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### One Size Does Not Fit All

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**BY DAVID H. SPRATT**  
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## One size does not fit all

I never have been much of a cook. For most of my life, heating up a premade meal from Whole Foods was a gourmet dinner, and throwing a Hot Pocket in the microwave was standard everyday fare. There were not many tricks in my culinary trade. Recently, however, with a friend's encouragement, I learned how to "cook." I am still no Bobby Flay, but finally, as I approach middle age, I have the patience and ability to follow a recipe. Several months ago, I actually made risotto from a recipe I found at a Virginia winery (another plug!), and it wasn't half bad. Today, with more confidence, I am actually going with my gut (pardon the pun) and substituting ingredients to make the recipes even better. But enough about cooking; after all, this column is about writing.

As legal writers, we need to resist the temptation to follow the same recipe over and over, even if doing so saves us time and makes us feel more comfortable. Legal writing is not comfort food; although legal writing can be learned, it is not rote or formulaic. Of course, there are formulas, such as IRAC, that help us organize a discussion, and techniques, such as clarity, conciseness, and proofreading, that we will use no matter what kind of legal document we are drafting. But each client situation is different, with different facts, different goals, and different "players" in the mix. One size does not fit all.

Consider this quote from a trial lawyer in the early 1980s about the way he conducts a new client interview: "First of all, it's a total waste of time, and secondly, I want to get to my end by asking questions my own way. I don't want to hear, 'We got married in December 1922, and then we had a fight in 1925.' I'll say, 'Now keep quiet. Let me ask you questions for 15 minutes and if at the end there's something you think I've left out, then you tell me. What do you want, question number one, do you want a divorce, a separation? Number two, are you looking for money, if so, how much? How much do you need? How much do you need for yourself? How much do you need for the children? Number three, what do you have on your spouse? What do you have that I can use as a compelling argument to get you what you want? Do they have anything on you?' And by the time that I get through . . . asking questions, I have the story, and I have not been fed information which I have no need to know." (The Natl. L.J. 13, 44-45, 47 (Dec. 1, 1980).)

Most contemporary lawyers, I hope, see the unreasonableness of this approach, as it assumes that all cases are exactly alike.

Such an extreme approach, particularly in 2012, will not win friends or influence people. So, why then do so many legal writers rely without hesitation on boilerplate language when drafting a document, assuming that a document drafted in one case can be molded and pigeonholed into a document that needs to be drafted in another?

We all use boilerplate language when we draft. Reinventing the wheel each time we draft a new document is inefficient, ineffective, and would likely result in client complaints about exorbitant attorneys' fees. Boilerplate is a useful time- and headache-saver.

Nevertheless, over-reliance on boilerplate language often leads to cookie-cutter thinking. The best lawyers understand the significance of every word, sentence, and paragraph that they include in a document. When presented with boilerplate or a sample document, make sure you know whether and why each provision and word should be included. Above all, tailor the terms of your document to the facts of the case you are working on. Many lawyers rely heavily on documents drafted for previous clients. While again, such documents are a resource, using documents from previous clients as a base can lead to embarrassment or worse. Hasty proofreading and reliance on spell-checking often results in one client's name or facts inadvertently appearing in another client's documents.

Also keep in mind that many form books and computer boilerplate are outdated and do not follow effective writing strategies of clarity and precision. Many of the provisions are full of legalese, which often results in ambiguity. Even if you take the time to modify the boilerplate generally and then use the more updated boilerplate for all subsequent cases, these modifications will benefit your client.

As a legal drafter, you are like a master chef who might have 20 or 30 recipes for a certain dish that you might refer to from time to time for ideas. Each time the recipe will be a little different depending on the quality of the ingredients, the number and tastes of your guests, the time you have to prepare the dish, etc. I still rely on recipes in my burgeoning role as chef. I did not spend thousands of dollars and countless hours learning to become a lawyer, however, so that I could use a form book or "model" to help my clients. They expect, deserve, and pay for much more. ■

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