More than "po-tay-to, po-tah-to"

I can't help myself. Every time a new legal writing style guide crosses my desk, I turn immediately to the chapter that deals with the most common treacherous words. I tell myself that I am looking for new lessons to share with my students, but I am more likely reassuring myself that I am "normal" with my particular style challenges. Here are six pairs of treacherous words to watch out for, according to the newest legal writing style guides:

Composed/Comprised: Composed means made of; the parts make up the whole. (Seven parts compose the brief). Comprised is the opposite understanding. Comprised means includes. Specifically, the whole includes the parts. (The brief comprises seven parts). The confusion between the two words happens when writers add "of" to "compose" and use it as a synonym of "comprise."

Continual/Continuous: Continual means the activity occurs frequently. Continuous means the activity occurs without any interruption.

Illegal/Unlawful: The difference between these two words is slight, but nonetheless it is important. Illegal means forbidden by law. For example, a statute forbids the contemplated conduct. Unlawful means the conduct is not expressly permitted. In other words, the law is silent about whether the conduct is allowed but for some other reason (ex. public policy) the conduct is disapproved.

Literally/Figuratively: Literally means exactly. Figuratively means metaphorically. Many writers use literally as an intensifier, which is an extra treacherous use (I literally died when I heard the punchline of the joke).

Prescribe/Proscribe: Prescribe is a verb that means to give a remedy. Proscribe means to forbid something. These two words are extra treacherous because when spoken, they tend to sound the same, even though they have nearly opposite meanings.

Rebut/Refute: Rebut means to argue or offer evidence to counter a point. Refute means to disprove something beyond a doubt. Simply put, if you rebut an argument, you are attempting to refute it.

And if you are curious what words challenge my writing brain, I always struggle with further/farther and less/fewer. At least I have a stack of legal writing style guides to consult! ■

Fresh start

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state to another, starting a new job or even a second career are just a few examples. Fresh starts can be very scary and challenging, but are mostly fulfilling and rewarding. There is never a bad time for a fresh start and if you have been thinking about doing something different, there is no better time than right now! ■

Q&A

LAWYER LIABILITY AND ETHICS

Practice of Law Not Immune from #MeToo Movement

By Jessica Beckwith, Jennings Haug Cunningham

Most of us are aware of the not-so-flattering statistics concerning women in law, with the ABA's most recent 2017 figures placing women in the legal profession at 36% and men at 64%. The numbers get worse for women, dropping below 20%, for equity partners and managing partners at Big Law. The cause of gender inequality in the practice is too nuanced to pinpoint one reason for it, but the birth of the #MeToo movement presents the opportunity to consider whether the issues identified by the movement hinders some females from advancing in this profession. The practice of law is not immune from the type of conduct that is being brought to light by the #MeToo movement and may have contributed to the statistics cited above.

Like many modern social movements, #MeToo ushered in a heated social debate about harassment and discrimination which many feel has purposefully been silenced until now. Although gender discrimination and harassment are illegal and are expressly banned in most law firm and government agency handbooks, there is no reason to think that the practice of law is immune from the kind of conduct that started this debate.

What will help put a stop to this type of conduct? The ABA believes that Model Rule of Professional Conduct 8.4(g) may help. The rule states, in part, "It is professional misconduct for a lawyer to: engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law." Arizona has not adopted ABA Model Rule 8.4(g). There is plenty of criticism of the rule which is outside the scope of this article, but this rule makes clear that attorney ethics should not be relegated to the duties to clients, the court system, or opposing parties, but should equally apply to our colleagues and employees. My guess is that many of us thought this concept was self-evident, but the news of late tells us differently.

Further, although critics of the #MeToo movement argue that it can at times be a witch hunt where the accused is guilty without so much as an inquiry into the veracity of the allegations, dismissing the movement altogether arguably continues to foster an environment where victims feel they cannot speak out. In fact, an Associate Deputy Attorney General in Texas immediately resigned in December 2017 after characterizing the claims of #MeToo victims as "pathetic."

The Preamble to the Arizona Rules of Professional Conduct states, "The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar." Now that we members of the Bar know about the problems that have been spotlighted by the #MeToo movement, we cannot idly sit back and wait for others to take action.

Like most wrongs in this world, harassment and gender bias will not be eradicated by our profession, but hopefully with an open dialogue about these issues and the consequences they have on the makeup of our profession we can work together to dramatically reduce their occurrence and their impact.

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March Calendar

Check out maricopabar.org/events and watch your inbox for the latest updates on dates, times, and locations for events and meetings.