

FINAL TIPS

“Excellent writing is a lifelong endeavor,” Chief Judge Lannetti contends. With practice comes progress. And, even if you’re out of practice, editing, rewriting and proofreading can significantly improve the final product.

In closing, keep in mind three final tips to guide your legal writing journey.

First, remember that good writing takes time. As Justice McCullough explains, “It is unlikely that your best insights and writing will happen when you are in a hurry. Give yourself the time to think, write and rewrite, as opposed to cobbling something together in a rush to meet a deadline.”

Second, evaluate and seek to improve your weaknesses. “Understand your weaknesses so you can focus on improving them (and ask others to assist you in that endeavor),” Chief Judge Lannetti recommends. “Have someone unfamiliar with the case read the brief and provide feedback. ... Recognize that feedback is a gift; encourage it.”

Lastly, consult and use writing resources, including classes, brief-writing programs² and books.³ Judge Callins suggests, “Attorneys should read books and/or take classes on brief writing. The class you took in law school will not necessarily serve you when you are writing an appellate brief for the first time 20 years later.” ■

ENDNOTES

1 The views advanced in this article represent education and advice authorized by the Virginia Canon of Judicial Conduct 1(M). These views should not be mistaken for the official views of the courts or the opinion of a justice or judge in any specific case.

2 For example, BriefCatch, a Microsoft Word Add-in, is a legal brief-writing program and Quick Check (Westlaw Edge) analyzes legal authorities within a brief.

3 Recommended books include the following:
Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* (2008).

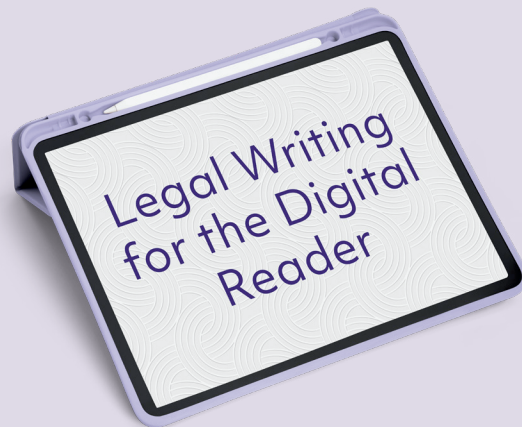
Bryan A. Garner, *Garner’s Modern English Usage* (5th ed. 2022).

Bryan A. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* (3d ed. 2014).

H.W. Fowler, *A Dictionary of Modern English Usage* (1983).

Richard C. Wydick, *Plain English for Lawyers* (5th ed. 2005).

Ross Guberman, *Point Made: How to Write Like the Nation’s Top Advocates* (2d ed. 2014).



BY JOHN P. O’HERRON

More and more, Virginia’s judges are reading briefs on a digital device. And with e-filing now the norm in Virginia’s appellate courts, this is especially true at the appellate level. This is a monumental shift in how judges are consuming your argument, and it should change how you write your briefs.

Why? Because the human brain interacts with, comprehends and recalls information differently when reading on a screen. If the needs of your reader have changed, so too has your job as a writer.

Studies (and your own experience, most likely) show several key differences between reading on an electronic device and reading on paper. First, the obvious: Reading on a screen can be distracting. Sure, we’re more mobile now, but we also are straining more to focus because email, music or whatever-is-on-that-new-tab-we-just-opened issue their siren calls. And each interruption takes time to recover from.¹

But aside from that, reading on a screen is simply harder and more time-consuming. Those websites tell you how long it’ll take to read their article because they know people give up. Studies show that we make up for this added burden of reading by skimming content more than reading it. This ends up looking like an F pattern: We read the first few sentences of paragraphs, and scan down the left side of text. Content down the page, to the right, and at the end of paragraphs is often skimmed.²

Finally, reading on a device robs us of many spatial orientation markers that help us comprehend and recall information. We can feel the thickness of a paper brief and how much we have left to go, we can quickly flip to page 3 from page 23 and we can recall important information at a specific place on a page. Digital text leaves us with fewer spatial cues, and the ones we have (internal hyperlinks, Ctrl F) interrupt our attention and focus.³

With these differences in mind, I offer the following tips to improve your writing for the digital reader.

TIPS FOR REACHING YOUR DIGITAL AUDIENCE



Readability is the lodestar of every brief. With the challenges of digital reading, it matters more than ever.

- 1 Add white space with more headings, lists, tables and images (as appropriate).** More white space and a variety of content and structure gives your reader a rest and keeps things fresh.
- 2 Spend more time on headers and topic sentences.** Overcoming the F pattern requires grabbing your reader's attention at the start and forecasting where you're going. Good headings also enable skimming for rereads or in advance of oral argument. Spend the time needed to get them right.
- 3 Shorten your paragraphs and sentences.** Some sentences are better long. But mental breaks are important, and paragraph breaks and new sentences provide them.



Help your readers orient themselves to your brief.

- 1 Use strong headings and subheadings.** Strong and descriptive headings help orient your reader to each section of your brief and to its place in the bigger picture. Add them to your fact section, too. Don't waste the opportunity to guide your reader along.
- 2 Change your page numbers and header numerals.** Page "2 of 30" orients the reader better than just "2." And changing your enumeration from roman numerals (I, I.A., I.B., I.B.i) to numbering (1, 1.1, 1.2, 1.2.1) will orient the reader better to the overall structure and place in your brief.
- 3 Hyperlink your table of contents.** Many court rules address this, but navigating a digital document can be vastly improved with bookmarks and a hyperlinked table of contents, allowing the reader to easily move from one part of your brief to another.



Your digital reader is busy and already distracted. Avoid distractions in your brief.

- 1 Reduce or eliminate footnotes.** Footnotes interrupt. Scrolling back and forth between the text and the footnote adds a step for your reader. Try to eliminate them.
- 2 Eliminate ALLCAPS.** It is harder to read and immediately triggers skimming.
- 3 Review for redundancies.** Editing is always of paramount importance, but even more so when needless repetition can trigger digital skimming.

As readers' habits change, so too must those of writers. This is no less true in the law. Spending time to make your brief more readable and usable to the digital reader will pay off. ■

ENDNOTES

1 See, e.g., Thomas Jackson, et al., *The Cost of Email Interruption* 5 (2001) (noting that on average it takes 64 seconds to recover from email interruption) ("The time it takes the average employee to recover from an email interrupt and to return to their work at the same work rate at which they left it, is on average 64 seconds.").

2 See Robert B. Dubose, *Legal Writing for the Rewired Brain: Communicating in a Paperless World*, at 4-6 (2010), available at www.texasbarcle.com/materials/events/10949/140308_01.pdf (citing F-pattern study).

3 See generally David Hricik and Karen J. Sneddon, *Screen Time: Legal Documents in the Digital Age*, 38-SUM Del. Law. 14 (2020) at 16 (citing authorities); Mary Beth Beazley, *Writing (and Reading) Appellate Briefs in the Digital Age*, 15 J. App. Prac. & Process 47, 49-51 (2014) (citing authorities).



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