

Minimize prepositional phrases. Question every *of*. (Part 1)

IN THE SUMMER 2022 COLUMN, I took aim at multiword prepositions like *prior to* and *with regard to*—two, three, even four words that function as a preposition but can almost always be replaced by one word. I said that they “are among the most noxious and pervasive small-scale faults in legal writing.”

Now we go after their sibling, unnecessary prepositional phrases, which may be somewhat less noxious but are even more pervasive. They are, in my view, the prime cause of sentence-level verbosity in legal writing. And the prime offender is *of*-phrases—hence my advice to question every *of*. Naturally, not all prepositional phrases can be eliminated—perhaps most of them can’t be—but tight prose minimizes them.

Below are three specific techniques. (Some of the sentences, taken from federal decisions, have been modified without showing ellipses or brackets.) There are more ways than these three, but they merit their own discussion. So up next will be a column on eliminating zombie nouns and using the active voice.

Of course, any technique can be overdone; writers must always consider sound and rhythm and idiom.

Use a possessive form

- “Plaintiffs contend that the Court improperly ruled ~~in favor of the City~~ **in the City’s favor** based on the Court’s interpretation of the ZO because the City did not raise this issue in its motion for summary judgment.” [Note that the edit could have been “for the City,” converting

a multiword preposition to a one-word preposition.]

- “~~Statements by the parties~~ **The parties’ statements** do not control the Court’s analysis of the ZO.”
- “Judge Price emphasized the ~~improper purpose of the lawsuit~~ **lawsuit’s improper purpose**, which was ‘to spread the narrative that our election processes are rigged and our democratic institutions cannot be trusted.’” [The edit also puts *which* next to what it modifies.]
- “Defendant emphasizes that, in the five years she has been incarcerated, she has obtained her GED; completed the 40-hour drug class; graduated from a 9-month, 12-step, drug-abuse program; and gone on to become one of the ~~leaders of the program~~ **program’s leaders**.”
- “As a whole, the Court finds ~~the testimony of James~~ **James’s testimony** more believable than ~~that of Berry~~ **Berry’s**.”

Change the prepositional phrase to an adjective

- “It is recommended that plaintiff’s complaint be dismissed for failure to comply with ~~an order of the Court~~ **a Court order** pursuant to [under] Fed. R. Civ. P. 41(b).” [Better: “be dismissed under Fed. R. Civ. P. 41(b) for failure to comply with a Court order.”]
- “Defendant Wheeler filed objections to the report and recommendation that the ~~claim of due process~~ **due-process claim** be denied.”
- “No statute, regulation, or ~~rule of common law~~ **common-law rule** imposes a duty upon [on] a carrier to know the identity of its passen-

gers.” [Changing to “its passengers’ identities”—back-to-back possessive forms—might be a little clumsy.]

- “The defendant appealed, arguing that his ~~conviction of robbery~~ **robbery conviction**, for which he was not indicted, was unconstitutional.”
- “However, [But] there was no transfer of ~~title of the Subaru~~ **the Subaru title** or any other written documentation regarding [on] the sale of the vehicle [the vehicle’s sale].”

Cut the prepositional phrase entirely

- “The Court of Appeals mandated that the sentencing court be satisfied ~~of the existence~~ of a legitimate basis for the arrest.” [Or “that the arrest had a legitimate basis.”]
- “The Court finds *Martinez* to be persuasive in ~~the context of~~ the present case [this case]. All the plaintiffs in ~~this case~~ were either [either were] targeted with impact munitions or chemical agents or were arrested under a challenged curfew order.”
- “In interpreting ~~the terms of~~ a trust, a settlor’s intent is determined by considering the language used in the trust, reading all the [its] provisions ~~of the trust~~ together.”
- “The circumstances surrounding the two disclosures differ significantly ~~in nature~~.”
- “The Court directed Defendants to produce these documents by July 1, 2022. To the extent [that] Defendants have not yet fully complied ~~with their duty to produce documents~~, Plaintiff’s motion is premature.”



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