Typography for Lawyers

ESSENTIAL TOOLS FOR POLISHED & PERSUASIVE DOCUMENTS

BY MATTHEW BUTTERICK
FOREWORD BY BRYAN A. GARNER
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Foreword by Bryan A. Garner

If Matthew Butterick Didn’t Exist, It Would Be
necessary to invent him. What’s unusual about the tour de force
you’re now holding is that not only is it bold and fresh and origi-
nal, but also that it’s fully developed: it reads like a fifth edition. It’s
smartly reasoned, it’s backed up by years of cultivated expertise,
and it’s well written.

Here’s how to use this book if you’re a supervising lawyer (Sarah)
dealing with an associate (Ralph):

“Ralph, thanks for the memo. I’m looking forward to reading it.
But …”

“Is there a problem?”

“Well yes. Frankly, I don’t want to read it. You’re underlining case
names, you’re putting two spaces after periods, and the font is just
ghastly. I could spend 30 minutes making it presentable, but I want
the associates who work with me to do that in the first place. Do you
own Butterick?”
“Huh?”

“Butterick. *Typography for Lawyers.* Here, take my copy home tonight. I’ll need it back tomorrow. Learn this stuff, please. I want all your writing for me to comply with Butterick. Got that?”

“Sure, Sarah. Thanks. I’ll see you tomorrow.”

Tomorrow will be a very new day.

Here’s how to proceed if you’re an associate (Leslie) dealing with a supervisor (Russell):

“Leslie, I don’t like the formatting of this memo. I want double-spaced Courier. And two spaces after a period!”

[Smiling pleasantly.] “You’re kidding!”

“No, that’s the way I want documents formatted.”

[Smiling pleasantly but incredulously.] “Is that just for editing purposes? I mean, we’re about to send this off to the client!”

“That’s the final format for transmitting it to the client.” [He would say *transmitting,* wouldn’t he?]

“Russ, bear with me. You’re the partner here, but haven’t you read Butterick? I really think we should follow Butterick. It makes the firm look better.”

“Who the hell is Butterick?”

“You know, *Typography for Lawyers.* He’s the guy who sets the standards for document design in law offices. He makes a good case that most lawyers are completely in the dark about typography. Here, have a look at it.”

Russell demurs.

“Really, Russ, I was shocked to learn that there should be only one space after a period. He makes an irrefutable case. Here, read just page 41.” [Be sure to say /ir-ref-yə-tə-bal/, for credibility’s sake.]

[Russell reads.] “I don’t care. I want double-spaced Courier. And two spaces after a period.”

“OK, Russ.” [Beaming enthusiastically.] “But I’m telling you, you’ve got to read Butterick.”

Here’s how to proceed if you’re on a committee that will be producing a report. At the tail end of the first meeting, as people are packing up, you say: “Can we make everyone’s life easier with just one ground rule? We will follow Butterick in all our drafts and in the final report. OK?”

“Butterick?”

“Sure. *Typography for Lawyers.* It’ll make our committee work so much more pleasant when we’re exchanging drafts. You don’t know Butterick? I’ll get you a copy. Believe me: it’ll change your life. You’ll wonder how you ever did without it.”

“You’re kidding.”

“Absolutely not. You’d do well to learn Butterick!”

Please remember these bits of dialogue. Adapt them. Use them. Often.

Is Butterick infallible? No: on page 106 he recommends three-level decimals. But otherwise he’s assuredly infallible.

— BRYAN A. GARNER
Hyphens and dashes look similar, but they’re not interchangeable.

<table>
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The hyphen (−) is the smallest of these marks. It has three uses.

1. A hyphen appears at the end of a line when a word breaks onto the next line. These hyphens are added and removed automatically by your word processor’s hyphenation feature.

2. Some multipart words are spelled with a hyphen (topsy-turvy, cost-effective, bric-a-brac). But a prefix is not typically followed with a hyphen (nonprofit, not non-profit).

3. A hyphen is used in phrasal adjectives (commercial-speech restriction, estate-planning attorney, law-school grades) to ensure clarity. Nonprofessional writers often omit these hyphens. As a professional writer, you should not.

For instance, consider the unhyphenated phrase five dollar bills. Is five the quantity of dollars, or are the bills each worth five dollars? As written, it suggests the former. If you mean the latter, then you’d write five-dollar bills.

Dashes come in two sizes—the en dash and the em dash. The em dash (—) is typically about as wide as a capital H. The en dash (–) is about half as wide.

En and em dashes are often approximated by typing two or three hyphens in a row (− or −−). Don’t do that. Use real dashes.

The en dash has two uses.


2. It denotes a connection or contrast between pairs of words (conservative–liberal split, Arizona–Nevada reciprocity, Sarbanes–Oxley Act).

Be careful when citing a source like Local Rule 7-3. That gets a hyphen, not an en dash, because it’s the multipart name of a single rule, not a range of rules.

The em dash is used to make a break between parts of a sentence. Use it when a comma is too weak, but a colon, semicolon, or pair of parentheses is too strong. The em dash puts a nice pause in the text—and it is underused in legal writing.

BY THE WAY

→ Even though the en dash is used for joint authors (Sarbanes–Oxley Act), use a hyphen for compound names. If the children of Sarbanes and Oxley married, they’d be known as Mr. & Mrs. Sarbanes-Oxley (with a hyphen), not Mr. & Mrs. Sarbanes–Oxley (with an en dash).

→ Em and en dashes are typically set flush against the surrounding text. Some fonts include a little white space around the em dash; some don’t. If your em dashes look like they’re being crushed, it’s fine to add word spaces before and after.

→ An en dash makes an acceptable minus sign in spreadsheets or mathematical expressions. (See also math symbols.)

→ Em and en refer to units of typographic measurement, not to the letters M and N. In a traditional metal font, the em was the vertical distance from the top of a piece of type to the bottom. The en was half the size of the em. Originally, the width of the em and en dashes corresponded to these units. In today’s digital fonts, they run narrower.
The **point size** of your text can be smaller than you think. The optimal point size for body text in printed documents is between 10 and 12 point.

While courts often require text to be set at 12 point—and sometimes larger—it’s not the most comfortable size for reading. If you compare a court filing with the average book, newspaper, or magazine, you’ll notice that the text in the filing is larger.

When you’re not bound by court rules, don’t treat 12 point as the minimum. Try sizes down to 10 point, including intermediate sizes like 10.5 and 11.5 point—half-point differences are meaningful at these sizes. (This paragraph is set at 11 point.)

When you’re not bound by court rules, don’t treat 12 point as the minimum. Try sizes down to 10 point, including intermediate sizes like 10.5 and 11.5 point—half-point differences are meaningful at these sizes. (This paragraph is set at 10.5 point.)

When you’re not bound by court rules, don’t treat 12 point as the minimum. Try sizes down to 10 point, including intermediate sizes like 10.5 and 11.5 point—half-point differences are meaningful at these sizes. (This paragraph is set at 10 point.)

This paragraph is set at 12 point. The text looks oversized compared to the other paragraphs, doesn’t it? It’s very difficult to find a professionally designed book, newspaper, or magazine with 12-point body text. One major reason is cost—bigger point sizes require more paper.

But I can’t guarantee 12 point will always look too big. That’s because the point-size system is not absolute—different fonts at the same point size won’t necessarily appear the same on the page.

That means you need to let your eyes be the judge. Don’t just rely on the point size. For instance, the three fonts below—Sabon, TIMES NEW ROMAN, and Arno—are set at 12 point, but they’re not the same size visually.

Different fonts set at the same point size won’t necessarily appear the same size on the page. Let your eyes be the judge. Don’t just rely on the point size.

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You can match the length of two fonts by setting a block of text twice: once in the old font and once in the new font, both at the same point size. Adjust the point size of the new font until each line of text breaks in roughly the same place. (You won’t be able to match them exactly.) Below, the point sizes of Sabon and Arno have been adjusted so they occupy the same space as Times New Roman.

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The problems that afflict research memos also afflict other long documents like settlement agreements and contracts. You can adapt this recipe for any of them.

My legal-writing teacher in law school required memos to be formatted in what I would call the classic typewriter layout—one-inch margins on all sides, 12-point font, and double-spaced lines. Because of its genesis in typewritten documents, this format is the basis of many institutional document-layout rules. For instance, most courts require filings to be in some variation of this format.

But have you ever seen a book, newspaper, or magazine that uses this layout? No. Why not? Because it’s not optimally legible. So why would anyone use it? Because it suits the severely limited capabilities of the typewriter. So if we don’t use typewriters anymore, why does everyone still use this layout?

My thoughts exactly.

**BEFORE**

1. **PAGE MARGINS** too small.
   **LINE LENGTH** too wide.
   **POINT SIZE** too big.
   Two spaces between sentences.
   **FIRST-LINE INDENTS** too deep.
   **LINE SPACING** too tall.
   **JUSTIFIED TEXT** without hyphenation.

2. **UNDERLINING** in heading.
   Headings don’t align horizontally with paragraphs.

3. **Hyphens** missing from phrasal adjectives.
   **Hyphen** used instead of en dash in citation.

Transplanting this document from the 1890s into the present is simple surgery.

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**Malicious Prosecution**

Malicious prosecution has three elements that must be pleaded and proven: 1) the defendant commenced a judicial proceeding against the plaintiff; 2) the original proceeding was “initiated with malice” and “without probable cause”; and 3) the proceeding was “pursued to a legal termination in [the plaintiff’s] favor.” *Bertino v. National General Corp.*, 13 Cal. 3d 43, 50 (1974).

1. **Commencement of judicial proceeding**
   Any civil proceeding where the plaintiff seeks affirmative relief may be the basis of a malicious prosecution claim. The original plaintiff does not need to personally sign the complaint; if he is “actively instrumental” or the “proximate and efficient cause” of the action, he may be liable. *Jacques Interiors v. Petruk*, 188 Cal. App. 3d 1363, 1372 (1987).

2. **Initiated without probable cause and with malice**
   The malicious prosecution plaintiff must establish both malice and lack of probable cause by the defendant in the underlying action.

   In a malicious prosecution action against an attorney in a civil suit, the standard for probable cause is whether a reasonable attorney would have thought the underlying claim was tenable at the time the original complaint was filed. See *Sheldon Appel Co. v. Albert & Okler*, 47 Cal. 3d 863, 885-86 (1989). An attorney may be liable for continuing to prosecute a claim after she discovers the action lacks probable cause, even if there was probable cause at the outset. See *Zamos v. Stroud*, 32 Cal. 4th 956, 970 (2004).
Note the combination of right-aligned and left-aligned TABS in the first four lines, so all eight pieces of text look like they're positioned against an invisible rectangle. If you have time for them, subtle details make a difference.

AFTER

1. Page margins larger (2” on sides and 1.5” on top and bottom). Point size smaller.
   One space between sentences.
   First-line indents reduced.
   Line spacing reduced.
   Hyphenation turned on.

2. Line length shorter (about 65 characters per line).
   No underlining.
   Headings align with paragraphs.
   Headings half a point larger than body text.
   Space added before and after headings.

3. Hyphens added to phrasal adjectives.
   En dash in citation.

An additional virtue: the revised layout fits more text on the page.

SHARING DRAFT DOCUMENTS

If you’re working on documents with other lawyers, you have less typographic control and should adjust accordingly.

The major problem is font choice. If you pick a font your collaborator doesn’t have, your collaborator won’t see the formatting accurately.

This is one of the few situations where system fonts are your best choice. Your collaborators are likely to have them, and these fonts look good on screen, where much of the collaboration happens. If you like, you can reformat with a different font at the end.

If it’s critical that your document appear the same way on your collaborator’s screen as it does on yours, the only foolproof technique is to share PDF files and use commenting and review tools on the PDF.

To:
Trixie Argon

From:

Re: Elements of malicious prosecution

Malicious prosecution has three elements that must be pleaded and proven: 1) the defendant commenced a judicial proceeding against the plaintiff; 2) the original proceeding was “initiated with malice” and “without probable cause”; and 3) the proceeding was “pursued to a legal termination in [the plaintiff’s] favor.” Bertero v. National General Corp., 13 Cal. 3d 63, 50 (1974).

A. Commencement of judicial proceeding

Any civil proceeding where the plaintiff seeks affirmative relief may be the basis of a malicious-prosecution claim. The original plaintiff does not need to personally sign the complaint; if he is “actively instrumental” or the “proximate and efficient cause” of the action, he may be liable. Jacques Interiors v. Petrakis, 388 Cal. App. 3d 1363, 1372 (1979).

B. Initiated without probable cause and with malice

The malicious-prosecution plaintiff must establish both malice and lack of probable cause by the defendant in the underlying action.

In a malicious-prosecution action against an attorney in a civil suit, the standard for probable cause is whether a reasonable attorney would have thought the underlying claim was tenable at the time the original complaint was filed. See Sheldon Appel Co. v. Albert & Olker, 47 Cal. 3d 863, 885–86 (1989). An attorney may be liable for continuing to prosecute a claim after she discovers the action lacks probable cause, even if there was probable cause at the outset. See Zamos v. Stroud, 32 Cal. 4th 958, 970 (2004).

The adequacy of an attorney’s research is not relevant, because probable cause relies on an objective standard of reasonableness. But if the court finds no probable cause, the thoroughness of the attorney’s research may apply to showing malice. See Sheldon Appel Co., 47 Cal. 3d at 873.

The showing of malice requires evidence of “ill will or some improper purpose,” ranging “anywhere from open hostility to in-

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Code 18301
Good typography is part of good lawyering.

Modern law offices have the same document-production capabilities as the professional printing shops of not so long ago. But most legal documents—letters, memos, agreements, court filings—remain stuck in the outdated habits of the typewriter era.

Based on the popular website, TYPOGRAPHY FOR LAWYERS is the first guide to the essentials of typography aimed specifically at lawyers. Author Matthew Butterick, a Harvard-trained typographer and practicing attorney, dispels the myth that legal documents are incompatible with excellent typography. Butterick takes you from the basics of type composition to advanced page-layout techniques. Butterick explains how to get professional results with the tools you already have—quickly and easily.

Written in a practical style, with dozens of visual examples, TYPOGRAPHY FOR LAWYERS is suitable for lawyers, legal staff, law students, and even nonlawyers. Topics include special keyboard characters, line length, point size, font choice, headings, and hyphenation. The book also includes tutorials on specific types of documents, including résumés, research memos, and motions.

www.typographyforlawyers.com

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