



Effective Writing

Copyright by Dr. Stephen Wilbers

www.wilbers.com

First published April 10, 2006

Legal writing advice from the experts

If anyone can talk a good game, a lawyer can. But talking persuasively is not enough. You have to know how to write persuasively.

That seemed to be the theme of a panel discussion titled “Effective legal writing as seen by those who matter: judges,” held March 30 on the University of Minnesota campus. The event was part of Fredrikson & Byron’s Excellence in Writing Series.

Minnesota Supreme Court Justice Paul H. Anderson set the tone when he leaned forward and said, “Good writing makes a difference in tough cases with conflicting opinions.”

The audience — mostly law students, law clerks, and young associate attorneys — listened intently.

According to Hennepin County District Court Judge Isabel Gomez, “Most attorneys are much better at oral arguments than written arguments, but it’s the written arguments that count.”

Two common pitfalls, according to the panel, are that briefs are too long — “You have five pages to convince me that this case needs to be reviewed,” declared Justice Anderson — and that arguments lack shape.

Judge Gomez complained about “formlessness” and blamed it on the “destructive” influence of the computer.

“It used to be said that word processors would refine our writing,” she said, “but they have contributed to this misshaped, lousy writing... People incorporate all this boilerplate junk. The trouble is that you lose any shaping of your argument whatsoever.

“This sort of formlessness is not just a matter of being irritating to a judge. It stands in the way of the judge knowing what you consider important in a case.”

Her expectation: “One would hope that a brief would be shaped so that one would know what was important, with important arguments first.”

The problem, according to Minnesota Federal District Court Judge Joan Ericksen, was that lawyers make a wrong assumption. “Lawyers always believe whoever has the most words will win,” she said, “but judges believe whoever has the best argument will win.”

Justice Anderson agreed. He described the problem as the “Velcro approach.”

“You write about six issues,” he said, “and you throw them at the wall and hope one of them will stick.”

In addition to talking about what was wrong with legal writing — wordiness and formlessness — the panel also addressed the positive side. Justice Anderson described writing as “an art” and “a process” that “tests the soundness of your reasoning.”

“You get there through a process,” he said. “You do it like an architect. You design a brief the way you design a house... You want to build on a solid foundation.”

In the final stage, which he called “the artistic stage,” you “refine the language”: “You want to make it easy for me to read... Good writing makes it easy for me to go your way and say yes, that makes sense.”

“The bottom line,” according to Judge Gomez, “is to persuade the judge so that the judge can stand with you... The written argument sits there, is read, is reread in a difficult case. What I see is first-rate oral argument and third-rate writing.”

Posted with permission. Copyright by Stephen Wilbers. Visit <http://www.wilbers.com> for writing exercises, online resources, and additional columns on legal writing.