

Legal Writing: Structuring a Better Legal Memorandum or Opinion

In writing a letter to a client, a legal opinion, or a memorandum of law, lawyers will habitually deal with issues in the order they recall them instead of presenting the ideas in a logical pattern that helps the reader to grasp the argument. You should consider how the issues fit together so you can present them in a way that they hang together and present a coherent image. You should also use the organization, the lay-out, and the logic tools that make the information usable for lawyer or client.

Purpose

In addition, the purpose of any writing should guide its organization and content. Legal memorandum have differing purposes in different situations. You have to decide whether the memorandum you are writing is needed for help to:

- decide whether to take a case
- advise a client
- draft a pleading
- prepare for trial

Giving thought to your purpose, your reader's needs, and the constraints on both of you will help you to focus and organize your message.

Reader's Logic

Communications research has proven that readers approach a document with preconceived ideas about the subject or the writer. General readers approach the letters with prejudices about the facts, based on prior experience or private interest.

A letter or memo needs a summary answer near the beginning to disabuse the reader of the preconceived opinion, so that they are receptive to the truth of the facts and law. Otherwise, a reader assimilates the information by predicting how it fits into their pre-existing framework of belief. And then they are dazed or confused by your conclusions at the end of the letter.

A meaningful introductory paragraph makes them set aside their preconceptions and primes them for acceptance of your ideas.

Organization

I want to share with you one area of concern that has arisen from my reviews of associates' letter opinions. There is a systemic problem which is that the law firm seldom has a common organizational structure for letter opinions. Every associate adopts a different pattern and individual associates change their patterns in different letters.

In this situation, both partners and clients have difficulty with the letters. Without a consistent organizational pattern, the reader never knows where to expect a particular type of information nor when to conclude that it is missing. Predictability and consistency in the readers' eyes are very important to effective and quality writing.

The real parts

There are functional parts to a document that most legal writers forget about. The reader of a document or letter of more than 3 pages will benefit from a miniature table of contents -- a listing of topic headings. A shorter letter needs an introductory paragraph that lets your reader know what is ahead and puts forward your position or conclusions in the affirmative. Write a summary introduction or preview paragraph.

Give an overview at the end that refines your whole message. A closing paragraph should clearly state or summarize what the reader is to do or what the writer will be doing next.

Most writers will be comfortable beginning their writing in the middle of the document, where the substance is worked out. Then they can finish the project by writing the summary introduction and conclusion after the contents are settled.

Information Access

Easy access to information is also feature now demanded of legal writing. To make the information accessible use a table of contents, use headings and numbering systems to show the architecture of the document and how the ideas are structured, give a preview and an overview.

Headings

Sometimes parts are titled: *Facts, Law, Conclusions*. These headings give no hint of the nature of the parts or of the content of the document. These topics would be useless in an outline and they are also useless for the purpose of headings. Headings should actually describe the information that follows.

Think of using headings like a flow chart. The headings lead the reader from

main points to subordinate points and mark new topics. They can work like the skeleton to hold the body of your work together.

Headings can:

- show that you are moving to another topic
- be descriptive and predictive
- show readers where a pause is suitable
- break up the document into manageable pieces for serial reading
- be an internal index helping readers to find important information.

Legal memoranda

- Heading and introduction

Identify the client and how or why the matter or research assignment was referred to you.

- Issues

Set out the basic legal questions that you will answer.

- Summary

Provide a brief answer to the questions. Brief here means no more than five to ten lines.

- Statement of facts

Set out all the important facts. If there is a dispute over the facts, set out both versions. Be as brief as possible. You can set the facts out chronologically or by another method. (See chapter on organization). One study on judges' opinions of briefs identified inadequate statement of facts as the major problem with legal memoranda.

- Survey of pertinent statutes

While this section is optional, your reader will find it helpful to have the applicable statutory provisions set out. If the provisions are long, paraphrase them here, and set them out on an attachment.

- Survey of precedents

You must review the relevant, primary precedents governing the facts. It is usually not necessary to prepare a history of the case law; the most recent or definitive cases will suffice.

- Discussion of each issue

A dispassionate discussion of the issues and the applicable law is the central purpose of the memorandum. In this section you predict the answers that a court would give if it were faced with your facts, given the pertinent law.

- Conclusion

A summary of your predictions about the state of the law and its application to your case. This is where you expand on the brief answer furnished at the beginning.

- Recommendation

You recommend the best solution to the problem facing the client. What should the client do? What do you propose to do for the client? These are the questions you answer here.

Most memoranda later form the basis for a letter of opinion. The format easily transfers from memo to letter. However, consideration should be given to both the language and the content when addressing the information to a client.

Legal Memorandum

Legal Opinion

Overview

Heading and Introduction

Heading and Introduction

Statement of Legal Issues

Issues

Summary

Brief Answer

Detail

Statement of Facts

Statement of Facts

Survey of Pertinent Statutes

Discussion

Review of Precedents

Discussion of Each Issue

Basis of action

Conclusion

Detailed Conclusion

Recommendation

Recommendation

Using the tools above will improve the comprehension of your ideas just as DSL speeds the expression of your thoughts.

Addenda

Patterns of Persuasion

You may chose to use a specific pattern of organization that suits your purpose.

Persuasive documents are written with the purpose of proving that a conclusion is sound or a recommendation ought to be put into effect. The ancient Greek and Roman style of argument was this:

Introduction

Narration

(plainly stating the facts of the case)

Division

(stating how the argument is organized: what is first, what is second, and so on.)

Confirmation

(presenting the facts that support the speaker's point of view)

Confutation

(examining the facts that do not support the argument)

Conclusion

(weighing the facts, assessing both sides of the argument and stating the conclusions)

Application of a Theory

1. Description of the theory to be applied
2. Presentation of the data
3. Interpretation of the data according to the theory
4. Implications of the interpretation
5. Conclusion

An alternative model is designed for readers who are likely to be unsympathetic to the theory or point of view or to your procedures and findings:

1. Theory to be applied
 - a. describe it
 - b. establish its validity
 - c. defend its use in this case

2. Presentation of the data
3. Interpretation of the data according to the theory
4. Implications of the interpretation
5. Review of alternative theories and their interpretation of the data (optional)
6. Conclusion