

Legal Writing Made Simple

Legal Writing Made Simple

A Step-by-Step Approach

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Introduction and How to Use This Book

Let's begin with an admission: despite the title of this book, legal writing is not simple. It is difficult. And, it is difficult for innumerable reasons, just a couple of which are worth mentioning here.

The first reason legal writing is difficult is because all law students have written in some form or another since they turned probably about five years old. Given this reality, all law students know how to write at least in the very basic sense of the word (and have known how to do so for quite some time). Moreover, many—top college graduates, English or journalism majors, prior novelists—excel in at least one form of writing. Yet, despite any past experience or success as a writer, no first-year law student comes into law school as a strong *legal writer*. This is because legal writing requires not only good writing (good grammar, good sentence structure, and good style) but also good legal analysis. How to conduct legal analysis is a new skill. Good legal analysis requires an understanding of what the law is, how the law works, and how the law is communicated by lawyers. Learning the law (and, specifically, learning how to write using it) is a bit like learning a foreign language. Mastery—especially mastery of writing in a new language—takes time, patience, and practice. Law students—especially those who have excelled in other areas of writing—struggle to appreciate the reality that legal writing is much like writing in a new language. Learning to write like a lawyer requires time, patience, and—most importantly—lots of practice in order to become an expert in it.

The second reason legal writing is difficult (and confusing) for students is because legal writing is more like math with words than like quintessential excellent writing, such as poetry. Often students with backgrounds in science or engineering—which are not normally thought of as synonymous with strong writing—excel in legal writing. This is because scientists and engineers are familiar with carefully plotting out the steps they took to reach their result in a logical and methodical fashion. Scientists and engineers are used to formulas and formulaic writing. In legal writing, to conduct sound

legal analysis, you also must “show your work”—that is, show the reader step by step how you derived your conclusion from applying the law to the facts of your case. The way you “show your work” in legal writing is formulaic like scientific writing. Courts reach and write decisions in a methodical way and pursuant to an accepted formula, and lawyers must do the same. This can be frustrating to students (especially to students who have their own “style” of writing that has suited them well in the past). As a beginning legal writer, you must set your style aside and first master the math-like content required for excellent legal analysis (and, thus, excellent legal writing).

Given the reality that legal writing is difficult for most new law students, this book aims to demystify the legal writing process by providing concrete formulas—both “macro” formulas and “micro” formulas—for mastering the content required for objective and persuasive legal analysis. The “macro” formula we start with in this book is CRAC, which stands for Conclusion (“C”), Rule (“R”), Analysis (“A”), and Conclusion (“C”). Within this macro formula, we use “micro” formulas to help you draft the different parts of CRAC. This book also breaks down different parts of legal work product, such as the introduction to a motion or the question presented of an objective memo, into smaller components so that you can see how they are constructed. Put simply, at each juncture of your legal writing journey, this book will give you a roadmap to follow (and a step-by-step list of directions). Our goal is that you will never find yourself lost—that is, facing an entirely blank page without directions as to how to start filling it.

Remember those paint-by-numbers kits you received as a gift for your eighth birthday? A bigger picture was broken up into numerous small parts, each with a number indicating which color you were to paint it. Going number by number, following the directions, even the most inexperienced artist could create a beautiful and complex picture. Those paint-by-numbers kits were the inspiration for our method of teaching first-year legal writing and for this book. After working with law students from unique backgrounds, of all different ages, with varied educational experiences, and with diverse core writing abilities, we have learned that the best way to teach beginning legal writing to a diverse set of students is to employ a step-by-step or paint-by-number approach. First, break down the “picture” into small, bite-sized parts. Then, like assigning colors to the numbers in a paint-by-numbers kit, provide formulas and explicit instructions to law students to help them populate their legal product (the picture) with the necessary content (the color). The result is the same: just like the novice artist colored in the small parts in the painting-by-numbers kit to generate a beautiful and complex picture, beginning law students can put the small pieces of legal analysis (CRAC) together to create larger and excellent pieces of legal writing.

Also, just like those paint-by-number kits do not confuse the novice artist with a bunch of choices but instead tell the novice artist that “anything with a number eight should be painted blue,” this book aims to not confuse novice law students with a bunch of choices. We have found that, in teaching beginning legal writing, giving a lot

of choices to novice legal writers can paralyze them from putting pen to paper (or fingers to keyboard) and writing. If we say, “Here are nine ways to write a case illustration,” students think, “I literally just learned what a case illustration is. I have never written a case illustration before. How do I know which of the nine ways I should use to illustrate my case?”

So, in this book, instead of giving you multiple choices for how to—for example—write a rule statement, we show you one way to write a rule statement that works. We then give you an example of that same rule statement in the context of objective writing and persuasive writing (and, in persuasive writing, how the same rule could be written by both sides). In this way, you will not be paralyzed by choices, but, instead, you will be equipped, from the outset, to write your own rule statements by following the instructions, the formulas, and the examples provided.

That said, just like an experienced artist would scoff at a paint-by-numbers kit, an experienced legal writer may scoff at the lack of choices in this book and its strict formulaic approach. But you must learn to crawl before you can walk. You must learn to walk before you can run. Once you master the basics taught in this book, you will have the confidence and skills to take your legal writing to an advanced level and to stray from the strict formulaic approach in this book. That is, once you have learned to talk, you can then learn to make your legal writing sing.

This book is organized into seven parts that can be categorized into three groups. Part One is the longest part of the book. It provides you with an overview of foundational, basic skills that apply to both objective and persuasive writing. Part One discusses (i) the overview of the federal and state legal systems; (ii) the hierarchy of authority; (iii) introductory legal research; (iv) how to read the law; and (v) basic grammar rules. Part One also introduces you to formulaic writing (and its backbone, CRAC—Conclusion, Rule, Analysis, and Conclusion) and why it is important.

Parts Two and Three explicitly address how to draft key legal documents. Part Two dives into objective writing and discusses, in detail, two of the more popular vehicles for objective writing: the formal objective memorandum and the e-mail memorandum. Part and parcel to its discussion of how to draft a formal objective memo, Part Two explains how to use the CRAC formula in the context of objective writing. Part Three discusses persuasive writing and, specifically, persuasive writing to the audience of a trial court via a motion or opposition to a motion. Part Three teaches you to apply the drafting techniques you learned in objective writing and make those techniques persuasive. Part Three builds upon the CRAC formula used in objective writing and shows you how to use it in the context of persuasive writing.

Parts Four through Six expand on the core skills discussed in Parts Two and Three. Part Four, which applies equally to objective writing and persuasive writing, discusses how you edit and polish your written work product (the work product that you so tirelessly drafted according to Part Two or Part Three). Part Five discusses how to take your written work and convert it into an oral presentation, specifically how to convert

a motion or opposition into an oral argument. Part Six discusses how the skills at the center of legal writing—Parts One through Four—translate to success on bar-style law-school essay exams, on actual bar essay questions, and on the bar’s Performance Tasks.

The last part—Part Seven—is the appendix, which consists of sample objective and persuasive written documents. What makes the appendix unique is that it includes, among other documents, an objective memo, a persuasive motion for summary judgment, and a persuasive opposition to the motion for summary judgment—all of which are written from the same problem and set of facts (although the facts are more developed for the motion and opposition than the memo because those would have been written well after the memo in the life cycle of the case). You will be able to use these documents as examples of not only objective legal writing and persuasive legal writing but also of how each compare to one another. For example, you will be able to see how an objective rule statement for an element compares side by side with a persuasive rule statement for the same element. In addition, you will be able to see how a persuasive rule statement for the same element compares when written by two different sides (the plaintiff and the defendant). The appendix also includes the underlying assigning memo for the objective memo and the factual record for the motion and opposition. You will see how the facts were taken from the assigning memo and transformed into a statement of facts for the objective memo. You will also see how the more complete factual record was transformed into statements of facts that tell two sides of the same story in the motion and the opposition.

Learning how to write—specifically how to write like a lawyer—will be critical to your success both in law school and in your practice as a lawyer. Legal writing is a different kind of writing than any type of writing you have ever done. So buckle up, get comfortable, and get ready to take off into the strange and new world of legal writing!

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