

Legal Analysis *and* Writing

Third Edition



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CHAPTER 10

The Writing Process for Effective Legal Writing

Outline

- I. Introduction
- II. Importance of Writing Skills
- III. Goal of Legal Writing
- IV. Legal Writing Process
- V. General Research Suggestions
- VI. Key Points Checklist: *The Writing Process*
- VII. Application

Learning Objectives

After completing this chapter, you should understand:

- The importance of writing skills
- What a legal writing process is and its importance in legal writing
- The three stages of the legal writing process
- The importance and use of an expanded outline in the legal writing process



For the past five years, Rick Strong has been the paralegal for Sara Fletcher, a criminal defense attorney. Rick performs a wide range of paralegal tasks for Sara. He interviews clients and witnesses, conducts legal investigations, arranges and maintains client files, conducts legal research, and occasionally prepares legal memoranda.

Rick enjoys legal research and determining the answers to legal questions. He dreads the actual writing process—the assembly of the research and analysis into a written format.

Carol Beck retained Sara to represent her in the case of *State v. Carol Beck*. In the case, police officers obtained a search warrant from a magistrate court judge authorizing a search of Ms. Beck's house for drugs. On the bottom of the warrant, the judge

wrote, "Unannounced entry is authorized to ensure officer safety." When the officers obtained the warrant, they told the judge that in other drug search cases, if the officers announced their presence prior to entry, the persons occupying the premises being searched often posed a threat to the officers. Based on this statement, the judge authorized the officers to enter Ms. Beck's house unannounced. When the officers executed the warrant, they did not announce their presence and purpose prior to entry. Their search recovered a plastic bag containing an ounce of cocaine. Carol Beck was charged with possession with intent to distribute.

Sara and Rick have just begun the preliminary stages of preparing Ms. Beck's defense. Rick's assignment is to prepare a legal memorandum

addressing the possibility of obtaining suppression of the evidence on the basis that the search was illegal. Sara tells Rick that any suppression motion must be filed in thirty days. What process

should Rick follow when preparing the memorandum? The legal writing process is presented in this chapter. The answer to Rick's question is discussed in the Application section of the chapter.

I. INTRODUCTION

This chapter presents a collection of general considerations involved in legal writing, including an approach to the writing process and guidelines to follow when engaging in the process.

The legal issue raised by the facts of a client's case must be researched and analyzed and the results communicated, usually in written form. Legal research, analysis, and writing are all related. Each is a step in a process designed to answer legal questions and lead to the resolution of disputes. Legal writing is the last step: the step where the research and analysis are assembled in a written form designed to record and communicate the answer to a legal question or questions concisely.

For various reasons, many people believe that most legal communication is oral and takes place either in the courtroom or in a law office. This is not the case, however. The bulk of legal communication is written. The vast majority of cases never go to trial. They are settled, and the settlements are reduced to writing. When cases do go to trial, much of the trial work involves writing: written motions, trial briefs, jury instructions, and so on. In many instances, the practice of law engaged in by law firms rarely involves litigation but instead focuses on the preparation of contracts, wills, corporation instruments, and other legal documents. A great deal of time is spent in research and in communicating that research in the form of legal memoranda and legal instruments.

II. IMPORTANCE OF WRITING SKILLS

There are several reasons why it is critically important for a paralegal to possess good writing skills. The following are some of the major reasons:

In many instances, you may spend most of your time engaged in legal writing of one form or another. If you possess good writing skills, you can produce a finished product in a shorter time than an individual who does not possess such skills. This results in greater productivity, which enhances your value to the law firm.

The quality of a written product is based on writing skill. The greater the skill, the greater the quality of the product. Part of your job evaluation may be based on the quality of your written product. In addition, a written product that leaves the firm, such as correspondence to a client, represents the law firm. A shoddy product reflects poorly on the firm's reputation.

Legal research and analysis are meaningless if the results cannot be communicated clearly and concisely. The goal of a legal research memorandum is to inform and record information. An individual who does not possess good writing skills may not be able to fulfill this goal.

Poor writing skills also may lead to miscommunication. One may intend the writing to convey a certain meaning when, in fact, it literally conveys a different meaning. This may lead to disaster if the supervising attorney relies on the literal

meaning and commits an error. Correspondence to a client may be so unclear that the client does not understand the communication.

For Example The written communication reads, “Individuals who file with the court promptly receive consideration.” This is ambiguous. Does it mean that individuals who file promptly with the court receive redress or does it mean that those who file with the court will receive prompt redress?

III. GOAL OF LEGAL WRITING

Before addressing the considerations involved in the legal writing process, it is important to identify the goal of legal writing. Law offices are busy places, and the reader of a paralegal’s work product is usually a busy person who does not have time to wade through flowery prose, extraneous or unclear material, or general rambling. The primary goal of legal writing, therefore, is to convey legal information clearly, concisely, and completely in a manner that accomplishes both of the following:

- Addressing the topic fully in as few words as possible
- Allowing the reader to gain a clear understanding of the information in as little time as possible.

You may feel that you do not possess good writing skills or that you do not have the capability to convey information clearly, concisely, and completely in a written form. Writing may be a struggle for you. Writing skills can be developed through practice and the use of a *writing process*.

IV. LEGAL WRITING PROCESS

A **legal writing process** helps you develop writing skills. It makes legal writing easier and is necessary for the reasons discussed in the following text.

1. Legal writing is highly organized and structured. The organized structure helps ensure that complex subject matter is clearly communicated.

For Example The IRAC (Issue, Rule, Analysis, Conclusion) analytical method discussed in Chapter 2 is a structured approach to problem solving. The IRAC format, when followed in the preparation of a legal memorandum, helps ensure the clear communication of the complex subject matter of legal issue analysis.

legal writing process

A systematic approach to legal writing. An organized approach to legal research, analysis, and writing. It is composed of three stages: prewriting, writing, and postwriting.

The use of a **legal writing process** helps you conduct research and analysis within the structure and format of the type of legal writing assigned. A writing process saves time by providing the means for organizing your legal analysis and research material as you gather it.

2. If you do not have a writing process and merely gather research material and immediately begin to write, you will waste a great deal of time because you are not ready to write. You are likely to flounder if you begin to write without first organizing your research and analysis or without thinking what you will write. If you have gathered a mountain of research that requires a

great deal of analysis, you will waste time struggling to determine what goes where and how. A writing process forces you to think before you write and to follow an organized structure from the beginning. When you sit down to write, you will be ready. The project will be thought out and organized.

3. When researching or analyzing an assignment or engaging in legal writing, a writing process provides a framework that helps to capture ideas and record them in their proper place as they occur. Without a process, ideas may be lost. This is discussed in the Use of an Outline subsection of this chapter.
4. A writing process helps you overcome the difficult areas of legal writing, such as when you get stuck in a difficult analytical area or encounter writer's block. A writing process helps you avoid these problems by providing a stepped approach. Becoming stuck or blocked is often the result of having missed a step or left something out. A process is a guide that includes all the steps and helps ensure that nothing is left out.

This section presents a general overview of the writing process and discusses matters you should consider at each stage of the process. When engaging in legal writing, you may adopt many different processes and combinations of processes. What works for one person may not work for another. You may ultimately adopt a process that includes steps from various approaches to legal writing, including some of those presented in this chapter. It does not matter which process you ultimately adopt, but *it is essential that you adopt some writing process.*

The legal writing process consists of the three basic stages presented in Exhibit 10–1. The following sections discuss each of these stages. Assembling all available information concerning the case is a prerequisite to the first stage—to the beginning of any writing process.

For Example The assignment is to prepare an office legal memorandum addressing the question of when the statute of limitations runs in a client's medical malpractice case. Gather all information concerning the case before you begin, including the client's file, depositions, interrogatories, witness interviews, any other discovery information, and so on.

The three stages of the legal writing process

Prewriting Stage	The stage where the assignment is organized, researched, and analyzed.
Writing Stage	The stage where research, analysis, and ideas are assembled into a written product.
Postwriting Stage	The stage where the assignment is revised, edited, and assembled in final form.

Exhibit 10–1

Stages of the Legal Writing Process

prewriting stage

The stage in the legal writing process where the assignment is organized, researched, and analyzed.

A. Prewriting Stage

Performing the steps necessary to get ready to begin is one of the most important aspects of the writing process. Novice writers often begin to write without being adequately prepared, but if you are fully prepared when you begin to write drafting becomes much easier. The **prewriting stage** of the writing process may be divided into the three sections presented in Exhibit 10–2.

The three sections of the prewriting stage

- | | |
|------------------------|--|
| 1. Assignment | An identification of the type and purpose of the writing assignment. |
| 2. Constraints | A consideration of any constraints placed on the assignment. |
| 3. Organization | The organization of the writing assignment. |

Exhibit 10–2*Sections of the Prewriting Stage***1. Assignment**

The writing process begins with identifying the type and purpose of the assignment. Considered the following three questions when reviewing the assignment:

- *Is the assignment clearly understood?*
- *What type of legal writing (document) is required?*
- *Who is the audience?*

Is the Assignment Clearly Understood? You may receive the assignment in the form of a written memorandum or through oral instructions from the supervising attorney. An early and important step in the prewriting stage is to be sure that you understand the task you have been assigned. If you have any questions concerning the general nature or specifics of the assignment, ask.

A misunderstanding of the assignment can waste a great deal of time if it leads you to perform the wrong task. Most attorneys welcome inquiries and prefer that a paralegal ask questions rather than proceed in a wrong direction. In this regard, if the assignment is unclear in any way, summarize the assignment orally with the attorney or draft a brief recapitulation of the assignment and submit it for the attorney's review and signature.

What Type of Legal Writing (Document) Is Required? Before you begin, you must know what form of legal writing the assignment requires. Each type of legal writing has a different function and different requirements.

There are various types of legal writing and numerous ways to categorize the types. The focus of this text is on legal research and analysis and related types of writing, such as the following.

Law Office Legal Research and Analysis Memoranda. A paralegal may be assigned the task of researching and analyzing the law that applies to a client's case. The law office legal memorandum is designed to inform the reader of the results of the research and analysis. The assignment may be as simple as identification of the statutory or case law that applies to a legal issue or as complex as identification of the issues in a case and analysis of the law that applies. The preparation of a law office legal memorandum is discussed in Chapters 12 and 13.

Correspondence. A paralegal may be required to draft several types of correspondence: demand letters, settlement proposals, notices of events such as hearing dates, and so on. The assignment may require the preparation of the draft of a letter to be sent to the client informing the client of the law that applies in the client's case and how the law applies. A paralegal cannot give legal advice to the client, but the paralegal may prepare the draft of the correspondence that the attorney will send to the client. Legal correspondence is addressed in Chapter 15.

Court Briefs. A **court brief** is a document filed with a court that contains an attorney's legal argument and the legal authority in support of that argument. Court briefs fall primarily in two categories: trial court briefs and appellate court briefs.

trial court brief

An external memorandum of law submitted to a trial court. It presents the legal authority and argument in support of a position advocated by an attorney, usually in regard to a motion or issue being addressed by the court. It is often referred to as a trial brief.

appellate court brief

An external memorandum of law submitted to a court of appeals. It presents the legal analysis, authority, and argument in support of a position that the lower court's decision or ruling was either correct or incorrect. It is often referred to as an appellate brief.

1. *Trial Court Briefs.* A court may require an attorney to submit a brief in support of a position taken by an attorney in regard to a legal issue in a case. A **trial court brief** is usually submitted in support of or in opposition to a motion filed with the court.

For Example

An attorney files a motion to dismiss a complaint, claiming that the statute of limitations has run. In support of the motion, the attorney files a legal brief that contains the legal and factual reasons the court should grant the motion. The opposing side will also file a brief in opposition to the granting of the motion.

2. *Appellate Court Briefs.* An **appellate court brief** is a document filed with an appellate court that presents the legal arguments and authorities in support of the client's position on appeal. It is designed to persuade the appellate court to rule in the client's favor. Court briefs are discussed in detail in Chapter 14.

Each of these types of legal writing is structured differently. The organization of and considerations involved in drafting these documents vary. The subsequent stages of the writing process are governed by the type of legal writing the assignment requires. Therefore, an early step in the prewriting stage is to identify the type of writing required.

Other types of legal writing may involve drafting legal documents such as contracts, wills, pleadings, and so on. Other courses such as contracts and wills cover the specific considerations involved in drafting these documents; therefore, they are not covered in this text. However, you may follow the writing process presented in this chapter when preparing such documents.

Who Is the Audience? Identifying the intended audience is an important step when assessing the requirements of an assignment. Inasmuch as the goal of legal writing is to communicate information clearly to the reader, you must ensure your writing is crafted in a manner suited to the needs of the reader.

Legal writing assignments are designed to reach a number of different audiences. The intended reader may be a judge, an attorney, a client, or some other person. The reader's ability to understand the writing will depend on the legal sophistication of the reader and the manner in which the document is written. A legal writing designed to inform a client or other layperson of the legal analysis of an issue is drafted differently than a writing designed to convey the same information to an attorney. The use of fundamental legal terminology may be appropriate when the writing is to be read by a person trained in the law. On the other hand, if the reader has little or no legal training, it may be necessary to use nonlegal terms to convey the same information clearly.

For Example

Communication to the supervising attorney: "The motion to suppress the evidence should be granted. Exigent circumstances that would have justified an unannounced entry were not present at the time the officers executed the warrant, and the judge who issued the search warrant did not authorize unannounced entry."

Communication of the same information to the client: “The court may not allow the prosecution to use at trial the evidence seized when the officers searched your house. The law requires officers to announce their presence before they enter your house to conduct a search. They are required to do this unless a judge gives them permission to enter without first announcing their presence. They may also enter unannounced if, when they arrive at your house, they believe that you are destroying evidence or present a danger to them. In your case, the judge did not authorize the officers to enter unannounced and nothing occurred when they arrived at your house to indicate you were destroying drugs or you were a threat to them.”

Another factor to consider is whether the writing is intended solely for internal office use. A writing that will be read only by individuals working in the office may contain information, comments, or assessments that would not be included in a writing intended to be read outside the office.

For Example “After analyzing the facts of the client’s case and the applicable law, it may be necessary to convince the client to reconsider the amount of damages he believes he is entitled to recover and the possibility of settling this case. He needs to be informed about the amount of damages he can realistically expect to receive. He is adamant in his belief that he is entitled to more than \$1 million, and he is not willing to consider settling for less. The range of recovery is more likely between \$10,000 and \$100,000.”

You must identify the audience to ensure that the legal communication is crafted in a manner commensurate with the ability of the reader to understand the contents.

2. Constraints

The next step in the prewriting process is to consider any possible **constraints** that may affect the performance of the assignment. Three major constraints that should be considered are presented in Exhibit 10–3.

Major constraints on the writing process

Time	If the performance of the assignment is governed by a deadline, you should allocate a specific amount of time to each stage of the writing process.
Length	If the assignment is limited to a set number of pages, you should organize the writing to ensure each section is allotted sufficient space.
Format/Organization	If the assignment is governed by a specific format or style established by office guidelines or court rule, you should identify the format.

Exhibit 10–3

Constraints on the Writing Process

Time. A time constraint may govern the performance of an assignment because most assignments have a deadline. You must determine what the deadline is. Once this is done, allocate a specific amount of time to each stage of the writing process.

For Example You have fifteen days to write a legal research memorandum on an issue in a case. You should allocate your time among the prewriting, writing, and postwriting stages of the writing process. A possible allocation could be six days for prewriting, five days for drafting, and four days for postwriting.

If you fail to allocate your time or fail to stick to the allocation, you may become absorbed or stuck in one stage and fail to leave enough time to complete the assignment properly. It does no good to research and analyze an issue completely if you do not have time to translate the research and analysis into a written form.

For Example You have fifteen days to prepare an office memorandum, but you become absorbed in the intricacies of the research and leave only two days to write the memo. This is not sufficient time to prepare a well-crafted product. The memorandum will either not be turned in on time or will be poorly written, either of which will harm your professional reputation.

Length. The assignment may have a length constraint. The supervising attorney may require that it not exceed a certain number of pages. If this is the case, keep the length limitation in mind from the start because this limitation will affect the amount of research material you gather. Of course, you must gather all the applicable law, but you must also screen the research to ensure that you do not gather excessive information. With the space limitation in mind, consider how much of the material that you are gathering can be included in the writing. Also, organize the writing to make sure that each section is allotted sufficient space.

For Example The assignment is to prepare a legal research memorandum that does not exceed fifteen pages. The organization must allocate sufficient space for each section of the memorandum. If the analysis takes up fourteen pages, there will not be sufficient space for the statement of the facts, the issue, or the conclusion.

Format. Most law offices have rules or guidelines that govern the organization and format of most types of legal writing, such as case briefs, office memoranda, and correspondence. Courts have formal rules governing the format and style of briefs and other documents submitted for filing.

For Example Many courts have rules governing the size of the paper, the size of the margins, the length of briefs, and so on.

Inasmuch as you must draft the assignment within the constraints of the required format, it is essential to identify the format at the beginning of the prewriting process.

3. Organization

Organization in the prewriting stage is the key to successful legal writing. You must be organized when conducting research and analysis in the prewriting stage, and the assignment must be organized when it is written. Developing and using an outline help make this possible. An **outline** is the skeletal structure and organizational framework of the legal writing. Three aspects of outlines are presented here.

- *The value of an outline*
- *The creation of an outline*
- *The use of an outline*

outline

The skeletal structure and organizational framework of a writing.

Value of an Outline. An outline is usually considered useful in the writing stage because it makes writing easier by providing an organized framework for the presentation of research and analysis. An outline, however, is of *greatest value* when properly used in the prewriting stage. There are several reasons for this.

- The act of creating an outline causes you to organize ideas and prepare an approach to the assignment at the beginning of the process. This helps you to think through all aspects of the assignment and take a global view, thereby avoiding gaps and weaknesses in your approach. You focus your attention and organize your thinking before you jump into the assignment.
- The use of an outline saves time. When used properly, all the information from a research source is placed in the outline when research is being performed. Time is often wasted when you have to retrieve a research source again to gather information that you either thought was not important or forgot to retrieve. If an outline is used properly, no research source should be retrieved more than once.
- An outline provides an organized framework for the structure of the assignment and for conducting research and analysis. It provides a context within which to place ideas and research. This use is discussed in detail later in the Use of an Outline subsection.
- An outline breaks complex problems into manageable components. It provides an organized framework from which to approach complex problems.

Creation of an Outline. The goal when creating an outline is to prepare the skeletal framework of the document you are going to draft. The outline should provide an overall picture of how all the pieces of the assignment relate to each other and fit together. The form of the outline does not matter. Whether you use roman numerals (I and II), capital letters (A and B), narrative sentences, fragments of sentences, or single words is unimportant. Use whatever form or style works for you, but you should use indentations to separate main topics from subtopics.

For Example

- I. Introduction
- II. Issue
- III. Analysis
 - A. Rule of law
 - B. Case law
 - 1. Name of case
 - 2. Facts of case

The outline of the legal writing is governed by the type of legal writing you are preparing. Identify the standard format used in the office for that type of writing. In the case of an office legal memorandum or correspondence, the law office may have a special format that must be followed. Use that format as the basis for the outline. If the writing is to be filed in court, such as an appellate brief, follow the format set out in the court rules. Whatever the basic format is, it may be necessary to make additions and expand the outline.

For Example Assume the firm's format for an office legal memorandum resembles the following:

1. Description of assignment
2. Issue
3. Facts
4. Analysis
5. Conclusion

This is a broad format that needs a lot of filling in to be useful. It may be necessary to fill in details for each section.

For Example An expansion of the analysis section may look like the following:

4. Analysis
 1. Introduction
 2. Rule of law
 3. Case interpreting the rule of law
 - a. Name of case/citation
 - b. Facts of case
 - c. Rule of law or legal principle presented in the case that applies to the client's facts
 - d. Application of rule/principle from the case to the client's facts

This outline example is referred to in this chapter as the analysis outline example.

When developing an outline, remember the following points.

1. *Keep the facts and issues of the assignment in mind while developing the outline.* It may be necessary to expand the outline to accommodate additional facts and issues.

For Example The standard office outline may have only one issue. Your assignment may involve more than one issue. Expand your outline to apply the standard office outline to each issue.

2. *Be flexible when creating and working with an outline.* Realize that it may be necessary to change the outline as you conduct research.

For Example The assignment involves drafting a simple office legal memorandum that addresses one issue. The outline you decide to follow is the analysis outline example presented previously. When you conduct the research, it becomes apparent that there are two aspects of the rule of law that apply to the issue and two court opinions that need to be included in the analysis. The memo outline must now be expanded to include the following:

4. Analysis
 1. Introduction
 2. Rule of law
 3. Case interpreting the meaning of *publication* as used in the rule of law
 - a. Name of case/citation
 - b. Facts of case
 - c. Interpretation of term
 - d. Application of the interpretation to the client's facts
 4. Case interpreting the meaning of *written* as used in the rule of law
 - a. Name of case/citation
 - b. Facts of case
 - c. Interpretation of term
 - d. Application of the interpretation to the client's facts

3. *Do not be surprised if it is necessary to reorganize the outline as a result of your research.* Research may provide a clearer picture of the relationship between issues and necessitate a rethinking of the organization of the outline.

For Example As a result of your research, you may realize that the sequence in which you plan to address the issues should be changed. The issue you thought should be discussed first should come second.

4. *The basic organizational format for most legal writing that requires legal analysis is the IRAC format.* That is, first state the question or *issue*, next identify the *rule* of law that governs the issue, then *analyze* how and why the rule applies, and end with a *conclusion* summarizing the analysis. This format may be followed when addressing each issue and subissue. If for some reason you are at a loss for a format to follow, the IRAC format can be used.

5. *Include in the outline a reference to or some notation for transition sentences.* **Transition sentences** connect the major sections of the writing and lead the reader smoothly through the legal analysis and make the document more readable. It is easy to become so focused on the law, cases, and analysis that you forget the transitions.

For Example "The rule of law that governs this issue is § 36-6-6, which prohibits oppressive conduct by majority shareholders. In the case of *Jones v. Thomas*, the court held ..." There should be a transition sentence linking the case to the rule of law: "The rule of law that governs this issue is § 36-6-6, which prohibits oppressive conduct by majority shareholders. *Because the statute does not provide a definition of the term* oppressive conduct, *case law must be referred to. A case on point is Jones v. Thomas where the court held ...*"

Outline formats for correspondence, office legal memoranda, and court briefs are presented in Chapters 12 through 14.

Use of an Outline. *The value of an outline is determined by its use.* If you prepare an outline only to set it aside while you are researching and analyzing the assignment, the outline's only value is to help organize your thinking and provide the organizational framework for the writing that follows. An outline is of greatest value when it is actively integrated into the prewriting stage because it can serve as an *invaluable guide* during the research and analysis process.

For Example

Follow the outline format when researching and analyzing: first identify the issue, next locate the rule of law that governs the issue, then identify the case law that interprets the rule of law in a fact situation similar to the client's case, and so on.

When integrated in the research and analysis process, an outline provides an organized context within which to place research and ideas. When used in this way, it results in the development of a rough draft while research and analysis are underway, allowing a tremendous savings of time and effort. *The integrated use of an outline in the prewriting stage simplifies the writing stage.*

How, then, do you integrate an outline into the research and analysis process in the prewriting stage? There are several ways to accomplish this. The practical approach suggested here is to use an **expanded outline**. This approach is composed of the two steps presented in Exhibit 10–4.

expanded outline

An outline that has been expanded so that it may be used in the prewriting stage. The use of an expanded outline allows the integration of all research, analysis, and ideas into an organized outline structure while research and analysis are being conducted. It facilitates the preparation of a rough draft.

Exhibit 10–4

Two-Step Approach for Use of an Outline in the Prewriting Stage

Use of an outline in the prewriting stage

Step 1 Convert the outline into a usable form—an expanded outline.

Use several sheets of three-hole punched or binder paper, or create separate pages if you are using a computer. Write the name of each section and subsection of the outline at the top of a separate page; for example, at the top of one page write “Issue,” at the top of another page write “Facts,” and so on.

Step 2 Integrate all research, analysis, and ideas into the outline while you are conducting research and analysis.

As you conduct research and ideas occur to you about any aspect of the case, enter them on the appropriate page of the expanded outline.

For illustrative purposes, assume the assignment is to prepare an office legal memorandum addressing a single issue in a client's case. The cause of action is a slander tort claim. The broad issue is whether there was publication within the meaning of the law. Section 20-2-2 of the state statutes provides that civil slander is “the oral publication of a false statement of fact concerning an individual . . .” The statute does not define *publication*. The facts of the case are that neighbor A, while visiting neighbor B's house, communicated to neighbor B a false statement of fact concerning the client. This example is referred to in this chapter as the slander example.

The format for the body of an office legal memorandum adopted in the office is as follows:

- I. Issue
- II. Statement of facts
- III. Analysis/application
 - 1. Rule of law—the rule of law that governs the issue—enacted/case law
 - 2. Case(s)—court interpretation of rule if necessary
 - A. Name and citation
 - B. Brief summary of facts showing case is on point
 - C. Rule/principle/reasoning applied by the court that applies to client's case
 - D. Application—discussion of how the rule of law presented in the court decision applies in the client's case
 - 3. Counteranalysis
- IV. Conclusion: a summary of the analysis

Step 1 Convert the outline to a usable form—an expanded outline. The memorandum format used in the office is typed on one sheet of paper and is not very useful in this form. The first step in the use of the outline is to convert it to a usable form—to expand the outline by taking several sheets of three-hole punched or binder paper, or creating separate pages if you are using a computer, and writing the name of each section and subsection of the outline at the top of a separate page.

For Example At the top of one sheet of paper or computer page, write the word *Issue*. At the top of another page, write *Statement of facts*. At the top of another page, write *Analysis—rule of law*. Continue with a new page for each of the following: *Analysis—case*, *Analysis—application of case to client's facts*, *Counteranalysis*, and *Conclusion*.

Some sections of the outline may require multiple pages.

For Example The *Analysis—case* section may require two pages: one page for *Analysis—case—citation and facts of case* and one page for *Analysis—case—rule/principle/reasoning*. Two or more pages may be required for a case because, in many instances, a great deal of information may be taken from a case, such as lengthy quotes from the court's reasoning.

If more than one rule of law applies, there should be a separate page for each rule of law. If several cases apply, there are separate pages for each case. If there are separate issues, *research and analyze each issue separately*, and prepare a separate expanded outline for each issue.

When completed, there should be a separate page for each section and subsection of the outline. The pages should be placed in a loose-leaf binder or entered in the computer in the order of the outline. In other words, the first page will be the Issue page, followed by the Statement of facts page, then the Analysis—rule of law page, and so on. If you are using binder paper, blank sheets of paper should be

inserted between each section. This allows for the expansion of each section to accommodate additional notes, comments, ideas, and so on. The end result is a greatly expanded outline that is usable in the prewriting stage.

Step 2 Integrate all research, analysis, and ideas into the outline while research and analysis are being conducted. As you conduct research, enter any ideas that occur to you concerning any aspect of the case on the appropriate page of the expanded outline.

Ideas. When any idea occurs concerning the case, enter it on the page of the expanded outline that relates to that idea. The term *ideas* as used here includes all thoughts relating to the writing of the assignment, such as how to compose transition sentences.

For Example

In the slander example, you may have a broad definition of the issue such as: "Was there publication?" As you conduct research and give more thought to the case, more refined formulations of the issue will become apparent, such as: "Under § 20-2-2, does slander occur when one person orally communicates to a third party false statements of fact concerning an individual?" As soon as this formulation of the issue comes to you, write it on the issue page. When it comes time to write the memorandum, multiple versions of the issue will be listed on the issue page. When all the ideas concerning the issue are in one place, it is easier to assemble the final statement of the issue.

For Example

While researching a case, an idea may come to you about how the transition sentence linking the case to the rule of law should be written. Write the sentence in the beginning of the case section of the expanded outline or at the end of the rule of law page.

Keep the expanded outline with you. Often the mind will work on an aspect of a case during sleep. You may wake up in the middle of the night or in the morning with an idea concerning the assignment or the answer to a problem. If the expanded outline is handy, you can enter the idea or answer immediately in the appropriate section. If it is not convenient to keep the outline with you, then carry a note pad to enter ideas as they come to you and place them in the outline later.

The value of the ability to place ideas immediately where they belong in the structure of the writing cannot be overemphasized. Some of the benefits include the following:

- Ideas are not lost. When researching, you often may have an idea and say to yourself, "I'll remember to include this when I write the _____ section." Five minutes later, the idea is lost. If you can write the idea down where it belongs immediately, it will not be lost.
- You can avoid confusion if you record your ideas in the section where they will appear in the writing. If you keep the binder with the expanded outline with you throughout the prewriting stage, and you place all ideas where they belong as they come to you, you will avoid confusion and time lost figuring out which ideas go where.

For Example While you are reading a case that interprets the rule of law, an idea may occur that relates to another aspect of the assignment, such as: “This gives me an idea about the counteranalysis of this issue.” You may jot the idea down on a separate piece of paper or think you will remember it. You say to yourself, “I’ll remember to include this when I write the counteranalysis.”

By the time you get down to writing, time has passed, and you cannot remember what the idea was or, if you jotted it down, where the idea fits into the assignment. You have several pieces of paper with notes and ideas, many of which you have forgotten what they relate to or why.

- Writing is made easier. When you sit down to write, all ideas are there, each in its proper place. You do not waste time performing the additional step of organizing ideas. Ideas are automatically organized as they come to you.

For Example If the issue page of the expanded outline contains all the ideas concerning the ways the issue may be stated, it is easier to craft the final draft of the issue. All the possible variations are laid out before you in one place. Drafting the issue is just a matter of assembling the issue from the best of the variations.

Research. Just as you place ideas in the proper place in the expanded outline as they occur, enter all the relevant research on the appropriate page as you conduct research.

For Example Referring to the slander example, when you locate the slander statute, section 20-2-2, place it on the rule of law page. Include the proper citation and a copy of the statute. Include on the outline page all the information concerning the statute that you may need when writing. This eliminates the need to look up the statute more than once.

For Example When you find the case or cases on point, enter the information concerning the case on the appropriate case page of the outline. This should include information such as the full citation, pertinent quotes concerning the rule of law or legal principle applied by the court, and the legal reasoning.

When researching case law, retrieve everything you may need from the case and include it in the expanded outline as you read the case. Why waste time looking up the same case twice? Place a copy of the case in the outline if necessary.

For Example First, read through the entire case. Then, on the second reading, as you come upon a statement of the legal principle or legal reasoning that may apply to the client’s case, *stop reading*. Enter the information from the case in the appropriate page of the expanded outline. Indicate the page of the case from which it was taken and, if appropriate, quote the information.

All too often, when reading a case for the second time, there is a tendency to tell yourself that you will come back later and note the pertinent information. If there is any possibility that you will use information from a case, retrieve it as you find it and place it on the appropriate case page of the outline. You will save time by eliminating the need to reread portions of the case.

Often the reasoning or rule you want to use is not where you remembered, and you must waste time wading through the case trying to locate it again. If it turns out that information retrieved will not be used in the legal writing, it is simply not used. It is much better to have everything concerning the case in your expanded outline when you sit down to write than to have to stop, retrieve, and reread the case.

If you use an expanded outline as suggested here, you are ready to write. All your research and ideas are assembled and organized. In effect, you have prepared a rough draft, and the writing task is made much simpler: The organization is done, ideas and research are captured and assembled in the proper place, and many transition sentences are already crafted and in place. The writing task is reduced simply to converting the outline to paragraph and sentence form.

B. Writing Stage

The second stage in the writing process is the actual drafting of the legal writing. In the **writing stage**, you assemble the research, analysis, and ideas into a written product. Many individuals find it difficult to go from the research stage to the drafting stage, from the prewriting stage to the writing stage. This is often called “writer’s block.” Some of the obstacles that often make it difficult to begin writing are organizing the research and determining what goes where and how it relates and is connected. If you use an expanded outline in the prewriting stage, it is much easier to begin writing. The research and analysis are already organized, the relationships between the different parts of the material are already established by the outline, and many introductory and transitional sentences have been written.

The next chapter presents rules and guidelines that govern the style and content of legal writing. Chapters 12 through 15 discuss what must be included when writing an office legal memorandum, court brief, or legal correspondence. The following rules and guidelines can help with the writing process in general. See Exhibit 10–5.

writing stage

The stage in the legal writing process where research, analysis, and ideas are assembled into a written product.

Guidelines and suggestions for the writing process

1. Prepare the writing location.
2. Write during the time of day when you do your best work.
3. Limit interruptions.
4. Begin writing; do not procrastinate.
5. Begin with a part of the assignment you feel most confident about.
6. Do not try to make the first draft the final draft.
7. Do not begin to write until you are prepared.
8. If you become stuck, move to another part of the assignment.
9. Establish a timetable.

Exhibit 10–5

Rules and Guidelines:
Writing Stage

Prepare the writing location. Make sure the work environment is pleasant and physically comfortable. Have at hand all the resources you need, such as paper, computer, research materials, and so on.

Write during the time of day when you do your best work.

Limit interruptions. Legal writing requires focus and concentration. Therefore, select a writing time and environment that allows you to be as free from interruptions and distractions as possible.

Begin writing; do not procrastinate. Often one of the most difficult steps is beginning. Do not put it off. The longer you put it off, the harder it will become to begin. Start writing anything that has to do with the project. Do not expect what you start with will great—just start. Once you begin writing, it will get easier.

Begin with a part of the assignment you feel most confident about. You do not have to write in the sequence of the outline. Write the easiest material first, especially if you are having trouble starting.

Do not try to make the first draft the final draft. The goal of the first draft is to translate the research and analysis into organized paragraphs and sentences, not to produce a finished product. Just write the information in rough form. It is much easier to polish a rough draft than to try to make the first draft a finished product.

Do not begin to write until you are prepared. Do all the research and analysis before beginning. It is much easier to write a rough draft if the prewriting stage is complete.

If you become stuck, move to another part of the assignment. If you are stuck on a particular section, leave it. The mind continues to work on a problem when you are unaware of it. That is why solutions to problems often seem to appear in the morning. Let the subconscious work on the problem while you move on. The solution to the difficulty may become apparent when you return to the problem.

Establish a timetable. Break the project into logical units and allocate your time accordingly. This helps you avoid spending too much time on one section of the writing and running out of time. Do not become fanatical about the time schedule, however. You created the timetable, and you can break it. It is there as a guide to keep you on track and alert you to the overall time constraints.

C. Postwriting Stage

The postwriting stage is the stage in the legal writing process where an assignment is revised, edited, and assembled in final form.

The **postwriting stage** involves revising and editing the writing developed in the writing stage.

1. Revising

The first draft will not be the final draft. Review all initial drafts with the idea of improving quality and clarity. Do not be surprised if the initial draft requires several redrafts. Do not set a limit on the number of redrafts that may be required. The goal of the final product is to convey the information it is designed to convey clearly, concisely, and completely. The number of redrafts should be governed by this goal.

Develop a checklist for use when reviewing a draft. (See Exhibit 10–6)

Checklist for use when reviewing a draft

1. Is the writing well organized?
2. Is it written in a manner the audience will understand?
3. Is the writing clear? Does it make sense?
4. Is the writing concise? Are there extra words that can be eliminated?
5. Is the writing complete? Are all the aspects of the assignment covered?
6. Are the legal authorities correctly cited?

postwriting stage

The stage in the legal writing process where an assignment is revised, edited, and assembled in final form.

Exhibit 10–6

Reviewing a Draft Checklist

You may wish to include some items in the checklist, such as the following:

1. Is the writing well organized? Is it organized in a logical manner? Does each section logically follow the previous section?
2. Is it written in a manner the audience will understand? If the writing is addressed to a layperson, is the draft written in plain language the reader will understand?
3. Is the writing clear? Does it make sense? Are there transition sentences that clearly link the sections and guide the reader from one section to the next?
4. Is the writing concise? Are there extra words that can be eliminated? Is it repetitive? If multiple examples are included to illustrate a single point, are all the examples necessary?
5. Is the writing complete? Are all the aspects of the assignment covered? If there are multiple issues, is each issue and subissue thoroughly analyzed?
6. Are the legal authorities correctly cited? Are all legal citations in the correct form? All legal research sources must be correctly cited. Unless the local court rules or the supervisory attorney's preferences dictate otherwise, proper citation form is governed by *The Bluebook: A Uniform System of Citation*. A brief summary of citation form is presented in Appendix C.

When reviewing a draft, allow time to elapse between drafting and revising. This allows the mind to clear. You will then be able to approach the revision with a fresh perspective, so you are more likely to catch errors and inconsistencies.

2. Editing

Editing is actually part of the revision process. The revision process discussed in the previous section addresses the broad intellectual and structural content of the legal writing, such as overall organization, clarity, and conciseness. Editing focuses on technical writing issues, such as punctuation, spelling, grammar, phrasing, typographical errors, and citation errors. Many of these specific areas are discussed in the next chapter. Keep a few general editing tips in mind, however, such as the following:

1. Be prepared to edit a legal writing several times. It may be necessary to edit a revision several times to catch all the errors.
2. Read the document out loud. When you read your own draft silently, your mind may automatically fill in a missing word or correct an error without your knowing it, and you will not catch the error. If possible, have a colleague read the document to you.
3. Ask a colleague whose writing skill you respect to edit the document.

V. GENERAL RESEARCH SUGGESTIONS

Research is a major part of the prewriting stage of the writing process. Although this is not a research text and does not focus on the steps involved in legal research, some general suggestions and guidelines concerning legal research as it relates to the prewriting stage are included in Exhibit 10–7.

1. *Prepare and use an expanded outline when conducting research.*
2. *Identify the issue first.* The first step should be to identify the issue, because you cannot begin to look for an answer until you know the question. The

Guidelines and suggestions for conducting research

1. Prepare and use an expanded outline when conducting research.
2. Identify the issue first.
3. Research issues one at a time.
4. Become familiar with the area of law.
5. Locate the enacted law that governs the question.
6. Locate the common/case law that may apply.
7. Make sure that the research is current.
8. If you reach a dead end, reanalyze the issue.

Exhibit 10-7

Suggestions and Guidelines: Legal Research and the Prewriting Stage

preliminary identification of the issue may be very broad, such as “Did negligence occur?” or “Was there a breach of contract when the goods were delivered 10 days late?” This preliminary identification will usually identify the general area of law to be researched, such as contracts, negligence, and so on.

3. *Research issues one at a time.* Research one issue thoroughly to its conclusion before proceeding to the next issue. If you find material on another issue, note a reference to it on the page in the expanded outline for that issue. Frustration and confusion can result from attempting to research several issues at once.
4. *Become familiar with the area of law.* If you are unfamiliar with the area of law that applies to the issue, obtain a general overview. Legal encyclopedias and treatises are examples of sources to consult to obtain an overview of an area of law.
5. *Locate the enacted law that governs the question.* Look first for any enacted law that governs the question, such as a statute or constitutional provision.
6. *Locate the case law that may apply.* Locate the relevant case law if there is no enacted law that governs or if the enacted law is so broadly drafted that case law is required to interpret the enacted law. Mandatory precedent should be located first, then persuasive precedent and secondary authority.
7. *Make sure that the research is current.* Check supplements and *Shepardize* cases to ensure that the authority you have located is current.
8. *If you reach a dead end, reanalyze the issue.* If you cannot find any authority, either primary or secondary, chances are the issue is too broadly or too narrowly stated. Restate the issue. If the issue is too broadly stated, restate it in narrower terms. Return to a basic research source for guidance, such as a legal encyclopedia. If the issue is too narrowly framed, restate it in broader terms.

VI. Key Points Checklist: *The Writing Process*

- ☐ Adopt a writing process. An organized approach is essential for legal writing. Develop a process that works for you. Follow the process recommended in this chapter or create your own.
- ☐ Work from an expanded outline in the prewriting stage. An expanded outline provides a framework for organizing your research and capturing your ideas.

- ❑ Consider the audience. Always identify the audience early in the process. The type of audience influences the style, depth, and complexity of the finished product.
- ❑ Consider time, length, and format constraints. Identify any constraints that affect the assignment, and design the approach to the assignment with these constraints in mind.
- ❑ Do not procrastinate. If you have trouble beginning to write, start with the easiest section. Sit down and begin. Do not worry about quality—just start.
- ❑ Break large assignments into manageable sections. Do not become overwhelmed by the complexity of an assignment.
- ❑ Do not try to make the first draft the final draft. Be prepared to compose several drafts. The goal is a quality product. Let this goal determine the number of redrafts needed.
- ❑ Update your research. Check all authorities to ensure that they are current.

VII. Application

This section presents an overview of the writing process through the application of the process to the hypothetical presented at the beginning of the chapter. After gathering and reviewing all the information available in the office concerning Ms. Beck's case, Rick follows the process recommended in this chapter. An outline of Rick's application of the process is as follows.

A. Prewriting Stage

I. *Assignment.* Rick first reviews the assignment.

A. *Is the assignment clear?* He reviews the assignment to be sure he understands what is required. Rick has no question in this regard. The assignment is to research and analyze the question of whether the evidence seized in the case can be suppressed.

B. *What type of legal writing is required?* The assignment is to draft an office legal memorandum. Rick retrieves the office memorandum outline form used by the firm. The body of the outline is presented here.

I. Issue

II. Statement of facts

III. Analysis/application

1. Rule of law—the rule of law that governs the issue—enacted/case law

2. Case(s)—court interpretation of the rule of law if necessary

A. Name and citation

B. Brief summary of facts showing case is on point

C. Rule/principle/reasoning applied by the court that applies to client's case

D. Application—discussion of how the rule of law presented in the court decision applies in the client's case

3. Counteranalysis

IV. Conclusion—a summary of the analysis

C. *Who is the audience?* The memorandum is for office use. Rick knows he does not have to write it in layperson's terms.

II. *Constraints.* What are the constraints on the assignment? Rick has a time constraint. Any motion to suppress the evidence must be filed in thirty days. He must finish the memorandum sufficiently in advance of the thirty days to allow Ms. Fletcher time to review it and prepare the appropriate motion. Based on past experience, he knows Ms. Fletcher prefers to have ten days to review the memorandum and prepare the motion. This leaves him twenty days to complete the assignment.

Rick also knows that Ms. Fletcher prefers shorter memos. She has told him that a single issue memo should not exceed seven pages. He knows he must budget his time and research to meet these constraints.

III. *Organization.* Rick organizes the assignment around the outline.

A. *Creation of expanded outline.* Rick expands the outline as suggested in the Organization subsection of the Prewriting Stage section of this chapter. The initial expanded outline is composed of eight pages of paper or computer pages. He labels the pages as follows: Issue; Facts; Analysis—rule of law; Analysis—case name, facts, and citation; Analysis—case—rule/ principle/reasoning; Analysis—application of case to facts; Counteranalysis; and Conclusion.

B. *Use of expanded outline.* Rick begins his research with the expanded outline at hand. He studies the facts and begins to formulate the issue. Every time he thinks of a way to state the issue, he writes it on the *Issue* page.

For Example The first formulation of the issue is “Can the evidence be suppressed?” Later formulations are “Can evidence be suppressed when officers execute a warrant unannounced based on the warrant’s authorization of unannounced entry?” and “Under the state’s exclusionary rule, can evidence be suppressed when officers conduct a search unannounced, pursuant to a warrant authorizing unannounced entry to ensure officer safety, and the authorization is based upon an affidavit that gives no particularized facts regarding threats to officer safety?”

As he researches, Rick finds article II, section 5, of the state constitution, which prohibits illegal searches and seizures. He copies article II, section 5, and places it on the *Analysis—rule of law* page. He realizes this provision is so broadly formulated that he must locate case law for an interpretation of how it applies in an unannounced entry situation.

While looking for a case on point, he thinks of a transitional sentence that will connect the rule of law section of the memo to the case law section.

For Example Article II, section 5, does not provide guidance as to what constitutes an illegal search when law enforcement officers enter into a residence unannounced; therefore, case law must be consulted.

Rick immediately writes this sentence at the end of the *Analysis—rule of law* page of the outline.

Rick locates the court opinion of *State v. Brick*. Addressing a fact situation almost identical to Ms. Beck’s, the court held that a warrant may authorize unannounced entry. The court went on to state, however, that the authorization must

be based on a “particularized showing that the individuals whose residence is being searched have in the past represented a threat to officer safety. Any authorization based upon a generalized statement, such as ‘Drug offenders often present a threat to officers’ safety during the execution of search warrants,’ violates article II, section 5, and the exclusionary rule requires the suppression of any evidence seized.”

Rick enters all the relevant information from the case in the appropriate *Analysis—case* pages of the outline. He includes the full citation, any relevant quotations from the case, and the page number references for the quotations. He does not have to reread the case when he writes the memorandum because all the key information is in the expanded outline.

While analyzing the case, he thinks of a sentence he will use when discussing how the case applies to the client’s facts. He enters this sentence in the *Analysis—application of case to facts* page of the outline.

For Example

“In our case, just as in *State v. Brick*, the officers executed a warrant unannounced, based on the authorization contained in the warrant. In our case, as in *Brick*, the authorization was based upon a generalized statement that drug offenders often pose a threat to officer safety when the officers announce their presence prior to entry. In *Brick*, the court ruled that such searches violate the state constitution and the evidence seized must be suppressed. If the trial court follows the rule of law presented in *State v. Brick*, the evidence should be suppressed.”

If there are more cases that need to be included in the memo, Rick will add more pages to the outline for each case and enter the pertinent information on the appropriate page.

Rick identifies any counterargument, such as that contained in conflicting case law, and enters it in the *Counteranalysis* page of the outline. If Rick has any thoughts concerning the conclusion while conducting the research and analysis, he enters them in the *Conclusion* page of the outline.

While working on the assignment, Rick keeps the outline or a note pad with him. He takes it home after work and writes any ideas concerning the assignment on the appropriate page when they occur to him. Nothing is lost, and all his ideas and research are organized in the outline.

Transitional sentences and other parts of the writing, such as how the issue should be written, are already drafted and in the proper place. If more than one issue needs to be addressed, Rick prepares a separate section of the outline for that issue and the rule of law and case law that apply to it.

B. Writing Stage

Once the research and analysis are completed, Rick prepares a rough draft. This task is greatly simplified by the use of the expanded outline. All the research, analysis, and ideas are already organized, and many of the sentences are written and in place. All Rick has to do is to convert the outline into sentence and paragraph form and fill in the gaps. When drafting, Rick keeps in mind the guidelines presented in the Writing Stage section of this chapter, such as do not procrastinate, prepare a comfortable writing location, and so on.

C. Postwriting Stage

The final step is to revise and edit the memorandum. Focusing on conciseness, clarity, and completeness, Rick uses a checklist similar to the one presented in the Postwriting Stage section of this chapter. Several drafts may be required, and considerable time may be spent redrafting. Rick's work is judged by the finished product; therefore, he takes care in this stage.

Note that this chapter places a great deal of emphasis on the prewriting stage of the writing process. If organization and care are taken at this stage and an expanded outline is used, the entire writing process is greatly simplified. It may seem like a lot of work to prepare an expanded outline, but using it will actually save time in the long run.

Quick References

appellate court brief	000	outline	000
assignment	000	postwriting stage	000
constraints	000	prewriting stage revising	000
court briefs	000	transition sentences	000
editing	000	trial court brief	000
expanded outline	000	writing stage	000
legal writing process	000		

Summary

Contrary to popular belief, the bulk of the practice of law involves writing in one form or another. Legal writing includes the preparation of documents, such as office legal memoranda, legal correspondence to clients and other individuals, litigation documents that will be filed with a court, and transaction documents prepared for clients' use, such as contracts.

Legal writing is often complex, requiring in-depth research and detailed analysis. The complexities of an assignment, time constraints, and heavy workloads dictate the necessity of following a writing process when engaging in legal writing. There is no established standard writing process. Each individual should adopt or create a process that works.

The chapter focuses on the three stages of the process.

1. Prewriting stage
2. Writing stage
3. Postwriting stage

The prewriting stage is composed of three sections: the assignment, constraints affecting the assignment, and the organization of the assignment. When approaching an assignment, you should first review the assignment to be sure the task is clearly understood. Next, identify the type of writing required and the audience the writing is intended to reach. After the assignment is reviewed, consider any constraints that affect the assignment, such as time, length, and format.

Once these matters are addressed, you should prepare an outline of the assignment. It is recommended that you prepare an *expanded outline* and use it when engaging in the research and analysis of the assignment.

An expanded outline consists of a separate notebook page or computer generated page for each topic and subtopic of the outline. Enter research and analysis in the expanded outline throughout the prewriting stage as material is gathered and analysis conducted. The use of this approach results in the capture and organization of ideas and material throughout the prewriting stage. The end result is essentially a rough draft that has developed during the prewriting stage.

The adoption of a prewriting process simplifies the writing stage. In the writing stage, the rough draft represented by the expanded outline is converted to the finished product, for example, a legal memorandum. Being overwhelmed by the size of the assignment and putting off starting to write are often major stumbling blocks in the writing stage. The use of an expanded outline simplifies complex projects and helps overcome the problem of starting because many of the early steps in writing, such as organization, are already accomplished.

All drafts must be revised and edited. A revision focuses on ensuring clarity, completeness, and conciseness. Editing focuses on narrower concerns involving accuracy, such as punctuation, grammar, and so on. The number of drafts is not preset but is governed by the goal of producing a quality product. If you follow the steps of the writing process, you will achieve the goal of producing a well-crafted, quality product.

This chapter concludes with a list of suggestions concerning legal research as it relates to the prewriting stage of the writing process, such as starting with the identification of the issue and being sure to update all research.

Internet Resources

Using “legal writing for paralegals,” “legal research memorandum,” or “IRAC legal analysis” as a topic, consult any of the thousands of Web sites that refer to legal research and analysis. Some sites refer to legal research text books, some focus on legal research and analysis, others focus on legal writing for law school students, some advertise research and writing services, some are Web sites for specific classes taught at schools, some advertise courses and seminars on legal research and writing, and some sites discuss legal memoranda in specific areas such as environment law. A Chicago-Kent College of law site, [<http://www.kentlaw.edu>], presents a sample legal memorandum. In the search box on the site, type “sample memo.” Another site, a Georgetown University law library Web site, [<http://www.ll.georgetown.edu>], provides links to research and writing resources and related materials useful to legal writers.

As with most topics on the Web, the problem is not the lack of sites but too many sites. Probably the best strategy would be to narrow your search to a specific type of legal writing and topic, such as “legal research memorandum, public service contracts.” The following sites may provide useful support information when engaged in projects requiring legal research.

[<http://www.nala.org>]

This is the site for the National Association for Legal Assistants (NALA). The association’s site provides a wealth of information ranging from articles on the pro-

fession to education and certification programs for paralegals. It includes information on court decisions affecting paralegals and links to other related sites.

[<http://www.paralegals.org>]

This is the Web page for the National Federation of Paralegal Associations (NFPA), another national paralegal organization. The Web page provides links to a wide range of sites of interest to paralegals—research sources, publications, products, and so on.

[<http://www.legalassistanttoday.com>]

Legal Assistant Today is a magazine geared towards the needs of paralegals. It often includes helpful articles on legal research and writing.

Exercises

Additional assignments are located on the Online Companion and the Student CD-ROM accompanying the text.

The following exercises are helpful in developing an understanding of and familiarity with the use of a writing process.

ASSIGNMENT 1

Describe the stages of the legal writing process.

ASSIGNMENT 2

Describe the steps of the prewriting stage.

ASSIGNMENT 3

Describe the types of legal writing discussed in this chapter.

ASSIGNMENT 4

Why is the type of audience important?

ASSIGNMENT 5

What are some of the constraints that may affect your performance of an assignment? How do they affect your performance of an assignment?

ASSIGNMENT 6

What is an expanded outline? Describe the creation and elements of the body of an expanded outline for an office legal memorandum.

ASSIGNMENT 7

Describe the use of an expanded outline in the preparation of an office legal memorandum.

ASSIGNMENT 8

What are some of the rules to keep in mind during the writing stage?

ASSIGNMENT 9

Prepare a checklist for revising and editing.

ASSIGNMENT 10

What are the general factors to keep in mind when engaging in research?

ASSIGNMENT 11

The paralegal is assigned the task of preparing an office legal memorandum. The memorandum is due in 10 days, and there is a five-page limit. The facts and law are as follows.

Facts: Mary was Tom's stockbroker and financial advisor.

Tom owned five acres of property. Mary advised Tom to sell the property to Ana at a price slightly less than the market price. She recommended that Tom buy stock with the proceeds. Tom sold the property to Ana and now wants to have the transaction set aside because he believes Mary unduly and improperly influenced his decision. Mary and Ana are very close friends.

Law: *Statutory law*—section 96-4-4-1 of the state statutes provides that a contract for the sale of land may be set aside if it is entered into under undue influence.

Case law—*Lorn v. Bell*. In a fact situation similar to Tom's, the court ruled

that under section 96-4-4-1, undue influence occurs when

1. The person influenced is susceptible to undue influence.
2. The person influenced is influenced to enter the contract.
3. The opportunity to influence is present.
4. Undue influence is present.
5. The person exercising the undue influence benefits from the undue influence.

Part A

Describe in detail the application of each step of the prewriting stage to this assignment.

Part B

For the organization step of the prewriting stage, prepare an expanded outline on the pattern of the outline presented in the Use of an Outline, Step 2 subsection.

Part C

Using only the information presented previously, fill in the expanded outline. Include a statement of the issue, analysis, counteranalysis, conclusion, and recommendations.

ASSIGNMENT 12

The following assignment is based on Assignment 8, Chapter 13. Use the memo,

statutory law, and case law from that assignment. The memo assigns the paralegal the task of preparing a rough draft of a letter summarizing the law and advising Mr. Canter whether there is sufficient evidence to support the charge that he committed bank robbery by use of a “dangerous weapon.” The final draft of the letter will be delivered to the client. The letter is due in seven days and there is a five-page limit.

1. Describe in detail the application of each step of the prewriting stage to the assignment.
2. For the organization step of the prewriting stage, prepare an expanded outline that follows the pattern of the outline presented in the Use of an Outline subsection under the Organization section of the chapter. Using the information presented in the assignment, fill in the expanded outline. Include a broad statement of the issue and at least one narrow statement of the issue in the Issue page of the outline.



For additional resources, visit our Web site at www.paralegal.delmar.cengage.com



Additional assignments are located on the Student CD-ROM accompanying the text.