

PRACTICE TIPS



WRITER'S CORNER

A Call to Action: Improving Legal Writing by Using Active Voice

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If there is one constant entry on lists of common legal writing issues, it is the overuse of passive voice. Lawyers often default to passive constructions, leading to writing that is cumbersome to read and understand. Passive voice describes events without clearly identifying the actor, which can lead to confusion. In legal contexts, where clarity and precision are crucial, passive voice can detract from the effectiveness of legal arguments.

Why is active voice effective?

The key to powerful legal writing lies in clarity and directness. Using active voice wherever possible improves the clarity of your arguments by making it easy for the reader to follow the action and understand the events described. Active voice is a grammatical construction in which the subject of a sentence performs the action expressed by the verb. In contrast, passive voice occurs when the subject of the sentence is acted upon by the verb. This subtle shift in focus can weaken your argument and make your writing harder to follow.

For example, consider these two sentences:

- **Active voice:** The lawyer wrote the brief.
- **Passive voice:** The brief was written by the lawyer.

In the active voice example, the actor is clear: the lawyer is the one doing the writing. In the passive voice example, the focus shifts to the brief, and the action becomes less immediate. The reader can immediately visualize the first sentence, where the main character—the lawyer—is introduced right at the beginning. The second sentence is more difficult to visualize, as the main character—the lawyer—doesn't appear until near the end.

When is passive voice useful?

Although active voice is generally preferred for its directness and clarity, passive voice has its place in certain circumstances. Passive voice can be useful when the focus is more on the action



or result, rather than on the person or entity performing the action. For example, in legal contexts where the subject is unknown or irrelevant, passive voice might be the better choice.

For example, passive voice works well in a sentence like, "The law was enacted last year." Here, the focus is on the law and the action of enactment, not on the people who made it happen. The writer may not know the names of every legislator who enacted the law, nor is this detail necessary for the reader. In cases where the actor is unknown or unimportant, passive voice can be effective.

However, overusing passive voice can detract from the clarity and persuasive power of your writing. Legal writing should enhance the reader's understanding and guide them toward the result you are advocating. Unnecessary passive voice weakens these efforts.

How can you identify and revise unhelpful passive voice?

When legal writers use passive voice, it is often unintentional. Being able to identify and revise passive voice is a useful tool for improving your writing.

Passive voice often follows a specific structure. The sentence includes a form of the verb "to be" (am, is, are, was, were, be, been, being) plus the past participle of the main verb (e.g., "written," "ordered," "conveyed"). The subject of the sentence is the recipient of the action, not the actor.

To convert passive voice to active voice, follow these three simple steps:

- Identify the actor in the sentence by asking yourself, “Who is performing the action?”
- Rearrange the sentence so the actor is at the beginning, as the subject.
- Adjust the verb to reflect the action performed by the subject.

By focusing on active voice in your legal writing, you'll not only make your sentences clearer but also enhance the overall impact of your arguments. Active voice increases readability and ensures that your writing is compelling and easier for readers to follow. Although passive voice has its place, using active voice will strengthen the clarity and persuasiveness of your legal writing.

Take this as a call to action: The next time you edit a document, review it for passive sentences that could benefit from revision. A small investment of time revising passive voice can create clearer, stronger arguments.

TECH TIPS

With Email, You Snooze, You Win?

By Jeffrey Schoenberger

For Practice HQ

The days of feeling special because “you’ve got mail” are long gone. In a little over 20 years, we’ve progressed from email bringing Tom Hanks and Meg Ryan together (1998’s “You’ve Got Mail”) to using productivity techniques to “hack” your email down to Inbox Zero (launched by Merlin Mann in 2006), to Georgetown computer science professor Cal Newport’s 2021 book, where we’re asked to imagine “A World Without Email.” Or what some of the older adults among us might call 1990.

All kidding aside, the stress from overflowing inboxes is real, made worse by a work-from-home environment where even quick “pop-in” questions from colleagues, in the past answered in the hall or over the coffee pot, became one more email requiring a response. These additional messages merely add to the tasks and “to-dos” already on the legal professional’s plate.

Some would advise that your email inbox is a terrible “to-do” list because, among other reasons, anyone with your email address can put something on your task list. And once your inbox is so full that messages begin disappearing “below” the monitor, those tasks are quickly forgotten, irrespective of how important they are (or were).

For the specific issue of email overload, several products exist to make your inbox a better “to do” list and remind you of important emails you may have forgotten.

If your firm uses Outlook 2016 or later (PC or Mac) or the Outlook web-based program as your email client, you can access Outlook’s Focused Inbox feature. While not as elaborate as the paid services discussed below, the Focused Inbox feature is Microsoft’s attempt to separate your emails into two categories: emails from real humans that need your attention and bulk-mail-type things like newsletters, advertisements, or mailing list messages. When Outlook guesses incorrectly, you only need to right-



click and select “Move to Focused [or Other]” to move that message to the alternate grouping, or “Always Move to Focused [or Other]” to have every message from that sender delivered to the alternate tab.

Gmail users aren’t left in the cold either. Gmail has had a similar sorting feature for years. Google will automatically divide your email inbox into up to five tabbed categories: primary, social, promotions, updates, and forums. If you haven’t changed your default Gmail settings, primary, social, and promotions are enabled.

Microsoft and Google know that some folks won’t be fans of focused or categorized emails. To disable Focused Inbox on Outlook for Windows, go to the View ribbon and click the “Show Focused Inbox” button to deactivate it. On the Mac, go to the Organize ribbon and click “Focused Inbox.” Similarly, Google provides instructions on how to change which tabs, if any beyond the required “primary” one, are enabled.

If you’re a Gmail user, the Gmail website has a built-in snooze feature. Not to be outdone, Microsoft’s Outlook web client, Mac, iOS, and Android programs offer a handy snooze feature. Unfortunately, the most used version, Outlook for Windows, doesn’t provide this feature.

The New Jersey State Bar Association’s Practice HQ is a free member resource designed to help you build and maintain a successful, thriving legal practice. Learn more at njsba.com/practice-hq. ■