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### Readers Speak Out

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## Readers Speak Out

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# The Scrivener: Modern Legal Writing



## Readers Speak Out



by K.K. DuVivier

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This month, I am turning the column over to letters from readers. If you have a question or comment to share, please feel free to write or e-mail me at the addresses in the box below. Don't worry, I will ask your permission before using your name.

### Spell Checkers

Ron Ball from Williamsburg, Kentucky, forwarded an article about spell checkers by William O. Bertelsman, Chief Judge of the U.S. District Court for the Eastern District of Kentucky.<sup>1</sup> Judge Bertelsman warns against relying on computer spell checkers. Here are Judge Bertelsman's comments on some excerpts of materials submitted to his court.

"The tenants of the doctrine of last clear chance are. . . ."

It seems the tenet that an attorney should read something before signing it didn't help this writer. [J. Bertelsman]

"I will not aqueous in your demand."

Well, the demand was kind of soggy. [J. Bertelsman]

"The agents sited defendant as he left the cite of the crime and searched for him. He sights cases that the search was without probable cause."

(I swear this is true. Maybe the guy needed a magnifying glass to sight the cases.) [J. Bertelsman]

### Prepositions

I end sentences with prepositions in everyday speech, such as, "She knows the address the box was sent to." I am afraid of ending a written sentence with a preposition, however. I change sentences like the above to read, "She knows the address to which the box was sent." This seems to me gram-

matically correct, but seems awkward; consequently, I am not sure it represents good writing style. What is right?

A reader from Las Vegas, Nevada.

Although most grammar books indicate that a sentence may end with a preposition, many readers are distracted because they think it is an error. Winston Churchill can joke about the topic—"This is the sort of English up with which I will not put"<sup>2</sup>—but the better practice is to revise most sentences to avoid ending with prepositions if you want your readers to be focused on substance rather than form. [KKD.]

### Capitalization

There has been a heated debate taking place in our office for quite some time now regarding when, or if, it is proper to capitalize "plaintiff" or "defendant." [I]s it all just a matter of personal style?

Dee L. Farris, *Beem & Mann, P.C., Denver*

Although nouns are capitalized in the German language, multiple capitalizations often seem awkward in English. As a matter of style, some writers prefer to use lower-case letters for party names.

However, proper *Bluebook* form requires capitalization of party designations "when referring to the parties in the matter that is the subject of the court document or memorandum."<sup>3</sup> Specifically, the *Bluebook* uses the words "Plaintiff" and "Defendant" as examples of words that should be capitalized. [KKD.]

### Possessives

I was working on a contract for a company called Mom's. How does one make this possessive? The context was something like, "Subject to Mom's approval. . . ." Two apostrophes look wrong, but one appears to be referring to the writer's mother. The general question, then, is how to make posses-

#### DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401 or through e-mail to: [duvivier@spot.colorado.edu](mailto:duvivier@spot.colorado.edu).

*K.K. DuVivier is a senior instructor of Legal Writing and Appellate Court Advocacy at the University of Colorado School of Law, Boulder.*

sive a name that already contains an apostrophe. We were unable to find any mention of this type of situation in any reference books. Can you help?

Linda Magloughlin, *March & Myatt, P.C.*,  
Fort Collins, Colorado

I, too, checked several reference books and found no specific answer to the inquiry. However, two rules could provide guidance. First, companies and organizations vary in how to form the possessive of their names. Thus, one company may choose to omit the apostrophe, such as "Publishers Weekly," and another may choose to include it, such as "Writer's Digest."<sup>4</sup> Second, if an apostrophe is grammatically correct, but awkward, the sentence often can be revised.<sup>5</sup> Therefore, it may seem to be a cop out, but I would recommend, "Subject to the approval of Mom's. . .", unless the client has other preferences. Do any readers have other suggestions for this dilemma? [KKD.]

### Keep it Simple

Al Canner, *Executive Director of the Colorado Hospice Organization, formerly of Caplan & Earnest in Boulder*, alerted me to an opinion by Senior U.S. District Court Judge Kane that would put most attorneys on notice that they ought to strive for clear and simple writing, at least in a complaint.<sup>6</sup> Judge Kane described "the nature of the complaint" as "vague, repetitive and indistinct."<sup>7</sup> He also states, "The obtuse nature of the complaint suggests that the author considers the provisions of Fed. R. Civ. P. 8 [requiring 'a short and plain statement'] to be merely the aspirational meanderings of a torpid establishment."<sup>8</sup>

### Punctuation

When I attended the U.S. Merchant Marine Academy, I was the managing editor of the newspaper. One engineer who apparently had no idea of punctuation once sent an article with no punctuation at all. The last page consisted of lines of periods, commas, colons, semicolons, and other marks with a note: "Here's the punctuation—put them where you want them."<sup>9</sup>

Carl M. Wright, *Boulder*

### NOTES

1. Bertelsman, "Against the Spell Checker," *Kentucky Bench & Bar* 48 (Summer 1995).
2. *The Oxford Dictionary of Quotations*, 4th ed. at 203 (Oxford University Press: Oxford, 1992), referencing Gowers, "Troubles with Prepositions," in *Plain Words* (1948).
3. The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation*, 16th ed. at 17 (Cambridge: Gannett House, 1996).
4. The New York Public Library, *Writer's Guide to Style and Usage* 272 (Harper Collins: N.Y., 1994).
5. *Id.* at 274.
6. *Houston v. Mile High Adventist Academy*, 846 F.Supp. 1449 (D. Colo. 1994).
7. *Id.* at 1454.
8. *Id.* at 1452.
9. Perhaps this engineer was following the lead of Mark Twain, who sent his editor a page full of punctuation marks with a note: "Put them wherever they seem to fit." *Writer's Guide to Style and Usage*, *supra*, note 4, at 267.

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