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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Names: Kuney, George W., author. | Looper, Donna C., author.
Title: Mastering legal analysis and drafting / George W. Kuney,
Donna C. Looper.
Description: Second edition. | Durham, North Carolina : Carolina
Academic Press, 2024. | Series: Mastering series | Includes
bibliographical references and index.
Identifiers: LCCN 2023050341 | ISBN 9781531029197 (paperback) |
ISBN 9781531029203 (ebook)
Subjects: LCSH: Legal composition. | Law—United States—Language.
| Legal research—United States. | Law—United
States—Methodology.
Classification: LCC KF250 . K86 2024 | DDC 808/.06634—dc22
LC record available at <https://lcn.loc.gov/2023050341>

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

To Carolyn

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SERIES EDITOR'S FOREWORD

The Carolina Academic Press Mastering Series is designed to provide you with a tool that will enable you to easily and efficiently “master” the substance and content of law school courses. Throughout the series, the focus is on quality writing that makes legal concepts understandable. As a result, the series is designed to be easy to read and is not unduly cluttered with footnotes or cites to secondary sources.

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ACKNOWLEDGMENTS

This book would not have been possible without substantial contributions of time and effort on the part of the members of the firms and courts that we have worked for across the country. Any list of those to whom we are indebted for teaching us about legal analysis and drafting is necessarily incomplete. That said, the following individuals have contributed materially to our understanding of legal drafting and our attempts to teach that skill to law students and lawyers: Margreth Barrett, Barbara J. Cox, Peter J. Gurfein, Thomas R. Haggard, the Hon. Fredrick J. R. Heebe, Joan Heminway, Adam A. Lewis, Mark and Mary Jendrek, Robert M. Lloyd, the Hon. Alex C. McDonald, the Hon. James A. McIntyre, Carol McCrehan Parker, Stacie L. Odeneal, Nancy B. Rapoport, Tina Stark, Mary Ann Darr Wegman, and our students at Hastings College of the Law, California Western School of Law, and the University of Tennessee College of Law who have helped us to better understand what should be done to begin to master legal analysis and drafting.

The works of other authors have also influenced our views and must be acknowledged. These include: M. Douglass Bellis, *Statutory Structure and Legislative Drafting Conventions: A Primer for Judges* (Federal Judicial Center, 2008); Richard K. Neuman, Jr., Sheila Simon, *LEGAL WRITING* (Aspen Publishers, 2008); David T. Ritchie, *MASTERING LEGAL ANALYSIS AND COMMUNICATION* (Carolina Academic Press, 2008); Helene S. Shapo, Marilyn R. Walter, Elizabeth Fajans, *WRITING AND ANALYSIS IN THE LAW* (Foundation Press, 5th ed. 2008); Bret Rappaport, *A Shot Across the Bow: How to Write an Effective Demand Letter*, 5 *JOURNAL OF THE ASSOCIATION OF LEGAL WRITING DIRECTORS*, 32 (2008); Charlotte Norris, *TEXAS LEGISLATIVE COUNCIL DRAFTING MANUAL* (2008); Thomas R. Haggard, George W. Kuney, *LEGAL DRAFTING IN A NUTSHELL* (Thomson/West, 2d ed. 2007); *THE BLUEBOOK, A UNIFORM SYSTEM OF CITATION* (The Harvard Law Review Association); George W. Kuney, *THE ELEMENTS OF CONTRACT DRAFTING* (Thompson/West 2d ed. 2006); Richard C. Wydick, *PLAIN*

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INTRODUCTION

Legal drafting is different from other forms of writing. It is purposeful writing meant to inform, persuade, and memorialize events and legal analysis. Good legal drafting is marked by precision, exactitude, lack of ambiguity, and an absence of unnecessary vagueness. Many of the legal drafting books on the market are especially suited for those that have already mastered the basic skills of legal drafting and, especially, for those that seek to instruct others in that field. This book does not seek to replicate what those books and their authors have already accomplished. Rather, it is meant as a first tier, comprehensive book on legal drafting and analysis in a variety of contexts. As a result, we seek to emphasize the fundamental structures and methods of legal writing, which are grounded in a surprisingly few, elemental rules and techniques of legal analysis and presentation.

This book is unabashedly a *how-to* book. It is designed to help the beginning or intermediate legal drafter identify those elemental rules and techniques and show how they are used to prepare effective legal writing in different formats, which share common elements and structures. The goal is to provide a system for producing quality work product of the type most commonly encountered in private practice and public service in the United States today. The focus is largely structural, as the structure of legal analysis drives the form and substance of all legal work product.

It is important for the legal drafter to lay aside habits that have been successful in other arenas, primarily the habit of jumping to conclusions. In law and legal drafting you need to *slow down and show your work*. Each step in the analysis should be explicitly stated, and no assumption beyond a common understanding of American English usage and style should be presumed. Law students frequently run up against this requirement of explicitly balanced reasoning when they receive the negative comment “conclusory” on their work product. This same sentiment, when expressed by a court, comes in the form of “motion denied—counsel has failed to make her case,” and when expressed by a reviewing court as “the decision below is vacated and remanded for proceedings consistent with this opinion.”

All legal analysis and writing should be concerned with explicitly identifying every link in a chain of reasoning. As was the case with long division in grade school, even if you get the right answer, you are not awarded points if you do not show your work. A court's legal opinion in support of a ruling is an obvious example. In well-reasoned and well written opinions, the court lays out the facts, lays out the applicable law as urged by the parties in their motions and briefs, and then applies that law to the facts at issue to reach a conclusion. The opinion, if it is well written, captures the whole chain of reasoning and allows an appellate court to examine each link on appeal to determine if the decision is sound.

Similarly, a research memorandum sets out the applicable law both favorable and unfavorable to the client's position then applies that law to the facts at issue to reach a prediction of the likely outcome. The well written memorandum should capture the whole chain of reasoning and show that the drafter's prediction is sound and well supported.

With motions and briefs, the goal is to persuade the court to rule a certain way and, ideally, adopt the lawyer's reasoning in the court's opinion. The audience is the court, which will examine the motion or brief and the chain of reasoning it contains to determine if it is sound. Letters to clients or opposing counsel or to an agency are no different. They seek to inform and persuade by providing a chain of reasoning to support their request, demand, or conclusion. For each, the audience expects to be able to examine the chain of reasoning.

The book begins with a discussion of legal analysis, followed by a chapter on legal drafting in general, and a chapter on citation form. These are followed by chapters on specific forms of legal drafting: letters, research memoranda, motions and supporting documents, appellate briefs, contracts and instruments, and legislation. It closes with some final thoughts on writing for the record—which is what legal analysis and drafting is all about.

The book is intended for reading and reference and is also suited for a law school legal drafting class if supplemented by appropriate problems and other assignments. The authors are happy to share past experience and discuss assignments with instructors using the book for such as class. You can contact them via email at gkuney@utk.edu.

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