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## Effective writing by lawyer essential for making a case

By Julie Baker and Lisa Healy

*Write On is a new, occasional feature on The Practice page intended to provide guidance on writing memoranda and briefs that will lead to the results their authors — attorneys — are hoping for from readers of those legal documents.*

"Now comes the Defendant in the above-captioned case and respectfully requests that this Honorable Court uphold the relevant provisions of the state and federal constitutions and statutes by. ...."

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As new lawyers, many of us learned to start our pleadings with a sentence — or several sentences — like the one above. From our point of view as writers, it's a nice, safe, predictable way to get started, not to mention a timesaver. Cutting and pasting are a lot easier than outlining and originality. Besides, aren't pleadings *supposed* to start this way?

The readers of such introductions say no. The boilerplate is just lines of text that the judge, magistrate or senior partner must plow through while wondering: "What is this case about? And how long will I have to wait to find out?" For a persuasive document aimed at convincing the reader to find in your client's favor, that sort of text is not a very favorable start.

"It's critically important to me to have an introduction that starts with punch," says Donald J. Savery, a litigation partner at Boston's Bingham McCutchen, who is also director of litigation training for Bingham's East Coast offices. "When the first page of the brief tells the judge something he or she could learn from reading the caption and the title, that's a waste of time. I tell associates to jump right in and say, 'This motion should be denied because ... .'"

Recognizing that all lawyers are pressed for time, our goal in writing this column is to help you negotiate the balance between efficiency and effectiveness. Practicing lawyers are professional writers. And because of the type of writing that started this column, lawyers have earned the reputation of being *bad* writers.

Too often, this assessment is accurate. And, while it may be accurate, it's not a life sentence. Most lawyers *can* write, or they would never have made it through law school and passed the bar exam. They just don't have the necessary tools to write well or the confidence to use those tools to produce effective, persuasive memoranda and briefs.

With Write On, we hope to give you the tools that will help you write easily, effectively and efficiently, in a way that will enable you to produce clear, straightforward, persuasive writing that will help your readers — most often, the decision-makers — actually do what you want them to do.

Our column will address a variety of topics, including: "Procrastination and How to Get Started"; "Planning and Outlining — Building from the Foundation Up"; and "Elegant Writing — How to Edit for Readability and Persuasion." We plan to cover topics as broad as the writing process and as narrow as: "What is the Passive Voice, Anyway? Can I Ever Use It?"

We also want to hear from you. What questions, tips or ideas do you have about writing? What challenges do you face that prevent you from writing as effectively and persuasively as possible? What works for you, and what have you read from other lawyers that you liked or disliked?

So remember: You *can* write, and you do not need to hide behind pages of form language and boilerplate because that's how you've always done it — or because that's how every other lawyer who has come before you has done it.

It may take courage to eliminate the boilerplate and state what you want directly: "The Plaintiff's Complaint should be dismissed because he cannot establish the necessary elements of a claim for invasion of privacy." But rest assured, you will

still be writing like a lawyer — only now, we hope you'll be writing like a *winning* lawyer.

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