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Recommended Citation

K.K. DuVivier, Pronoun References: Part I-When No Substitute Will Do, 25 COLO. LAW. 29 (July 1996).

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The Scrivener: Modern Legal Writing



Pronoun References: Part I— When No Substitute Will Do

by K.K. DuVivier

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In our writing we know who is who and what is what, but we often fail to let our readers know. Readers follow easily if we give them specific information. A pronoun can be a good substitute for specific information, but to avoid confusion, a pronoun must clearly refer back to its antecedent—the word or words for which it substitutes.¹

Ambiguous pronoun references plague much legal writing. Two frequent reasons for pronoun ambiguity are (1) multiple antecedents and (2) overly broad references.

Multiple Antecedents

The problem of multiple antecedents arises when a sentence or paragraph contains two or more nouns that could serve as the antecedent to which the pronoun refers. Notice the ambiguity created by the following instruction from the Texas Employment Commission.

Original: The parties are advised that they should immediately mail any documents they intend to rely upon as evidence in the hearing to the hearing officer and the other party at the addresses listed above. Failure to provide the other party with a copy of the document(s) may result in their exclusion from the hearing.²

This wording creates confusion about who or what will be excluded from the hearing. Does “their” refer to the errant party, to both parties, or to the documents themselves?

In most cases, ambiguity can be avoided by placing the pronoun and its antecedent in close proximity—assuring that no word or words that could be mistaken for the antecedent intervene. Under standard grammatical construction, “their” would refer to the documents. Generally, the antecedent is the closest noun that immediately precedes the pronoun:³ “document(s)” is the closest noun immediately preceding the pronoun “their.”

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

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But sometimes, proximity alone is not sufficient to eliminate ambiguity. “Document(s)” could be a singular noun, so the pronoun that corresponds to it should be the third person singular “its.” Instead, the third person plural “their” is used in the instruction, causing readers to look back to the preceding sentence for an antecedent. In the preceding sentence, the third person plural pronoun “they” is used to refer to the noun “the parties.” Thus, “the parties” seems to be a logical antecedent for “their” in the last sentence.

The best way to solve the ambiguity created by the multiple antecedents in the Employment Commission instruction is to repeat the appropriate noun instead of substituting a pronoun.

Improved: Example 1 (assuming the parties are to be excluded)—Failure may result in the parties’ exclusion from the hearing.

Example 2 (assuming the document is to be excluded)—Failure may result in the documents’ exclusion from the hearing.⁵

As a general rule, check your writing for multiple antecedents. If two or more people of the same sex are involved or if there is any question about who or what is referenced, repeat the specific noun instead of replacing it with a pronoun.

Overly Broad References

Another frequent reference problem in legal writing is the use of pronouns such as “it,” “this,” “that,” “such” or “which” to refer broadly to a general idea. Review the following example to see the confusion created by using the pronoun “this” as a broad reference.

Original: Even if Mr. Smith’s testimony about possible embarrassment caused by Acme is adequate to justify a damage award, emotional harm is difficult to quantify. *This* makes it unlikely that Mr. Smith will receive any substantial recovery.⁶

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Because the pronoun "this" does not refer back to a specific noun in the first sentence, the burden then falls on the readers to surmise how much or how little of the discussion "this" references. The best solution for clarifying such broad references is to add a summarizing noun to show what the pronoun is intended to encompass.

Improved: Even if Mr. Smith's testimony about possible embarrassment caused by Acme is adequate to justify a damage award, emotional harm is difficult to quantify. *This difficulty* [summarizing noun] makes it unlikely that Mr. Smith will receive any substantial recovery.⁷

Repeating a summarizing noun or phrase not only clarifies the scope of the reference—repeating the key terms also helps impress on readers the importance of those terms.

Original: A court will consider modifying child custody arrangements if both parents request a modification or if there has been a substantial change in the circumstances. *Such* has occurred in this case.

Improved: A court will consider modifying child custody arrangements if both parents request a modification or if there has been a substantial change in the circumstances. *A substantial change in the circumstances* has occurred in this case.⁸

Pronouns can be handy substitutes for nouns in your writing. They can improve flow and shorten the text. But remember that they are just substitutes. If your pronouns create any ambiguity, crystallize your meaning by replacing the pronoun

with the specific noun—use the original when no substitute will do.

NOTES

1. For example, in the sentence "Every dog has his day," the pronoun "his" refers back to the antecedent "dog." Example from Tarshis, *Grammar for Smart People* 49 (N.Y.: Pocket Books/Simon & Schuster, Inc., 1992).

2. Example from LeClerq, *Guide to Legal Writing Style* 90-91 (Boston: Little, Brown & Co., 1995)(*emphasis added*).

3. Tarshis, *supra*, note 1 at 53.

4. This language suggests that both parties would be excluded from the hearing. If the instruction intends to penalize only the errant party by exclusion, the instruction should clearly state this in words such as the following: "result in the errant party's exclusion from the hearing and that party's default in the case."

5. LeClerq reports that the Texas Employment Commission actually did revise the instruction to clarify that the penalty was "the document's exclusion." LeClerq, *supra*, note 3 at 91. However, the Commission version retains some confusion because it uses the singular noun "document" in contrast to the plural pronoun "their" used in the first version of the instruction. A pronoun always should agree in number with its antecedent, as will be discussed in the next *Scrivener* column.

6. Example from Oates, Enquist and Kunsch, *The Legal Writing Handbook* 753 (Boston, MA: Little, Brown & Co., 1993)(*emphasis added*).

7. *Id.* at 754 (*emphasis added*).

8. Examples from Oates, *supra*, note 6 at 754-55 (*emphasis added*).



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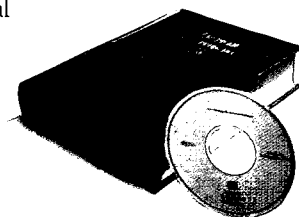
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