



EFFECTIVE USE OF THE HYPHEN, EN DASH, AND EM DASH IN LEGAL WRITING

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Some lawyers and legal writers, including recent law school graduates and certain Millennials, may not know the difference between the hyphen, en dash, and em dash. This article provides a short overview when legal writers should use—and not use—these three different dash marks. The three punctuation dash marks include: the hyphen (-), the en dash (–), and the em dash (—).

Why Do Dash Marks Matter?

The author is somewhat ashamed to admit that he did not even know the name for the “em dash” until working as a lawyer for more than a year. Another lawyer reported an error in a case appearing on Westlaw that incorrectly used a hyphen instead of an em dash. The em dash was not covered in any law school legal writing class and is not tested on the bar exam. But every lawyer should know the distinction between these different punctuation marks. Punctuation is critical to setting the tone for effective legal writing.¹ Moreover, proper use will impress judges and possibly opposing counsel. After all, “words are the tools of the lawyer’s craft.”² As one judge pointed out, “You are a lawyer now. Words are your tools. Learn to use them with precision.”³ Another judge lamented, “The court deplores punctuation errors.”⁴ Typography, defined as the visual component of the written word, matters.

Differences in punctuation, including use of a hyphen rather than an em dash, can significantly affect the meaning of statutes, regulations, contractual provisions, or other legal documents. Each kind of dash has its own uses. One Washington Supreme Court opinion recognized that “as a hyphen may easily be confused with a dash, this further supports our conclusion a hyphen is patently ambiguous when used to separate multiple payees on a negotiable instrument.”⁵

Courts often look at punctuation, including the em dash, to give statutes their plain and ordinary meaning under the rules of statutory construction. The U.S. Court of Appeals for the Sixth Circuit explained that under the Family Medical Leave Act⁶ (FMLA), certain clauses are interrelated and must be read together, rather than separately, without an em dash. The Sixth Circuit explained that the presence of the em dash following the term “employer” suggests that certain clauses modify the term employer. The em dash is used with another clause to indicate a relationship. Despite the consistent use of the em dash to show inter-relatedness, there is no such punctuation to show that other sections should be linked in the same manner. In the absence of the em dash and considering that each clause is enumerated, logic suggests that other clauses are distinct provisions.⁷

Another federal court construing the FMLA noted that “the use of the em dash after the word employer also suggests such a parallel construction, especially considering that similar punctuation was used to set off parallel provisions in numerous other places.”⁸ Indeed, inclusion or exclusion of the em dash can lead to different results when construing statutes, regulations, and contracts.

In addition, courts may arrive at a different meaning or reduce or disallow attorney’s fees when briefs contain formatting and punctua-

tion errors. One federal district court in Florida noted, “Presumably, a typographical error resulted in the defendant’s using different punctuation at opposite ends of an appositive ... the defendant employs an en dash at one end and a hyphen at the other.” The court opinion also stated, “Most authorities on punctuation recommend commas to enclose an appositive, but every authority recommends using the em dash rather than either an en dash or a hyphen to highlight a clause.”⁹ Another federal court reduced attorney’s fees 25 percent because the briefs, motions, letters, and other documents that counsel submitted were replete with spelling, grammatical, and punctuation errors. This reflected on the attorney’s competence and the hourly rate to which he was entitled.¹⁰

What Are These Dash Marks?

A hyphen is a punctuation mark used to divide or to compound words or word elements or numbers. The hyphen is the key next to the zero on the standard “QWERTY” keyboard. The hyphen is the shortest of the bunch. Think of the hyphen as the James Madison or Napoleon Bonaparte of the three different dashes—short in stature but one with the potential to exert significant influence. The hyphen connects two things that are intimately related. For example, the words “co-defendant” and “two-thirds” use the hyphen.

The middle of the bunch is the en dash. The en dash is a dash that is one-half the length of an em dash. The en dash is used for connecting things that are related to each other by distance, such as page ranges or dates. The en dash is like the middleman in a transaction. Walmart founder Sam Walton built an empire essentially as a middleman. For example, date ranges of “May–September” or page ranges of “47–50” use the en dash. A table of contents or index that uses page ranges should use the en dash. Citations that include page ranges should also use an en dash rather than a hyphen.

The em dash is the longest of the dash marks. The em dash is a dash that is one em wide. Back in the old days of typewriters and typesetting, one em was the width of a piece of type about as wide as it is tall used as a unit of measure of typeset matter. The em dash is typically about as wide as a capital H. Think of the em dash as the Goliath or Manute Bol of the bunch. The em dash is used for a pause or a break in a sentence. The em dash can be used in a manner similar to parentheses, or for an additional thought to be added within a sentence by sort of breaking away from that sentence.

For example, in the landmark U.S. Supreme Court case requiring the police to obtain a search warrant to search the contents of a cell phone incident to arrest, Chief Justice John Roberts effectively utilized the em dash at the end of the court’s opinion to stress a point: “Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.”¹¹ Legal writers can effectively use the em dash for emphasis as a powerful tool because it harshly sets off an interrupting thought.¹²

Punctuation marks and font styles, like em dashes and italics, can be used to call attention to the material, but they should be used sparingly as an emphatic device. One survey of judicial opinions found that dissenting justices use em dashes far more often than their winning counterparts. But overuse will interfere with the goal of persuasion and could even send the wrong message to the chosen audience.¹³ Indeed, punctuation used for emphatic effect or overused in the guise of style is bound to distract.¹⁴

A diligent legal writer should not insert a space before or after

dashes. When using the hyphen, the en dash, or the em dash, do not include a space either before or after them. The only exception is with a hanging or suspended hyphen (e.g., pre- or post-1945).

To save time, legal writers should create shortcut keys in Microsoft Word or the word processing software of choice for the en dash and em dash. The suggested shortcut key for the en dash is “alt + n” and the suggested shortcut key for the em dash is “alt + m.” These keyboard shortcuts will save lawyers time and money in the long run when they draft briefs or other legal documents. Legal writers who do not know how to create a shortcut key can simply run an internet search for “create shortcut key” to find lots of helpful tutorials.

Quick Reference Guide

hyphen (shortest): -

en dash (medium length): –

em dash (longest): —

Suggested keyboard shortcuts:

en dash: alt + n

em dash: alt + m

hyphen:

connects two things that are intimately related

Examples:

co-defendant

two-thirds

pre- or post-1945

en dash:

connects things that are related to each other by distance such as page ranges or dates

Examples:

June–September

1801–1805

pages 47–50

em dash:

used for a pause or a break in a sentence, often in a manner similar to parentheses to add an additional thought within a sentence by sort of breaking away from that sentence

Examples:

- “Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1967).
- “Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.” *Riley v. California*, 573 U.S. 373, 403 (2014).

Additional Resources

For additional guidance on proper punctuation, the legal writer with attention to detail might consult Bryan A. Garner, *The Redbook: A Manual On Legal Style* (3d ed. 2013), and Matthew Butterick, *Typography for Lawyers* (2d ed. 2018). After all, U.S. Supreme Court Justice Oliver Wendell Holmes observed: “A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.”¹⁵ ◉



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Endnotes

¹Bret Rappaport, *Using the Elements of Rhythm, Flow, and Tone to Create A More Effective and Persuasive Acoustic Experience in Legal Writing*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 67, 102 (2010).

²*Hollcroft v. Dep't of Treasury, I.R.S.*, 687 F. Supp. 510, 517 (E.D. Cal. 1988).

³*Gray v. State*, 134 S.W.3d 471, 474 (Tex. App. 2004).

⁴*Arch v. Glendale Nissan*, No. 03 C 7297, 2005 WL 1421140, at *3 (N.D. Ill. June 7, 2005).

⁵*J.R. Simplot Inc. v. Knight*, 139 Wash. 2d 534, 545, 988 P.2d 955, 960 (1999).

⁶29 U.S.C. § 52611-54.

⁷*Mitchell v. Chapman*, 343 F.3d 811, 830 (6th Cir. 2003).

⁸*Cantley v. Simmons*, 179 F. Supp. 2d 654, 657 (S.D. W. Va. 2002).

⁹*Berkshire Life Ins. Co. of Am. v. Duggan*, No. 8:14-CV-246-T-23MAP, 2015 WL 224671, at *1 (M.D. Fla. Jan. 15, 2015).

¹⁰*See Hopkins v. Denny's Inc.*, No. CIV. A. 96-7660, 1998 WL 372309, at *3 (E.D. Pa. June 16, 1998).

¹¹*Riley v. California*, 573 U.S. 373, 403 (2014).

¹²Rappaport, *supra* note 1.

¹³Stacy Rogers Sharp, *Crafting Responses to Counterarguments Learning from the Swing-Vote Cases*, 10 LEGAL COMM. & RHETORIC 201, 223-24 (2013).

¹⁴Joan Ames Magat, *Hawking Hyphens in Compound Modifiers*, 11 LEGAL COMM. & RHETORIC 153, 155 (2014).

¹⁵*Towne v. Eisner*, 245 U.S. 418, 425 (1918).

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peting considerations between governmental restrictions to guard against epidemics and pandemics and the preservation of individual rights, as well as the use of technology to ensure the continuance of participatory governance.

Safety of Administrative Judges

The FBA supports the efforts by the Social Security Administration and the Executive Office of Immigration Review to take appropriate steps to ensure the security of their administrative law judges and immigration judges as well as all others who participate in its proceedings.

Veterans Disability Claims Adjudication

The FBA supports legislative and administrative improvements to the veterans disability claims process in the Department of Defense and Department of Veterans Affairs to ensure equitable and expeditious determinations.

Attorney Fee-Based Representation of Veterans

The FBA supports proposals to expand the availability of fee-based representation of veterans in the disability claims process and to oppose any efforts to repeal the authority of attorney representation to veterans in the furtherance of such claims.

Frivolous Litigation

The FBA opposes legislative proposals to eliminate judicial discretion in the imposition of sanctions for frivolous litigation, including proposals to revise Rule 11 of the Federal Rules of Civil Procedure by imposing mandatory sanctions and preventing a party from withdrawing challenged pleadings on a voluntary basis within a reasonable time. ◉