

1: Getting Ready to Write

As Yogi Berra once said, “The best place to begin is at the beginning.” Legal writing has three stages:

1. Pre-writing (research, planning)
2. Drafting (writing)
3. Revising (rewriting, proofreading, editing)

Expect to spend 50% of your budgeted time in the pre-writing stage, and the remaining 50% in the drafting and revising stages.

Pre-Writing

Think about the last time you needed to write a paper. Did you sit down at your desk with your laptop, open up Microsoft Word to a new blank document, place your fingers on the keyboard, and start composing beautiful prose that flowed from your mind through your fingers onto the screen without any need to stop until you had finished writing a complete and perfect paper? Wait, does that not sound right? What about this: Did you sit down at your desk with your laptop, then get up to get a drink, then text some friends, then go to the bathroom, then return to your laptop and think to yourself, “I will never ever find a single word to write on this paper and the assignment is stupid and I just can’t?” You could also be a student who has never written a lengthy paper, so you do not have prior writing experiences to reflect on. Maybe you are returning to school after some time out of school and you cannot remember how you used to write a paper of any length. Or maybe you do not yet see how projects you have completed also count as writing projects, or at least will benefit from the same steps that are used in the writing process. Making a presentation to a boss, generating a lab report, and filling out spreadsheets with collected data are all projects that benefit from implementing the writing process, including these prewriting steps.

One of the biggest mistakes that writers make is to fail to consider the entire writing process timeline of a document. **Prewriting**, that time before you sit down to put words on a page, is an often-overlooked part of the writing process. There are two parts to prewriting. The first step is to assess what you need as a writer to create the best possible environment and the second step is to perform the preparation steps that come prior to writing.

Self-Assessment

Assessing yourself as a writer is something that you should complete in-depth every term. Although you should be sure to implement what you learn about yourself as a writer for every writing project you undertake, you will not need to complete a full assessment each time. For a starting point, consider completing this self-assessment questionnaire from Pam Jenoff, [The Self-Assessed Writer: Harnessing Fiction-Writing Processes to Understand Ourselves as Legal Writers and Maximize Legal Writing Productivity](#), 10 Legal Comm. & Rhetoric: JALWD 187, 192 (2013).

Self-Assessment Questionnaire

Part One - Environmental/Atmospheric Preferences

1. What is your preferred time of day to write? Why?
2. What is your preferred writing environment? (Location? Activity or quiet?)
3. What is your preferred writing medium? (Desktop, laptop, longhand?)
4. Are there particular foods or beverages that enhance your writing experience?

Part Two - Substantive Assessment

1. What are your writing strengths?
2. What are your writing weaknesses?
3. Describe some of your prior favorite writing experiences. Least favorite?
4. Describe your writing style.
5. How do you like to begin a writing project?

You should consider these questions as a starting point to assess yourself. Other things you can consider for environmental and atmospheric preferences include what you prefer to wear when you write, whether you want to listen to music, and how much space you like to have to spread out your materials. When completing your substantive assessment, also ask yourself what evidence you have to support your strengths and weaknesses. Ask why you identify certain previous writing experiences as favorites and least favorites; what do the favorites have in common and what set them apart?

Once you have determined what your preferences are to create an ideal writing environment, you will then need to assess whether you can meet those preferences. If you cannot, and chances are there will be times when you cannot, have a plan for what to do to cope with writing environments that are less than perfect. Consider how you can use your current environment to work best for you. If you have to write in a noisy environment, can you use earplugs or noise cancelling headphones? If you do not have access to a desk, can you use a dining room table? If your internet is unstable, can you go to a library or coffee shop?

Preparation Steps

The second part of prewriting is the series of steps that you should take prior to sitting down to put pen to paper. This part should feel familiar! However, many people forget to include these steps as vital parts of the writing process, which can result in either people not budgeting sufficient time for these steps or feeling like they are wasting time when they should be writing. Paying careful attention to these steps of the writing process is just as important as the others! This list is an overview of the prewriting process that you should use before starting to compose your written document:

- Read the assignment and any accompanying documents.
- Gain mastery over the facts.
- Develop your research plan.
- Read the authorities you find.
- Develop what categories you will use to determine relevancy.
- Retain the authorities that are relevant to deciding your legal issue.
- Analyze the remaining authorities to determine what narrow issue to use to answer your legal question.
- Map out how you will use the authorities to support the conclusion you draw.

And then, write.

Accept that there is more to creating a quality written document than just the time spent typing away on the keyboard. Discover the set-up that works best for you and build in time to your writing process to lay groundwork that sets you up for success.

Overview of Stage 1 (Pre-Writing)

The first stage involves factual and legal research, as well as general planning of how you will draft the required document or present your research findings.

Factual research:

Most legal writing involves drafting documents related to client services (for example, wills, contracts or other legal forms), or documents related to answering client questions. Regardless of the type of document you are drafting, you need a factual context.

For wills, contracts, and most other legal forms, the documents will inform you as to the factual information you need to complete them. Most law offices have checklists and/or templates for those types of documents.

This textbook focuses on Legal Analysis and Writing related to documents designed to assist the lawyer with answering client questions and providing legal advice to the client. As such, you'll want to begin by conducting factual research comprising

1. Reviewing all of the client file materials provided to you,
2. Interviewing the client and other relevant persons to "fill in the factual gaps" and obtain more detailed information than what is contained in the client's file, and
3. Obtaining copies of documents or reports relating to the client's question. For example, this could include accident reports, weather reports, insurance policies, medical records, etc.

Of course, you'll want to discuss with your supervising attorney what information is required, the attorney's strategy for obtaining the information, and the scope of your responsibility/authority for obtaining it.

Your factual research will form the basis for identifying the specific legal questions that need to be researched in the next step.

Legal research:

Keeping in mind your time and cost constraints, thoroughly research your issue(s). Your supervising attorney should provide you with guidance as to the best place to start your legal research. Often, the best places are statutes, administrative codes, and jury instructions.

Remember to organize your notes by legal issue, using a separate piece of paper (or Word document) for each legal question that requires research. Doing so will help you when the time comes to experiment with issue organization in the drafting stage.

While it's fine to start with a broader legal question (Is the client likely to be convicted of arson?), be prepared to revise that broad legal question into more focused and specific questions relating to narrower parts of that question (Will the State be able to prove that the client intentionally set a fire?). Sometimes the meaning of a single word within a statute becomes a legal question requiring additional research.

A good, complete set of research notes would include:

1. Notes demonstrating the researcher's determination of legal resources to research (statutes annotated, case digests, secondary sources, etc.);
2. Notes showing the researcher's brainstorming of research terms to look up in indexes, digests, or on computerized legal research sites such as FastCase®, Westlaw® or LexisNexis®;
3. Notes showing the research as it progresses (showing possible statutory sections to look up, or possible digest topics, based upon findings in the index);
4. Dates on which the research is performed, as well as the amount of time spent each day performing research (for billing purposes);
5. A system showing that all updating of authorities has been performed, and the date on which it was performed (using Shepard's®, or other computerized updating).

After researching and before beginning your first draft, take the following steps:

Assess purpose: To inform, persuade or advise; that is the question! How will you or your supervising attorney use the document? The purpose may be to inform the attorney and others working on the file of the current state of the law, as in a legal research memorandum. Sometimes the purpose is to persuade someone to adopt your view of the facts/law, as in a trial brief or settlement demand. Other times the purpose is to advise the client of the best course of action, given the facts and the state of the law. Your assessment of the document's purpose will affect its tone and language.

Assess audience: Who is your intended reader? Your assessment of the intended audience will affect your document's tone, language and degree of formality. For example, if your intended reader is an adversary, your tone will be more assertive. Similarly, if your intended reader has a legal or other specialized background, you are more likely to use legal or technical jargon in your document than if your intended reader is an average lay person. Additionally, the degree of formality will be higher if your intended audience is a Judge than it would be for a long-time client (but of course, your tone will always be professional).

Assess tone: What emotion do you want your document to convey? A document having an informative purpose will use a neutral tone. A document having a persuasive purpose will use an assertive tone. Finally, when advising a client, a respectfully instructive tone is appropriate. Tone is conveyed primarily through word choice and sentence structure. Certain words have positive or negative connotation (or "feelings") attached to them: there is a world of difference between a "child" and a "juvenile."

Mapping: What ideas must your document contain, and in what order? For simpler documents, such as letters, status memos or transactional documents, checklists are a particularly effective means to ensure that you include all of the necessary components/information. For documents involving legal analysis, such as legal research memoranda or trial/appellate briefs, outlining each issue to be addressed is an important step.

Overview of Stage 2 (Writing/Drafting)

Once the planning is complete, it's time to move to Stage 2: Drafting. In this stage, you will use your checklist/outline from Stage 1, as well as your assessments of audience, purpose and tone to start writing. Remember, you probably have about 50% of your budgeted time to spend in Stage 2 and Stage 3 (revising).

How much time you spend drafting versus revising depends on the type of writer you are. Some people spend a lot of time on their first drafts, revising as they go, such that very little revision is needed once that first draft is complete. Others are more comfortable getting their ideas down on paper (or computer) very quickly; these people spend much more time (hopefully!) revising than drafting. Whatever your personal style, plan to spend quality time in each stage.

When you are starting your first draft, there are several things to consider to help you keep in mind what the final product should look like.

Format: How should your documents look? Many legal documents require a specific format, with specialized headings and/or components. For example, letters are written on company letterhead. In Wisconsin, pleadings and other documents that are e-filed have required formats. You will learn about two formats in this textbook: Case briefs and Legal Research Memoranda.

Framework: How will you address the substance of your documents? Case Briefs and Legal Research Memoranda are based on formulas directing the order in which to address components. Different lawyers may use frameworks that differ slightly from the frameworks you will see in this textbook, but most of the components will be very similar. Before starting your first draft, make sure you know your supervising attorney's preferences.

Structure: How will you compose/construct paragraphs and sentences within each component of your document? Different documents call for different types of paragraph and sentence structures. For example, the discussion section of a Legal Research Memorandum uses the IRAC (issue, rule, application, conclusion) structure.

Clear writing: Which words, grammatical structure, punctuation, etc., will best convey your message? Usually, simple, direct, short words and sentences are most clear. Above all, you must remain professional. Clear writing is addressed in the Writing Fundamentals section of this textbook.

Overview of Stage 3 (Revising/Rewriting/Proofreading/Editing)

Once your ideas are down on paper, it's time to move to Stage 3: Revising. In this stage, you will refine the presentation of your ideas. The idea is to make sure your writing doesn't get in the way of the reader's comprehension of your message. **No matter how good your first draft appears, you should spend time revising it!**

Revising has two elements. Usually, people are strong in one element and may struggle a bit with the other element. When deciding where to start your revisions, think about how you would answer the following questions:

- Do you work more effectively if you first tackle difficult tasks and then move on to tasks that are more "in your wheelhouse?" Or does it work better for you to build confidence with tasks that come naturally to you before moving on to challenging tasks?
- Are you detail-oriented or big-picture-oriented?

Regardless of how you answered those questions, be sure to spend quality time in both elements of revision: (1) Micro-editing (making sure the details are correct) and (2) Macro-editing (making sure the document "as a whole" is correct).

WRITING FUNDAMENTALS (A CLOSER LOOK AT STAGE 2)

Once you've completed Stage 1 in the writing process, it's time to move on to Stage 2, the drafting stage. Here, we will review the components of clear writing: Proper punctuation, spelling, and grammar; appropriate word choice; effective sentence structure; smooth transitions; and logical organization.

Wait a minute. I know I've had that stuff in other courses...do I really have to learn about it again?

Yes, yes, absolutely yes! As a legal practitioner, your primary means of communication will be written communication. Your written language is thus a direct reflection of you as an intelligent, credible professional. Poor writing is a bad reflection on you and could sabotage your career. Clear writing enhances others' opinions of your intellect and credibility; clear writing commands respect.

Compare your writing to a construction project. Your final product is the "dream house" that will become your home. The punctuation, spelling, grammar, and words are your building materials; sentence structure, transitions, and organization are your workmanship. Substandard building materials and shoddy workmanship inevitably lead to a crummy house. You wouldn't put a pit toilet in a castle, would you? And regardless of the type of toilet you install, you wouldn't put it in the kitchen or forget to connect the drain, right?

Let's take a closer look at our building materials...

Proper Punctuation

Punctuation is the material that holds your sentences and words together. The wrong nails will not properly hold the framing or might stick out, ruining other materials. Likewise, the wrong punctuation won't hold your words or sentences together, and, to the

trained eye, will certainly “stick out.” For example, misuse of the lowly comma can wreak havoc with a sentence: “Students who cheat and plagiarize should be removed from the program” versus “Students, who cheat and plagiarize, should be removed from the program”. In the first scenario, only the cheaters will be removed. In the second scenario, all students will be removed since they are all cheaters (this is most certainly not true!).

Proper punctuation placement proclaims professionalism. Punctuation pitfalls are pernicious! Following are some of the most common “Punctuation Pitfalls” to avoid.

The comma (,)

The comma is the workhorse of the English language. It is properly used to

- Precede a title (Mr. Jones, President; Al Johnson, Jr.)
- Write about a specific date (September 23, 2019)
- Differentiate between an abbreviation and the end of a sentence. (Andromeda, Inc., manufactures widgets.)
- Set apart a parenthetical phrase (Babies, who are helpless, require constant care.)
- Introduce a quotation. (She said, “I’ll have what she’s having.”)
- Separate words in a series (I like bananas, coconuts and grapes). There is disagreement over whether a comma should precede the word “and” in a series. Either include it or don’t, but be consistent throughout your document.

The comma *should not be used*

- As a cure-all for run-on sentences
- Following the phrase, “as well as”
- To connect two sentences together into one sentence (this is known as a comma splice)
- To write about a non-specific date (**not** Spring, 2020 or September, 2019 – also, don’t put the word “of” in these date phrases)

The semicolon (;)

The semicolon is used when a comma isn’t strong enough to get the job done. It is properly used to

- Separate two related ideas contained in one sentence, when each of the ideas is itself a full sentence. (Roses are yellow; violets are blue.)
- Precede an adverbial conjunction, such as however, therefore, nevertheless. (Dogs are great pets; however, cats require less maintenance. Every bone in her body ached; nevertheless, she finished the race.)
- Separate the series within a series. (I like bananas, coconuts and grapes; beef, turkey and fish; and broccoli, carrots and corn.)

The colon (:)

A colon is primarily used as a grand introduction. It strongly emphasizes the phrase that follows it.

- A colon should only be used following a main clause that is itself a complete sentence. (President Clinton walked up to the podium: “It depends on what the meaning of ‘is’ is.”)
- A colon should not be used to introduce information or a series. (**Not** “The library hours are: 9 a.m. to noon.” **Not** “She played: soccer, baseball and basketball.”)

Quotation marks (“ ”)

Quotation marks record what others have said. Make sure you understand when to use double (“ ”) and single (‘ ’) quotation marks.

- Use double quotation marks
 - around a short (less than 4 lines of text) quotation.
 - around a quote within a long quote (long quotes are single spaced, double indented, and have no quote marks surrounding them. Court opinions frequently use this format.)

- Use single quotation marks for a quote within a quote when the entire quote is less than 4 lines of text. (Karen said, “I heard Tom tell Jane, ‘I went shopping yesterday.’ We were standing outside when he said it.”)

? Exercise

To test your punctuation prowess, go to [this website \(opens in new window\)](#).

Capitalization, Numbers, and Time

Once again, there are so many tricky rules to follow! Here are some you will most commonly run into in legal writing:

- **Capitalization is required**
 - For proper names and titles, if the title refers to a specific person or entity (President Lincoln; the State of Wisconsin; George Jones, President and CEO of Americo; the Trial Court)
 - For the first word of a quotation, if the quotation is a complete sentence (“Haynesworth is a dirty crook,” the witness stated.)
 - In a phrase using a room designation, if the room name or number is right before or after the word “room” (Today’s meeting is in Room 322. The wedding reception is in the Niagara Room.)
- **Capitalization is not required**
 - For titles, if the title refers to a general category of persons or entities (All of our presidents have been men. There are fifty states in the United States of America. Trial courts must make specific findings of fact.)
 - For the first word of a quotation, if the quotation is not complete sentence (“Haynesworth,” the witness stated, “is a dirty crook.”)
- **Numbers should be written out as words when:**
 - The number is ten or less
 - For approximations (The paper route is approximately twenty miles long.)
 - Writing about fractions that are not preceded by a whole number (“The meeting starts in one half hour” **not** “The meeting starts in ½ hour”)
 - Writing about decades or centuries (The twentieth century; The roaring twenties)
- **Use numerals when:**
 - The number is 11 or higher
 - Writing about fractions that are preceded by a whole number; use a space after the whole number (1 ½, **not** 1½, or one and one half)
 - Using numbers in a series (Jimmy ate 2 apples, 11 grapes and ½ pound of watermelon.)
 - Writing about dimensions, measurements, temperatures, percentages and page numbers (The room is 12 by 15 feet; yesterday’s temperature was 85 degrees; see the sample on page 1002; Unemployment is down 2 percent) – notice that the measurements (feet, degrees, percent) are written out and not abbreviated.
- **When writing about time:**
 - Write out the numeral if using “o’clock”, and don’t use “a.m.” or “p.m.” (The hearing begins at eleven o’clock.)
 - Use numerals and either “a.m.” or “p.m.” if you don’t use “o’clock” (The hearing begins at 10:30 a.m.)
 - Use only the numeral if writing about a time exactly on the hour (“The meeting will end at 11 a.m.” **not** “The meeting will end at 11:00 a.m.” The reason for this rule is that :00 is actually an abbreviation for o’clock.)

Proper Spelling

Always run spell-checker on everything you draft, whether it’s a document, Excel workbook, PowerPoint presentation, etc.! While you’re at it, **make sure your spellchecker is checking words in ALL CAPS (in MS Word, click file>more>options>proofing, uncheck “ignore words in UPPERCASE”).**

When you run spell-checker, be careful! Look closely at every error that is flagged as a spelling error. It’s so easy to go quickly through and “ignore” when a person’s name comes up as a misspelling. If a name comes up as a misspelling and you’ve spelled the name correctly, it’s OK to click “ignore all” – you can even add the name (and other legalese, such as per stirpes) to the dictionary.

After you run spell-checker, run “dumb-checker” – that’s your brain. Although spell-checker is constantly improving, it won’t catch all of the errors involving missing words (or missing letters in words). Spell-checker also might not catch homonyms (words that sound alike but are spelled differently and have different meanings). Beware these tricky “evil twins!”

Word	Meaning	"Twin"	Meaning
effect	the result (a noun)	affect	impact (a verb)
principle	rule, standards, primary	principal	the “main man” \$ in a trust/investment
lead	as a noun, it’s a metal	led	past tense of the verb “lead” (She led the way)
elude	escape, dodge	allude	suggest, refer to
waiver	giving up something	waver	being indecisive
incite	start, provoke	insight	perception, knowledge
weather	the conditions outside	whether	if
to	a preposition (give it to me) part of an infinitive (to run)	too two	also the number 2
ensure	make definite	insure	protect against loss
choose	rhymes with chews present tense verb (choose me!)	chose	rhymes with hose past tense verb (he chose me)
loose	rhymes with moose adjective (the loose moose)	lose	rhymes with booze verb (drive with booze and you will lose)
their(s)	possessive of “they”	there’s	there is
your	possessive of “you”	you’re	you are
its	possessive of “it”	it’s	it is

Of course, there are many others, so it’s important to slowly and carefully proofread for spelling. If you’re unsure, take the time to look up the word in a dictionary. The time you spend doing this will be worth it. Mistaken use of homonyms can be fatal to an otherwise excellent piece of writing.

Proper Grammar

Grammar is crucial to getting your ideas across accurately. Improper grammar can result in the meaning of your sentence being lost or changed. There are many components to proper grammar; only a few are highlighted here. Spell-checker can help with grammar too, but it’s not perfect. Here are some common grammar gaffes:

Adjective/Adverb Confusion: Both adjectives and adverbs give us additional information about something adding context and interest to your sentence. However, there are some important differences.

- Adjectives describe nouns (size, color, characteristics).
- Adverbs describe verbs, conditions, or reasons; sometimes they answer the question of “how.” Typically, adverbs end in “ly.”
Notice the differences below:
 - A quick fox (adjective). A fox runs quickly (adverb).
 - Use clear writing (adjective). Writing clearly is important (adverb).

Pronouns: These are designed to replace a noun and can be very troublesome! Make sure you are using the correct pronoun (and spelling it correctly), based on what part of the sentence in which it appears.

- Use subject pronouns in the subject part of the sentence (Who or what is doing the action in the sentence)
 - “He and I went to the store.” (**not** “Him and I went to the store;” also not “Him and me went to the store.”) When in doubt, write it separately before combining pronouns: “He went to the store.” (We’d never say, “Him went to the store.”) “I went to the store.” (We’d never say, “Me went to the store.”)
 - “Who is that masked man?”
 - “This is the man who was in jail.” (Two sentences would be “This is the man. He was in jail.” He and who are both subject words)
- Use object pronouns in the object part of the sentence. Use them when they receive the action, or after a preposition (such as to, for, from, under, etc.)
 - “Billy hit me/him/her/us/them.”
 - “She gave the ball to me/him/her/us/them.”
 - “Give me/him/her/us/them the ball.”
 - “This is the man whom I mentioned earlier.” (Helpful hint: two sentences would be “This is the man. I mentioned him earlier.” Him and whom are both object words)
 - “To whom are you speaking?”
- Use possessive pronouns to show possession. (**NOTE: none of the possessive pronouns uses an apostrophe!!**)
 - “His dog is cute. Its name is Fido.”
 - “Whose dog is this?”
- Use reflexive pronouns only if you have a subject that relates to the pronoun
 - “I ask myself this question all the time.”
 - “He gave himself a raise.”
 - “If you have any questions, feel free to contact Attorney Ramsdon or me.” **not** “If you have any questions, feel free to contact Attorney Ramsdon or myself.” (Again, think of two separate sentences. “If you have any questions, feel free to contact Attorney Ramsdon.” and “If you have any questions, feel free to contact me.” You wouldn’t tell a client, “If you have any questions, feel free to contact myself.”

Here’s a chart than can help you choose the correct pronoun:

Subject	Object/Preposition	Possessive	Reflexive
I	Me	My/mine	I ... myself
You	You	Your/yours	You ... yourself
He/she/it	Him/her/it	His/hers/its	He ... himself She ... herself It ... itself
We	Us	Our/ours	We ... ourselves
They	Them	Their/theirs	They ... themselves
Who	Whom	Whose	(not applicable)

Once you decide how your noun or pronoun is being used (or one of many pronouns in a phrase), you can substitute virtually any pronoun in the same column. Choose the one that is easiest for you to write correctly.

Additional problems can arise when substituting a pronoun for one or more nouns or names.

- Substitute singular pronouns for singular nouns or a single name:
 - “Each child should know his or her phone number.” **not** “Each child should know their phone number.”
 - “Schneider Corporation should fairly pay its employees.” **not** “Schneider Corporation should fairly pay their employees.”
- Substitute plural pronouns for plural nouns or multiple names

- “All children should know their phone number.”
- “Schneider Corporation and McDonalds Corporation should fairly pay their employees.”
- Don’t substitute a pronoun for a noun or a person’s name if the result is vague meaning.
 - She loaned her her prom dress. *I have no idea what’s going on here!*
 - Tiffany loaned Justina her prom dress. *OK, now I know who is loaning whose dress to whom.*

Verbs: These action words present many potential traps for the unwary. Regular verbs, irregular verbs, and all the possible verb tenses (would you believe there are **24** of them?) make English one of the most difficult languages to learn. Watch out for these common verb usage traps:

- Singular/plural subject-verb disagreement (when there is only one subject of the sentence)
 - A singular subject requires a singular verb
 - These nouns are singular: corporation, jury, class, anyone, each, either, everybody, everyone, neither, nobody, none (usually), no one, somebody, and someone
 - “The jury is required to answer all of the verdict questions.” **not** “The jury are required to answer all of the verdict questions.” (even though a jury is made up of multiple people, the sentence refers to a single group).
 - “A dog makes a fine pet.”
 - Plural subjects require a plural pronoun and a plural verb
 - “The jurors are required to answer all of the verdict questions.” **not** “The jurors is required to answer all of the verdict questions.”
- Singular/plural subject-verb disagreement (when there are multiple subjects in the sentence)
 - When all of the subjects are singular, the verb form is dictated by the “connector” between the subjects:
 - “Or” is disjunctive (or separating). That means multiple singular subjects require a singular verb:
 - “A dog **or** a cat makes a fine pet.” **not** “A dog or a cat make a fine pet.” If you were to write two separate sentences, you would write, “A dog makes a fine pet. A cat makes a fine pet.”
 - “And” is conjunctive, bringing together multiple subjects and making them a plural subject requiring a plural verb:
 - “My cat and dog are good companions.” **Not** “My cat and dog is a good companion.”
 - When you have combinations of singular subjects and plural subjects connected by the word “or,” the subject closest to the verb dictates the verb form:
 - The cat (singular) or the dogs (plural) are (plural) responsible for the damage to the furniture.
 - The dogs (plural) or the cat (singular) is (singular) responsible for the damage to the furniture. (Grammatically correct, but awkward to read. The first version of this sentence is better)
- Split infinitives – don’t put an adverb between the parts of an infinitive verb (“To run quickly” **not** “to quickly run”)

Prepositions: A preposition is a word or group of words used before a noun, pronoun, or noun phrase to show direction, time, place, location, spatial relationships, or to introduce an object. Some examples of prepositions are words like “in,” “at,” “on,” “of,” and “to.” Here are a few tricky rules:

- To refer to one point in **time**, use the prepositions “in,” “at,” and “on.” **Do not use “for!”** (Reja had to be at work at 8 a.m. **not** Reja had to be at work for 8 a.m.)
- **Do not end a sentence with a preposition.**
 - “The class in which I am currently enrolled” **not** “The class I am currently enrolled in.”
 - “To whom am I speaking?” **not** “Who am I speaking to?”

Contractions: Because they are informal writing, it’s usually best to avoid using contractions in legal writing. Because you sometimes need to use them when writing a direct quotation, knowing how to properly write contractions is important. Here is a contraction table that might help you:

Original	"To be" (am, is, are)	"Have"	"Would"
I	I’m (I am)	I’ve	I’d
You	You’re (you are)	You’ve	You’d

Original	"To be" (am, is, are)	"Have"	"Would"
He/She/It	He's She's It's (it is)	He's (he has) She's (she has) It's (it has)	He'd She'd It'd
We	We're (we are)	We've	We'd
They	They're (they are)	They've	They'd
Who	Who's (who is)	Who've	Who'd
Where	Where's (where is)	Where've (where have)	Improper – often "where'd" = where did
What	What's (what is)	What've (what have)	Improper – often "what'd" = what did
Why	Why's (why is)	Why've (why have)	Improper – often "why'd" = why did
How	How's (how is)	How've (how have)	Improper – often "how'd" = how did

One more note: **"Would of" is never correct!** The correct way to write out the contraction for "would've" is "would have." The same is true for should've and could've.

Modifiers: These are words that give us additional information about words, typically either nouns or verbs. One thing to watch out for is the placement of modifiers within your sentence. Modifiers are descriptions of the word/words closest to them. A misplaced modifier can change the meaning of your sentence in unintended ways.

- A "female former attorney" = a female who once was an attorney, but no longer practices law
- A "former female attorney" = an attorney who once was a female and has transitioned to being a male (and continues to practice law)

Another tricky modifier is "only." The following sentence is ambiguous and could have several meanings: "Liu agreed only to lend her sister money." Here are the potential meanings:

- Liu agreed to lend money to her sister and no one else.
- Liu agreed to lend her sister money and nothing else (not clothes).
- Liu agreed to lend money, but not to give it as a gift.

To fix the sentence, either use one of these three options, or place the word "only" right next to the word to modify (only her sister... only money ... only to lend)

? Exercise

To find out whether you are a grammar guru, go to [this website](#) (opens in a new window).

Appropriate Word Choice

Words are the basic building blocks in your document. High-quality building blocks (words) are concise, concrete and accurate. This is not to say that a writer never wants to use words that are not concise or concrete! Sometimes, if you want to de-emphasize something that is harmful to your client, you want to use words that are less concise or concrete (but accurate nonetheless). The important thing is to make a **conscious decision** about the words you use.

Concise words: Words are concise if they are direct and clear.

- Avoid using flowery language or unnecessary words that don't add meaning to the sentence

Wordy	Concise
In order to	To
Whether or not	If or whether (We will play soccer regardless of whether it is raining. He was unsure if we would play baseball next weekend.)
In the event that	
Enclosed please find	Enclosed is/are
In accordance with	Under

- Avoid jargon or “legalese” unless it’s absolutely necessary to the idea you are expressing or the document you are drafting
 - Jargon should be used only with experts in the related field (when writing to a doctor, refer to the larynx, rather than the voice box)
 - Legalese to avoid: phrases using “said” as a substitute for “the” (as in “said plaintiff”); heretofore, wherefore, aforementioned.
 - Avoid Latin phrases unless you are writing to an attorney or judge (and even then, be careful!)

Do not use this ...	If this will work as well
Accord	Give
Bequeath, Devise	Give
Per annum	Yearly, each year
Forthwith	Immediately
Party of the first (or second) part	The party’s name or title
Utilize	Use
<i>Inter alia</i>	Among other things
<i>Arguendo</i>	For the sake of argument

Concrete words: When writing descriptions of events or things, it’s important to help the reader to visualize an event or action. Sometimes we call these “picture words.” Like actual concrete, we want our words to be strong and effective, rather than weak. Below are some side-by-side comparisons to help illustrate this point. Notice how the words on the “concrete” side allow you to create a detailed picture in your mind of what is being described, while the words on the right provide too little information for a detailed picture.

Concrete/Powerful	Weak/Vague
His arm was severed when it became caught in the threshing machine.	He injured his body part in the device at issue.
It rained every day for a week.	A period of unfavorable weather set in.
The defendant boasted that he knew where the witness was secreted	The defendant stated he knew where the witness was.

Concrete/Positive (what is/was)	Weak/Negative (what isn't/wasn't)
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Concrete/Positive (what is/was)	Weak/Negative (what isn't/wasn't)
He usually came late to class.	He did not often arrive on time to class.
The politician was dishonest.	The politician was not truthful.
She forgot/failed to do her homework.	She did not remember to do her homework

Accurate words: In legal writing, we need to use words that convey exactly the intended meaning (both dictionary meaning and “emotional” meaning).

- Sometimes simple is better. What good is a word if your reader really doesn’t understand it?
 - “inapposite” is a very powerful word, but few people outside the legal field know what it means. It is an adjective meaning that an example or legal authority is completely irrelevant and inapplicable
 - “apropos” is also a powerful word, but it is often misused as a synonym for “appropriate.” Apropos means “having the characteristics of” or “an example of”: “The team’s inability to produce any offense in the playoffs is apropos of the entire season.” (this problem has nagged the team all season long)
- Be aware of the connotation (or emotional baggage) attached to certain words and choose your words accordingly. Here are some examples of words that have the same basic meaning, but very different “emotions” attached to them:
 - Child – juvenile
 - Affordable – cheap
 - Determined – stubborn
- Watch out for slang and colloquialisms
 - Ain’t, cop, and other slang aren’t used in legal writing unless you are directly quoting someone who used those words
 - Colloquialisms (words with “local flavor”) such as y’all and bubbler (instead of drinking fountain) also aren’t used in legal writing unless you are directly quoting someone who used those words
- Watch out for “made up” words or usage that is always incorrect
 - “**I seen**” is incorrect – instead, write “I saw” or “I have seen”
 - **Irregardless** is not a word!
 - Other incorrect words: alright, anyways, alot
- Don’t abuse your thesaurus! A thesaurus is a useful tool to help you avoid repeatedly using the same words, or to help you find more accurate words. However, not all synonyms are created equal; don’t just substitute a synonym for a word without being certain of its exact meaning. Following are some examples of substitutions to be used with caution:

Word	Meaning/Usage	"Synonym"	Meaning/Usage
Guilty of	Used with crimes He was found guilty of larceny.	Liable for	Used with civil matters. He was found liable for damages.
comprise	include, make up of A jury is comprised of 12 persons.	constitute	add up to Seven days constitute one week.
imply	suggest, indicate Her hesitation to answer implies guilt.	infer	assume, deduce One might infer from her hesitation to answer that she is guilty.
apprise	notify, inform He was apprised of the situation	appraise	estimate value, opine Please appraise these diamonds.

Word	Meaning/Usage	"Synonym"	Meaning/Usage
disinterested	neutral Service of process should be competed by a disinterested person.	uninterested	bored, uncaring I am uninterested in hearing about that event.
prescribe	to order Doctors prescribe medication	proscribe	forbid, prohibit Criminal laws proscribe certain conduct
Different from	used to show contrast, typically between nouns This situation is different from the one we had yesterday.	Differently (than)	used to show contrast (typically other than nouns) Let me know if you conclude differently. Berta saw things differently than Jonas.

Effective Sentence Structure

Sentence structure provides the framework for your words. The best building materials are useless if they aren't put together properly. There are a few things to consider when choosing your sentence structure.

Active voice: As a general rule, the subject (or main idea/actor) comes first, with the verb (action) as close to the subject as possible, and the object (where the action is going) following the verb. This is known as subject-verb-object (s-v-o) structure, or active voice. The active voice is preferred; the subject is doing the action described by the verb, rather than having the action done to it.

Jade hit the ball. S V O	Active voice. The subject, Jade, does the verb action, hitting.
The ball was hit by Jade. S V O	Passive voice. The subject, the ball, is receiving the verb action, hitting. If you see the word "by" in your sentence right after a verb, it's likely is passive voice.
Mary was arrested yesterday. S V No object/actor	Passive voice. The subject, Mary, is receiving the verb action, arresting. We know a police officer was the actor. Active voice would read, "The police officer arrested Mary yesterday."
The parties entered into mediation.	Passive voice. The verb, mediate, was turned into a noun (nominalization – look for -tion, -sion, or -ment endings to words). Active voice would read, "The parties mediated."

HOWEVER: This is not to say that a writer never wants to use passive voice! Sometimes, if you want to de-emphasize something that is harmful to your client, you want to use passive voice. I want you to make a **conscious decision** about the sentence structure you use.

Sentence fragments: If a sentence does not contain a subject or a verb, it is a sentence "fragment." Sometimes sentence fragments are tricky to identify.

- Whether a person is liable for dog bite injuries. This looks like a complete sentence, but it isn't!
 - The word "whether" is a conjunction (a connector, like and, but, or).
 - This sentence is incomplete because we don't know what happens next. Substitute the word "if" and the incomplete thought becomes clear: "If a person is liable for dog bite injuries."

- Make the sentence complete by adding an active verb and an explanation: Whether a person is liable for dog bite injuries requires examination of the totality of the circumstances.
- Adverb clauses also are not complete sentences, for similar reasons – we don’t know what happens next. The following are all sentence fragments:
 - Even when I'm sick.
 - When you have finished working.
 - Whenever you like.
 - Wherever we prefer.
 - Since I returned from vacation.
 - As she was not there.
 - Since you always do well.
 - Before entering high school.

Run-on sentences: Too many thoughts, topics, or ideas with only a period at the end constitute the classic run-on sentence. Many times, these are multiple sentences connected with commas (a comma splice) or no punctuation at all. A good rule of thumb is that if your sentence runs longer than two full lines in a document, look at it carefully to determine whether there are multiple sentences covering multiple ideas that should be split into multiple sentences with appropriate transitions.

Parallel Construction: Just like you want to use the same size lumber throughout your house frame, you want to use similar structure as to nouns, pronouns, verbs or articles for similar ideas. Parallelism involves:

- Consistency in series as to nouns
 - Last week we studied cultures of the French, the Spanish, and the Germans (all start with “the”).
 - I like bananas, coconuts and grapes (all fruits); corn, carrots and beans (all vegetables); and beef, pork and chicken (all meats).
- Consistency in series as to verbs
 - Diedre was not certain her call was being recorded, but she suspected it may be recorded (verb are all past tense. Don’t switch from past tense to present tense or future tense).
 - We discussed hiring, training and supervising new employees (all -ing verbs).
- Consistency when using correlative or comparative expressions
 - both...and; not...but; not only...but also; either...or; etc.) should be followed by the same grammatical construction
 - The ceremony was both long and tedious (one adjective on each side of both/and).
 - The ceremony was not only long but also tedious.
 - **Not** It was both a long ceremony and very tedious.
- Patterns in writing, in which similar ideas are expressed with similar words. An excellent example of good parallelism is the Beatitudes, which consistently uses a “blessed are ... for they shall” structure.

Smooth Transitions

The blueprint shows how all of the materials come together and relate to each other to make the building. Transitions between sentences and paragraphs give your document “flow” and tell the reader how the ideas are related. Transitions also signal the reader when a new idea is being introduced. Imagine the foreman gives you a bunch of building materials and tells you to build a castle, without giving you directions as to how to put the materials together. If you fail to use transitions in your document, you leave the reader with no direction as to how to put your ideas together. Your ideas will come across much better if the reader doesn’t have to work hard to understand them.

- Transitions between sentences tell the reader how the two sentences are related
- Transitions between paragraphs tell the reader how the two topics are related
- Transitions also let the reader know when you are discussing a new topic

Here are some examples of the different types of transitions you can use:

Similarity	Contrast	Combinations	Chronology	Summary

Similarity	Contrast	Combinations	Chronology	Summary
Similarly Similar to Likewise Like In the same way	In contrast Unlike However On the contrary Contrary to On the other hand	Additionally Also Moreover Furthermore	First Next Finally Lastly	Therefore Thus Hence In Conclusion Ergo

? Exercise

For more ideas, visit [this website](#) (opens in a new window).

Logical Organization

The floor plan, layout, and flow of your dream house need to make sense. When you walk through the front door of your dream house, you don't want to walk into the bathroom. The same is true for the overall flow of your writing.

- Make sure the order in which you discuss topics makes sense. Some possible ways to organize:
 - Chronological (tell the story from beginning to end)
 - Cause/effect (it's usually best to discuss cause before effect/result)
 - By claim/transaction (discuss each legal claim or transaction completely before moving on to the next one)
 - By party/person (discuss each party's role in the legal claim or transaction completely before moving on to the next one)
- Finish your discussion of one topic before going on to the next topic. Going back and forth between topics, or jumping back to previous topics, can be very confusing.
- Other common problems to avoid include
 - improper cause and effect (I sneeze every time I go to my friend's house, so I'm allergic to my friend);
 - wrong proof, right conclusion (improper data or facts are used to reach a conclusion – all diamond rings are engagement rings);
 - right proof, wrong conclusion (other conclusions may follow from the facts – Lassie is a girl's name, therefore all dogs that portrayed "Lassie" were girls. This conclusion is incorrect.)

REVISING (A CLOSER LOOK AT STAGE 3)

Now that you've completed Stages 1 and 2 in the writing process, it's time to move on to Stage 3, the revising stage. As a legal practitioner, your primary means of communication will be written communication. Don't skip or gloss over this stage! Remember, the client is paying for effective legal writing. More importantly, your writing should come across as professional and intelligent as you are.

As mentioned previously, revising involves two components, Micro-editing and Macro-editing. Micro-editing focuses on the details, and Macro-editing focuses on the "big picture." Here, we will look at the two components involved in proofreading and learn some tips on how to put the final "polish" on our product. Editing is a difficult skill to learn, and the best writers are not always the best editors.

Micro-editing

Detail-oriented people typically experience micro-editing as a strength. It's like putting the final touches on your home construction project. This part of the project is a combination of artistry and skill. You need to catch all the mistakes!

- Check for all components of clear writing (punctuation, capitalization, numbers, time, spelling, and grammar).
- Review word choices and eliminate unnecessary words; make sure the words are appropriate to your tone and audience.
- Look for typographical errors in dates, measures, and names.

- Check all details for accuracy.
- Run spell-checker – carefully and slowly
- Run “dumb-checker” – there is no substitute for human eyes and brains.
- Check citations. Here are some tips for effective citation-checking:
 1. Mark all citations: Use a highlighter, red pen or other method
 2. Ask your supervisor for specifics: Where is this document going to be filed/used? Does your supervisor or the judge prefer underlining or italics?
 3. Know the Rules: Familiarity with *The Bluebook* and local court rules is key. For local court rules, ask a law librarian or the clerk of courts, or check the court’s home page on the Internet.
 4. Document your corrections: Write down the page number of *The Bluebook* that supports your corrections.
 5. Develop a system to track the citations you have corrected, in case you are interrupted during your cite-checking process.
 6. Focus on the task at hand: Don’t attempt to proofread for spelling, grammar or other items while cite-checking. If you notice a problem, highlight it for correction at a later time.
 7. Be thorough: Check *all* citations in the document, not just those appearing in the argument or discussion section.
 8. Be consistent: Make sure titles and signals (such as *supra*, *id.*, *see*) are always either underlined or italicized (not both). Make sure abbreviations are consistent.

Among other things, legal writing is characterized by the need for

- Precision/clarity – words matter! To many of us, the word “drinking” in certain contexts means consuming alcohol (Were you drinking prior to the accident?). However, a person can also drink juice, coffee, water, and other things, so the word “drinking” by itself is imprecise.
- Correct punctuation – misplaced commas can change meaning! There’s a big difference in the meaning of “Let’s eat, Grandma!” and “Let’s eat Grandma!”
- Accuracy – make sure your sentence says exactly what you mean it to say.
- Conciseness – believe it or not, some types of legal documents have word limits. Also, your reader is much more likely to understand and/or be persuaded by sentences, arguments and documents that are not unnecessarily wordy. More is not always better.

? Exercise

[Read more about concise legal writing here](#) (opens in new window).

Macro editing

Big-picture-oriented people typically experience macro-editing as a strength. It involves looking at the “big picture” to make sure you’ve used the proper tone, that your document is logically organized with smooth transitions between ideas and paragraphs, that it contains all legally required components, and that it is internally consistent. It’s like the “final walk through” in your construction project, when you ensure everything was built to specifications and the whole project and its components are consistent and work well together.

- Check for effective sentence structure.
 - Are the sentences clear and easy to read?
 - Are the sentences neither too long nor too short?
- Check for smooth transitions.
 - Do you effectively signal the reader when you are changing topics?
 - Is it clear how sentences, paragraphs and topics relate to one another?
 - Is the document as a whole easy to read? Does it flow well?
- Make sure the document’s tone matches its purpose and audience.
- Use professional writing at all times

- Avoid informal words, contractions, slang, and colloquialisms.
- Don't "personalize" your writing with phrases such as "I believe" or otherwise using the first person "I."
- Don't use exclamation marks, all caps, or a lot of boldfacing.
- Your writing should never be sarcastic, hostile or condescending.
- Review organization. Is it logical? Does the ordering of topics make sense?
- Check for internal consistency throughout the document.
 - Does the document, as a whole, make sense?
 - Later parts of the document should not conflict with earlier parts of the document.
- Make sure the document is complete.
 - Does it have all of the required components?
 - Did you include all of the important facts and legal provisions?

Revision may seem like a tedious waste of time, but it is one of the most important steps in preparing a well-written document. The tricky thing about revising is that it's very difficult to catch errors in your own work. Your brain knows what is supposed to be there, and it will "fill the gaps" with missing words and unclear meaning. To combat this, set your document aside for a few hours before doing your micro- and macro-editing.

After you have finished both micro- and macro-editing read your document out loud – slowly.

Achieving Your Writing Goals

The ultimate goal is that your readers understand what you are trying to convey to them. Whether you are writing a letter, a case brief, or a memorandum, your communication must be clear and organized. The proper formats, used at different times, will make your writing easier to read and understand. The time you spend planning, writing, and revising will pay off in the form of supervising attorneys who trust your work and then reward you with more interesting and complex work as you continue in your legal career.

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