MOTIONS AND THEIR accompanying memoranda of law typically are not considered spellbinding reading. One reason for this perception is that motions and memoranda have a job to do: they must quickly inform the decision-maker about what is at issue, what the law is, and what your client’s position is. As a result, lawyers often consider these documents to be “routine” and do not take the time and effort to transform them into magical documents that will impress clients, opposing counsel, and judges.

Darby Dickerson

Transform the ordinary into the magical.

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HOW TO DO IT BETTER • In just a few easy steps, you can transform your motions and memoranda from the ordinary to the magical. You can quickly turn documents into ones people enjoy reading and that advance your client’s arguments more effectively. To achieve this result, you should strive for simplicity, coherence, and—above all—clarity. Below are some tips for pulling a few rabbits out of the hat when you need to.

1. Use Visual Cues

Some judges react more positively when you supplement or replace narrative text with a chart, graph, flow chart, or other visual aid. For example, consider the following set-up in a motion regarding a discovery dispute; assume you represent the plaintiff.

<table>
<thead>
<tr>
<th>P’s Interrogatory</th>
<th>D’s Objection</th>
<th>Reason Why Objection Should Be Denied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Include verbatim text of interrogatory at issue.</td>
<td>Include the problem portions of the defendant’s response.</td>
<td>Present your bullet-point reasoning and authority.</td>
</tr>
</tbody>
</table>

2. Use Roadmaps

Help the reader by indicating where your argument is headed. This technique is called “roadmapping.” In one or two sentences, preview the arguments you intend to make: “Jackson, Inc. requests that the court deny XYZ Corporation’s motion for summary judgment for three reasons:
• First, ________________;
• Second, ________________; and
• Third, ________________.”

In addition to a general roadmap at the beginning of the memorandum, also use roadmaps to open major sections of the argument.

3. Present Facts Accurately

Be accurate when presenting the facts. Do not overstate or misstate the facts. Do not omit relevant facts, even if they are adverse to your client’s position. Because the facts appear early in the brief, if you misstate the facts, you can irreparably damage your credibility with the court.

4. Provide Accurate, Sufficient, And Complete Record Citations

Each factual statement—whether it appears in the facts, discussion, or other section—must be supported by evidence. When providing citations, be as specific as possible. Give the page number, and, when available, a line or paragraph number. Do not merely say, “See Document X.” When citing legal authority, provide a pinpoint citation that will lead the reader to the exact spot that supports your proposition. Some judges and clerks will ignore statements that lack specific support; others may comb through the record or the authority looking for the specific cite—but they will resent you as they are hunting for it.

5. Present Quotations Accurately And In Context

Check quotations carefully and do not delete significant language that would alter the quotation’s meaning. “If counsel has inadvertently misquoted an authority, the error provides opposing counsel with the opportunity to seize upon the mistake and offer the mistake to the court as an example of the fallacious legal reasoning that permeates the opponent’s brief. The general rule is that a quotation improperly used is worse than saying nothing at all.” Timothy E. Eble & Mary K. Molloy, Ten Commandments of Appellate Advocacy, 91 Case & Comment 16, 19 (Jan.–Feb. 1986). As a general rule, except when referring to key statutory language, judges do not like attorneys to quote, especially when the
quotation is long. Numerous quotations signal either that the writer is lazy and just did not want to take the time to paraphrase, or that the writer did not understand the material well enough to paraphrase it.

6. Describe Cases And Other Authorities Accurately

When describing a case or other authority, describe it accurately. State what the authority actually says, not what you want it to say. Do not distort or mischaracterize holdings. The judge or law clerk likely will read many of the cases you cite. The first time the judge thinks you have played fast and loose, your credibility—and possibly your client’s case—will be lost. Robert H. Jackson, *Advocacy before the Supreme Court: Suggestions for Effective Case Presentations*, 37 A.B.A. J. 801, 804 (1951) (former U.S. Supreme Court Justice cautioning appellate counsel not to “ascribe a strained meaning to writings of a sitting judge. I have been, and I have seen other Justices, indignant at the distortion of some writing. It is hard to retrieve the confidence forfeited by seeking such an advantage”). Also, make certain the case you cite actually supports the related textual proposition. Too many times lawyers cite cases for support when the case has nothing to do with the matter at hand. This problem often results from attorneys reading only the headnotes—which can be wrong or can give a wrong impression about the case—or from lifting a description from another source without independently verifying the source. Read the cases you cite, and read them completely. Make sure you understand what they say, and accurately tell the court what they say. The court expects it; your client expects it; the procedural and ethics rules require it.

7. Neutralize Adverse Facts And Highlight Favorable Facts

Try using these techniques to enhance persuasiveness:

- **Space.** Just as television watchers remember the advertisements that receive the most airtime, readers best remember the facts that get the most play. Consequently, devote more space to favorable facts than to unfavorable ones;
- **Detail.** Readers also tend to remember events described in detail better than those described more generally. The more detail, the more vivid the picture. Use detail—or the absence of detail—to your advantage. Describe favorable facts in detail and use more general terms for unfavorable facts;
- **Placement.** Readers tend to best remember information presented at the beginning and at the end. Place favorable information at the beginning and end of the section and of paragraphs. Place less favorable information in the middle of the section and in the middle of paragraphs;
- **Voice.** Use active voice when you want to emphasize something and passive voice when you want to deflect the reader’s attention; and
- **Sentence length.** Short sentences tend to grab attention. Long sentences deflect attention.

8. Streamline Your Writing

Less is sometimes more. Below are just a few tips on cutting dead words (consult Bryan Garner’s books for additional techniques):

- **Avoid nominalizations.** Nominalizations are verbs disguised as nouns. “Decide” is a verb. “Decision” is a nominalization. When you use nominalizations, you add unnecessary words to the sentence. Example with nominalization: “The judge rendered a decision.” Without: “The judge decided”;
- **Question every preposition.** First, question every “of”; many are unnecessary (*this type of obligation…this obligation*); often a possessive will help (*the mother of the child…the child’s mother*). Also avoid these bulky constructions—

Instead of

Use

In the event of

If