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**Legal Editing Style Guide –
a New Approach to Editing**

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ACTIVITIES

Past Chair, Real Estate Forms Committee, State Bar of Texas.

Past Chair (1993-1996), Dallas Bar Association, Real Property Section.

Member, Various Planning Committees for the State Bar of Texas and University of Houston.

Director, Advanced Real Estate Law Course (1994) (State Bar of Texas).

Moderator, Advanced Real Estate Law Course (1995) (State Bar of Texas).

Speaker/Author: Numerous articles written for real estate related legal topics, including the Dallas Bar Association Real Property Section, State Bar of Texas, South Texas College of Law, University of Texas Law School, University of Houston Law Center, and Southern Methodist University School of Law.

Former Member: City of Allen, Texas Planning and Zoning Commission

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Additional information, including copies of CLE presentations, is posted on my website: www.kkerrlaw.com.

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LEGAL EDITING STYLE GUIDE – A NEW APPROACH TO EDITING

1. Introduction. There are thousands of books, articles, blogs, seminars, and speeches on legal writing. They all say the same thing. They have been around for a long time. The problem is lawyers don't change. We learn our drafting skills from older lawyers and forms. Once learned we cannot let them go.

Some articles focus on Legal *Writing*. Writing articles are focused more on persuasive writing, for example, pleadings, motions, and legal briefs.

Others deal with Legal *Drafting*. Drafting articles cover a broader subject. In order to properly draft a contract, an attorney has to: (1) know the law, (2) know the client's business, (3) know the client's needs, (4) participate in the give and take of negotiations, and (5) advise the client of the final terms.

A few articles cover Legal *Editing*. We all agree on the basic rules of editing. All sentences start with a capital letter and end with some type of punctuation. Why? Because if we simply wrote words without capitals and periods people had trouble understanding what we mean. Noun/ verbs have to agree. We don't say "Bob and Jane *is* going to the store." But from that point on, lawyers don't really agree on any editing rules. English teachers abhor sentences in the passive voice. It is traditional to say "the earnest money will be released by the title company." Bryan Garner [and every other expert] discourages the use of "shall." But lawyers use it everywhere. "The purchase price shall be \$10,000,000."

Based on very limited surveys of Texas attorneys, lawyers do not have many real editing rules. We believe in the prior forms as handed down from long ago on stone tablets. After all, in practicing law, we allocate the necessary billable time to the drafting phase. But when it comes to the editing phase, deadlines, commitments, and the urge to use the same tried and true form prevails and contracts go out without any real consideration of "editing."

There really isn't anything in this article that hasn't been said before and by more qualified authors. Blaise Pascal, a French mathematician, wrote this comment in his collection of letters called "*Lettres Provinciales* in 1657, "[i]f I had more time, I would have written a shorter letter¹." It seems contradictory that using fewer words takes more time. But this isn't a new phenomenon created by a digital world of smart phones, word processors, and emails.

Despite hundreds of years of improving our language and intellect, our biggest problem is still a failure to edit.

2. Acknowledgement. This article is a reprisal of "Legal Editing – a New Look at an Old Topic," Advanced Real Estate Drafting Course 2014, presented by Kevin M. Kerr and Sherry Priest.

3. A tale of two editors. My years on the Real Estate Forms Committee taught me there are two types of lawyers when it comes to editing.

The first is the "Clenched Fist Editor." In negotiating language, the Clenched Fist Editor has a stern demeanor, a furrowed brow, and bulging neck veins. When asked to remove words from the document, the

¹ See <http://quoteinvestigator.com/2012/04/28/shorter-letter>.

Clenched Fist Editor shouts, “those words will stay in my tried and tested form unless you can convince me that they are wrong!”

The other is the “Open Palm Editor.” This editor is characterized with a calm, peaceful, maybe even angelic countenance. Serenity pours from the Open Palm Editor’s voice. When asked about a word in the form, the Open Palm Editor quietly replies, “we shouldn’t leave that language in unless it is necessary.”

You have to decide who you are - or, who you want to be. If you are content being a Clenched Fist Editor, then enjoy the talk and get your CLE credit. But if you are a Clenched Fist Editor and you would like to explore the world of the Open Palm Editor, then I invite you on the journey. It is a journey because there isn’t an easy solution. We all have very bad editing habits, as attested to in the hundreds of critical articles on the internet about legal writing. You will also have to fight partners in your firm and the attorneys you negotiate with in this new endeavor.

4. A familiar story. Bryan Garner wrote a preface for Matthew Butterick’s book, *Typography for Lawyers*. It is a prose narrative of a supervising lawyer critiquing an associate’s memorandum. She complained that the associate: (1) underlined case names instead of using italics; (2) used two spaces instead of one after a period; and (3) the font was ghastly [Byran’s word]. She said the associate should have used Butterick. Of course, the memo had to be re-written in order to be presentable [by the supervising lawyer’s standards].

This same scene played out at a law firm in my past. The associates knew the “style” of different partners. One liked underlined definitions [(the “Contract”) the other didn’t. Even though we had IBM mag-card type writers and such editing changes were tedious, that was the rule.

How much time is wasted with silly in-house changes just to suit the whim of each supervising attorney? Why wasn’t the associate trained on the required style upfront, rather than being presented with Butterick after the fact?

5. The Problem. High school and college curriculums have eliminated writing requirements. Law schools have never really offered courses on contract drafting. At best, the writing component consists of oral advocacy/ legal brief writing.

Law firms rely on forms handed down from the ages. Then each attorney develops a style and instructs each associate accordingly. This leads to random rules on construction.

Great care is given to the legal issues of the document, but not the overall style.

Lawyers think their writing is great, it’s the other lawyers that are terrible.

6. The Solution. Every law firm should develop a Legal Editing Style Guide.

Newspapers have style guides. The most popular is the *Chicago Manual of Style*. According to Wikipedia:

What is now known as *The Chicago Manual of Style* was first published in 1906 under the title *Manual of Style: Being a compilation of the typographical rules in force at the*

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