

Legal Writing in the Digital Age

by Sarah T. Weitz

When you began reading this magazine, did you notice the way in which your eye reads each page? Did you read the headline and first paragraph, then pick up the pace, skimming down the left side of the page?

If so, you are not alone. Research shows that our eyes move in an “F” pattern down a paper page, as mentioned by Professor Ellie Margolis in her 2015 article “Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century.” Most of our attention is captured by information at the top of the page. Then our eyes skim down the left side to the middle, where we scan laterally again. Our eyes then skim down the left side of the page again to the bottom.

Many of us no longer read on paper. Electronic filing became the norm in Florida three years ago. The entire Fourth District Court of Appeal, a majority of the Third District Court of Appeal, and many trial judges in South Florida now read almost exclusively on electronic devices. At a recent BCBA seminar, a panel of Fourth DCA judges suggested that attorneys consider the effect this has on their advocacy.

The small screen of a tablet changes our reading experience in several ways. Reading is no longer a tactile experience involving the turning of pages and the heft of a brief in our hands. On a screen, we cannot see an entire page at once. We do not know whether we are near the end without checking the page numbers. Electronic documents are designed to be interactive, with hyperlinks, bookmarks, and a search function that all allow the reader to jump away from the text into



another document.

With so many potential distractions, we need to provide better sign posts for our readers to signal the reader’s location in a piece. These sign posts can take several forms.

One is a roadmap sentence at the beginning of a trial court motion and in the facts section of an appellate brief. A single-sentence description of the issue helps orient the court to the key facts that you present next. Additional roadmap sentences should be used at the beginning of each argument section to move the reader through the piece.

Numbered headings and subheadings also are important structural elements. In the argument section, well-written subheadings can help move the reader through each point. Consider using subheadings in the facts section to help link the facts to each point that you plan to make later in the brief.

Avoid footnotes. Even on a paper page, footnotes interrupt the rhythm of your words and for tablet readers, footnotes stop the flow entirely. The reader finds himself in a different part of the text and

is forced to find his way back.

As you write, remember the “F”-shaped reading pattern. Always lead with your most important information to take advantage of this natural reading pattern as well as the reader’s limited time. Before filing your brief, review it on a tablet so that you can read your work the way the court will. If important sentences are buried in the middle of a page, you may want to rearrange your text to ensure maximum impact.

Many of the suggestions in this article were highlighted by Judges Robert M. Gross and Jonathan D. Gerber during the BCBA Appellate Practice Section’s Fourth DCA seminar on April 15, 2016.

This article was submitted on behalf of the BCBA Appellate Practice Section, Michele K. Feinzig, Esq. of the Law Offices of Robin Bresky, Chair and Louis Reinstein, Esq. of Billing, Cochran, Lyles, Mauro & Ramsey, P.A., Vice Chair. **B**



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