

THE 1L GUIDE TO LEGAL WRITING

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TO
LEGAL
WRITING

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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Names: Pinder, Kamina, author.

Title: The 1L guide to legal writing / Kamina Pinder.

Description: Durham, North Carolina : Carolina Academic Press, 2024. | Includes bibliographical references and index.

Identifiers: LCCN 2024006493 |

ISBN 9781531020545 (paperback) |

ISBN 9781531020552 (ebook)

Subjects: LCSH: Legal composition. |

Law—United States—Language.

Classification: LCC KF250 .P56 2024 |

DDC 808.06/634—dc23/eng/20240214

LC record available at <https://lccn.loc.gov/2024006493>

CAROLINA ACADEMIC PRESS

700 Kent Street

Durham, North Carolina 27701

(919) 489-7486

www.cap-press.com

PRINTED IN THE UNITED STATES OF AMERICA

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Acknowledgments

This book is dedicated to my parents, Frank and Lover Henderson; my daughter, Spencer Jack; and my sister, Karen Mitchell.

Special thank you for the invaluable contributions and edits of my research assistants: Charli Davis, Mackenzie Ward, Suresh Boodram, Nora Maloney, Beth Petras, and Isabella Ryan.

And I am grateful for the support and general feedback of my legal writing colleagues at Emory University School of Law, and of students Constance Couch, Lexie Carmon, Laney Foeller, Robert Schmidt, Audrey Smith-Roetto, and Michelle Podolny.

And finally, I thank Ally Templin and Hilarie Gaylin for their inspiration and encouragement, respectively.

Preface

Why I Wrote This Book

Dear 1L,

I am beginning this book with a confession. I always swore I would not write a book on legal writing. There are plenty of legal writing books out there, and I was not sure I had anything new to add on the topic. Then I realized that my students rarely did much reading of any writing book I assigned to the class. I did not reference the books very frequently, and to the extent I did it was frequently to make distinctions. I recognize that the casebook readings for doctrinal courses are already overwhelming (I also teach Contracts, so I know firsthand how much reading you have), and that if there is reading that 1L students are going to give short shrift, it will be the reading for the legal writing class. Also, the workload of legal writing classes typically outweighs the number of credits the students earn for the class. Accordingly, I wrote this book to provide students a no-frills, straightforward reference for legal writing concepts.

I tell my students that teaching legal writing is a lot like teaching someone to drive. I can talk about driving until I am blue in the face: telling you where to put your hands on the wheel, how to adjust your mirrors, and what to do with the gas pedal, gears, brakes, traffic rules, etcetera; but most of your learning will occur when you actually do it yourself. Similarly, most of your learning about legal writing will come from actually applying what your professor teaches you, and then

through your individual conferences with your professor and your ongoing editorial process. This book puts that learning in a framework by providing guidance followed by clear examples.

The book is organized in three parts. The first two parts parallel the typical structure of a 1L legal writing program. Part I addresses the predictive memorandum of the first semester, and Part II illustrates how to write persuasively through the common second-semester paradigm of the appellate brief. Part III includes a number of resources and examples that are meant to complement the reading and assist you in writing that extends beyond your classroom assignments.

For the sake of simplicity and consistency, all the examples in this book stem from the same fact pattern. This fact pattern, which follows this preface, is a promissory estoppel (think Contracts) issue about a law student to whom a law firm promised future employment and later reneged.

What This Book Is Not

This book will not teach you how to research, cite, or select cases that you will use in legal documents. Your legal writing professor, law librarian, or someone else will teach you that. I promised you the basics, and that would go beyond the basics. I recognize that even if your attention span were unlimited, I am competing for your time and attention with reading from doctrinal casebooks, and perhaps even another legal writing book.

Most important, this is not a substitute for what you learn in your legal writing class. Of course, there is always some subjectivity involved in how professors approach legal writing, so to the extent that what you read differs from what your professor teaches you, by all means adopt the approach of the person who will grade your assignment.

Although it has been quite a long time, my memories of the feelings of excitement and anxiety of the first year of law school remain vivid. I hope that this book serves as a valuable resource as you take this auspicious journey.

Sincerely,
Professor Pinder

The Fact Pattern

The following is a brief summary of the fact pattern on which all examples in this book are based. Law student writers Charli Davis and Mackenzie Ward drafted the memorandum and appellate briefs; their writing focused on the reliance and detriment elements of promissory estoppel.

A New Jersey top-ranked law firm hired a first-year law student for its summer program. The student provided very impressive work over the summer; consequently, even though it was the midst of an economic recession, the firm offered him a job after he graduated conditioned on his continued strong performance in law school.

Comfortable in the knowledge that he had a job awaiting him after graduation, the law student relaxed his academic performance in law school, though he did remain on the Dean's List. The student continued to work for the law firm his second summer and during his third year—forgoing interviewing at other law firms, externship opportunities, and a potential spot on the executive board of the law school's main law journal.

When the economy did not recover, the firm notified the student during his third year of law school that it would not hire him after graduation. The student obtained a job as an associate with a solo practitioner in Delaware at approximately twenty-five percent of the starting salary that the law firm would have paid.

