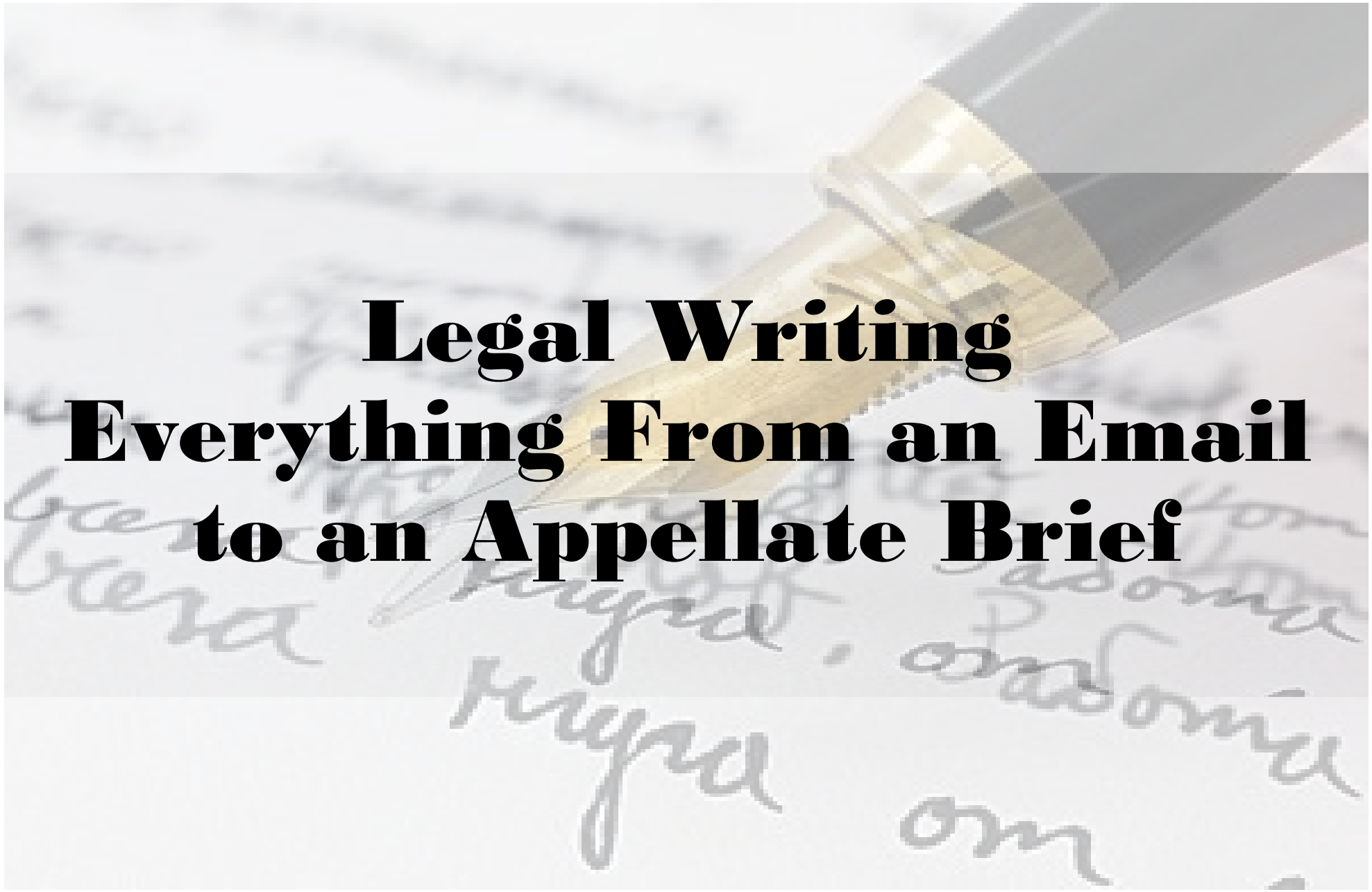


Legal Writing
Everything From an Email to an Appellate Brief



The letter I have written today is **longer** than usual because **I lacked the time** to make it shorter.

Blaise Pascal, French mathematician, physicist, inventor, writer and Christian philosopher.

"If you don't know where you are going, you'll end up someplace else."

— Yogi Berra

PLAN AHEAD

- ✓ Write for you intended audience.
- ✓ Whatever the product (brief, letter or email) your first sentence should tell the reader *what* you are asking him or her to read and *why*.
- ✓ Everything you write should be complete in and of itself.
  - ➢ When referring to previously sent documents, briefly summarize the documents so the reader doesn't have to go back and read the prior document to proceed.
  - ➢ If you are attaching an exhibit, briefly summarize the exhibit so the reader knows before reading the exhibit why it is attached and where to concentrate.
- ✓ Know and plan for your page and time limitation.
- ✓ Provide reader guideposts, especially headings.

TIPS FOR COURT FILINGS



"*Judges, like people, may be divided roughly into four classes:*

judges with neither head nor heart – they are to be avoided at all costs;

judges with head but no heart – they are almost as bad;

then judges with heart but no head – risky but better than the first two;

and finally, those rare judges who possess both head and a heart – thanks to blind luck, that's our judge."

PICK A THEME

Before you start writing, you should settle upon your theme, often described as "telling a story." Another way to look at the task is to pretend you must explain to a judge – in one sentence – why the judge should rule in your favor.

- ***Case Study A***: Lawsuit Seeking a Court Order to **Block** the City Controller from Auditing the City Attorney's Offfice.

  Opening Sentence for Court Brief:
  "The City of Los Angeles filed this lawsuit to uphold the audit limitations in Section 261 of the current City Charter, which were enacted by the voters in 1999."

- ***Case Study B***: Lawsuit to Obtain A Court Order to **Compel** a Private Entity to Submit to an Audit by the City Controller.

  Opening Sentence of Court Brief:

  "Petitioner's Motion is the latest maneuver aimed at defying a basic truth: if you accept public funding you must accept public scrutiny."

THE ORDER OF THE PRESENTATION FOR COURT FILINGS

- ✓ **A Summary of Argument is your most effective tool.** Busy judges and lawyers want to know the bottom line. You're not writing fiction. Don't bury the lede or go for a big "reveal" at the end. Another benefit of a fulsome summary of the argument is it lets you make your points twice.
- ✓ **Strongest arguments should appear first.** Don't be a slave to chronology or any other methodology.
- ✓ **Always mention your weakest point.** Do not let your adversary be the first to frame the issue. Consider sandwiching a weak point between two strong points.
- ✓ **Finish strong**. Consider placing your second strongest argument at the end. Also, take advantage of a customized final sentence to drive home your theme.
  - **Do:** *"The Court should put an end to Petitioner's game of stonewalling the lawful audit by upholding the audit subpoenas."*
  - **Don't:** *"For the foregoing reasons, Respondent requests a ruling in its favor."*

SPECIALIZED TIPS FOR LEGAL FILINGS

- ✓ **Use Plain Language Rather than Legalese.** Judges don't enjoy reading legalese any more than a lay person.

  - Pursuant to your instructions, I met with Roger Smith today regarding the above-referenced case.

    As you requested, I met with Roger Smith today.

  - This letter is for the purpose of retaining your services as a consultant regarding the above-referenced matter.

    We would like to retain you as a consultant in this case.

  - Thank you in advance for your courtesy and cooperation in this regard. Please do not hesitate to contact me should you have any questions regarding the request.

    Thank you. If you have any questions, please call.

SPECIALIZED TIPS FOR LEGAL FILINGS

- ✓ **Use Positive Phrasing.** Tell the judge what the evidence and law demonstrate rather than what it fails to demonstrate.
- ✓ **Use Footnotes Sparingly.** Footnotes signal to a judge that an aside is approaching. Footnotes should not be used to convey substantive information. Footnotes should not be used to distinguish important cases, as the judge may perceive the placement as a misguided dodge.
- ✓ **Attack an Opponents' Rationale rather than your Opponent/In an Appellate Context, Challenge the Judge's ruling/basis, not the Judge.**
  - ➢ **Do:** "Liability is clear because of the doctrine of preemption. The trial court erroneously dismissed the complaint because it found that one prong of the preemption analysis – the conflict requirement – was absent. The preemption doctrine controls here because the state statute and the local ordinance are in direct conflict; a person in compliance with the per-household limit of four dogs contained in the local ordinance will be in violation of the conflicting state law limit of two dogs per household."
  - ➢ **Don't:** "Liability is clear because of the doctrine of preemption. The trial court erroneously dismissed the complaint. The appellate court should reverse the trial court because of the doctrine of preemption."

SPECIALIZED TIPS FOR OBJECTIVE WRITING

- ✓ **Always include an Executive Summary (in longer documents) or a descriptive first sentence.**
  - ➢ **Do:** "I am sending this email to give you a "heads up" about an item on the Recreation and Parks agenda this Thursday involving use of Quimby Funds for a regional park."
  - ➢ **Don't:** "The Quimby Act was codified in the Government Code, which was last amended in 2015. . ."
- ✓ **Use Headings as a Guidepost for Readers.**
- ✓ **Objective Writing Should Include Conclusions Drawn from the Analysis.** A research project should not just set out the law, it should also form an opinion about the conclusions to be drawn from the law.

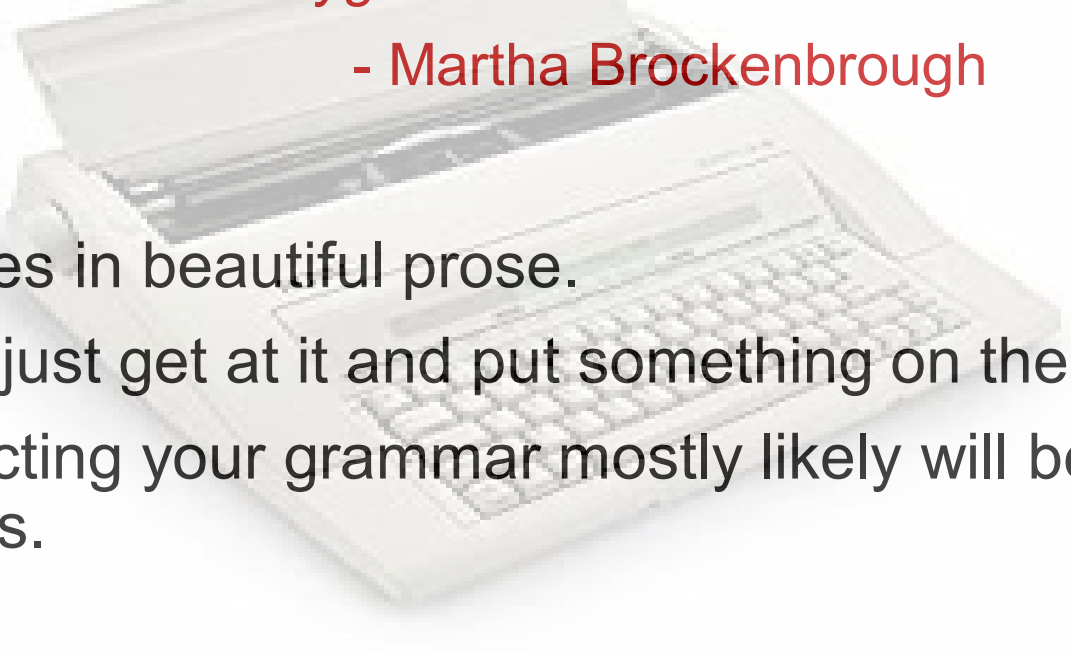
STYLE AND GRAMMAR TIPS FOR ALL WRITTEN PRODUCTS

"Anarchy is as detestable in grammar as it is in society."

- Maurice Druon

"Grammar to a writer is to a mountaineer a good pair of hiking boots or, more precisely, to a deep-sea diver an oxygen tank."

- Martha Brockenbrough



- ✓ Not everyone writes in beautiful prose.
- ✓ Writing is hard so just get at it and put something on the page.
- ✓ The work of correcting your grammar mostly likely will be done during the editing process.

EDITING

"Editing might be a bloody trade, but knives aren't the exclusive property of butchers. Surgeons use them too."

- Blake Morrison

"So the writer who breeds more words that he needs, is making a chore for the reader who reads."

- Dr. Seuss

"It is perfectly okay to write garbage, as long as you edit brilliantly."

- C.J. Cherryh

"I try to leave out the parts that people skip."

- Elmore Leonard

- ✓ Editing is more important than writing for ensuring a good product.
- ✓ Edit as though you are being paid by the word to cut away.
- ✓ Edit with the reader in mind.
- ✓ Edit after putting the work aside so you come at it, in a fresh way, the way the reader will.

USE THE ACTIVE VOICE . . . WELL, ALMOST ALWAYS

"[The active voice is the] vigorous voice, unashamed to say whodunit. Passive voice is preferred by the weak, the cowardly, ashamed to name the fink who told them what they are evasively telling you."

--John Bremner

Don't: The report will be considered by the Board next Monday.

Do: The Board will consider the report next Monday.

Don't: Testimony was heard from the plaintiff and from three witnesses on behalf of the defendant.

Do: *After the plaintiff testified, three witnesses testified for the corporation.*

Don't: This is a purely legal question to be determined by the court.

Do: *The court decides this purely legal question.*

Don't: McCormick's motion for partial summary judgment on the duty to defend should be denied.

Do: *The court should deny McCormick's motion for partial summary judgment on the duty to defend.*

PASSIVE VOICE
(when the purpose is to obscure)

On rare occasions, passive voice is preferred to obscure the identity of an actor:

- ✓ Key passage from Special Counsel Robert Mueller's Indictment of Roger Stone is a textbook example of a purposeful use of the passive voice:

  > [A] senior Trump Campaign official was directed to contact STONE about any additional [Organization 1] releases and what other damaging information [Organization 1] had regarding the Clinton campaign."

- ✓ This passage in the Indictment is discussing five actors but only four are identified by name, title or alias. The other un-named actor, apparently, was so sensitive, that his or her name was obscured through the use of the passive phrase "a senior Trump Campaign office *was directed…."* Directed by whom, one might ask? The use of the passive voice obscured the identity and even obviated the need to give the absent person's title or an alias.
- ✓ In our world, occasionally we use the passive voice to shield the identity of an actor for litigation or discovery person, or simply not to tattle:

  > "The Board was advised to re-agenize the item, which it did."

Break.
Up.
Long.
Sentences.

- ✓ **Don't:**

  The contractor refused the City's offer to mediate and thereafter continued to engage in a pattern and practice of conduct which resulted in a failure to meet milestones, a refusal to consult with the agency and numerous other breaches of the contract which caused the City to file suit against the contractor.

- ✓ **Do:**

  The contractor refused the City's offer to mediate. Thereafter, the contractor engaged in a pattern and practice of unacceptable behavior, including a failure to meet milestones, a refusal to consult with the agency and numerous other breaches of the contract. The contractor's defaults caused the City to file suit against the contractor.

Ensure Parallelism in Lists
Consider Using Numbering for Long Lists:

- ✓ **Don't:** The Department agreed to supply more parking, hearing complaints more quickly, to hire more personnel, community outreach and more notice for events.

- ✓ **Do:** The Department agreed to: 1) supply more parking; 2) hear complaints more quickly; 3) hire additional personnel; 4) engage in more community outreach; and 5) provide more advance notice for events.

The court should disregard Thompson's opposition because it violates California Rule of Court 313.

- ✓ **Don't:** The court relied heavily on the district court's statement that the would be intervenors retained the right to appear through counsel, to participate in the fairness hearing, to conduct discovery, and standing to appeal the court's approval or disapproval of the class-action settlement.

- ✓ **Do:** *The court relied heavily on the district court's statement that **(1)** the would-be intervenors retained the right to appear through counsel, to participate in the fairness hearing, to conduct discovery, and **(2) they had** standing to appeal the court's approval or disapproval of the class-action settlement.*

- ✓ **Don't:** The *Younger* doctrine also applies to a state civil proceeding that (1) is ongoing, (2) implicates important state interests, and (3) affords an adequate opportunity to raise federal claims.

- ✓ **Do:** *The Younger doctrine also applies to a state civil proceeding that is ongoing, (2) implicates important state interests, and (3) affords an adequate opportunity to raise federal claims*.

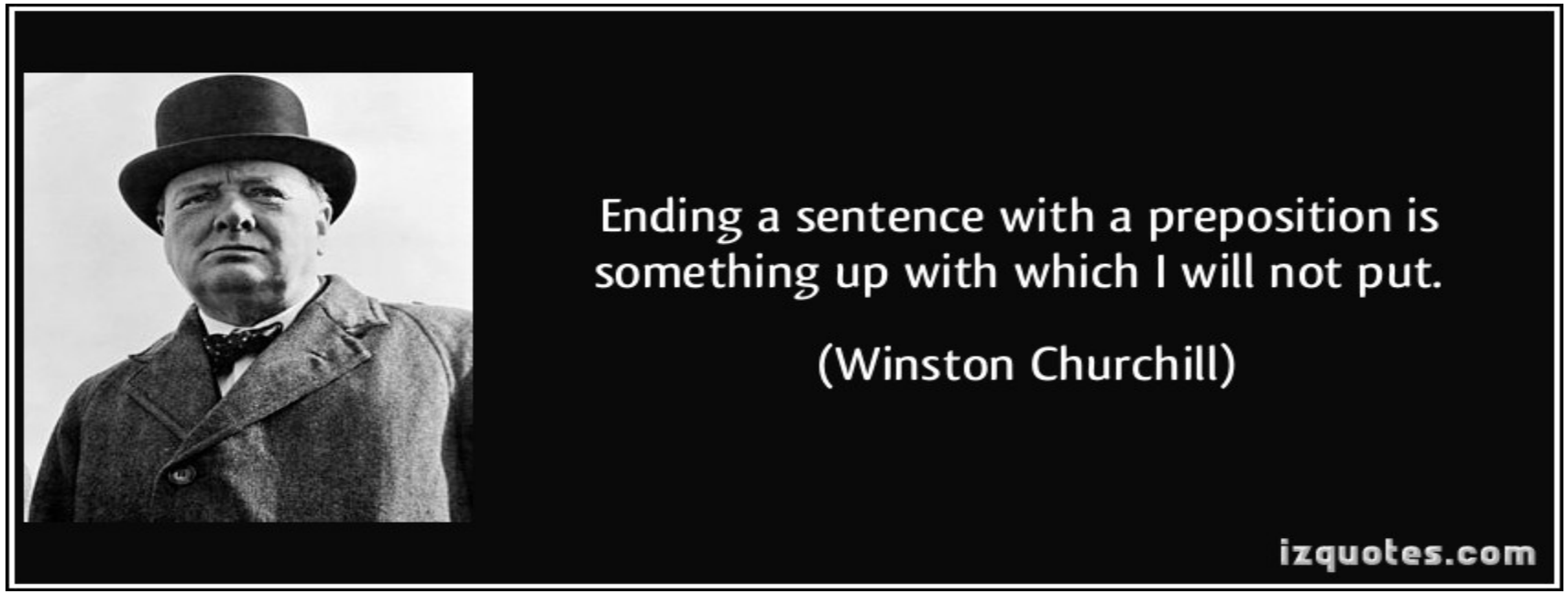
SINGULAR v. PLURAL

- ✓ **Always Draft in the Singular When Possible**

For clarity, singular construction is best. For example, the following sentence, written in the plural, is subject to two, different constructions.

- **Plural Construction:** "The City requires vendors who vend inside the park and on the perimeter sidewalk to get permits.
- **Question:** Does the sentence mean that a vendor who vends on both the sidewalk and the park interior needs a permit but that a vendor who vends only in the interior or only on the sidewalk doesn't?
- **Singular Construction:** "The City requires a vendor who vends inside the park or on the perimeter sidewalk to get a permit."

AVOID ENDING A SENTENCE OF PHRASE WITH A PREPOSITION



- ✓ **Don't:** After the Council returned from its recess, the previously canceled meeting was set up.
- ✓ **Do:** The previously canceled meeting was convened after the Council returned from its recess.

AVOID USING THE WORD "IT" TO START A SENTENCE

- ✓ **Don't:** It appears that the Court relied heavily on the defendant's waiver defense.
- ✓ **Do:** The Court apparently relied heavily on the defendant's waiver defense.

- ✓ **Don't:** It held that the Plaintiff failed to comply.
- ✓ **Do:** The Court held that the Plaintiff failed to comply…

AVOID STARTING A SENTENCE WITH THE WORD “THERE”

- ✓ **Don’t:** There were many reasons why the Committee rejected the report.
- ✓ **Do:** The Committee rejected the report for many reasons.

- ✓ **Don’t:** There is no valid exemption applicable to the …
- ✓ **Do:** No valid exemption applies to the…

USE PRONOUNS VERY SPARINGLY

- ✓ **Don't:** John and Steve discussed the matter before he went…
- ✓ **Do:** John discussed the matter with Steve before John went…

- ✓ **Don't:** He filed the report before he spoke to the Commissioner.
- ✓ **Do:** John filed the report before he spoke to the Commissioner.

- ✓ **Don't:** Even though she failed to seek advice, Dorothy spoke.
- ✓ **Do:** Even though Dorothy failed to seek advice, she spoke.

AVOID USE OF NON-DESCRIPTIVE "CATCHALL" WORDS

- ✓**Don't:** This is why the Court refused to grant…
- ✓**Do:** The numerous failures explain why the Court refused to grant…

- ✓**Don't:** Those contract terms required the contractor to…
- ✓**Do:** The insurance and indemnity provisions required the contractor to…

- ✓**Don't:** These persons appear to have influenced the Board…
- ✓**Do:** The speakers appear to have influenced the Board…

- ✓**Don't:** That was the reason why the contract was terminated by the G.M.
- ✓**Do:** The G.M. terminated the contract as a result of the breach.

- ✓**Don't:** It was the reason why the fine doubled.
- ✓**Do:** The fine doubled because of the prior conviction.

- ✓**Don't:** The City cannot sanction such conduct.
- ✓**Do:** The City cannot sanction discriminatory conduct.

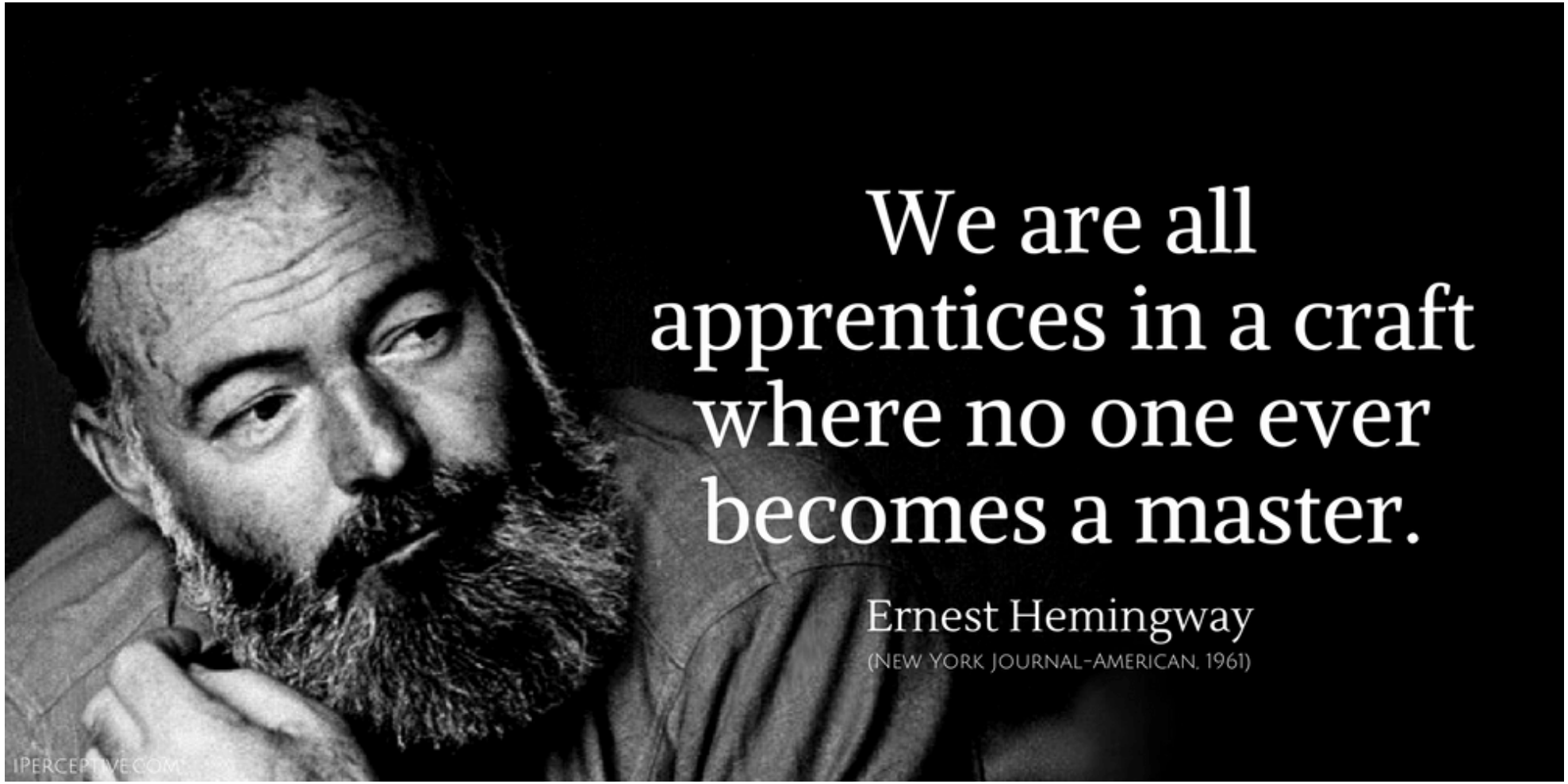
Proof Reading

fi you can raed this, you have a sgtrane mind too. I cdnuolt blveiee that I cluod aulacity uesdnatnrd what I was rdanieg. The phaonmneal pweor of the human mind, aoccdrnig to a rscheearch at Cmabrigde Uinervtisy, it dseno't mtaetr in what oerdr the lttleres in a word are, the olny iproamtnt thing is that the frsit and lsat ltteer be in the rghit pclae. The rset can be a taotl mses and you can still raed it whotuit a pboerlm. This is bcuseae the human mind deos not raed ervey lteter by istlef, but the word as a wlohe. Azanmig huh? Yaeh and I awlyas tghuhot slpeling was ipmorantt! If you can raed this SHARE IT.

Can you raed this?

Olny 55 plepoe out of 100 can.

CONCLUSION


We are all apprentices in a craft where no one ever becomes a master.
Ernest Hemingway
(NEW YORK JOURNAL-AMERICAN, 1961)

Editing Workshop
- Opening Paragraph –
Council Report

In *Martin v. Boise,* 2018 U.S. App. LEXIS 25032*,* the Ninth Circuit examined the constitutionality of a City of Boise ordinance that made it a misdemeanor to camp in any public place. A group of homeless individuals filed suit, seeking damages and injunctive relief against enforcement of the ordinance. They asserted a violation of the Eight Amendment.

This report addresses the impact of a recent Ninth Circuit opinion on the validity of the Los Angeles Municipal Code Section 41.18, which criminalizes "sitting, sleeping or lying" on a public sidewalk. In *Martin v. Boise*, 2018 U.S. App. LEXIS 25032, the Ninth Circuit examined the Constitutionality of a similar City of Boise ordinance. A group of homeless individuals in Boise filed suit, seeking damages against enforcement of the ordinance. The plaintiffs asserted that the Boise ordinance violated the Eight Amendment because it constituted cruel and unsual punishment given the lack of homeless shelter beds in Boise. The Ninth Circuit ruled in plaintiffs' favor of the homeless *Boise* plaintiffs. Los Angeles currently does not have sufficient shelter space for our homeless residents leaving LAMC 41.18 vulnerable to legal challenge under the *Boise* case. For the reasons set forth below, we recommend that the City Council repeal Section 41.18.

Workshop
Strategic Editing

On September 25, 2007, in a Texas federal district court, R&B Music sought injunctive relief against the McCoys to prevent them from any further use or disclosure of R&B's trade secrets. On September 26, 2007, the Texas court issued an order restraining the McCoys from using or disclosing certain R&B property and proprietary information. On September 26, 2007, the court set an evidentiary hearing for Tuesday, October 7, 2007, on R&B's preliminary-injunction motion.

On October 6, 2007, the McCoys moved to dismiss for an alleged lack of venue and personal jurisdiction. Alternatively, they asked the court to transfer the case to an Illinois federal court under 28 U.S.C. S. 1404 or 1406.

On October 7, 3007, when the parties arrived for the injunction hearing, the Texas court indicated an intent to hear testimony and rule on the McCoys' dismissal or transfer motion, to which R&B had been given no chance to respond. The testimony established that both of the McCoys had significant contacts in Texas for the past eight years – including daily phone calls and faxes to and from R&B; their three visits to R&B's Texas headquarters; and their work in negotiating R&B contracts with Texas musicians.

Workshop
Strategic Editing

On September 25, 2007, ~~in a Texas federal district court,~~ R&B Music sought to enjoin ~~injunctive relief against~~ the McCoys from ~~to prevent them from any further~~ usinge or disclosingure ~~of~~ R&B's trade secrets. The next day, ~~On September 26, 2007,~~ the Texas federal district court issued an order restraining the McCoys from using or disclosing certain R&B property and proprietary information. The court also ~~On September 26, 2007, the court~~ set an evidentiary hearing on R&B's preliminary-injunction motion.

A day before that scheduled hearing, ~~On October 6, 2007,~~ the McCoys moved to dismiss for ~~an alleged~~ lack of venue and personal jurisdiction; or a. ~~A~~lternatively, ~~they asked the court~~ to transfer the case to an Illinois federal court under 28 U.S.C. S. 1404 or 1406.

At the ~~On~~ October 7, 2~~3~~007 evidentiary hearing on the injunction motion, ~~when the parties arrived for the injunction~~ hearing, the Texas court indicated it would also ~~an intent to~~ hear testimony and rule on the McCoys' dismissal or transfer motion, to which R&B had been given no chance to respond. The testimony established that both John and Kate ~~of the~~ McCoy~~s~~ had significant contacts in Texas for the past eight years – including daily phone calls and faxes to and from R&B; their three visits to R&B's Texas headquarters; and their work in negotiating R&B contracts with Texas musicians.

Workshop
Strategic Editing

On October 8, 2007, the Texas court transferred the case to this Court, noting that the transfer was for the reasons stated on the record. As the October 7, 2007 transcript reveals, the Texas court decided that while it had personal jurisdiction over John McCoy, it lacked personal jurisdiction over Kate McCoy. According to the court, the case should be transferred because "to accord relief to R&B down here while leaving the Illinois court to deal with Kate McCoy simply would not provide an effective situation" for any of the parties. The judge did not indicate which statutory section governed the transfer.

On October 8, 2007, in the same order, the Texas court further ruled that its September 26, 2007 order restricting both John and Katy McCoy from using or disclosing R&B's trade secrets would remain in effect until further orders of the Illinois court. Ob October 13, 2007, R&B filed the present supplemental motion for preliminary injunction, asking this Court to extend and expand the injunctive relief already granted by the Texas court.

Workshop
Strategic Editing
Clean Edit

On September 25, 2007, R&B Music sought to enjoin the McCoys from using or disclosing R&B's trade secrets. The next day, the Texas federal district court issued an order restraining the McCoys from using or disclosing certain R&B property and proprietary information. The court also set an evidentiary hearing on R&B's preliminary-injunction motion for 10 days later.

A day before that scheduled hearing, the McCoys moved to dismiss for lack of venue and personal jurisdiction; or alternatively, to transfer the case to an Illinois federal court under 28 U.S.C. S. 1404 or 1406.

At the October 7, 2007 evidentiary hearing on the injunction motion, the Texas court indicated it would also hear testimony and rule on the McCoys' dismissal or transfer motion, to which R&B had been given no chance to respond. The testimony established that both John and Kate McCoy had significant contacts in Texas for the past eight years – including daily phone calls and faxes to and from R&B; their three visits to R&B's Texas headquarters; and their work in negotiating R&B contracts with Texas musicians.