

§ 3.6

Interoffice Memorandum*Form and Function*

Virtually all forms of legal memoranda include the following elements:

1. caption
2. assignment
3. facts
4. issues
5. analysis
6. conclusion
7. recommendation

EXAMPLE 1 – INTEROFFICE MEMORANDUM**MEMORANDUM**

TO: Supervising Attorney
 FROM: Lucy Prosser, Paralegal
 DATE: 01/25/21
 RE: Sam Slime

Caption

Basic information about who the memo is to and from.

ASSIGNMENT

You asked me to review cases and statutes provided to determine the strength of our client's case.

Assignment

Restate the attorney's instructions regarding the assigned task.

FACTS

Our client, Sam Slime, is being sued for breach of marriage promise by Paula King. Sam and Paula met in October 2009. After they dated for some time, Paula proposed, and Sam agreed to marry her. Sam claims that he was broke at the time, and therefore, was under duress when he agreed to the engagement. They set the wedding date for November 2020.

Facts

Facts about your client's case

Six months later, Sam won the state lottery. With his financial problems alleviated, Sam could see that he did not want to marry Paula and soon broke off the engagement. Paula has filed suit in Denver District court.

Our client claims that he had every right to break off the engagement. It seems that Sam had always believed that a couple should wait until married to engage in sexual intercourse. Sam claims that shortly after they became engaged, Paula seduced him not just once, but several times. Our client says he could never marry a woman with such a lack of morals.

ISSUES

1. Is the fact that the parties engaged in sexual intercourse after their engagement relevant?
2. Did our client violate Colo. Rev. Stat. § 19-22-302?

ANALYSIS

ISSUE 1. *Is the fact that the parties engaged in sexual intercourse after their engagement relevant?*

Courts generally have held that sexual intercourse between an engaged couple does not bar suit on grounds of breach of promise. In *Fleetwood v. Barnett*, 11 Colo. App. 77, 52 P. 293 (1898), the defendant asked the plaintiff to marry him and the plaintiff agreed. The wedding date was to be two years following the engagement. Soon after the engagement, the couple was unable to resist the “temptations of the flesh.” The next day, the defendant informed the plaintiff that he no longer considered himself bound by his promise to marry her, especially considering the unethical behavior by the plaintiff the previous night in allowing the defendant to take advantage of her. The court held:

This court recognizes that relationships between individuals are complex, and often defy simple analysis. After reviewing the facts presented in this matter, we determine that illicit intercourse between the parties after promise of marriage *shall not bar recovery* for breach of that promise.

Id. at 11 Colo. App. 80, 52 P. 296 (emphasis added)

This case applies because in both cases sexual intercourse following promise of marriage is the primary issue. The apparent differences between *Fleetwood* and the instant case are that *Fleetwood* occurred in 1898, when a promise of marriage was taken more seriously, and that the defendant proposed to the plaintiff in *Fleetwood*, whereas the plaintiff proposed to the defendant in our client’s case. However, while the date would certainly encourage research for more recent rulings, neither of these differences would, in and of themselves, render *Fleetwood* irrelevant. It would therefore appear that our client should not rely on his sexual activity with the plaintiff after his engagement to her as a defense.

Issues

Questions that will be answered by the court. The attorney should determine the issues.

Analysis

Using the IRAC method of legal analysis, analyze each relied upon authority one at a time.

ISSUE 2. *Did our client violate Colo. Rev. Stat. § 19-22-302?*

While case law appears to work against our client, statutory authority is not so clear. Colo. Rev. Stat. § 19-22-302 is relevant. It states:

Any person who proposes marriage to another is deemed to have entered into a valid contract and, therefore, is bound by that agreement as to any lawful commitment.

This statute is only binding upon the “person who proposes marriage.” Since it was the plaintiff in the instant case who proposed marriage, it is she who is bound by that proposal, not our client. Therefore, our client did not violate Colo. Rev. Stat. § 19-22-302.

CONCLUSION

- In this case, our client accepted a proposal of marriage, then claimed that sexual intercourse following the proposal caused him to reconsider. *Fleetwood v. Barnett* establishes that post-engagement intercourse does not prevent a plaintiff from recovering for breach of that promise. Therefore, sexual intercourse following promise of marriage should not be relied upon as a defense to breach of that promise.
- Our client accepted a proposal of marriage from the plaintiff. The statute cited applies only to the person who proposes marriage. Thus, our client did not violate the statute in question.

Conclusion
Answers to the
Issues.

RECOMMENDATION

While my instructions were to limit myself to the authority provided, further research on these issues before trial would certainly be advisable. Although our client was not in direct violation of the statute cited, it is doubtful that our client would succeed in a jury trial, since case law would hold against our client. All efforts should therefore be made to settle this case out of court.

Recommendation
Next steps to be
taken.

ASSIGNMENT § 3.6 | INTEROFFICE MEMORANDUM

Using only the authority provided in **Appendix A**, prepare an interoffice memorandum analyzing the issues listed below. If you were researching these issues for a real client you would want to rely heavily on authority from your state. However, since this assignment is of limited scope, you may use cases from any jurisdiction.

Although you are expected to make a serious effort in creating the memorandum, do not feel you must create the perfect memo the first time. An educational experience is progressive, and this is your first effort in legal writing. In addition to the cases provided, you may use a legal dictionary.

Your Client's Facts

Three months ago, your attorney hired you as her first paralegal. She is concerned, however, about what tasks and duties she may have you perform. You have already engaged in a couple of activities that she thinks, in hindsight, may have been inappropriate. When a client first came to the firm, your attorney asked that you handle the initial interview. She told you to hear all the facts, then convey to the client the attorney's interest in handling the case. She also told you the specific fees that would be charged, including the paralegal's and attorney's hourly rates. You shared this information with the client at that initial meeting. Your attorney wants you to review some authorities to make a determination. She also wants to know whether she can ask you to attend a settlement conference without her being present and whether you would be allowed to accept or reject certain proposals. She has always planned to use you for this sort of activity, but now wants to make sure there is nothing unethical about such delegation of responsibilities.

Your Client's Issues

1. *Can a paralegal interview a client for the purpose of providing the client with fee and representative information?*
2. *Under what circumstances may a paralegal conduct a settlement conference?*

Under the Facts portion of the memorandum, provide a brief description of the reason your firm is representing your client, followed by an explanation of your attorney's concerns regarding the scope of your duties. Using the authorities provided, analyze the above issues.

Authorities to be Relied Upon

Find the following authorities using *Westlaw*, *Lexis*, in the law library, or in **Appendix A**.

Attorney Griev. Comm. v. Hallmon, 343 Md. 390, 681 A.2d 510 (1996)

In re Morin, 319 Or. 547, 878 P.2d 393 (1994)

People v. Milner, 35 P.3d 670 (Colo. 2001)

State Stat. § 88.120

Your Billable Hours

Keep track of your billable hours. Attach a copy of your time sheet to the last page of the memorandum. After your memorandum has been graded and returned, place the document in the Work Product section of your client's file.

HELPFUL HINTS

In Appendix C you will find **Helpful Hints in Legal Writing** to help you get started with each stage of the IRAC analytical process.

EXAMPLE 2 – INTEROFFICE MEMORANDUM**MEMORANDUM**

TO: Jeanne Wilkins, Esq.
FROM: Joanne Fielder, Paralegal
DATE: March 19, 2021
RE: The right of Tom Sayers to have his name placed on Jenny Saunders' birth certificate as the natural father.

ASSIGNMENT

Research case law and review statutes to determine whether our client has the right to have his name placed retroactively on the birth certificate of his two-year-old daughter, Adelaide Louise Saunders.

FACTS

Our client, Tom Sayers, is an eighteen-year-old high school senior. Tom and his mother have asked that we review Tom's parental status. Two years ago, Tom became sexually involved with a classmate, Heather Saunders. Heather was sixteen at the time, and Tom was fifteen. Heather became pregnant by Tom and on September 3 of last year Heather gave birth to a healthy girl. However, Heather and Tom had broken up shortly after Heather became pregnant. Tom saw little of Heather during this time.

When Heather gave birth, Tom was not informed. Heather filled out the birth certificate, naming herself as the mother and "unknown" as the father. The child's name was listed

as Adelaide Louise Saunders. When Tom found out three days later that Heather had given birth, he went to see Heather and the baby at her house. Subsequently, Heather and Tom came to an informal agreement for Tom to see Adelaide one weekday per week and every other weekend. In addition, Tom would pay Heather fifty dollars per week in child support while he was still in high school. So far the agreement has worked well.

Two weeks ago, Tom was informed that Heather plans to get married in November. While there is no indication of hostile feelings or plans on Heather's part to change the arrangement at this time, Tom and his mother are concerned that Heather's husband may want to adopt Adelaide. Tom wants to know what his rights are.

ISSUES

1. *Is it possible to have a new birth certificate issued with our client named as father?*
2. *Are there any guidelines for establishing paternity two years after the fact?*

ANALYSIS

ISSUE 1. *Is it possible to have a new birth certificate issued with our client named as father?*

According to both case law and statutory authority, it appears that Tom will be declared Jenny's natural father on her birth certificate. C.R.S. 13-21-201 states as follows:

In the event that the name of the natural father of a child is

- (a) not listed on the birth certificate, or
- (b) incorrect on the birth certificate due to error, or
- (c) incorrect on the birth certificate due to fraud,

the court, in its discretion, may order that a new birth certificate be issued providing the correct name of the natural father once the natural father's identity has been determined. The new certificate shall replace the original, nunc pro tunc.

Subsection (a) applies to our client. No name for the natural father was listed on the original birth certificate. This statute provides for the issuance of a new certificate "once the natural father's identity has been determined."

In addition, courts have held that it is in the interest of the child that the natural father's identity be listed on the birth certificate when it is known.

In the U.S. Supreme Court case of *Jacobs v. Livingston*, 143 U.S. 679 (1970), a mother tried to prevent the listing of the natural father on the birth certificate of their newborn son. The couple was not married, and the father had been convicted of second-degree murder just prior to the boy's birth. He was sentenced to life in prison with the possibility of parole.

The mother asserted that it would be detrimental for the child to be labeled and stigmatized by having a convicted murderer listed on his birth certificate as his natural father. The court disagreed. In ordering the natural father's name placed on a new birth certificate, it reasoned:

...while the court must pursue the best interests of the child, the court cannot expect to shelter him from all mishaps or unjust treatments life will present. None of us choose our parents. Denying them does not change the fact that they bore us. This child must have the opportunity to choose his relationship with his father at some point in the future. The fact is that the identity of the natural father is known . . . and must be provided for in the appropriate records.

Id. at 683

Jacobs applies to our client's case because not only the natural father, but the child, has the right to have accurate and complete information regarding parenthood provided in "appropriate records." However, while the case and statute above give the court the authority to replace the original birth certificate with one bearing the father's name, our client will have to prove, to the court's satisfaction, that he is, indeed, Jenny's father.

ISSUE 2. Are there any guidelines for establishing paternity two years after the fact?

Courts have provided guidelines for determining paternity when paternity is in dispute. In *Henry v. Lowell*, 335 U.S. 281 (1972), the United States Supreme Court upheld the Supreme Court of Hawaii in naming the plaintiff as father of a child, despite the defendant mother's objection.

In that case, James Henry filed a suit with the District Court of Hawaii to be named father of a little girl. James' position was that, even though paternity tests were "inconclusive," he should be declared the child's father because of previous behavior by the mother, Karen. James asserted that Karen encouraged the child to refer to him as "Daddy." Karen confirmed this. The court held:

Determination of the paternity of a child may be achieved in several ways... First, the admission by both parents as to paternity. Second, medical or scientific tests deemed accurate and reliable by the court.

Third, that a male individual is, over an extended period of time, held out by the child's mother as the father and treated with an attitude consistent with the manner in which a natural father would be treated....

Id. at 284

In our client's case, it is possible that Heather may now admit that Tom is Adelaide's father and be willing to have Tom listed as Jenny's father on a new birth certificate. If she resists, we should suggest a medical paternity test which would most likely prove that our client is Jenny's father. In addition, Heather Saunders has certainly "held out" Tom as the father of her child, as provided for in the *Henry* case. Heather has never denied Tom's paternity. Therefore, it appears that Tom will be able to have a new birth certificate issued naming him as Jenny's natural father.

CONCLUSION

1. The court, at its discretion, may order a new birth certificate issued with the natural father's identity provided.
2. Due to Heather's consistent recognition of Tom as Jenny's father, it appears that establishing paternity will not be a problem.

RECOMMENDATION

We should advise our client to approach Heather in an amicable atmosphere and ask whether she would be willing to have a new certificate issued.