

Chapter 18

Legal Writing: Form and Substance

Chapter Outline

1. Introduction
2. Legal Writing—The Preliminaries
3. The Importance of Good Writing Skills
4. Pleadings and Discovery
5. General Legal Correspondence
6. The Legal Memorandum
7. The Appellate Brief

Chapter Objectives

After completing this chapter, you will know:

- What factors you should consider before undertaking a legal-writing assignment.
- What factors you should consider when drafting a legal document.
- Some techniques for improving your writing skills.
- Some basic guidelines for structuring sentences and paragraphs.
- The purpose and format of the most common types of legal letters.
- How to prepare a legal memorandum.
- How to prepare an appellate brief.

Chapter 18 Legal Writing: Form and Substance

Chapter Outline

I. INTRODUCTION

- A. A paralegal's day will involve many types of writing responsibilities.
- B. Although a paralegal may be involved in drafting many kinds of legal documents, the same basic principles of writing apply to all.

Writing It Right

This is the last time I'm going to tell you: be organized. Writing letters, pleadings, and documents requires organization. Know your audience; know the format for the writing; know your objective. Then, write it right.

II. LEGAL WRITING—THE PRELIMINARIES

A. Understanding the Assignment

- i. When paralegals receive a writing assignment, they should always make sure to understand the exact nature of the request.

B. Time Constraints and Flexibility

- i. The time factor is an important consideration in legal writing.
- ii. The paralegal must understand clearly when the assignment is to be completed.
- iii. External circumstances and unexpected client demands may demand changes in the writing assignment. These situations require the paralegal to be flexible.

C. Writing Approaches

- i. Determine what type of writing is required: objective or persuasive.
 - 1. *Objective* writing is an unbiased analysis, presenting a balanced discussion of both sides.
 - 2. *Persuasive* writing requires advocating the facts and issues in the light most favorable to your client.

Keep Your Audience in Mind

As you write, keep your audience in mind. To whom am I writing and for what reason? Are you writing to the client? Are you preparing discovery material for your opponent? Are you asking the court to rule in your favor? Once you determine this objective, you will be better able to begin your project, writing in an appropriate style. Read your writing. Write again. Re-read your writing. Re-write again. Make your writing a work of art.

III. THE IMPORTANCE OF GOOD WRITING SKILLS

- A. The legal profession is primarily a communications profession. Therefore, effective written communications are particularly crucial.

B. Organize and Outline Your Presentation

i. Choice of Format

1. The *format* refers to such things as the width of margins, the indentation of paragraphs, and so on.
2. Documents filed with a court must conform to the format rules of that jurisdiction.
3. Most law firms adopt special formats for other types of documents, such as correspondence.

C. Structural Devices

- i. Using numbers or bullets are devices to let the reader know the structure of the argument or discussion.
- ii. Arranging events *chronologically* (in a time sequence) can serve as a structural device.

D. Write to Your Audience

- i. The ultimate goal of legal writing is to communicate information or ideas to the reader.
- ii. It is important to tailor the writing to the intended audience.
 1. A letter to an attorney may include legal terms and concepts.
 2. A letter to a layperson, who probably would not understand legal terms and concepts, should be written differently.

E. Avoid Legalese: Use Everyday English

- i. Writing “to your audience” often requires the paralegal to minimize or eliminate legal jargon, or *legalese*.
- ii. Terms, such as “hereof,” “therein,” and “thereto,” should be avoided.
- iii. When translating legalese into plain English, paralegals need to make sure that they correctly understand the intent of the legal phrase.

F. Be Brief and to the Point

- i. Unnecessary words can become stumbling blocks for the reader and prevent a clear understanding of the point the paralegal wishes to make.
- ii. Only use words essential to the point you are making.

G. Writing Basics: Sentences

- i. A good writer uses short, concrete sentences because they are easier to understand.
- ii. Writing in the active voice also makes sentences easier to understand.
- iii. Make sure to use correct grammar when writing legal documents.

H. Writing Basics: Paragraphs and Transitions

- i. A paragraph should have unity and coherence.
- ii. Each paragraph should begin with a topic sentence that indicates what the paragraph is about.

- iii. Create a new paragraph whenever you start discussing another idea.
- I. Be Alert for Sexist Language
 - i. Take care to be aware of and avoid sexist language in your writing.
- J. Proofread and Revise Your Document
 - i. Always allow time to proofread and revise whatever you are writing.
 - ii. Creating a polished document takes time, and a good portion of that time should be spent in proofreading and revising your written work product.

Simple, Succinct, Structured Sentences with Style ...

Avoid the temptation to write in legalese. You probably hate reading through all that verbiage, so keep that in mind as you draft letters, pleadings, and other court documents. Make the information easy for the reader to comprehend. Make your sentences short and to the point. Avoid long sentences.

- IV. PLEADINGS AND DISCOVERY
 - A. Many writing tasks undertaken by paralegals involve forms that must be submitted to the court or to opposing counsel.
 - B. It is especially important that these documents contain the required information and be presented in the appropriate format.
- V. GENERAL LEGAL CORRESPONDENCE
 - A. General Format for Legal Correspondence
 - i. Date
 - 1. Legal correspondence must be dated.
 - 2. The date serves an important function in legal matters.
 - ii. Method of Delivery and Address Block
 - 1. The method of delivery should appear below the date.
 - 2. The *address block* indicates to whom the letter is addressed.
 - iii. Reference Line and Salutation
 - 1. The writer may include a *reference line* identifying the matter discussed in the letter.
 - 2. Many law firms also include the firm's file number of the case in the reference line.
 - 3. The *salutation* appears just below the reference line. It is a greeting to the addressee.
 - iv. Body and Closing
 - 1. The *body* is the main part of the letter.
 - 2. The closing in legal correspondence is formal, for example, "Sincerely" or "Very truly yours."

v. Types of Legal Letters

1. Informative Letters

a. An *informative letter* conveys information to another party.

2. Confirmation Letter

a. A *confirmation letter* puts into written form the contents of an oral discussion.

3. Opinion Letters

a. The function of an *opinion letter* is to provide information and advice. An opinion letter must be signed by an attorney.

4. Demand Letters

a. In the *demand letter*, one party explains its legal position in a dispute and requests that the recipient take some action.

VI. THE LEGAL MEMORANDUM

A. The legal memorandum is prepared for internal use within a law firm, legal department, or other organization or agency.

B. The goal in drafting a legal memorandum is to inform, explain, and evaluate the client's claim or defense.

C. The format of a legal memorandum includes: the heading, the statement of facts, questions presented, brief conclusion, discussion and analysis, and conclusion.

D. The attorney for whom the memo is prepared wants to see **your** analysis, not a reiteration of a court's opinion.

Research, Analyze, Write: RAW

That is what it is: the raw structure to a case. You locate your research material, analyze and apply it to your facts, then write the conclusion to your client's legal issue. Be sure to practice writing. Edit your writing. Use good grammar. Consider reading it aloud to yourself, noting the punctuation and paragraphing.

Make your writing a work of art.

VII. THE APPELLATE BRIEF

A. Types of Appellate Briefs

i. Four types of appellate briefs may be filed with the appellate court:

1. Appellant's Brief

a. The *appellant's brief* is the first brief filed with the court. It establishes the issues to be addressed on the appeal.

2. Appellee's Brief

a. The *appellee's brief* will address the issues raised by the appellant's brief.

3. Reply Brief
 - a. The *reply brief* is filed by the appellant in response to the appellee's brief.
 4. *Amicus Curiae* Brief
 - a. The *amicus curiae* brief is filed by a "friend of the court," or an individual or organization not party to the suit.
- B. Writing an Effective Appellate Brief
- i. Title Page
 1. The *title page* is the front cover of the appellate brief.
 - ii. Table of Contents
 1. The *table of contents* lists the sections of the appellate brief and gives the page number on which each section begins.
 - iii. Table of Authorities
 1. The *table of authorities* provides the reader with page references for all authorities cited in the argument.
 - iv. Statement of Jurisdiction
 1. The *statement of jurisdiction* indicates the source of authority for the appellate court's jurisdiction over the dispute.
 - v. Questions Presented
 1. The *questions presented* set out the legal issues that will be argued by the parties in the dispute.
 - vi. Statement of the Claim
 1. The *statement of the claim* usually contains two components:
 - a. A preliminary statement dealing with the procedural background of the case
 - b. A statement of the relevant facts of the case.
 - vii. Summary of the Argument
 1. The *summary of the argument* is a condensed version of the developed argument made in the main text of the brief.
 - viii. Argument
 1. In the *argument* section, the legal arguments are developed and analyzed.
 - a. Point Headings and Subheadings
 - 1) A *point heading* is a brief recapitulation of the point being made in that section
 - b. The Body of the Argument
 - 1) The *body of the argument* develops the reasons why the court should decide in favor of the client.
 - c. Conclusion
 - 1) The *conclusion* is a very brief statement.

- 2) The conclusion is not a summary of the argument, but a claim for relief based on the arguments.