

PERSUASIVE WRITING

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Why Good Writing Is Important

- About 5% of cases go to trial – the rest settle or are disposed of by motion practice
- Federal courts typically rule on the papers; trend in state courts is toward the same
- Judges are overwhelmed with paper – your paper needs to be clear, concise, and persuasive or it will be ignored
- Ours is a profession – writing is a large part of what we do as lawyers – we need to do it well



Rock

Paper

Scissors

stus.com

Two Basic Rules

- Golden Rule – don't write anything you would not want to see on the front page of the Dallas Morning News
- Persuasive writing starts with the mechanics
 - Watch your grammar
 - Watch your punctuation
 - Buy a book, if necessary
 - Strunk & White – Elements of Style
 - The Gregg Reference Manual
 - Bryan Garner books

Persuasion is Needed in All Kinds of Writings

- Emails/Letters
- Motions/Briefs
- Agreements

Emails/Letters

- Be careful about firing off an email or letter – think about what you are writing – Read and re-read
- It is always better to be professional, not snarky or sarcastic
- Your email or letter may end up attached to a motion or brief – especially if it is a Rule 11 agreement or part of an ongoing discovery battle
- Do not use abbreviations (especially text abbreviations) in business emails
- Use the same care with an email as you would use with a letter

15 Tips for Persuasive Writing

- Pay attention to who your audience is – tailor your message to your audience
- Use plain language and communicate clearly
 - No “lawspeak” – “hereinafter”, “thereto”, “aforesaid”, “such motion”
 - Your client does not want to read gobbledygook
 - Your judge does not want to read gobbledygook
 - Your opposition does not want to read gobbledygook
 - Do not use gobbledygook



“Our legal department wants us to download their new software. It translates gobbledygook to mumbo jumbo.”

15 Tips for Persuasive Writing

- Frame the issue early in a short plain statement
 - Creates the context for your message
 - Tells why you are writing
 - Tells why the reader should continue reading
 - Tells what is important about what you have to say
- Headings should inform and tell the reader what is coming – be descriptive
- Write short paragraphs and short crisp sentences
 - Adhere to a page limit – even if it is your page limit
 - Make your writing easy to read

15 Tips for Persuasive Writing

- State your arguments as conclusions rather than opinions
- Use your facts well – find cases with facts that are similar to yours
- Use your imagination
 - Use analogies
- Do not waste time or space on words/sentences that do not add to your argument
 - Introductory paragraphs for motions and briefs
 - “It is important [interesting] to note”

15 Tips for Persuasive Writing

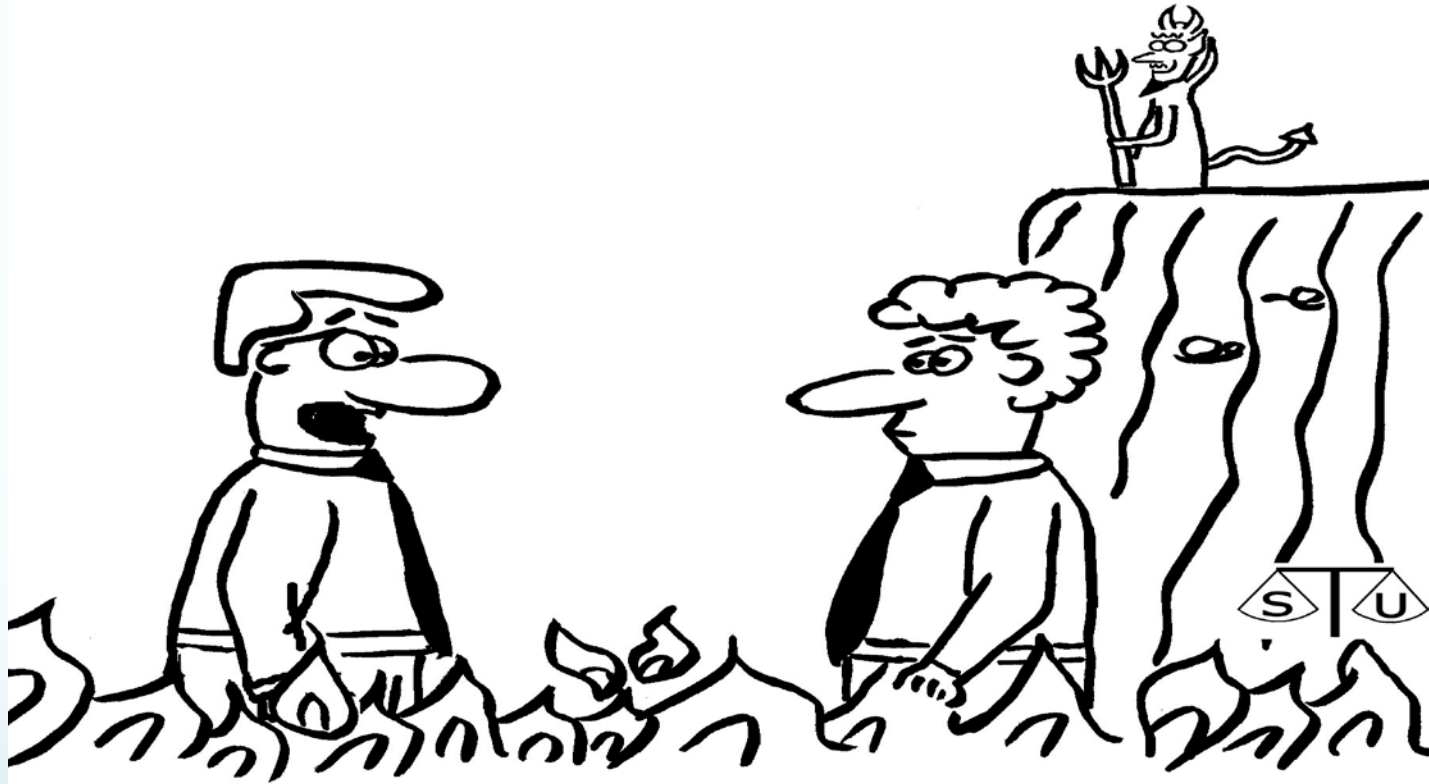
- Do not use sarcasm, insults, or scorn
 - They are tiresome for the reader
 - They are not persuasive
 - Beware of the artificial
- Mainly active voice, not passive
 - John beat him vs. He was beaten by John
- One word instead of two; two words instead of three
 - “To” vs. “in order to”; “Because” vs. “for the reason that”

15 Tips for Persuasive Writing

- Know the difference between “that” and “which”
 - “Cars that use hybrid technology save fuel”
 - “Texas law, which governs this contract, provides. . .”
- Call the parties by their names, not their procedural titles
- Put string citations in footnotes
 - Do not let footnotes take control
 - Reserve parentheticals to statements relevant to your facts

Agreements

- Be clear and concise – future litigation may depend on clear drafting
- Do not rely on someone else's boilerplate language
 - Know the meaning of all provisions
 - Don't include provisions you do not need
- Mandatory provisions require mandatory language
 - Shall, Exclusive, Only
- Do not include two provisions that cover the same subject matter



"I still say those 10 Commandments are deceptively open to interpretation."

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