

The Legal Writing Companion

Problems, Solutions, and Samples

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*To our families and friends,
from whom we learn new things every day.*

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Introduction

We would like to start by welcoming you. If you are reading this, you are probably a first-year law student, a new legal writer, or both. The first year of law school is daunting for many, with hundred-page weekly reading assignments, massive tomes on legal subjects, and a sense of wanting to make sure you are “doing it right” ... whatever “it” is. Many new legal writers feel like a stranger in a strange land as they begin to read and speak the language of the law, and discover that their past approaches to research and writing are insufficient or too different to be useful in this new context. You may also find that what you thought were strengths are now weaknesses and vice versa. You are not alone; almost every new legal writer experiences something like this—even the authors who came to law school with strong writing credentials discovered they had a lot to learn to become skilled legal writers.

You may imagine yourself at the start of a long road, and indeed you are—at the start of the road through your 1L year, which is the first leg of the journey through law school. You are not, however, at the start of a road through your legal writing course. Instead, you’ve been dropped somewhere in the middle of the journey, or off the road a bit, with writing experience and habits both good and bad both helping you and interfering with your ability to get on your way.

So, why add this book to the pile of resources you’ll use as you navigate these journeys? We titled this book rather deliberately: we want this book to be a companion as you learn and develop your legal writing skills. Consider this book to be your buddy, your traveling partner, your go-to resource. It is designed to supplement the lectures and exercises, assigned readings, and writing assignments you will encounter in your legal writing course. We have long thought that the ideal way to learn legal writing would be through one-on-one instruction, a model that no law school has the time and money to provide. Your legal writing professor will provide as much individual feedback as she can over the course of the year; this book is designed to fill in some gaps and act as a hands-on resource for those times when you are struggling on your own. We hope that it not only helps you troubleshoot your way through the first year, but also helps you develop the self-awareness and self-sufficiency

to move forward confidently in your later law school writing experiences. We also hope this book can serve as a touchstone for the basics of legal writing as you work through your first years of legal practice. Indeed, we see this book as a resource to help you throughout your legal writing career.

Most first-year students have a light bulb moment when legal writing finally clicks for them. “I barely wrote any papers in college so I had no confidence in my writing skills until I got feedback on my first paper,” said one science major. “I didn’t know how much background my audience would need so I spent 8 pages of my 10-page paper on introductory materials,” said a novice legal writer. Another goal of this book is to help you get to your light bulb moment sooner by diagnosing the source of your confusion and to help you understand how to move forward to the next step.

The legal writing process involves making choices—ideally, effective choices that enhance your final work product. Many of the concepts and skills you will learn and practice during your first-year legal writing course are intended to help you understand how to make good choices that will effectively communicate legal analysis to a legal reader. Sometimes new legal writers feel like they are being forced to follow a formula at the cost of creative thinking and writing. Other writers may disagree with some concepts or approaches taught in class. It is typical and acceptable to have these feelings. Instead of focusing on the negative, try to embrace the new ideas and approaches as proven techniques for communicating legal analysis. Once you understand the basics and begin to master them, you will earn the right to make your own choices and to feel good about the choices you make. These choices will be informed by what you have learned in your legal writing course, and you can feel comfortable taking ownership of future writing projects.

Legal writing also involves proper citation of authorities. There are two primary resources that define and explain the rules of legal citation: the *ALWD Guide to Legal Citation* (5th edition) and the *Bluebook* (19th edition). We recommend the *ALWD Guide* for new legal writers because it is user-friendly, written with students in mind, and filled with sample citations and detailed descriptions of how to implement the rules in practice-based and academic documents. Even better, the rules in the current edition of the *ALWD Guide* will produce the same citation form as the *Bluebook* rules. Thus, even if your supervisor requires *Bluebook*-compliant citation, you can use the *ALWD Guide* to get there.

Of course we understand that your immediate goal is to get a good grade in your legal writing course and we support that. But we want more for you. We want you to become a strong legal researcher and writer in preparation for your transition to practice. Once you leave the classroom, you need the con-

confidence and competence to make effective choices on your own; this book is designed to take you there.

How to Use This Book

Your legal writing course and textbooks will provide you with the basics of legal writing. This book attempts to go beyond these basics: It focuses on providing more detailed support for the common struggles and obstacles that new legal writers experience. With a focus on the practice-based legal writing assignments you will encounter in your first year (in contrast to scholarly research projects you may work on as an upper-level student), the book walks you through the research and writing process, identifies common weaknesses and areas of struggle for new legal writers, and gives you specific, concrete guidance on how to avoid those pitfalls.

With this troubleshooting approach in mind, we have organized each chapter of this book around a specific issue typically encountered by new legal writers. Many of the issues are multi-faceted and we have included internal cross-referencing to show how aspects of legal writing overlap and interact with each other. We encourage you to check the cross-references to give yourself the greatest opportunity to benefit from the tools in the book. Also keep in mind that you might find it helpful to skim through various chapters to help figure out where to turn for help, rather than sitting down to read cover-to-cover.

The book is organized around the following potential problem areas for new legal writers:

- I Haven't Begun Yet and I Already Feel Lost
- I'm Having Trouble Managing My Research Process
- I'm Having Trouble Transitioning from Prewriting to Writing
- I'm Having Trouble Organizing My Analysis
- I'm Having Trouble Writing and Explaining Legal Rules
- I'm Having Trouble with Application and Analysis
- I'm Having Trouble with the Smaller Components of Legal Writing
- I'm Having Trouble Polishing My Writing

Legal Writing Samples

In order to better explain some of these problems and solutions, throughout the book we use legal writing samples to give you concrete illustrations of how to execute our guidance. You will notice that we use isolated samples

(without surrounding context) to focus on specific problems and solutions; to the extent you have questions about the surrounding context, consult the two annotated complete memos in Appendix A to give you a sense of how a specific sample would fit in the complete memo.

Although we heavily rely on samples throughout the book, we want to offer a few words of caution about writing samples and explain how we use them here. Most first-year students—probably including you—clamor for samples of good legal writing. This is totally understandable—it’s hard to talk about writing in the abstract, and it can be very beneficial to see principles of good writing in action. However, samples can be easily misunderstood, especially by students in their early days as legal writers. This is because so much of what constitutes “good” legal writing depends on the nature and complexity of the legal issue at hand, things that may not be appreciated by the new legal writer. We have seen a student go so far as to mimic a sample legal memo as literally as possible, from the number of paragraphs in the Statement of Facts to the number of cases cited in the Discussion section.

This is not a strategy for success, and these types of misunderstandings can cause long-term frustration and confusion; we hope to help you avoid these misunderstandings by explaining what we view to be effective use of writing samples. First, writing samples must include detailed discussions of both strong and weak writing. We have our doubts about the utility of samples read in a vacuum, but annotated, carefully-parsed samples of things that work and things that do not can be useful tools. Second, remember the purpose of writing samples: to get to the “why” of what makes them good, not to follow them as a blueprint of the “right” way to do things. As this book will make clear, there are many “right” ways to do things, and even those are very context-driven. Where there are multiple viable approaches, we will identify and explain them to give you the ability to make a fully-informed **choice** or to identify something to discuss with your supervisor. Distinguishing between rules and conventions on the one hand, and personal audience preferences on the other, is an important skill that you will develop across many facets of your law school experience.

Finally, any samples your professor gives you trump the samples included in this book; your professor might have a preference different than what we have covered here. And to the extent you have questions about the samples from your professor, do not hesitate to ask questions about them, too!

Carlile Case File

In this book, we use samples involving a fictional landlord/tenant case regarding a potential constructive eviction to illustrate the problems and solutions. To get the most out of these samples, we recommend that you carefully read the case file materials (located in the shaded pages immediately following this introduction) and revisit those materials throughout your use of this book. At times, we also refer to relevant legal authority that relates to the sample problem; at times, you may want to read through these research materials to get the most out of the samples. The samples used in the book assume a familiarity with these materials and the strengths and weaknesses discussed in the text will make more sense to you with this familiarity. We want you to put yourself in the shoes of the fictional legal writer working on this writing project so that you can read and think critically about the approaches and samples included in the book. Our intent is that you will translate what you learn from this fictional situation to your own writing. You will see samples both large and small contained throughout the book; two fully annotated samples of a complete memo based on this scenario can be found in Appendix A, and an annotated comparison of the two memos is in Appendix B.

Case File: Carlile

To: Associate
From: Nicole Vogel, Partner
Date: September 17, 2013
Subject: Dominic Carlile

We have a new client, Dominic Carlile. Dominic recently moved out of an apartment and his landlord has sued him. Dominic is hoping that he can avoid paying additional rent by asserting a constructive eviction defense, specifically that there was an interference with his quiet enjoyment of the apartment. My notes from this morning's meeting with Dominic are attached.

Your task is to determine whether there was an interference with Dominic's quiet enjoyment and whether the landlord was responsible if there was an interference. I had a chance to look briefly at the law—there seem to be some relevant statutes in Chapter 186 of Mass. Gen. Laws.

I have several associates working on various parts of this case, including investigating other defenses and the applicability of other statutes. Please focus only on your specific assignment to avoid duplicating work and to help me prepare to meet with Dominic. I have a meeting scheduled with Dominic on Oct. 1, 2013. I need your Informal Memo by 9:00 am on Sept. 30, 2013. Please limit your memo to 1200 words.

Here are the notes from my meeting with Dominic Carlile

Carlile may have a defense of constructive eviction against his former landlord. The first step is determining whether there was interference with Carlile's quiet enjoyment and whether the landlord was responsible.

- Carlile was recently sued by former landlord, Melanie Hairston
 - Suit filed 8/15/13
 - Sought rent for month of August and injunction compelling Carlile to pay remaining months on lease
- Carlile entered lease with Hairston, tenancy began 2/1/13, 12-month lease agreement
- Hairston owns small apartment complex in Worcester, MA
 - All units surround small inner courtyard, green lawn lined with flowers, some small trees for shade and benches for residents to sit
- Carlile rented an efficiency with a window facing the courtyard
- Carlile is an artist; makes money selling watercolor paintings
 - Courtyard was dealmaker for him in choosing this apartment because he could paint outdoors; thought peaceful setting would improve productivity
 - He did not mention this to Hairston at the time or when he signed the lease
 - Hairston did not even know Carlile is an artist
- After moving in, he painted indoors for several months
 - As weather improved, he moved his work outside to paint outdoors exclusively

- Quickly adapted to working outdoors; painting indoors seemed unbearable
- Another tenant, Luke Konrad, lived in building for several years; rents a large two-bedroom apartment
- 6/21/13—While painting in the courtyard, Carlile was distracted by noise coming from Konrad’s apartment
 - Konrad recently developed an interest in the trumpet; had some friends over for an impromptu brass section music session
 - Carlile couldn’t finish the painting he was working on in the courtyard; he ended up with one-half of a painting instead of the three or four he planned to complete
 - Carlile figured it was one jam session; no big deal, he would catch up on his painting over the weekend
- 6/26/13—Another small practice session interrupted Carlile’s painting
 - Annoying because there was an art fair that coming weekend; Carlile was worried he wouldn’t have as many pieces ready to sell
 - He did not say anything to Konrad about the noise
 - He had never talked to Konrad; thought two times were not enough to raise the issue with Konrad
- 6/27/13—Carlile heard “trumpet noise” while he was painting in the courtyard; screeching sounds from trumpet disturbed Carlile so much he had to stop working again
- 6/28/13—Carlile again was unable to paint in the courtyard because of Konrad’s trumpet practice
 - He was so frustrated he decided to skip the weekend art fair
- 6/29/13—Carlile knocked on Konrad’s door several times, hoping to discuss the noise problem
 - Konrad never answered
 - Carlile left a note under the door asking Konrad to practice somewhere else
- 6/30/13—Carlile paid his rent in person to Hairston
 - While in Hairston’s office, Carlile mentioned the trumpet noise and note
 - Hairston said she hoped Konrad would read the note
 - Carlile told Hairston that he could not hear the trumpet sound when he was inside his apartment with the window shut, but that he preferred to paint outside of his small apartment
- 7/1/13—Carlile heard Konrad practicing again

- Carlile tried to talk to Konrad, but again Konrad did not answer the door
- Carlile went back later thinking Konrad did not hear him over the trumpet blasts when he knocked earlier; Konrad again did not answer
- Carlile called Hairston to complain
 - Hairston said that she had no idea Carlile wanted to use the courtyard to paint; the courtyard was for use by residents as a space to get outdoors
 - She suggested Carlile try a nearby public park or his apartment for painting; or wear headphones or earplugs while painting in the courtyard
 - She also suggested Carlile just wait it out because Konrad was known to go through phases and would probably grow out of trumpeting
 - She noted that he recently had been interested in shadow puppets and that interest had run its course in just a few months
- Konrad practiced during the day the rest of the week
- Carlile completed only one painting that week but he doesn't think he will be able to sell that painting; his style has been strained by the trumpet noise
- Carlile said he has lost all inspiration; he used to sell excellent floral and pastoral scenes, inspired by the courtyard
 - Forced to listen to Konrad's trumpeting, all Carlile can think of while painting is a wounded elephant
- 7/6/13—Carlile moved out, taking his belongings; moved into his parents' home where he has been productively painting since
 - He did not pay any further rent or utilities

Lease Agreement Excerpts:

§14. Common Areas

A. Common Areas are defined as building lobby, fitness room, laundry room, and courtyard.

... All tenants have full access to and enjoyment of the common areas....

§23. Community Living

...

C. Lessee shall not disturb the enjoyment of other tenants.... Lessee shall abide Lessor's instructions to abate any action found to be detrimental to the interests of the Lessor or any tenant.