Ways of effective drafting and legal writing

There’s a distinct, stereotypical legal style, and an effective legal style. Usually they are worlds apart. Who needs to reread 10 times some paragraph that is packed like Humpty Dumpty’s portmanteau words? Reading some contract filled to the brim with "whereas the party of the first part asserts to the party of the second part" is just dull. It lessens understanding, even if you can show off your vocabulary to the max as well as confuse the issue.

So how can you improve your legal writing and drafting? There are many ways.

First, as the Red King from Lewis Carroll’s *Alice in Wonderland* said, "begin at the beginning, go to the end, then stop." In other words, be plain and straightforward. Being cute or clever when it isn’t necessary can be distracting. Plain, clear English is what you need — not too much Latin and five-syllable words.

Second, be clear. Ambiguity is a loser. Too much ambiguity means you aren’t arguing your case very well or are trying to hide something. And the potential for misunderstandings, especially in email, can be immense. Especially in a contract setting or other negotiations, ambiguity is actually construed against the drafter. You don’t want to be the poor soul who has to tell the CEO that the contract was annulled because your drafting was ambiguous.

This also means be complete. Especially in contracts, if you don’t cover something, it’s up to the judge. Boilerplate is not really necessary, yet it is usually used for a reason — it is comprehensive in most cases. Just make sure to tailor your writing to the appropriate contract.

Third, be polite! It may feel good to make those stinging, snide comments about the other company or to the other side… but this won’t be your only case or dealing with them. "While I realize that this concept is a bit much for Counsel to appreciate, you can indeed add 2 to 5 to get 7" is probably not a way to get brownie points — no matter how much the client laughs. If you need to get a point across, doing so tactfully is better.

Fourth, always assume that a judge will read everything in the case, and keep that in mind. Don’t embarrass yourself or your company, and always try to help the judge out if the time comes — especially in the court documents. Your case isn’t the only one he or she is dealing with, and while you may have spent a hundred hours on this case and know it intimately, the judge most likely hasn’t. Making the judge’s life easier will tend to make your life easier. (It’s the same principle as “Make the court clerk happy — they will be more willing to help you.”)

Don’t use passive voice. Do use white space and short paragraphs, and if in court, you’ll usually want to pay more attention to the brief than the oral argument. The judge may be asleep or preoccupied with opposing counsel’s fashion faux pas during oral arguments, and unless he or she pulls the recording (and how likely is that?), the brief will provide the most important argument to the court.

In a contract or other setting, avoiding passive voice and using white space are still important. Visual appeal will help make your proposal attractive. Remember to organize things logically, and make it so that if someone is looking for the integration clause, he or she doesn’t have to flip through all 50 pages. Tables of contents can be used as well and are greatly appreciated in lengthier contracts. Breaking up long paragraphs into subparagraphs and numbered lists is nice too — it makes it easier to pinpoint cite a particular provision. This also goes for most documents, such as articles of incorporation, etc.

Email is becoming increasingly important, so don’t forget to use good writing in those emails. As electronic discovery is soaring, the above principles apply to emails and interoffice communications as well.

Good luck, and make your writing shine! The prospective attorney with a nice sample contract or document has a leg up, come hiring time.