



TEN TIPS FOR TRANSITIONING TO LEGAL WRITING

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Before you began law school, you likely had some writing experience. As an undergraduate, you may have written scholarly papers or perhaps even a senior thesis. Or you may have written memos, reports, or other documents in work or internship settings. Whatever your writing experience is, legal writing is a new discipline for most first-year law students. Think of learning legal writing skills as being socialized into the legal discourse community rather than as a small variation on something you have been doing for years. This handout provides ten tips for helping the transition to this new discipline go more smoothly.

1. Understand the Importance of Developing Legal Writing Skills

Before you begin the journey into legal writing, you may wonder why legal writing is so important and thus why ensuring a smooth transition to legal writing is so critical. There are two main answers. First, lawyers write—a lot and often—and thus it is important to gain familiarity with legal writing and confidence with this new discipline. Whether you are an aspiring litigator who will write motions and briefs or a future transactional lawyer who will draft contracts and due diligence memos, your writing throughout your career will apply foundational skills gained during the first few months of your Legal Practice class.

Second, most legal writing skills are transferrable to other disciplines that are important to your growth as a law student and future lawyer. For example, effective legal writing employs sound logic and reasoning, and thus improving the way you present arguments for a legal writing assignment will also translate to how you present arguments in doctrinal subjects. Relatedly, in legal writing, you learn to spot gaps in reasoning, compare favorable authority, and distinguish unfavorable authority; these are all building block techniques used by lawyers throughout their careers. Thus, developing legal writing skills is important to your evolution in becoming a lawyer.

2. Recognize that Legal Writing is a New Discipline

For most first-year law students, the style, tone, and even citation methods of legal writing are new. For many, legal writing can at first be daunting. But like many remedies, the solution to your concerns is likely a balanced one: rely on certain qualities of writing you have previously honed, but be prepared to shed some bad habits and develop better ones.

While *legal* writing may be a new discipline, you have written in the past, and you should rely on basic tenets of good writing as you make the transition to legal writing. For example, whether

¹ Danielle Pineres created this document in 2011. Michael Fazio updated this document in 2017.

you were writing an essay for your undergraduate political science seminar or a long email to your boss detailing your research findings on a particular question, you thought about how to organize your argument. Moreover, you likely thought about large-scale organization, such as the general order of large chunks of the document, and about small-scale organization, such as how you wanted the information to be presented within paragraphs. Both large-scale and small-scale organization are critical components of strong legal writing, but the way we think about organizing a legal document and the rationales for choosing certain structures may be different.

Nonetheless, some aspects of legal writing are likely new, and thus you will need to recognize and correct your deficiencies early on. One area that most novice legal writers struggle with is writing concisely. In the past, you may not have thought much about writing concisely, as you may have felt unconstrained by a word count or page limit. However, during the first year, assignments will have strict word counts, which are intended to mirror length limits imposed by courts, supervisors, and clients in practice. Thus, you will need to hone your skills in selecting what you write and how you write it. Second, many novice legal writers struggle with crafting legal rules. Legal rules are the starting point of a legal analysis.² While a rule can sometimes be easily found within one case, often times the legal writer must create a rule, relying on the facts, holding, and reasoning of multiple cases to synthesize a rule that can subsequently be applied to a new set of facts. For many, this process is new, and some fall into old habits, such as relying too heavily on quoted material that favors your argument but is not directly on point. Thus, it is critical to recognize that legal writing may require learning some new methods.

3. Learn the Structure of Legal Writing Now So You Can Adapt It Later

In any new discipline, you must learn the basics before you feel comfortable being a bit more creative. The same is true for the structure of legal writing. In the beginning, it may seem repetitive to follow a paradigm structure, but remember that writers follow this structure because it facilitates smooth analysis. Moreover, because readers expect most writing to follow a paradigm structure, this structure also facilitates comprehension among readers. Once you learn and master the conventions of legal writing, you will be able to adapt the template to better serve your needs as a more advanced writer. For example, addressing counterarguments and utilizing more complex analogical reasoning are techniques that will be more effectively incorporated if you have already mastered the underlying structure of good legal writing.

4. Read Effective Examples of the Types of Documents You Are Learning to Write

The judicial opinions that constitute most of what you read as a law student are different documents with different audiences than the memos and briefs you will write as a first-year law student. Thus, you should take the time to read a few examples of what constitutes an effective memo or brief in our field. The purpose of this exploration should be to familiarize yourself with the analysis, structure, tone, and format of the documents with which you will be working. Briefs in most federal cases are readily available on Lexis and Westlaw, so try a court of appeals brief by a well-respected practitioner in a recent case. Ask a legal writing professor to see a few of the best objective memos he or she has received. Or peruse your Legal Practice textbook or

² RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY AND STYLE 15 (4th ed., 2001).

other resources for examples of effective legal writing.³ But because each document will have a particular objective, audience, and context, be careful about using any single document as a model. Rather, your review should focus on understanding why the documents are effective.

5. Research and Organize Effectively

In the past, you may have just started an assignment by beginning to write, hoping that you can perform the research and organize the document as you go. However, pre-writing tasks are always necessary for a legal document, and researching and organizing effectively will save you time and effort on the backend. Moreover, researching and organizing are processes that often inform one another; thus you will want to spend sufficient time on these tasks before beginning to write.

When you research, the objective is to digest the material presented in cases and other sources and start thinking about how you would use this material in your assignment. Many writers prefer to brief all the cases they read, which helps them internalize what they are reading. Others opt for using a spreadsheet to organize cases by issue, facts, holding, and reasoning. At the least, you should develop a system for keeping track of your research, as this can give you a sense of what issues may require further research and also prevent you from mistakenly retracing your steps. There are other available research strategies, but it is important that you begin developing a system you feel comfortable with.

After conducting some initial research, you must organize your thoughts. Outlines are the default tool, and you should organize your writing at both the general and specific levels. Many times, your research will inform the way you organize. For example, your research may reveal that three elements must be satisfied, and thus you would organize your thoughts around these three elements. Further, these steps can give you an idea of whether you have completed enough research to begin drafting, or if there are sections of your analysis where your legal authority is thin and would benefit from targeted research. By laying out the framework of your analysis in an outline, the writing process will likely proceed more smoothly.

6. Opt for Plain English Over Legalese

The long-winded sentences that are often indirect, cluttered, and needlessly technical may dominate many cases you read in law school, but the expectations of legal readers have changed. Today, concise and readable legal writing is expected from lawyers, and you should be cautious of emulating the writing style of judges from times past. It is tempting to dress up your writing in legalese like “heretofore” and “aforementioned” because as a writer new to the legal profession you may confuse this archaic jargon with the expected conventions of the current legal community.

However, you will learn to distinguish between words and phrases that are simply jargon and can be re-phrased or omitted, and words and phrases that have a special legal meaning, or are “terms of art.” Moreover, you should use terms of art consistently across a document. The ability to

³ See, e.g., RICHARD K. NEUMANN, JR. & KRISTEN KONRAD TISCIONE, *LEGAL REASONING AND LEGAL WRITING* (7th ed., 2013); ROSS GUBERMAN, *POINT MADE: HOW TO WRITE LIKE THE NATION’S TOP ADVOCATES* (2d ed., 2014).

distinguish between the two will come with time and exposure to legal writing. In general, try to avoid the temptation to write in legalese and instead stick to plain English.

7. Avoid Over-Quoting Sources

As a novice legal writer, you may feel “the law is the law, and you can’t paraphrase the language of the law.”⁴ Novice legal writers often prefer to quote language from an original source, such as a judicial opinion. Of course, it is sometimes best to quote a source, such as when a court’s precise language is important to your analysis. But many times, you can paraphrase the court’s explanation of the facts, reasoning, or holding in a concise way that fits better within your analysis. Or you may be able to synthesize material from various sources into your own words. Thus, look for ways to paraphrase and synthesize to improve your writing’s clarity and conciseness.

8. Expect to Re-write, Not Just Proofread

In the past, after an initial draft, you may have focused on issues like sentence structure, clarity, and the occasional missing word and then submitted the document. However, in legal writing, the revision process often includes not just proofreading, but also re-writing parts of the document. Despite researching and organizing effectively, initial drafts often suffer from logical gaps and deviate slightly from an original outline. Or you may realize through the writing process that there is a better way to organize your arguments. Thus, you should build enough time into your writing process to make substantive revisions to an initial draft before moving on.

9. ...But Don’t Forget to Proofread and Polish

The revision process may involve some re-writing, but you still must devote time to proofreading and polishing your assignment. Most writers do some proofreading and polishing periodically throughout the writing process, but it is still important to review the document after re-writing to improve clarity and cohesion, remedy awkward phrasing, and address other often-neglected areas. Many writers find that reading the document aloud can help slow down your review and make spotting some of these issues easier. Additionally, polishing the document so that it is presentable to your professor, supervisor, or even a judge is critical. Documents that contain proper Bluebook citations, spacing, alignment, and headings garner credibility among readers. Even for first drafts, legal readers expect the document to be proofread and polished, so be sure to set aside time to complete these tasks. For this stage, many writers find a checklist to be useful.

10. Be Prepared to Accept and Incorporate Feedback to Improve Your Writing

You may have received feedback on your writing in the past, but perhaps not to the degree you will receive during the Legal Practice course and throughout your career as an attorney. The Legal Practice course is designed so that you receive substantial feedback on your research and writing skills, so be sure to take advantage of this opportunity. It is always difficult to receive constructive criticism. Some of the feedback may reflect problems you have never had to

⁴ Joseph M. Williams, *On the Maturing of Legal Writers; Two Models of Growth and Development*, 1 LEGAL WRITING 1, 24 (1991).

grapple with, and the legal reader is likely more scrutinizing than casual readers. But like in any other discipline in which you are trying to improve, accepting and incorporating feedback is critical to your growth as a legal writer. Moreover, understanding the deficiency in your writing that prompted particular feedback can help you spot similar issues in the future and become your own editor. Thus, you should have an open mind when receiving feedback about your writing.