



Good Legal Writing: A Guide for Paralegals

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Introduction

Superior writing skills are essential to your work as a paralegal regardless to the law firm size or your area of focus. If your specialty is litigation, you will draft simple and complex documents of correspondence, legal memorandums, briefs, pleadings, motions and discovery. Contracts, agreements and resolution are common documents if you perform transactional tasks. Mastering the art of writing clear, concise and persuasive prose is one of the best ways that sets you apart from peers.

Even for the most seasoned professional, legal writing can be intimidating. Most likely, you entered the paralegal profession with a particular writing style taught in school. Consequently, you might have fallen into the habit of using outdated writing rules clouded with legalese.

Nevertheless, you can hone your skills to produce quality legal writing. The purpose of this white paper is to offer some tips and best practices to freshen up your skills. Apply some or all of these tips to refine your writing and eliminate verbosity.

Being a Successful Paralegal

It takes more than legal knowledge to be a successful paralegal. Command of legal principles and procedural rules are important. However, your role in communicating with quality writing is equally significant since most day-to-day communication is through writing.

At any point, you may need to summarize an interview or deposition, produce an investigation report or write a memorandum, among other documents. Typically, you may also need to draft contracts, pleadings or articles of incorporation.

Good legal writing requires a combination of your creative and theoretical sides. The artistry of writing creates a palette of words based on facts that are woven into legal theory. Whether the reader has a legal background or is a layperson, the finishing touch is a written document that fits the need of any audience.

Keep in mind that some of your writing goes outside the law firm. Clients, witnesses and opposing attorneys will receive copies. Documents that you prepare are filed in court or sent to clients directly. Some documents, such as a deed or contract, could become an exhibit during litigation.

Your writing as a paralegal may fall into one of two categories: persuasive or objective. Persuasive writing is based on fact and intended to persuade the reader. Some persuasive writing may also appeal to the emotion as with a settlement demand letter.

Objective writing communicates as much fact as possible without relying on inflammatory or emotional language. Typically, you write objectively when you are writing a legal opinion.

Add to the mix the difference in writing style when the correspondence is for a court where rules focus on mechanics. This is discussed more below in the “Writing Tools You Will Always Use” section.

Be Mechanically Correct

Proper punctuation and grammar refer to writing mechanically correct. Producing documents that are free of typographic errors is also necessary for good writing in the legal profession. Imagine the effect that a misspelled word could have on contract enforcement or executing a will. Additionally, you want to use the right terminology according to the legal issue being addressed.

Most attorneys are detail oriented and expect the same from their paralegals. Errors affect the reader and give the impression that you are not attentive to details.

There are many resources available to help you improve mechanics. In addition to courses in legal writing, there are a number of books and reference manuals to help you with writing better. Websites contain information on the aspects of writing in general and legal writing techniques. Check with your law firm to see if form files are available with examples that you can emulate.

Remember: good legal writing is not written; it is rewritten. Proofread and edit documents even if it is the twelfth one you have written for the day. Practice makes good legal writing perfect.

Keep it Clear and Concise

Clear and concise writing, in conjunction with good mechanics, projects competence in the legal profession. In legal writing, you presume a relationship with the reader who needs information. The reader assumes that the information will be communicated in clear, concise and competent words. Writing without clarity leads to confusion.

Including complex sentences, unnecessary qualifiers or an overuse of legalese does little to impart information effectively. Any reader who has to sort through poorly worded sentence to find the important fact becomes frustrated. Unclear writing breaks the reader/writer relationship. How can you expect the reader to know what is important if you are unable to communicate?

Write with a Purpose

Being a successful paralegal requires writing with an identifiable purpose. You must continuously develop your writing skills to produce outstanding prose. Development typically comes through forming writing habits: prewriting, writing and post-writing.

Prewriting

Before you put pen to paper, ask yourself two questions: Who is the intended audience? What is the purpose of the legal document? Knowing your audience helps to write according to expectations. When you understand expectations, you can determine the best way to accomplish a purpose.

Writing

Now that you understand the purpose, your next task is to articulate that purpose into coherent words. Translating the purpose for others to read can be troublesome but not impossible. During the writing process, you will segregate the significant from insignificant information. Start with an outline for organization and clarity of thought, particularly if you are writing a long document.

Post-writing

Every good legal writer proofreads and edits documents. Revisions are essential if information does not align with the original purpose of the document. You want to check for the spelling errors that word processing software misses – such as ‘their’ when it should be ‘there’. This is the time to clear up grammar, punctuation and to make sure legal terminology is used properly.

Write Easy, Not Legalese

Some old habits are hard to break and for many attorneys, legalese is something many refuse to let go. Where attorneys believe this is artful writing to impress the reader with their legal acumen, some people read confusion. Words like whereas and heretofore are from old English common law usage that many attorneys still feel comfortable with using. Your goal as a paralegal is to write broadly enough for flexible interpretation.

While some words are used to impress, others are simply overused. How many times have you read “however” or “therefore” in a single legal document? Both are useful for writing transitions but are often found in prose where a transition is not necessary.

Double Entendres

Legal terms that are unambiguous to you may have a totally different meaning for a lay person. This is known as double entendres where words or phrases have both common and technical meanings. Some of these include alien, suffer, assigns and privileged communication.

Communication between you and the reader is skewed when the reader uses common meanings for interpretations. In some situations, the reader’s profession gives specialized meaning to some legal words. For example, sidebar means a conference in legal terms. The same word refers to a short news story that accompanies a longer one in the publishing industry.

While you may not prevent every conceivable misinterpretation, consider the reasonable knowledge of the reader. Some scenarios allow you to select the best legal terminology to use. Other scenarios may require neutral language to avoid ambiguous communication.

Keep a Human Tone

Another glaring problem with legalese for laypeople is the stiff tone that it presents. You can easily alienate the reader even when that was not your original intent. Rigid writing can create an unsuspecting discourteous encounter. Imagine opening a letter from an attorney that addresses your loved one as “the above referenced deceased.” This is a harsh and impersonal tone with a client who uses your law firm’s services.

Remember, your audience is essential to good legal writing. It is possible to convey the right legal message while maintaining a human tone. “Your wife’s will” is more pleasing to the reader and does not compromise your professional position.

Be Consistent with the Written Word

Consistency in writing is important when you need to make the reader receive the message comfortably. One of the quickest ways to lose the reader is to shift the tone, language or attitude in your written word. Stick with an established tone throughout the document.

Shifting accomplishes nothing but distrust when you go from folksy to formal or from austere to friendly. Never begin your writing with stilted, legalese and end with a chatty tone. Contrasting tones is disturbing and jolting for your reader.

Mixing Metaphors

Another way to confuse your reader in legal writing is to use mixed metaphors. Good legal writing takes advantage of metaphors to present an image of a legal point. Describing the machinery of government working best when joints are used properly plants a vivid detail to an abstract concept.

Concluding the same metaphor with an argument or idea “going up in smoke and landing the accused in jail like a thud” does not reinforce the argument. This is using a mixed metaphor that confuses – rather than clarifies – the message. Never shift midway when using a metaphor. End where you begin so that the reader can fully grasp the meaning and concept.

Writing Tools You Will Always Use

The legal profession is often the place where little things can make all the difference. Including a pertinent detail in a brief to sway a judge’s ruling can help your client tremendously. Failing to follow the rules of the court when presenting a major brief could get the case thrown out.

Briefs supporting a dispositive or trial motion usually include a cover page, Table of Contents and Table of Authorities. For some cases, all three are mandatory by the court; in other cases, using these can enhance and improve the readability of the brief. Make sure you are familiar with all three tools to use as excellent methods when preparing and filing complex briefs.

Tips on the Perfect Cover Sheet

Court rules may require a cover sheet with specific formatting instructions for your brief. Even if the court does not require a cover sheet, you should include one for a lengthy brief. Typically, the cover sheet includes

- Case number
- Caption style of the case
- Brief title
- Contact information for the attorney filing the brief
- Whether the attorney represents the defendant or plaintiff
- Date of brief filing

Some covers for an appellate brief may also include the trial judge's name and jurisdiction of the case. Make sure everything is correct on the cover page. Both parties' names should be listed and spelled correctly. The caption style of the case is the first piece of information that the court will read – this must be correct.

Here is a good chance to use your proofing skills to make sure an 'e' really should be at the end of the last name 'Brown'. Additionally, case numbers are notorious for being incorrect and cause a court clerk to misfile the brief.

Some courts also have requirements about the color of the cover sheet. When no rules exist, select a tan, off-white or light blue cover page. Stay away from unprofessional neon or pastel colors. They are cute and distracting in a court of law.

Table of Contents

Often, the next section that you will include in a trial brief is the Table of Contents. Just like an outline of a book, the TOC is an index of headings and subheadings to help the court navigate through the brief. Court rules will govern whether a TOC is required and the order that you must follow.

Table of Authorities

Normally, the Table of Authorities follows the TOC. Again, applicable court rules will tell you if the TOA is required and the specific format. Some court jurisdictions require that both sections be one document. When this is the case, authorities are listed under the proposition included in the TOC.

Always Follow Court Rules

Since the court rules determine the type of format you need to use for each part of a brief, follow the rules. Each jurisdiction may have its own set of rules. Some requirements can change from one court to another within the same jurisdiction. In some situations, court rules and local court rules govern the same brief simultaneously. Without carefully reviewing the requirements for each brief, it is easy to overlook one detail.

You can avoid this problem by creating a brief cheat sheet. Include court rules on briefs for each jurisdiction where your attorney may practice. For each court, identify:

- What is filed with the court, i.e., an original brief and number of copies
- Whether and when the judge requires a copy of the brief delivered to him or her
- If there are page number limits
- Court requirements for a cover page, TOC or TOA
- Specifications on citations for rules, the record or other related jurisdictions
- What is required in each brief and if there is a specific order
- Court format requirements for word count and font size
- Sample of required documents for each jurisdiction.

Thoroughly read all rules related to the brief for each jurisdiction to make sure your cheat sheet has the correct information. You will become acquainted with court rules and be able to produce quality documents.

Use Proper Citations of Cases

Correct citation of cases in your brief requires listing each in alphabetical order with the volume number of the reporter and beginning page of the case. Do not list pages within the case to spot cites throughout the entire brief.

The right way to cite *Walt Disney Productions v. Air Pirates*:

Walt Disney Productions v. Air Pirates, 581 F.2d 751 (CA9 1978)

Also keep in mind that citations within a quote are not listed in the TOA since you are not basing a legal argument on the citation.

20 Practical Tips for Good Legal Writing

Follow these 20 practical tips to help you improve your legal writing skills.

1. Use practical English words and write as if you were having a face-to-face conversation with the reader.
2. Make sure the language used is tailored for the right audience.
3. Research what the reader needs and give them that information in your writing. Nothing more, nothing less.
4. Always have something to say. Otherwise, what is the point of writing? Gather information before you begin writing and develop a framework. Be flexible enough to rearrange anything as necessary.
5. When writing about a generic principle, consider using a three-pronged approach for the reader. Begin with an illustration that is applicable to the specific matter at hand. Use a quote to emphasize and support the principle. Finally, include a historical, biographical or entertaining account for further explanation.
6. Take a moment to visualize the ideas and concepts that you want to write. By thinking before you write, you can illustrate the purpose in colorful words to make the writing more interesting. Of course, this depends on the topic that is being written.

7. Try brainstorming with a colleague to generate some ideas. Brainstorming also helps to discover new facts or interpretations that you might have missed initially. Pulling in new ideas can help you formulate points of argument for the case.
8. Whenever time permits, practice writing a document without consideration for structure. Go back and revise what you have written at a later date.
9. Start out writing something that is related to the main theme of the legal document. This sets up the reader's frame of mind to become interested in what they are reading.
10. Make sure you direct words to the reader where they have an opportunity to relate or learn from the topic.
11. Write one statement at a time. Keep it simple and direct.
12. Give examples by first illustrating the wrong way of doing something followed by the right way.
13. Start with an outline before you begin writing; index cards are useful to separate topics as they come to mind. Refer to the index cards and rearrange them in the order that you think fits.
14. Begin by telling your reader what you are going to write. Then, write it.
15. Separate facts from opinions, especially when you are writing a legal brief or other pleadings.

16. Good legal writing should be lively, direct and personal.
17. Use active voice as much as possible. Edit sentences that use the passive voice in writing. Most word processing software has a grammar checker that will highlight the use of passive voice.
18. Always double check – and recheck -- numbers and facts. Use facts that are necessary to express a point. Confront any counterpoints against your case. Eliminate details that do not add value to the legal document. Never stretch facts to make a point.
19. Be careful to understate your legal point before exaggerating. You want to build trust with the reader. One exaggeration can work against you and the case.
20. Summarize the main points at the end of the document. Never introduce new ideas when you are writing the conclusion. Emphasize the main points already made throughout the document.

Conclusion

At any time, your supervising attorney may ask you to write a variety of legal documents. Whether the document is for internal use or for a judge to read, this guide will remove the daunting experience.

The written word is upheld as a vital tool for the legal profession. With words, you can advocate for your client, inform the reader, give instructions and persuade a judge to rule in your favor. Mastering legal writing skills will take time. However, practice makes perfect and soon you will have superior writing techniques.

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