

CHAPTER 3

THE FOUNDATIONS OF LEGAL WRITING

Chapter Outline

VOLUME 2, CHAPTER 3

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ASSIGNMENTS

- Assignment § 3.3**
Demand Letter
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Client Letter
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Interoffice Memorandum

Chapter 3 Introduction

FORM MANIPULATION

A paralegal student once had an assignment to draft his first interoffice memorandum. The only instructional advice was a basic outline of the components of the memorandum:

- CAPTION
- FACTS
- ISSUES
- ANALYSIS
- CONCLUSION
- RECOMMENDATION

A few words were spoken by the instructor trying to describe each of the elements, but that was it. So, the student went to work. He was motivated and wanted to create a great document. He had never drafted any sort of law-related document, but by after several hours of working on it, he was pleased with what he produced. When his graded paper was returned the student was, to say the least, disappointed. His grade was a C+.

What had he missed in the instruction? When he approached his instructor about how sorry he was to have turned in such a deficient assignment, the teacher said he should not feel bad. It was the second highest score in the class! The student asked if the class could get an example of a memorandum, and if he could resubmit the assignment. The instructor agreed. Now, armed with an example, a form, the resubmission received an A.

Forms make a paralegal's work more efficient, and result in a higher quality product. The skill of using previously existing documents to create a new document is form manipulation. In this course, you will be provided with forms and examples for every writing assignment. Most importantly, you will learn how to take an existing form to make a new document.

IN THIS CHAPTER . . .

THEORY OF LEGAL WRITING

FORMS OF LEGAL WRITING

IRAC: THE PROCESS OF ANALYSIS

§ 3.1

The Theory of Legal Writing

“Do you have a form?”

CRITICAL SKILL-SET

No matter what legal document the writer is preparing, the theory of writing remains unchanged.

Use existing material and authority to create new documents.

This concept is important for two reasons.

Use forms or templates

The document being created has most likely been created before. By using a previously existing form or template, the paralegal not only increases the likelihood of producing a quality document, but also produces it in a more efficient manner saving the client money.

This applies even in the creation of such mundane documents as a client retainer agreement letter, or a request to a hospital to provide records. Use existing documents, such as forms, form books, and templates, to create new, modified documents. Do not reinvent the wheel.

Precedence

Second, by using existing authority as a basis for legal analysis or argument, the document gains weight in terms of its legal reasoning. That is because what the court cares about when making ruling is the law, and only the law. What the lawyer or paralegal thinks is irrelevant. All that matters is the law.

The advantage to the paralegal is that the use of reasoning from existing law takes the pressure off the paralegal to create that reasoning for him or herself. It makes the process of legal analysis easier to accomplish, and results in a more authoritative document. In other words, you do not have to create the law; you just find and apply it.

FILES, BOOKS, DIGITAL

Forms Are Our Friends!

When you are given an assignment by your supervising attorney to create a legal document that you have never created before, one question should always be asked of the attorney.

“Do you have a form for that?”

Forms can be a collection of previously drafted pleadings, discovery, motions, and other documents kept in a binder in your law firm. They can be found in published multiple-book series in a law library. They can be found on *Westlaw* and *Lexis*, or even on the open Internet.

Wherever you find them, as a paralegal, forms are your best friend.

- *Forms make your work easier*
- *Forms make your work more efficient*
- *Forms make your work product better*

Whether it is using forms, locating relevant cases and statutes, or finding your own previous work product, by relying on material that already exists, you are not only making your life easier, but you are also probably going to end up with a quality document.

WHERE DO I FIND A FORM?

Let's assume your attorney asks you to create a Motion in Limine. He gives you a bit of information (such as what evidence he is trying to exclude from the trial) but that's all. And you have never created a Motion in Limine.

In rough order of priority, here are the places a paralegal might look for an example of a form.

- **The Attorney**
Before starting you may want to ask the attorney to define the motion if you do not know what its function is. (A Motion in Limine asks the court to rule on the admissibility of evidence before trial.) Then ask the lawyer if she has created that document before. She will likely search her memory banks for other cases she has worked on, or cases by other attorneys in the firm who filed such a document. This is the best and most efficient way to find a form. If you follow the example created by the attorney, you can hardly go wrong.
- **Law Firm Files**
Ask other lawyers and paralegals if they have ever drafted the document and request a copy.
- **Law Firm Form Banks (Hardcopy)**
Most law firms keep a form bank in a binder or binders for just such purposes as this. If your firm does not have one, you can make a lot of bonus points by creating one. Ask each attorney and paralegal for forms they would like to include.
- **Law Firm Form Banks (Digital)**
This is basically the same as the hardcopy version but kept on a computer.
- **Form Books (Law Library and Online)**
Lexis and *Westlaw* both have great form books, but they are not free to access or download. So, if possible, visit your law library to review the form books covered in later chapters, such as *West's Legal Forms*.
- **Networking**
Reach out to your paralegal colleagues to see if they have an example.