

# THE LAWYER'S EDITING MANUAL



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Joan Ames Magat

CAROLINA ACADEMIC PRESS  
Durham, North Carolina

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**Library of Congress Cataloging-in-Publication Data**

Magat, Joan Ames.

The lawyer's editing manual / Joan Ames Magat. — 1st ed.

p. cm.

Includes index.

ISBN 978-1-59460-538-3 (alk. paper)

1. Legal composition. 2. Editing. I. Title.

KF250.M24 2008

808'.06634—dc22

2008035210

Carolina Academic Press  
700 Kent Street  
Durham, NC 27701  
Phone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

Dedicated to the memory of Wes, who was more to me than I can ever say,  
and to our daughters, whose flesh, bones, and spirits express the depth of  
his goodness, his intelligence, and his love.



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## Foreword

### Whazzit?

This manual began as a defensive maneuver: as the faculty editor of a law journal, I am sensitive to authors' published grumbles that student editors don't know enough about effective writing to be up to their task. So the manual was initially a compendium of rules and conventions that would be useful to student editors seeking guidance or support for their editorial impulses. It is that, still. But it soon became apparent that the manual would be of use to a much broader audience: lawyers, law clerks, and law students (including those editing journals)—anyone involved in drafting, polishing, or editing formal legal documents, from client letters to memoranda and briefs, to scholarly articles, to judicial opinions. For these, this manual should be a nifty but reasonably comprehensive tool as handy and indispensable as *The Bluebook*, focused not on citations but on text.

What are called “rules” here are sometimes disputable, “conventions” even more so. The only reason to be sticklers about using these consistently is to ease the reader's way: writing well (and editing to make writing better) is, after all, about *the reader*. The choice and order of words and their punctuation are simply signals that trigger reader comprehension; their arrangement on the page can facilitate or impede that comprehension, can make the reading a pleasure or a drudge.

An aside about sexist pronouns: The fracas over how to avoid favoritism has gone on for some time, and, apart from such efficient (and perhaps ephemeral) unisex inventions as s/he or the constraining cop-out of using only plurals, it appears to remain unresolved. How to deal with the issue is, to my mind, a matter of taste; our choice of pronouns is not what enslaves women or keeps men oblivious to the offense of the omnipresent “he.” One currently popular convention is to vary the sex of the personage, signaling to the reader that it simply doesn't matter whether he reads or she writes or vice versa; what matters is what's read and what's written, and how. That convention is as good as any other and is thus what I use here.

### Sources

For the manual's rules and conventions, I consulted such respected sources as *The Chicago Manual of Style* (15th ed.); H.W. Fowler, *A Dictionary of Modern English Usage* (2d ed. 1965); *Webster's Dictionary of English Usage* (1989); *A Dictionary of Modern Legal Usage* (1995) and *The Redbook*, both by Bryan Garner; the *Texas Law Review Manual on Usage, Style & Editing* (9th ed.); William Strunk Jr. and E.B. White, *The Elements of Style* (4th ed. 2000); and Frederick Crews, *The Random House Handbook* (1974); among multiple others, including, of course,

*Webster's Collegiate Dictionary* (11th ed.), *Black's Law Dictionary* (8th ed.), and *The Bluebook* (18th ed.). *Bluebook* rules are cited and, in some instances, quoted for convenience' sake. Consulting a multiplicity of the sources, I figured, would support treating as rules what is really just conventional practice (because our language, as a tool for our times, is ever in flux). Predictably, though, not all rules and conventions are supported by perfect consensus. This manual does not enter the debate, but it does support its choices with explanation. It is easier for the writer or editor not just to defend, but to remember a convention when the logic of the choice is expressed, as well.

### ***The Examples***

Some passages illustrating these rules and conventions I dreamed up; others I borrowed from recent law-review articles and, occasionally, judicial opinions. Authorship of passages not modified beyond recognition is acknowledged in Endnotes. To avoid distracting the reader unnecessarily, quotation marks are not used to signal original language, though modification is indicated with brackets and ellipses. An exception is section III on Quotations, where indicating quotation marks is indispensable. The sources supporting certain conventions about which reasonable minds may differ are annotated likewise. And reasonable minds do differ, if for no other reason than that our language is evolving.

### ***A Word about Legal Prose Style***

The style of legal writing—whether it be academic, judicial, or professional—is formal and, to some extent, technical, in that its patterns tend to be somewhat rigid and predictable. The reason for the rigidity and formality is surely to present the document's content to the busy reader—the judge, the partner or associate—in a predictable medium that is easily negotiated and that does not itself distract from the message. More and more academic authors, however, write in the style of articulate, serious, documented journalism, which is more colloquial in tone. The only rule that might be said to apply to legal style overall, whatever form it takes, is that it ease and not inhibit the reader's comprehension—that it be correct, clear, and consistent. Otherwise, the author is entitled to great leeway. This manual includes a section on Usage and Style that might sensitize the writer and editor to what makes one passage sing and another one grate. It is not—and cannot be—comprehensive. My intention here is to prompt the editorial ear to hear and distinguish between the music and the noise, whether that be in the writing one is editing or in the editor's own prose.

### ***A Word for the Student Editor: The Limits of Editorial Interference***

The legal writer in general and the student editor in particular should be ruthless in scrutinizing her own writing for incorrectness or ineffectiveness and in revising, revising, revising to make her prose pellucid. Her dealings with the writing of others, however, should be restrained

by considerable tact. Authors will accept an edit that *corrects error* without cavil; but most academic authors are sufficiently confident of their writing skills that suggested edits for *effectiveness* may well offend unless carefully proffered.

In short, edits to prose should first follow identifiable principles such as those described in this manual. An editor should never suggest changing text to something that “sounds better” to her, regardless of how well-attuned her ear, without knowing *why* it sounds better. Then, the *why* behind such optional edits should be explained in a comment bubble or another unintrusive but clearly delineated text.

## ***How to Use This Manual***

### ***Rules of Thumb & Pencils***

Because reasonable minds may (and will) differ about what writing practices are “right” and “wrong” (and because this is certainly so in an increasingly global legal world), this manual does not pretend to present definitive rules. But it does offer rules of thumb—common-practice answers for questions that typically arise regarding legal prose. The conventions covered here are not all supported by consensus, and whether a practice is, in fact, “common” is doubtless contestable. But all these conventions, these rules of thumb, rest on this premise: Writing is for the reader. It follows that writing conventions should be consistent so as not to distract the reader or confound his expectations, and that such conventions should facilitate the read.

Nonetheless, this manual comes with a virtual pencil. For despite the logic and common practices underlying the rules of thumb listed and illustrated here, different practices might be preferred; if they are, they should be noted so that whatever practice is preferred, it is consistently followed.

### ***Terminology***

American law students have typically heard, read, and written enough correct English to have developed an ear for correct language patterns; so they typically have little use for the labels used by grammarians and linguists to describe the rules and conventions that govern clear and effective writing. If students once knew the names of these patterns, they may well have forgotten them by now. But when we need to communicate about these rules and conventions, the labels come in handy. So this manual uses such labels to describe a language pattern or to refer to one. They are defined in the glossary at the end, which also indexes their use.

### ***Organization & Layout:***

This manual is organized into five sections: I. GRAMMAR, II. PUNCTUATION, III. QUOTATIONS, IV. USAGE & STYLE, and V. CONVENTIONS. To some extent, the order signifies assumptions about use: from the first section to the last, the rules (such as they are) stated and illustrated track a kind of progression from practices that should be followed consistently because

they are widely viewed as “correct” (grammar, punctuation) to practices that should be followed consistently (usage, style, conventions) because they enable the efficient (and enjoyable) read.

GRAMMAR comes first because its rules are the most definite, the least debatable. This section introduces the terminology that the remainder of the manual uses, it lists grammatical errors that occur most often, and it dispels myths about presumptive grammatical errors that are not, in fact, wrong. PUNCTUATION is next because its rules, like those governing grammar, follow a logic that tends to remain relatively constant. This is followed by an important section on introducing and using QUOTATIONS. The section on USAGE & STYLE includes entries on not only effective word choice but effective sentence and paragraph structure; the CONVENTIONS section offers options about capitalization, the use of italics, spelling, and so forth. Some of these track and reference *Bluebook* rules; others track and reference conventions suggested in the *Chicago Manual of Style*.

Rules and conventions are stated in the left-hand column of each page. Examples of their application are given in the column on the right.

### ***Subject***

(and definition or description when considered necessary)

### ***Sub-subject***

(and definition or description when considered necessary)

**Rule or convention** stated and explained in this column

**Examples** shown in this column  
*comments*

*comments*

Many rules are illustrated with a simple (if not simplistic) example. Some are accompanied as well by a sentence quoted or paraphrased from a published law-review article—for what may appear obvious when illustrated briefly and plainly can be harder to see in the real world of more complex text. When necessary, the example or the rule or convention itself is accompanied by comments in italics.

### ***Approaching the Contents***

The quickest way to find a rule on a particular subject—say, commas—is via the TABLE OF CONTENTS. If an editor cannot recall what a serial comma is, for example, the GLOSSARY & INDEX is the better approach. Or an editor might find it helpful to simply peruse a particular section—such as I. GRAMMAR: Verbs: Tenses—to review, for example, when to use past progressive versus the past tense.

## Acknowledgments

Thanks, first, to those who encouraged me to pursue this project, including most prominently my loving daughters, Marin and Claire.

Thanks, next, to its earliest proofreaders, Claire and Marin, again, and Ian Houseal, for spending more than one summer day sunk in the task and for offering many a practical and clarifying suggestion.

Thanks, then, to the line of editors-in-chief of *Law & Contemporary Problems*, from Chris Hart (2004–2005), who thought that such a little book would come in handy for law students editing law-review text, to Anne Hazlett (2006–2007), Sarah Hawkins (2007–2008), and Jeff Mason (2008–2009) who readily adopted the manual, in its rough early versions, for use by their own editorial staffs. And thanks to the members of those staffs, whose reliance on the manual's conventions and whose suggestions for modifications and amendments strengthened both the manual and the consistency and quality of their own editing.

And thanks to the later proofreaders—Sarah, again, who reviewed and approved new sections and, most notably, Anne Beaumont, who devoted at least one transcontinental flight to its scrutiny and who caught and corrected many, many errors and obscurities that had eluded me. That Anne had been an editor before she came to Duke Law School was too fortuitous for me not to exploit. She knows the depth of my appreciation; but I still owe her.

Finally, thanks to my students in the Advanced Legal Writing Workshop, whose use of the manual lent a common vocabulary to principled, comprehensible suggestions for revision in their peer reviews of their classmates' work. (Such effective editing, though, would have been impossible without the students' having exercised their own astuteness, intelligence, and kindness in the peer-reviewing task.)

And thanks to Keith Sipe and Tim Colton and the rest of the crew at Carolina Academic Press, for seeing the usefulness of this manual not only for law-review editors, but for lawyers in practice. Thanks to them, too, of course, for bringing it to fruition.





# Abbreviations

NB *nota bene*, note well

**Cf.** compare

a.k.a. also known as

→ this arrow is intended simply to direct the reader's eye to something that follows—usually, the revision of the passage given in any one example

≠ is not the same as

WEBSTER'S

*Webster's Collegiate Dictionary* (11th ed.),

BLACK'S

*Black's Law Dictionary* (8th ed.)

CHICAGO MANUAL

*The Chicago Manual of Style* (15th ed.)

FOWLER, MODERN ENGLISH USAGE

H.W. Fowler, *A Dictionary of Modern English Usage* (2d ed. 1965)

GARNER, MODERN LEGAL USAGE

Brian A. Garner, *A Dictionary of Modern Legal Usage* (2d ed. 1995)

BLUEBOOK

*The Bluebook* (18th ed.)