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presents

Public Law 101 Conference

Writing Workshop

Tuesday, November 14, 2023
1:00 p.m. – 2:15 p.m.

Speaker:

Suzanne Reuben, Legal Research and Writing Instructor
UC Davis School of Law

Conference Reference Materials

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Suzanne Reuben Bio

Suzanne Reuben is a full-time faculty member at the University of California, Davis, School of Law. She teaches the first-year legal research and writing course. Ms. Reuben previously served as an adjunct at Western State College of Law, teaching 1L legal research and writing and upper-level sales law courses. She also served as an adjunct professor online with Mitchell Hamline School of Law, teaching legal research and writing. Prior to starting a career in academia, Ms. Reuben practiced civil litigation in Southern California for over a decade, focusing on business law and insurance coverage. She earned her J.D. from the University of California, Los Angeles, School of Law in 2006.

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Mastering Legal Writing: A guide for newly admitted attorneys

Speaker: Suzanne Reuben

Date: November 14, 2023

Agenda

- I. Importance of Legal Writing
- II. Legal Writing Fundamentals
- III. Editing, Grammar, and Language
- IV. Ethical Considerations
- V. Legal Writing Pitfalls
- VI. Conclusion and Q&A

Importance and Role of Legal Writing

Legal writing is at the heart of what lawyers do. Many lawyers spend far more time writing than orally advocating. Our initial analysis is usually written. We draft a variety of documents, including internal memos; emails/letters to clients and opposing counsel; and motions/briefs to the court. We even draft notes and outlines to help us prepare for oral arguments and depositions. Often, your written analysis will be a judge's first exposure to your argument, and depending on the court's local rules, it may be the only thing a judge considers before issuing a ruling. Thus, it is extremely important for a lawyer to be able to write clearly, concisely, and effectively.

Legal Writing Fundamentals

Objective vs. Persuasive analysis

- Objective analysis
 - Never underestimate the importance of starting with an objective analysis
 - Helps to organize your arguments
 - Helps to highlight strengths and weaknesses of case
- Persuasive analysis
 - Language choices matter
 - Organization of analysis is very important

Legal Writing Fundamentals

Organization and Structure of Legal Documents

- The organization and structure may vary depending on the type of document you are drafting. For example, a demurrer has different requirements than a motion for summary judgment. Different courts will also have different requirements regarding what information particular motions must contain.
- However, the structure and organization of your legal analysis will typically be consistent from one type of a document to another.

Legal Writing Fundamentals

IRAC vs. CREAC

IRAC

I – Issue

R – Rule

A – Application

C – Conclusion

CREAC

C – Conclusion

R – Rule

E – Explanation

A – Application

C – Conclusion

Legal Writing Fundamentals

CREAC

C – State your overall conclusion

R – State the rule(s) a court must follow

E – Explain how courts have applied the rule in past cases. Use precedent cases with similar facts patterns to help explain how courts have applied rules in the past

A – Analyze how the court will apply the rule in your case, using rule-based and analogical reasoning

C – State your overall conclusion again

Question: How might CREAC differ if writing objectively versus persuasively?

Legal Writing Fundamentals

Objective vs. Persuasive example

- Objective rule statement:
 - “A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding.” Cal. Civ. Proc. Code § 437c(a)(1).
- Persuasive rule statement:
 - A court must grant a motion for summary judgment if there are no triable issues of material fact, and “the moving party is entitled to judgment as a matter of law.” *Aguilar v. Atlantic Richfield Co.*, 25 Cal. 4th 826, 843 (2001).

Legal Writing Fundamentals

Tips Regarding Organization and Structure of Legal Documents

- Put strongest arguments first
- Focus on your argument, not your opponent's
- Carefully draft headings – think of headings as part of your argument
- Outline before writing
- If the analysis has multiple sub-sections, start with a roadmap (i.e., a paragraph or two explaining how the multiple parts of the analysis fit together)
- Remember the first sentence of a paragraph should state the point that paragraph will prove
- Carefully draft the introduction

Legal Writing Fundamentals

Writing for your audience

- While most lawyers/judges expect legal arguments to follow a certain basic structure (i.e., IRAC or something similar) there is no “one-size-fits-all” approach to writing
- Tailor your writing to the specific reader
- Research your judge
- Ask your supervisor if they have a preferred format or style
- Follow preferred customs within your area of law or jurisdiction
- Remember lawyers and judges are busy and want you to get to the point

Editing, Grammar, and Language

The importance of editing, revising, and proofreading

- If your writing contains grammar, spelling, formatting, or citation errors, the reader may question whether your analysis is also faulty
- If your document looks professional, it will leave a good first impression. Therefore, consistency in formatting and style is important.
- It's easy to get completely wrapped up in your argument. Thus, it's always a good idea to consider whether revisions should be made to the analysis.

Editing, Grammar, and Language

Proofreading for grammar, formatting, punctuation and citation errors

- Take a break and come back to it with fresh eyes
- Print it out to proofread
- Seek peer feedback
- Leave time to proofread and edit
- Grammar and content checking tools can be useful, but always check your own work

Editing, Grammar, and Language

Use clear, concise, precise and plain language

“We lawyers do not write plain English. We use eight words to say what we could say in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic, four outstanding characteristics. It is ‘(1) wordy, (2) unclear, (3) pompous, and (4) dull.’” Richard C. Wydick & Amy Sloan, *Plain English for Lawyers* 3 (6th ed. 2019).

Editing, Grammar, and Language

Use clear, concise, precise and plain language

- Avoid compound constructions (e.g., “in regard to” = regarding)
- Omit phrases like “the fact that” (e.g., “because of the fact that” = because)
- Avoid redundant terms (e.g., “null and void”)
- Avoid nominalizations (e.g., “enter into an agreement” = agreed)
- Omit throat clearing phrases (e.g., “it is important to point out...”)

Additional examples can be found in Richard C. Wydick & Amy Sloan, *Plain English for Lawyers* (6th ed. 2019).

Editing, Grammar, and Language

Use clear, concise, precise, and plain language

- Use simple, but formal language
- Use active voice (unless trying to hide the actor)
- Keep the subject-verb-object close together and in that order
- Put things in your own words rather than over-quoting
- Remember, you don't need to use the entire page limit

Ethical Considerations

Zealous Representation Within Ethical Boundaries

- Being a zealous advocate does not mean being a jerk
- Avoid name-calling
- Avoid attacking your opponent in communications both inside and outside of court
- Don't make every detail a battle

Ethical Considerations

Confidentiality

- Per Rule 1.6 of the California Rules of Professional Conduct and section 6068 of the California Business and Professions Code, an attorney must not reveal confidential information of a client
- Thus, lawyers must avoid revealing any confidential information in any correspondence with outside parties or any documents filed with a court
- In addition, attorneys should be cautious about inputting confidential client information when using online resources. When using an online resource, it is advisable to familiarize yourself with the website's data collection policies.

Legal Writing Pitfalls

The dangers of copy-pasting and avoiding plagiarism

- Templates and forms can be excellent resources, however, you are responsible for ensuring the accuracy of your work
- Always check that the law is accurate; always check that documents follow legal rules; always check that arguments are sound
- Consider how a document can be improved and make the arguments your own
- Include frequent and accurate citations

Legal Writing Pitfalls

Competence and the dangers of generative AI

- ChatGPT and other generative AI have exciting capabilities but should be used with caution.
- Generative AI has been known to “hallucinate” (i.e., make up answers) and therefore lawyers must confirm the accuracy of anything it produces. For example, lawyers in New York were sanctioned for submitting a brief containing fake cases.
- Lawyers are ultimately responsible for competently representing their clients and therefore, shouldn’t rely on generative AI.
- Also, as previously noted, online resources can create issues with confidentiality.

Legal Writing Pitfalls

Language and bias

- Grammar rules and acceptable language change with time.
- In the past, it was acceptable to use “he” to refer to all people. However, now we typically use gender-neutral language. For example, Rule 2.1058 of the California Rules of Court requires the use of gender-neutral language in jury instructions.
- We should also be conscious of whether our word choices or arguments reflect bias.

Legal Writing Pitfalls

Failure to follow local rules

- Most courts have their own local rules that supplement the relevant state or federal rules
- Sometimes these rules provide specific requirements for written documents filed with the court
- Always check the court's website for local rules; never rely on your colleagues to know them

Conclusion and Q&A

- **Key Takeaways**
 - Effective writing is essential to the practice of law
 - Follow the expected structure
 - Write to your audience
 - Be concise and clear
 - Carefully proofread and edit
 - Be aware of ethical standards
- **Questions?**