

Ethics/Professionalism and Writing Assignment: Civility in Communication

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Adversarial Correspondence

Tips

- Begin a letter simply with “I am writing to ...”
 - (For a short reply e-mail where some informality is called for, you might skip this.)
- Do multiple drafts.
- Write for the judge. (Assume the judge will read it.)
- Avoid invective.
- Cut out adverbs.
- Put what you need in writing.
- Show how cooperative you are.

Beginning

I am writing to confirm agreements we reached in our meet-and-confer telephone conference earlier today.

I write to respond to your letter of March 23, 2016, in which you demanded that my client cease operating his lawn mowing business.

This way of beginning a letter is standard and practical. There is no need for creativity here.

Do multiple drafts

- There is no single better tool for improving your writing than to revise and rewrite what you have already written.
- This is not a waste of time (a/k/a billable hours) - words are the attorney's product. You should always aim for a quality product.

Write for the judge

- You are always writing for a judge.
- Sometimes a jury, too.
- You can't bully a recipient with harsh language.
 - Unless they are unsophisticated - in which case *maybe*.
 - But then you will pay a price in credibility with the judge.
- Don't try to get the recipient to see it your way ...
- Get them to see that the judge will see it your way.

Avoid invective

- Invective is insulting language.
- Judges can see invective a mile away.
- It shows the judge that you are not trying your best to get along.
- That lessens your credibility with the judge.
- Besides, what are the chances invective will help you?

Invective Example

Your letter fails to state any legal authority for your absurd claim that my client's fasteners are responsible for the porch collapse.

Invective Example

~~Your~~ The letter ~~fails to state~~ does not provide any legal authority for the ~~your absurd~~ claim that my client's fasteners are responsible for the porch collapse.

Invective Example

After re-writing:

The letter does not provide any legal authority for the claim that my client's fasteners are responsible for the porch collapse.

Cut out adverbs

- Cutting out adverbs is one of the quickest ways to make your writing more powerful and less shrill.
- Whenever you can, put your writing aside, come back to it later, and try to cut out adverbs.
- Ask yourself, “Can I possibly do without this adverb?”
- If the answer is yes, cut it out.

Adverbs Example

The requests seek ~~highly~~ unusual documents for a product defect case. ... Document request no. 13 seeks ~~completely~~ irrelevant documents, and the production of those documents would be unduly burdensome.

Put what you need in writing

- When you write, you are creating evidence.
 - evidence of notice
 - evidence of diligence
 - evidence of agreement
- So, create the evidence you'll need later on.
- If you are not writing to create evidence, then maybe a phone call or face-to-face meeting would be better.

Show how cooperative you are

- Judges are extremely alert to how cooperative, professional, and civil attorneys are.
- If you impress a judge in this way, and if the other party does not, you will reap rewards in a million little ways.
 - credibility in a dispute with the other party over discovery, deadlines, etc.
 - credibility in making arguments and motions

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Keep in mind:

- Being civil is unlikely to harm you or your client.
- Being civil is likely to help your relations with opposing counsel in dealing with the dispute efficiently and expeditiously - something you probably both want.
- You are likely to be happier at the end of the day and feel a greater sense of professional fulfillment if you maintain civility.
- Your opposing counsel one day is your co-counsel the next.
- All lawyers are "in this together" in the endeavor to create a more just society.

Your goals for your assignment:

- Brevity: Be much, much more concise than the e-mail to which you are responding.
- Courtesy: Use courteous language.
- Restraint: Refrain from answering rancor and invective with the same.
- Accuracy: Be accurate in what you say about the law.
- Advocacy: Safeguard your clients' interests.

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