

Legal Analysis *and* Writing

Third Edition

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Correspondence

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Learning Objectives

After completing this chapter, you should understand:

- The basic components of correspondence
- The types of law office correspondence that communicate the results of legal research and analysis
- The elements of information, opinion, and demand letters
- How to draft information, opinion, and demand letters



In the hypothetical introduced at the beginning of the last chapter, Alice Black, the supervisory attorney, assigned Pam Hayes, the paralegal, the task of preparing a response to a motion to dismiss for failure to state a claim. After Ms. Hayes completed the assignment, she received the following memo.

To: Pam Hayes, Paralegal
 From: Alice Black, Attorney
 Case: Civil 02-601, *Nick Shine v. Blue Sky Ski Resort*
 Re: Correspondence to client

Please prepare a letter to Mr. Shine advising him of the status of the case. Include in the letter the following:

- Inform Mr. Shine that a motion to dismiss has been filed. Explain to him what a motion is, and tell him how the court will proceed in regard to the motion.
- Summarize the analysis of the law contained in the memorandum brief you prepared in response to the motion.

The Application section of this chapter includes the correspondence prepared by Ms. Hayes and other sample correspondence.

I. INTRODUCTION

This chapter and Chapter 14 focus primarily on the preparation of documents that contain legal research and analysis and are designed for an audience outside the law office. This chapter examines the preparation of documents designed for an external audience other than a court. These documents are usually correspondence addressed to a client. A paralegal, however, may be called on to draft correspondence to a variety of external audiences, such as witnesses, court personnel, and opposing counsel.

Correspondence is a major form of written communication between the law firm and the outside world. Other than documents submitted to courts and transaction documents, such as contracts, correspondence is the *primary form* of writing designed for an audience outside the law office.

It is essential, therefore, that correspondence be well crafted because it helps establish and maintain the image and reputation of the law firm. Correspondence that contains grammatical or substantive errors or is difficult to understand reflects poorly on the law firm.

- A client may question the capability of the firm to handle the client's case.
- The court may question the competence of the individual who signs the document.
- Opposing counsel may conclude that if the law firm is incapable of preparing quality correspondence it is not capable of successfully representing its client.

Because most legal correspondence is in letter rather than memo form, the term *letter* is used in this chapter when referring to legal correspondence. A paralegal may prepare letters for a variety of purposes. The three main categories of letters that include *legal research and analysis* to some degree are the following:

1. Letters that provide information—*informational letters*
2. Letters that provide answers or legal opinions—*opinion letters*
3. Letters that demand action—*demand letters*

Although the focus in this chapter is on letters that contain legal research and analysis, other types of letters are briefly mentioned. Following a discussion of the components common to all of the three categories mentioned previously, separate sections of this chapter address each category.

II. BASIC COMPONENTS

Basic conventions apply to the various types of letters prepared in a law office and basic components are usually present in all types of letters. Each of these components may not be necessary or required in every letter you draft. This section, however, introduces all of the possible components so that you will be familiar with them.

The content and manner of presentation of each of the components discussed in the following text may vary from office to office. Compose your letters according to the guidelines adopted in your office. Refer to the Application section of this chapter for examples of the components discussed in the following subsections.

The basic format and components of letters prepared in a law office are presented in Exhibit 15-1.

A. Letterhead

The **letterhead** usually contains the full name, address, telephone number, and facsimile number of the law firm. It is usually preprinted on the firm's stationery and centered at the top of the page. An example of the information in a letterhead is as follows:

Thomas, Belter and Ryan
751 Main Street
Friendly, New Washington 00065
(200) 444-7778 • FAX 444-7678 • www.ThomasLaw.com

Basic format and components of law office correspondence

- Letterhead/Heading
- Date
- Method of Delivery
- Recipient's Address Block
- Reference (Re:) Line
- Salutation
- Body
- Closing
- Signature and Title
- Initials of Drafter
- Enclosure Notation
- Others Receiving Copies

Exhibit 15-1

*Basic Format and
Components of Letters*

Subsequent pages contain an identification of the letter, which is usually called a **header**. These pages do not contain the letterhead. The header includes the name of the addressee, the date, and the page number. Place it at the top left or right margin of the page. An example of a header is as follows:

Jon Jones
May 5, 2008
Page Three

B. Date

The full date is usually placed below the letterhead at the left or right margin. It may also be centered below the letterhead. The date includes the full date: the day, month, and year. Because most correspondence is filed chronologically, a date is essential for the chronological file. Note that many offices date-stamp correspondence when it is received in the office and file it according to that date.

C. Method of Delivery

At the left margin, below the date, is the **method of delivery**. This is usually required only if the manner of delivery is other than United States mail. Examples are as follows:

Via Federal Express
Via Hand Delivery
Via Facsimile

D. Recipient's Address Block

Below the date and method of delivery is the **address block** of the addressee. Place it at the left margin. The address block includes:

- The name of the person to whom the letter is addressed
- The individual's title (if any)
- The name of the business (if applicable)
- The address

The following is an example of an address block:

Elizabeth Counter
President
Friendly Enterprises
139 Main Street
Friendly, NW 00065

E. Reference (Re:) Line

The reference line briefly identifies the topic of the letter. A reference line is usually placed at the left margin following the address block. Some firms require that the reference line include the case name and number if the letter concerns a pending lawsuit. The following is an example of a reference line:

Re: Request for production of documents
Smith v. Jones, Civil Action 97-1001

F. Salutation

Below the reference line is the **salutation** or greeting. Legal correspondence is generally formal in tone, and the greeting is normally formal. An example of a greeting follows:

Dear Ms. Counter:

You may use the first name if you know the addressee well, but this is the exception. If in doubt, ask the supervisory attorney. If you do not know the name of the addressee, such as may be the case when the letter is addressed to a business, contact the business and ascertain the individual's name. The use of "To whom it may concern:" is very impersonal and invites a slow response. A person is likely to respond more quickly when he or she is specifically named.

G. Body

The **body** is the heart of the letter—what the letter is about. The body is usually composed of the three components listed in Exhibit 15–2.

Standard components of the body of a letter

| | |
|------------------------------|---|
| Introduction | Introductory paragraph or sentence summarizing the purpose of the letter. |
| Main Body | Detailed explanation of the purpose of the letter. |
| Requests/Instructions | Request or instructions for the recipient. |

re

Re means in the matter of, about, or concerning. It is usually placed at the beginning of the reference line in a memo or correspondence.

salutation

The part of a letter that presents the greeting (e.g., Dear Ms. Jones).

Exhibit 15–2

Components of the Body of a Letter

1. Introduction

The body of the letter usually begins with an introductory sentence or paragraph (if necessary) that identifies or summarizes the main purpose of the letter.

For Example

"This letter is to advise you of the filing of a motion for summary judgment by the defendant. The hearing on the motion is scheduled to take place on March 6, 2008." "This letter is to confirm our conversation today in which you stated that you would not be able to attend the hearing scheduled to take place on May 16, 2008."

2. Main Body

The main body of the letter follows the introduction. The main body explains in detail the purpose of the letter. Craft the main body with care to ensure that you communicate the required information clearly and concisely. It may be necessary to use an outline when a letter covers multiple or complex matters. As with an office memorandum or court brief, the body may require several drafts.

You must always consider the audience when drafting the main body. If you are drafting the letter to a layperson, such as the client, avoid the use of legalese and define and explain clearly any legal terms that are used.

When writing to a layperson, consider the sophistication of the reader. Ask yourself the following questions:

- “How familiar with legal matters is the reader?”
- “Does the reader often read material that involves complex subjects?”

Although the addressee may not be familiar with the law, the individual may be highly educated or may often deal with complex or technical matters. In such cases, you may be able to craft the letter with greater complexity and present the subject matter with greater legal or technical detail. If the reader does not as a matter of course engage in a lot of complex or technical reading or is not familiar with such matters, then you should avoid including a detailed, complex discussion in the main body.

The content of the body will differ according to the type of letter you are drafting.

The subsections of this chapter that address information, opinion, and demand letters discuss the differences in the format and content of the body of these types of correspondence.

3. Requests/Instructions

Include any **requests** or **instructions** for the recipient in the last section of the body.

For Example

“Please bring with you copies of the contract and any other written material related to the contract.”

“Please keep a daily diary. Include in it a detailed description of all your daily activities, such as how long you sleep, what physical activities you engage in during the day, and so on.”

In some instances, the paralegal may draft and *sign* a letter to the client. A paralegal may sign a letter that provides general information. *A paralegal may not sign a letter that gives a legal opinion or legal advice.* Most state laws and rules of ethics prohibit a paralegal from practicing law, and providing a legal opinion or legal advice constitutes the practice of law. Therefore, when preparing a letter that you or another paralegal will sign, be sure not to include a legal opinion or provide legal advice.

H. Closing

The **closing** follows the body of the letter. The closing usually consists of some standard statement. The following are examples of closings:

- “Thank you for your prompt consideration of this matter.
Sincerely,”

- “Please contact me if you have any questions in regard to this matter.
Very truly yours,”
- “Thank you for your assistance.
Best regards,”

I. Signature and Title

The signature and title of the person signing the letter follows the closing. An example follows:

- _____
Sarah Smith
Attorney at Law

When the individual signing the letter is a paralegal, the paralegal status should be clearly indicated below the signature line, as in the following examples:

- “ _____
Jon Jones
Paralegal”
- “ _____
Sarah Smith
Paralegal”

J. Initials of Drafter

The final notation on the letter is a reference to the author of the letter and the typist. Note the author’s initials in all capitals, and note the typist’s in lowercase letters—for example, JDR/mwt.

K. Enclosure Notation

Next, if enclosures, such as contracts, documents, and so on, are included with the letter, indicate their presence by typing “Enc.” or “Encs.” at the left margin following the signature.

- “ _____ Sarah Smith
Attorney at Law
Encs.”

L. Others Receiving Copies

If other individuals are receiving copies of the letter, indicate this by typing “cc”: and the name of the individual(s) after the signature and title. This follows the enclosure notation if an enclosure notation is used. An example is as follows:

cc: Colin Smith
Mae Carrey

If you are uncertain who should receive copies, check with your supervisor.

M. Format Style

The basic format of a letter varies from firm to firm and is dictated by personal taste and style. Two fundamental styles are *full block* and *modified block*. In full block, everything but the letterhead is flush with the left margin. The information letter in the first example in the Application section is typed in full block format. In modified

block, the date is centered, and the signature line can be just right of the center of the page or flush left. The first line of each paragraph is indented. The opinion letter in the second example in the Application section is presented in modified block format.

N. General Considerations: All Correspondence

Adopt the highest standards of accuracy, both substantive and stylistic, when drafting legal correspondence. As mentioned in the Introduction, correspondence helps determine the image, reputation, and success of the law firm. In many situations, the information provided in the correspondence constitutes the practice of law and subjects the firm to possible liability for claims of legal malpractice. Therefore, the quality of the product is critically important and you should

- take the utmost care to ensure that any legal research and analysis are error free.
- make sure that the finished product is free from writing errors involving grammar, spelling, and so on.
- be prepared to perform the number of edits and redrafts necessary to ensure the final product is professionally prepared.

Draft letters so clearly that they cannot be misinterpreted. A reader may not like the information conveyed in the letter and wish to misinterpret the contents intentionally. The discussion in the following sections is designed to assist in the preparation of letters that clearly convey information and are difficult to misinterpret.

III. TYPES OF CORRESPONDENCE

Although, as discussed in the previous section, the basic components of legal correspondence are the same, the content of the body of the correspondence varies according to the type of letter being drafted. There are many categories of legal correspondence, and the categorization is based upon the purpose that each category is designed to serve. Inasmuch as this text focuses on legal analysis, this section addresses law office correspondence that communicates the results of legal research and analysis. The three basic categories of letters that communicate this information are presented in Exhibit 15–3.

This section focuses on the body of these categories of letters and how each differs in the presentation of legal research and analysis. The following subsec-

Law office correspondence that communicate the results of legal research and analysis

| | |
|----------------------------|---|
| Information Letters | Letters that provide general legal information or background on a legal issue. For example, the information may be a summary of the law or the requirements of a particular statute. |
| Opinion Letters | Letters that provide information concerning the law, an analysis of that information, and a legal opinion or legal advice. |
| Demand Letters | Letters designed to persuade someone to take action favorable to the interest of the client or cease acting in a manner that is detrimental to the client. They include a summary of the applicable law in support of the requested action. |

Exhibit 15–3

Types of Letters That Communicate the Results of Legal Research and Analysis

tions address the preparation of letters where the recipient is a nonlawyer, because most of the correspondence a paralegal is called on to prepare is for that audience.

A. Information Letter

A paralegal is often asked to draft a letter providing information to the client or other layperson. The components of an **information letter** usually include the elements mentioned in the Basic Components section of this chapter. The body of the information letter, however, varies according to the type of information conveyed. There are many types of information letters. Some of the types, and examples of parts of the body of these types, are the following:

- Letters that confirm an appointment or inform of the date and time of scheduled events.

For Example “This letter is to advise you that the court hearing on the motion to modify child support will be held on May 6, 2008, in the courtroom of . . .” “This letter is to confirm our appointment at 9:00 a.m., May 22, 2008 . . .”

- Letters that inform the client of the current status of the case.

For Example “The defendants filed an answer on June 6, 2008. On June 14, 2008, we sent them a request to produce documents concerning the contract and are awaiting their response to that request. We will contact you when we receive their response.”

- Letters that present the firm’s bill.
- Letters that give the results of an investigation.

For Example “After performing a thorough investigation, we were unable to locate any witness who actually saw the accident. We interviewed the witnesses at the scene, canvassed the neighborhood, and contacted all the store owners in the area. If you happen to remember the license plate of any vehicle that passed by or have any additional information, please let us know . . .”

- Letters that provide general legal information or background on a legal issue. This is the type of information being provided to Mr. Shine in the assignment at the beginning of the chapter.

The information may include a summary of the law involved in the client’s case or the requirements of a particular statute. This type of information letter is usually the most complex of the information letters and often involves communicating the results of legal research and analysis. The body of this type of information letter is discussed in the remainder of this subsection.

The body of an information letter that provides the results of legal research and analysis usually consists of the components listed in Exhibit 15–4.

information letter

Correspondence that provides general legal information or background on a legal issue. It usually involves the communication of the results of legal research and analysis to a client or a third party.

Exhibit 15-4

Body of Information Letter: Recommended Format and Components

Recommended components of the body of an information letter

| | |
|-----------------------------|--|
| Introduction/Opening | A sentence or paragraph explaining the purpose of the letter. |
| Answer/Explanation | A detailed presentation of the legal information or background on a legal issue. |
| Closing | A standard closing statement or if the answer/explanation is lengthy, a summary of the answer. |

1. Introduction/Opening

The introduction states the purpose of the letter.

For Example “The purpose of this letter is to inform you of a request that has been filed by the defendant and the law the court will consider when addressing the request.” “The purpose of this letter is to inform you of a recent law that was passed that affects your business.”

2. Answer/Explanation

This section presents the results of legal research and analysis.

For Example “Section 97-355-21 of the corporation statutes was recently amended. Under the provisions of the amendment, you must file your annual report no later than twenty days after the end of the fiscal year. As you know, the statute prior to the amendment allowed forty days to file the report.”

The body of the letter presented in the first example in the Application section provides a detailed illustration of this component of an information letter.

3. Closing

The closing of the letter is similar to the closing of any legal correspondence as discussed in the Basic Components section of this chapter.

For Example “Because you prepare the annual report for your corporation, I feel it is important that you be advised of the change in the law. If you have any questions, please contact me.”

In some instances, especially when the answer/explanation is lengthy or complex, it may be necessary to include a summary or a conclusion in the closing. See the closing of the information letter in the first example in the Application section.

This type of information letter merely presents a summary of the law or the legal status of a case. It communicates basic information; it *does not give a legal opinion on a question or provide legal advice*. That role is performed by an opinion letter.

B. Opinion Letter

An **opinion letter** is like an information letter in that it provides information concerning the law. It is different in that it often includes an analysis of that information and provides a legal opinion or legal advice. The purpose is to inform the reader how the law applies to the facts. An opinion letter is usually generated by a question asked by the client or raised by the facts of the client's case. Therefore, the focus of this section is on opinion letters addressed to the client.

You may be assigned the task of researching, analyzing, and preparing an inter-office memorandum that addresses the question that will be answered in an opinion letter. The purpose of the assignment is to provide the attorney with the information necessary to prepare the letter. On occasion, you may be assigned the additional task of preparing a rough draft of the opinion letter. Many of the considerations involved in preparing an opinion letter are the same as those involved in preparing an office memorandum. When you are assigned the task of preparing the letter, refer to Chapters 12 and 13 in addition to this chapter for guidance.

An opinion letter provides the reader with a legal opinion and legal advice; therefore, *it constitutes the practice of law and an attorney must sign it*. The attorney is subject to legal liability for harm that occurs as a result of the client acting upon erroneous information contained in the letter. If you are preparing the draft of an opinion letter, take great care to ensure that your research and analysis are accurate.

Because the purpose is to inform the client of the law and provide legal advice, the opinion letter is drafted in the same objective tone as the office memorandum. The difference is that the client is usually a layperson unfamiliar with legal terms and legal writing. When this is the case, avoid legalese and keep legal quotations and citations at a minimum. If the reader is familiar with the law and legal writing, you may use more legal terms, quotations, and citations. In some instances, the attorney may direct that the client be provided with the office memorandum rather than an opinion letter.

Although an opinion letter and office memorandum are similar in many respects, there are differences in format. An opinion letter follows a business format as discussed in the Basic Components section of this chapter; an office memorandum follows a memo format as discussed in Chapters 12 and 13. The body of the letter includes the basic elements of the office memorandum, but the elements are presented with less technical detail and fewer legal terms.

As with most legal writing, there is no standard format for the body of an opinion letter. The body of most opinion letters, however, follows the format presented in Exhibit 15-5.

1. Introduction/Opening

The introduction establishes the focus of the letter and identifies the question or questions that will be answered. The opening usually begins with a reference to the question and the context within which the client raised the question.

For Example

"On January 2, 2008, you hired me to represent you in your criminal case. When we met in my office on that date, you asked me to determine whether we could obtain a suppression of the evidence (the heroin) seized when the police officers executed a search warrant by entering your residence unannounced."

opinion letter

Correspondence, usually written to a client, that in addition to informing the reader of how the law applies to a specific question, provides legal advice.

Exhibit 15–5

Body of Opinion Letter: Recommended Format and Components

Recommended components of the body of an opinion letter

| | |
|-----------------------------|---|
| Introduction/Opening | A sentence or paragraph identifying the question or questions that will be answered. |
| Facts | A brief presentation of the background and key facts relative to the question(s) being addressed. |
| Answer/Conclusion | A brief answer to the question similar to the brief answer section of an office memorandum. |
| Explanation | An explanation of how the law applies to the facts raised by the question, crafted in a manner that the client will understand. |
| Closing/Conclusion | The last paragraph of the explanation section, containing a standard closing statement or if the explanation is lengthy, a summary of the explanation. It also includes a statement of any action the client should take or what will occur next. |

Notice that the question is stated in broader terms than it would be in an office memorandum. Draft the question in a manner sufficient for the client to understand the question. You do not have to state it as completely or as formally as discussed in Chapter 7. The Relevant Law + Legal Question + Key Facts format does not have to be followed. In the preceding example, there is no reference to the rule of law.

Include language in the introduction that indicates that the opinion and advice apply only to addressee and the specific facts included in the letter. You should also mention that the opinion is based on the law as of the date of the opinion.

For Example “This opinion is provided for your use and solely for your benefit. It applies only to the facts presented in the fact section of this letter and the law as of the date of the letter.”

2. Facts

Present the facts in an opinion letter in the same objective manner as in an office memorandum. Include only the key and background facts to keep the section as short as possible. See the Fact section of the opinion letter presented in the second example in the Application section of this chapter.

3. Answer/Conclusion

This section presents a brief answer to the question. It is similar to the brief answer section of the office memorandum. By placing the answer near the beginning of the letter, the reader immediately knows the result without having to read the explanation. This is helpful if the reader is busy and may not be able to read the explanation until a later time.

The answer should be clear and as short as possible. Because the answer is usually a legal opinion, you should state it as an opinion.

For Example “The court will probably not suppress the evidence based upon the officers’ failure to announce their presence prior to entering your residence when they executed the warrant.”

Add any needed specifics or limitations after the answer.

For Example “The outcome could be different if Officer Galen changes his testimony and states he did not see you holding a rifle in your front room when they approached the house. Officer Kaler stated that he did not see you in the front room as they approached the house. In light of Officer Kaler’s statement, Officer Galen could change his statement.”

4. Explanation

The explanation section is similar to the analysis section of an office memorandum. The difference is that the explanation must be crafted in a manner that is not so technical that the client has difficulty understanding it. Also, the explanation section is usually not as long or as complex as an analysis section of an office memorandum. When preparing this section, note the following guidelines.

- If there is more than one issue, discuss the issues in the order they are presented in the introduction.
- If possible, limit the letter to as few issues as possible, that is, two to three. If there are multiple issues, the letter may become too complex or long and the reader may have difficulty understanding or keeping track of the subject matter. Separate the issues, and prepare more than one letter if necessary.
- Draft the content with the legal sophistication of the reader in mind. The client may not be familiar with the law and technical writing, and an explanation that is as detailed as the analysis section of an office memorandum may not be appropriate. Keep quotations and citations to a minimum. Rather than quote, rephrase the statutory or case law in a manner that a layperson can understand. If you must use a legal term, make sure its meaning is clear. Define the legal terms that are used.
- Provide a complete explanation. The client must be fully informed. Do not omit important information because the client is unsophisticated in the law. Present all the key information in a manner that fully and clearly informs the client. The following is an example of an explanation section of an opinion letter.

The Fourth Amendment to the United States Constitution and article II, section 9, of the state constitution prohibit “unreasonable searches and seizures.” These amendments do not prohibit all searches and seizures, however, just those that are “unreasonable.”

The law provides that anything seized as a result of an unreasonable search may not be admitted into evidence in a trial. The state supreme court has ruled that officers must announce their presence before entering a residence when executing a search warrant. The court stated that an unannounced entry is unreasonable and violates the United States and state constitutions.

There are, however, exceptions to the rule that officers must announce their presence before executing a warrant. One exception is when the officers arrive at the place to be searched and there is evidence that the person or persons present at the scene are a danger to the officers. *Smith v. Jones* is a court case remarkably similar to your case. In this case, when the police arrived at the residence to be searched, they saw the defendant enter the house with a rifle in his hands. The state supreme court ruled that this evidence provided the officers with authority to execute the warrant and enter the residence to be searched without first announcing their presence.

Based upon the ruling in the *Smith v. Jones* case and the similarity between the facts of that case and the facts in your case, the trial court probably will not suppress the evidence seized at your residence and will allow its admission at trial.

5. Closing/Conclusion

The closing is usually not a separate section of an opinion letter. Rather, it is usually the last paragraph of the explanation section. It is similar to the closing of any legal correspondence as discussed in the Basic Components section of this chapter. In addition, in an opinion letter, the closing should summarize any action the client should take or what will occur next.

For Example

"I hope this letter answers your questions. Please note that, although the officers may have acted properly when they entered your residence unannounced, there is a question whether the warrant was properly issued in the first place. When we complete our investigation into this matter, we anticipate that we will file a motion to suppress the evidence because the warrant should not have been issued at all. We will discuss this at our appointment scheduled on Friday the ninth. Please contact me if you have any questions."

C. Demand/Advocacy Letter

Another basic type of letter you may be called upon to draft is a demand or advocacy letter. A **demand** or **advocacy letter** is designed to persuade someone to take action favorable to the interests of the client or cease acting in a manner that is detrimental to the client. This may be as simple as demanding payment on a debt or as complex as requesting that a course of conduct be taken, such as rehiring an employee. In many instances, a demand letter will include a summary of the applicable law in support of the requested action. This section addresses the considerations involved when preparing a demand letter that includes a reference to the law and an analysis of the law.

You may be given an assignment to prepare an office memorandum summarizing the law that will be used as the basis for the demand letter and to prepare a draft of the letter. Like the opinion letter, the attorney signs a demand letter.

The basic format and components of a demand letter are similar to those discussed in the Basic Components section of this chapter and, like an opinion letter, there is no standard format for the demand letter. A major difference is that a demand letter is not designed to address a legal question but, rather, to encourage action or seek relief. Therefore, it does not contain an Answer/Conclusion

demand/advocacy letter

Correspondence that is designed to persuade someone to take action favorable to the interests of the client or cease acting in a manner that is detrimental to the client.

section in the body because it does not address a question that requires a brief answer. The demand letter also differs from an opinion letter in that it is designed to advocate a position and persuade the reader and, therefore, is written in a persuasive manner.

The body of a demand letter follows the same basic format and is composed of elements similar to the body of the opinion letter (see Exhibit 15–6).

This section explores the differences between the body of a demand letter and the body of an opinion letter. The discussion focuses on demand letters sent to non-lawyers. The attorney will usually draft a demand letter that will be sent to another attorney.

| Recommended components of the body of a demand letter | |
|--|--|
| Introduction/Opening | An identification of the writer or client followed by the statement of the purpose of the letter. |
| Facts | A brief presentation of the background and key facts relative to the subject being addressed. |
| Explanation | A presentation of the legal authority in support of the relief requested, crafted in a manner that the recipient will understand. |
| Closing/Conclusion | The last paragraph of the explanation section, a standard closing statement or if the explanation is lengthy, a summary of the explanation. It should restate the relief requested and indicate what the next course of action may be. |

Exhibit 15–6

*Body of Demand Letter:
Recommended Format
and Components*

1. Introduction/Opening

The introduction of a demand letter is somewhat different from the opening of an opinion letter. It begins with the identification of the writer or the client.

For Example

“Our office represents Mr. Jason Hill in the above-referenced case.”
“Mr. Jason Hill has retained this office in regard to . . .”

A statement of the purpose of the letter follows the identification. It establishes the focus of the letter and identifies the problem addressed and the relief sought.

For Example

“Your efforts to collect payment from Mr. Hill on his automobile loan are in violation of the Collections Act, and we demand that they cease immediately.”

2. Facts

The content of the fact section is the same as in the opinion letter except that you should present the facts in a persuasive manner similar to the persuasive

presentation of the facts in a court brief. See the Statement of Facts: Persuasive Presentation subsection of Chapter 14.

For Example “On January 7, 2008, Mr. Hill signed a loan with your company to pay for the purchase of an automobile. From the date of the loan until two months ago, he has paid, on time and in full, every installment on the loan. For the past two months, owing to the illness of his oldest child, Mr. Hill has been able to pay only one-half of the required monthly payment. He contacted your office on the fifth of last month and informed the loan officer that for the next three months he would be making reduced payments. He was informed that he should be making full payments.

“For the past three weeks, your collections department has telephoned Mr. Hill after 7:00 p.m. six nights a week demanding full payment. In each instance, Mr. Hill has politely informed the caller that he is paying all he can and requested that the calls cease. The calls have not ceased.”

3. Explanation

This section presents the legal authority in support of the relief requested. Because the reader is a nonlawyer, draft the section with this in mind. Refer to the discussion in the Explanation subsection of the Opinion Letter section for guidance. This section of a demand letter differs from the explanation section of an opinion letter in that you should draft the section in a persuasive manner.

For Example “The Collections Act provides that efforts to collect debts should be made in a reasonable manner. The state supreme court, in the case of *Irons v. Collections, Inc.*, ruled that telephone calls to a debtor’s residence after 7:00 p.m. or more frequently than three times a week are unreasonable and violate the act if the debtor objects to the calls. Your office has contacted Mr. Hill after 7:00 p.m. six nights a week for the past three weeks. The calls have continued despite Mr. Hill’s objections and requests that they cease.”

4. Closing/Conclusion

Like the closing of an opinion letter, the closing of a demand letter is usually not a separate section. It is usually the last paragraph of the explanation section and is similar to the closing of any legal correspondence as discussed in the Basic Components section of this chapter. The closing should restate the relief requested and indicate what the next course of action may be.

For Example “Therefore, your calls to Mr. Hill are clearly a violation of the Collections Act and must cease immediately. If the calls do not cease, we will take the appropriate steps necessary to obtain the relief provided in the act.
“If you have any questions in regard to this matter, please contact me.”

IV. Key Points Checklist: *Preparing Legal Correspondence*

- ❑ Prepare correspondence accurately and professionally. Letters may affect the reputation of the firm, and poorly drafted letters do not inspire the client's confidence.
- ❑ Draft the correspondence with the legal sophistication of the reader in mind. Avoid legalese; if you must use legal terms, define them clearly.
- ❑ Keep legal citations and quotations to a minimum. Use quotations only if they are easy to understand and add clarity to the subject matter. Paraphrase the material if it is written in a manner that is difficult to comprehend.
- ❑ When drafting an opinion letter, be sure to indicate that the letter is limited to the facts of the case, based on the current law, and intended solely for the benefit of the addressee.
- ❑ If there are multiple issues, divide the subject into separate manageable topics. Prepare and send separate letters covering the topics.
- ❑ Do not include legal advice or recommend a course of action if the correspondence is to be signed by someone other than an attorney. Such information constitutes the practice of law and must be signed by an attorney.
- ❑ Keep a file of the letters and other documents you have prepared. Organize the file by topic, such as demand letters, opinion letters, and so on. Often, rather than starting a new letter, it is faster and easier to edit an old letter or use it as a guide for the correspondence you are drafting.

V. Application

This section contains two examples of legal correspondence that illustrate the application of the principles discussed in this chapter. The first example addresses the assignment presented at the beginning of the chapter. This assignment requires the preparation of an information letter by the paralegal, Pam Hayes. The second example illustrates an opinion letter. It is based on the same law used in the first example and on facts that are similar to those of the first example.

A. Example: Information Letter

The assignment introduced at the beginning of the chapter calls for the preparation of an information letter. In this example, the letter is presented in *full block* style.

Law Offices of Alice Black
2100 Main Street
Friendly, New Washington 00065
(200) 267-7000 • FAX 267-7001 • www.ThomasLaw.com

April 29, 2008
Mr. Nick Shine
9100 2nd Street
Friendly, NW 00065

Re: *Shine v. Blue Sky Ski Resort*
Motion to dismiss for failure to state a claim

Dear Mr. Shine:

The purpose of this letter is to inform you of the status of your case and to summarize the law in regard to the motion that will be heard on May 17, 2008.

As you know, on April 6, we filed your complaint against Blue Sky Ski Resort. In the complaint, we claim that the resort was negligent for failing to post a sign warning skiers of the ice hazard you encountered. In order to prove a claim for negligence, one of the requirements we must establish is that the resort had a duty to warn skiers of the ice hazard.

On April 20, the resort filed a motion with the court asking that the court dismiss the case. A motion is a request submitted to the court asking the court to take some form of action. The court usually holds a hearing on a motion. At the hearing, the parties present their position on whether the request should be granted.

On May 17, 2008, the court will conduct a hearing on the resort's motion to dismiss. At that hearing, we anticipate the resort will claim that under the provisions of the Ski Safety Act, it does not have a duty to warn skiers of ice hazards. The resort will argue that ice hazards are the responsibility of skiers under the act and, therefore, it cannot be sued for negligence, because it had no duty to warn of the ice hazard.

In support of its argument that it does not have a duty to warn of ice hazards, the resort will rely on section 8B of the act. This section states that skiers are responsible for injuries that result from snow and ice conditions. Our position is that the resort does have a duty to warn of this type of hazard under section 7A of the act. That section provides that resorts have a duty to warn skiers of unusual conditions or hazards on ski runs.

It is unclear from the statute which section of the act applies in a situation such as yours. The state court of appeals, in the case of *Aster v. White Mountain Resort*, interpreted the act in a fact situation similar to yours. In this case, a skier, while skiing on a new ski run, hit a rock covered by snow. The court stated that resorts have a duty to warn of snow conditions if they are unavoidable and present an unobvious or latent hazard.

At the motion hearing, we will argue that the resort's motion to dismiss should be denied because the ice condition you encountered was unavoidable and latent, just as the snow condition was in *Aster v. White Mountain Resort*. We will further argue that the rule of law stated in that case provides that resorts have a duty to warn of hazards such as the one you encountered. Therefore, the resort can be sued for its negligence in failing to post a warning of the ice hazard.

The resort will probably argue that the ruling of the court of appeals in *Karen v. High Mountain Pass* should apply. In that case, a skier broke his leg after failing to negotiate a series of moguls that were present in the middle of a turn on a ski run. The court stated that skiers are responsible for snow and ice hazards, and moguls, even though unavoidable, are snow hazards easily observable and routinely present on most ski runs. We believe the court will not apply the ruling in the *Karen* case because that case involved a snow hazard that was observable and routinely encountered by skiers. In your case, the snow hazard was unobservable, unavoidable, and not routinely encountered by skiers.

In conclusion, we are optimistic that the court will rule in our favor and deny the motion. The ice hazard you encountered was unavoidable and latent just like the snow condition in *Aster v. White Mountain Resort*. This being the case, the court should follow the holding in that case and find that Blue Sky Ski Resort had a duty to warn skiers of the hazard. You are not required to attend the hearing, but you may attend if you wish.

Please let us know if you plan to attend.

If you have any questions, please call.

Sincerely,

Pam Hayes
Paralegal
PAH/wkk

B. Example: Opinion Letter

The example in this section is based on the following fact situation. On January 6, 2008, the client, David Duggan, appeared for an initial interview at the law offices of Alice Black. Pam Hayes, the paralegal, conducted the interview. In the interview, Mr. Duggan stated that he was skiing on December 7, 2007, on an expert ski run at Red Mountain Ski Resort. He encountered a series of moguls near the top of the ski run. The moguls were difficult to ski, and he lost control, fell, and broke his left arm. There was no sign at the top of the run indicating the presence of difficult moguls on the run. He believes the resort should have posted a sign well in advance of the moguls, warning of their presence. He wants to know if he can sue the resort for its failure to post a warning.

Alice Black assigned Pam Hayes the task of preparing a rough draft of an opinion letter to be sent to Mr. Duggan. The letter should inform him of the likelihood of successfully suing the resort for its failure to post a warning of the presence of the moguls. The governing law is chapter 70 of the New Washington Ski Safety Act. The governing case is *Karen v. High Mountain Pass*, 55 N. Wash. 462, 866 N.E. 995 (Ct. App. 1994). The relevant portions of the statute and case are introduced at the beginning of the Application section of Chapter 14. The opinion letter is presented in *modified block* format.

Law Offices of Alice Black
2100 Main Street
Friendly, New Washington 00065
(200) 267-7000 • FAX 267-7001 • www.AliceLaw.com
January 18, 2008

Via Facsimile and U.S. Mail

Mr. David Duggan
5501 Glenview Ave.
Friendly, NW 00065

Re: Possibility of a lawsuit against Red Mountain Ski Resort for failure to warn of moguls

Dear Mr. Duggan:

On January 6, 2008, we met in my office to discuss the possibility of suing Red Mountain Ski Resort for the ski injury you suffered on December 7, 2007. This opinion is based on the facts outlined in the fact section of this letter and the applicable law as of the date of the letter. This letter is solely for your benefit and limited to the facts discussed below. Please contact me if any of the facts are misstated or if you have additional information.

FACTS

On December 7, 2007, you were skiing on an expert run at Red Mountain Ski Resort. Near the top of the run, you encountered a series of moguls. The moguls were difficult to ski, and as a result, you lost control and broke your left arm. There were no signs posted on the run that warned skiers of the upcoming moguls.

ANSWER

Based upon the above facts, you probably cannot successfully sue Red Mountain Ski Resort for its failure to warn of the moguls. The only possible theory under which you could sue is negligence. You would claim that the resort was negligent for failing to warn of the upcoming moguls. Under the applicable state statute and the court opinions that interpret that statute, the resort does not have a duty to warn of the presence of moguls.

EXPLANATION

Chapter 70 of the New Washington statutes, the Ski Safety Act, governs the operation of ski resorts and establishes the duties of skiers and resort operators. Section 7A of the act requires resorts to warn of sections of trails “that present an unusual obstacle or hazard.” Section 8B of the act states that a skier “expressly assumes the risk and legal responsibility for any injury to a person or property which results from . . . surface or subsurface snow or ice conditions . . .”

The act does not discuss whether a mogul is a snow condition for which the skier is responsible. The state court of appeals, however, in the case of *Karen v. High Mountain Pass*, addressed the question of whether a resort has a duty to post a warning of the presence of moguls on a ski run. In this case, a skier broke his leg after failing to negotiate a series of moguls that were present in the middle of a turn on a ski run. The court stated that skiers are responsible for snow and ice hazards. The court noted that moguls, even though unavoidable, are snow hazards easily observable and routinely present on most ski runs. The court ruled that under the act, resorts have no duty to warn of snow hazards such as moguls.

The facts in your case are very similar to the facts in *Karen v. High Mountain Pass*.

In your case, just as in that case, the injury occurred as a result of an encounter with moguls. It is apparent from section 8B of the statute, and the court’s interpretation of that section in *Karen v. High Mountain Pass*, that skiers are responsible for injuries sustained as a result of encountering moguls on a ski run. Therefore, based on the statute and the court opinion in *Karen v. High Mountain Pass*, it is my opinion that it is highly unlikely that a lawsuit against Red Mountain Ski Resort for the injuries you sustained would be successful.

I hope this information answers your question. I regret that I am not able to provide a more favorable answer. If you have additional information concerning the accident or if you have any other questions, please contact me.

Sincerely,

Alice Black
Attorney at Law

ALB/wkk

C. Comments on Examples

In regard to the preceding examples, note that both letters

- present the subject matter clearly through the use of short sentences rather than complex sentences, which are often more difficult to follow and understand.
- present the law in an objective and professional manner.
- avoid legalese and discuss the material in a simple and clear manner. Although there are references to statutes and case law, a summary of the law is provided rather than a technical discussion. The legal points are simply phrased in lay terms.

In addition, the opinion letter clearly states at the outset that the opinion is limited to the current law and the facts provided by the client. Reference is made to the fact that the letter is intended solely for the benefit of the recipient.

Quick References

| | | | |
|------------------------|-----|-----------------------|-----|
| address block | 000 | initials of drafter | 000 |
| body | 000 | letterhead | 000 |
| closing | 000 | method of delivery | 000 |
| demand/advocacy letter | 000 | opinion letter | 000 |
| enclosure notation | 000 | re | 000 |
| header | 000 | requests/instructions | 000 |
| information letter | 000 | salutation | 000 |

Summary

This chapter discusses the preparation of legal correspondence, referred to as letters in the chapter. The focus is on those letters that communicate the results of legal research and analysis. Letters are one of the primary forms of written communication directed to an audience outside the law office.

The following are fundamental components of all legal correspondence. There is no standard format; the content and style of presentation of these components vary according to personal and local preference. The basic contents of the components are discussed in the Basic Components section of the chapter.

- Letterhead/Heading
- Date
- Method of Delivery
- Recipient's Address Block
- Reference (Re:) Line
- Salutation
- Body
- Closing
- Signature and Title
- Initials of Drafter
- Enclosure Notation
- Others Receiving Copies

Letters that include the results of legal research and analysis fall into three basic categories based upon the purpose of the communication:

1. To provide information—information letters
2. To provide an opinion—opinion letters
3. To demand action—demand letters

These three types of letters differ primarily in the content of the body.

The body of an information letter presents an objective summary of the research and analysis without the inclusion of any legal opinion or advice. The body of an opinion letter, in addition to a summary of the law, usually provides an objective

assessment of the application of the law to the facts and often recommends a course of action. Because it includes a legal opinion or legal advice, an opinion letter constitutes the practice of law and must be signed by an attorney.

A demand letter is designed to persuade the reader to act in a manner that benefits the client, for example, to pay a debt. The body of a demand letter is similar to the body of an opinion letter. The major difference is that the law and analysis are drafted in a persuasive manner.

Because the recipient of legal correspondence is an individual outside the law office, the correspondence contributes to the image and reputation of the law firm. For this reason, and because legal liability attaches to some correspondence, it is of paramount importance that you draft an accurate and professional product.

Internet Resources

If you use “legal correspondence” as a search topic, you will find a wide range of Web sites (thousands, in fact) that refer to legal correspondence. The following is a summary of the categories of sites that may prove helpful when working on correspondence.

- Sites that provide legal correspondence in specific cases, such as correspondence of the Association of Trial lawyers regarding a specific subject.
- Sites that advertise businesses that prepare or assist in the preparation of correspondence.
- Sites that advertise for schools that include as part of the curriculum the preparation of correspondence.
- Sites that advertise legal forms and templates for legal correspondence.
- Sites that contain job announcements for jobs that require the preparation of legal correspondence.
- Sites that advertise texts that cover the preparation of legal correspondence.

Narrow your search results by using a specific topic such as “preparing legal opinion correspondence” or “legal correspondence, child custody cases.”

Exercises

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

ASSIGNMENT 1

Describe the three types of correspondence discussed in this chapter and the purposes of each type.

ASSIGNMENT 2

Describe how the three types of correspondence differ from each other.

ASSIGNMENT 3

For this exercise, refer to the assignment introduced at the beginning of Chapter 12 and the law relevant to that assignment presented in the Application section of Chapter 12. The law firm represents Mrs. Findo. Draft an opinion letter to her informing her whether she can testify against her husband in light of the applicable Illinois statutory and case law.

ASSIGNMENT 4

For this exercise, refer to the assignment introduced at the beginning of Chapter 13

and the relevant law included in the Application section of that chapter. You work for a law firm that represents the defendant.

- A. Draft an information letter informing the defendant of what constitutes an arrest in the state of New Washington, and how the law has been interpreted to apply in search warrant situations.
- B. Draft an opinion letter advising the defendant whether there is sufficient evidence to support charges of possession.

ASSIGNMENT 5

The client, Mrs. Tatum, purchased a new microwave oven from Inki Appliances Company. There was no written or oral warranty given when the sale was made. The microwave stopped working one week after Mrs. Tatum took it home. She returned the microwave three days after it quit working. The owner of Inki Appliances refused to repair or replace the microwave or give Mrs. Tatum her money back. Prepare a demand letter to be sent to Inki Appliances. The letter is to be signed by your supervisory attorney, Alice Black. Use the letterhead presented in the Application section of this chapter. Mr. Terry Spear is the president and owner of Inki Appliances Company, and the address is 1001 Maple Drive, Friendly, NW 00065.

Statutory Law: Section 50-102-314 of the New Washington statutes provides that “a warranty that the goods shall be merchantable is implied . . . if the seller is a merchant with respect to the goods of that kind.” Mr. Spear is a merchant. Mrs. Tatum did not misuse the microwave or in any other way cause it to quit working.

Case Law: The case on point is *Smith v. Appliance City*, 56 N. Wash. 162, 868 N.E. 997 (1995). In *Smith*, the New Washington supreme court ruled that the seller has three options when an implied warranty is breached: return the purchase price to the buyer, repair the merchandise, or replace the merchandise.

ASSIGNMENT 6

Refer to Assignment 8 in Chapter 13. Prepare an information letter to Mr. Canter informing him of the results of your research in regard to armed bank robbery.

ASSIGNMENT 7

Refer to Assignment 5 in Chapter 13. Draft an opinion letter to Mrs. Dixon informing her of the results of your research and the likelihood that the holographic will submitted by Mary Cary will be eligible for probate.

ASSIGNMENT 8

Refer to Assignment 9 in Chapter 13. Prepare a demand letter to Ms. Chavez informing her of the law concerning the unilateral reduction of child support when a child reaches the age of majority. Include in the letter a demand that she resume paying the full child support ordered by the court.

ASSIGNMENT 9

The client, Mr. David Keys, would like to know what state law provides concerning the removal of a director from the board of directors of a corporation. Prepare an information letter to Mr. Keys summarizing the requirements of the removal statute. Draft the letter for the signature of your supervisory attorney, Alice Black. Use the letterhead presented in the Application section of this chapter. Mr. Keys' address is 761 South Vine Street, Sunnydale, NW 00066.

Statute: New Washington Statutes Annotated § 77-11-22. Removal of directors:

At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

ASSIGNMENT 10

Perform Assignment 9 using your state law. Make up local addresses for the law firm and client.

ASSIGNMENT 11

Draft an information letter to the client, Mr. Daniel Hope, Vice President, National Insurance Company. In the letter summarize the state law concerning National's duty to defend persons it insures under its automobile insurance policies. Draft the letter for the signature of your supervisory attorney, Alice Black. Use the letterhead

presented in the Application section of this chapter. National Insurance Company's address is 459 Twenty-Second Street, Friendly, NW 00065. There is no statutory law governing the duty of the insurance company to defend its insured. The relevant case law is presented below.

Case Law:

Wrickles v. Washington Ins. Co., 61 N. Wash. 104 (Ct. App. 2007). Where it is determined that the insurer has unjustifiably failed to defend against claims against its insured, the insurer is liable for any judgment entered against its insured. In addition, the insurer may be liable for any reasonable settlement entered into by the insured.

State Farm Ins. Co. v. Peterson, 56 N. Wash. 38 (1995). The obligation to defend arises out of and must be found in the insuring agreement promising to defend the insured against liability.

Alison v. Lincoln Ins. Co., 60 N. Wash. 677 (Ct. App. 2000). The duty to defend is triggered when an injured party's complaint against the insured states facts that bring the case within the coverage of the policy.

Jamison v. Lincoln Ins. Co., 58 N. Wash. 430 (1998). An insurance company may only refuse to defend its insured when the allegations in the complaint are completely outside the insurance policy coverage.

Wilson v. Washington Ins. Co., 59 N. Wash. 980 (1999). If the allegations in the complaint against the insured may fall within the coverage of the policy but are potentially excluded by any non-coverage provision in the policy, then the insurer is under a duty to defend the insured in the primary action. The duty continues until a court having jurisdiction over the case finds that the insurer is relieved of the liability under the non-coverage provisions of the policy.

ASSIGNMENT 12

In this assignment, draft the letter for the signature of the supervisory attorney, Alice Black. Use the letterhead presented in the Application section of this chapter. Mr.

Sanders' address is 930 North Hardwood Court, Friendly, NW 00065.

Assignment Memo:

We represent Washington Ins. Co. They paid a claim by their insured in the amount of \$21,235.00. The claim arose out of an automobile collision between the insured, Deborah Anderson, and Mr. Karl Sanders. Mr. Sanders ran a stop sign and his vehicle collided with the insured, resulting in the damage. Washington Ins. has written to Mr. Sanders requesting that he either provide proof of insurance at the time of the accident or that he pay the claim in full. He has not responded.

Prepare a draft of a demand letter to Mr. Karl Sanders demanding that he pay the \$21,235.00 or contact me to see if we can reach an agreement for payment of the debt.

Inform him that this is an attempt to collect a debt. Also inform him that if he does not contact us within thirty-three days of the date of the letter, I will assume that he does not dispute the debt and I will pursue all legal remedies available under the law. Inform him that a lawsuit will be filed in the district court for the full amount of the debt plus interest and I will request any fees and costs I may incur in pursuit of the litigation.

In addition, inform him that pursuant to New Washington law, once a judgment is obtained I can take action to have his driver's license and vehicle registration suspended under the provisions of the Financial Responsibility Act, NWSA § 45-6-124.

Statutory Law: Section 45-6-124 of the New Washington Financial Responsibility Act allows a judgment creditor to take action to suspend a debtor's driver's license and vehicle registration for nonpayment of any judgment arising from a motor vehicle accident.



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.