Criminal Prosecution of Consumer Scams and Fraud

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Growing up, I thought strong oral advocacy was the hallmark of a successful lawyer. In practice, however, I have found that effective writing skills are equally valuable. Judges place significant weight on arguments made in your legal writing, and a compelling brief is often the best way to make an impact on the court. With that in mind, the following are some legal writing pointers I have learned along the way that I hope will be beneficial in your consumer protection cases.

Tip 1: Research the rules for the court in which you are filing.

Courts often have particular rules for formatting or page limits. Consult these rules for your jurisdiction and conform your writing to meet the requirements. Not complying with the local rules will make you look unprepared and unprofessional. Knowing the parameters from the outset will save you time in the long run.

Tip 2: Organize your thoughts.

Especially with legal writing, organization is critical. Before you start drafting, think about your target audience, decide which facts and case law you are going to cite, and think about the most logical way to structure your arguments. Creating an outline is always a good first step before putting pen to paper. Although it might seem time consuming on the front end, your final product will be more organized and in turn more persuasive.

Tip 3: Write clearly.

As Justice Benjamin Cardozo wrote, “there can be little doubt that in matters of literary style the sovereign virtue for the judge is clearness.” Your goal in legal writing is to inform and persuade. To accomplish this goal, your writing must be clear and direct. Avoid convoluted explanations or meandering arguments. The more confusing your argument seems, the less inclined a judge will be to agree with your position.

One tip for improving clarity is to read your work out loud. I learned this technique back in high school, but it applies equally today. If something does not sound right when you read it out loud, chances are it will be confusing to the reader.

Tip 4: Be concise.
More is not better in legal writing. Although it is tempting to make as many arguments as possible in support of your position, I would caution against the shotgun approach. Rather, you should carefully identify your strongest issues and focus on them. When I worked for our state court of appeals, fifteen issues raised in an appellate brief did not impress the judges. In fact, it tended to dilute the brief’s credibility and detract from the stronger issues on appeal.

Once you decide which arguments to make, strive to tighten your prose. Ten pages of concise writing are better than fifty pages filled with fluff. Make succinct arguments and avoid providing lengthy and unnecessary examples. Learn to delete extraneous paragraphs, sentences, and words that make your writing cluttered or redundant. Make sure every word in the document serves a purpose.

**Tip 5: Avoid mischaracterizing facts and case law.**

Although this tip seems like common sense, it is surprising how often I have read briefs that mischaracterized the holding of a case or exaggerated facts. There is no quicker way to tarnish your credibility with the court and your peers. In one of my cases, the defendants recently filed a motion citing a case that seemed very favorable to their position. Although I was initially concerned that I had not come across the case in my research, my fears subsided after reading the case because it did not stand for the proposition for which it was cited. Always be genuine in your writing. It is better to acknowledge facts or case law that might be unfavorable to your position and distinguish them rather than stretching the truth.

**Tip 6: Do not use multiple methods to add emphasis.**

This was easily my biggest pet peeve during my time as a law clerk. But isn’t it helpful to highlight an important point for the judge like this? The answer is no. Multiple forms of emphasis are not proper in legal writing and will only annoy the court. Trust that a persuasive argument will speak for itself without unnecessary ink drawing attention to it.

If you decide to emphasize particular words or sentences, choose one method of emphasis – either italicizing or underlining – and be consistent with your choice throughout the document.

**Tip 7: Omit disparaging comments.**

I am disappointed by the number of times I read veiled insults against the opposing party in legal writing. Exaggerating the other side’s intentions by using words such as “preposterous” or “absurd” will not make a judge sympathetic to your position. In fact, this kind of disparaging remark detracts from your argument and makes you look petty. Writing that the other side’s position is “without merit” accomplishes the same thing without being unnecessarily antagonistic. Even if the other side takes a jab at you, ignore it and focus on your legal arguments. Your restraint will likely impress the judge.

Although lawyers have a duty to be zealous advocates for our clients, we also have a duty of civility. It is important to strike the balance of being a strong advocate while also maintaining
civility. Your client and your professional reputation will benefit if you leave the zingers for another occasion.

**Tip 8: Proofread. Then proofread again.**

There is a reason we have all heard this last tip a million times. A motion replete with typos and other errors makes you appear unprofessional and incompetent, or at the very least indifferent. If you have spent weeks working on a document, you do not want to leave such an impression. Always give yourself at least a day in advance of the deadline to do a final proofread for spelling, grammar, and citation errors. Your writing (and mental health) will benefit.

Legal writing can be daunting, but the ability to write clearly and persuasively is an important professional skill. Whether you have been practicing for three years or thirty years, we can all strive to improve our legal writing. Hopefully, these tips will be useful in your consumer protection practices. News stories of widespread consumer fraud and its grave impact on the public are frequently publicized. Historically, state attorneys general have seized numerous opportunities to join forces to stop consumer abuse, investigate scams and fraud, advocate for consumer rights, and provide for greater consumer protection on a national scale. However, occurring even more often than news headlines of national significance are stories of individual consumers being victimized and defrauded by individual con men.

In 1999, Oklahoma law was amended to expressly grant to the Office of the Attorney General the power to investigate and prosecute suspected violations of consumer laws.\(^1\) Pursuant to the Oklahoma Consumer Protection Act (OCPA),\(^2\) the term “consumer laws”\(^3\) includes the crimes of: embezzlement; false personation; obtaining or attempting to obtain money or property by trick or deception; the unauthorized use of credit and debit cards; deceptive advertising; and certain provisions of the Oklahoma Computer Crimes Act.\(^4\) All of the criminal offenses included in the OCPA have the potential to be filed as either misdemeanors or felonies and may result in a term of imprisonment, fines, penalties, and/or restitution.\(^5\) The wide range of prospective crimes and punishment ranges, coupled with the authority and reach of statewide jurisdiction, have proven to be an essential and effective means of combating consumer scams and fraud.

Con men and scam artists frequently move from place to place across county lines in their attempts to target new and unsuspecting victims and evade detection by law enforcement. Furthermore, city and county law enforcement officials may not have the resources to coordinate efforts with their counterparts in neighboring areas. State attorneys general have the benefit of statewide jurisdiction, so we have the ability to focus our efforts on a broader scale. In turn, we

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\(^1\) Okla. Stat. tit. 15, '762
\(^2\) See Okla Stat. tit. 15, '751, et seq.
\(^3\) Okla. Stat. tit. 15, '752 (17)
\(^5\) See Okla. Stat. tit. 21, '1451; '1541.1; '1541.2; '1502; '1533.1; '1533.2; '1550.2; and '1550.21-1550.43. The available punishment types and ranges often depend on the value of money or property at issue and the prior criminal history of the defendant.
have a more accurate view of the defendant’s reach and victim impact because our consideration of the cases includes a comprehensive examination of all material facts and information. Furthermore, using a singular prosecutor for all cases involving the same defendant allows for the development of a sound and well-reasoned case strategy and plea recommendation.

For example, our office recently received consumer complaints from several victims in three separate counties which all concerned the same suspect. If each complaint had been examined on its own, the monetary values might have seemed modest. However, because of the investigative and prosecutorial authority provided under the above referenced statutes, all of the complaints were considered and processed together. Through our statewide complaint process, we determined that the true impact of the defendant’s crimes totaled more than $156,000. As the result of our expanded jurisdictional and criminal statutory authority, we can file numerous felony charges and benefit from a streamlined prosecutorial approach.

Another beneficial aspect of our prosecutorial authority is that we can not only obtain punishments of imprisonment, fines, and/or penalties, but can also assess restitution for the direct benefit of victimized consumers. Restitution is frequently ordered in our criminal prosecutions as a condition of probation, either as the result of a deferred or suspended sentence, or upon release from incarceration under a split sentence. Because our office directly supervises the collection of restitution funds in our cases, we are able to provide victims with a more straightforward and personal means of communication. Our oversight of the restitution process also provides us with immediate and firsthand knowledge of any issues or delays in payments. As a result, if a defendant refuses to pay the court-ordered restitution, or is unable to comply with the payment schedule, our office may request an amendment to the payment terms, seek additional payments from the defendant for arrearages, or, in cases of non-compliance, file for an acceleration or revocation of the defendant’s probation. The financial impact of consumer fraud can be disastrous for the affected victims, especially for senior citizens who are frequent targets of consumer scams. Our efforts ensure the continued accountability of offenders and provide victims with repayment of monies they would otherwise have to seek civil remedies to collect.

In addition to other authorized penalties, the OCPA provides that any person convicted in a criminal proceeding of a violation of the Act shall be guilty of a misdemeanor for the first offense. However, if the value of the money or property at issue is $500 or more, or if the conviction is for a second or subsequent violation of the OCPA, the violation is a felony with a punishment of up to 10 years imprisonment and/or a fine of up to $5,000. The predicate offense created by the statute ensures that repeat con artists and fraudsters are appropriately identified and prosecuted within the judicial system.

Without our ability to criminally prosecute consumer fraud, many victims would not have means to seek justice. Oklahoma’s criminal statutory provisions ensure that consumers harmed by fraud or scams have access to assistance and relief even if their cases are not of global or national significance. As state attorneys general, we have the unique opportunity to use our statewide

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6 A judgment and sentence that includes both a term of imprisonment and a term of probation
7 Okla. Stat. tit. 15, '761.1 (E)
8 Id.
jurisdiction and prosecutorial authority to combat the devastating effects of crimes against consumers.