

Ten Tips to Torture-Free Legal Writing for Paralegals

By Lisa M. Newman, Marigold Consulting

Traditionally, the task of legal writing has been assumed by the attorney. Increasingly now, however, paralegals are being asked by their supervising attorneys to prepare a variety of legal documents. Some documents are created for internal purposes, relied upon by the attorney in preparation for litigation or an appeal. Other documents are reviewed by the attorney, revised, and ultimately filed with the court. In law offices of all sizes, it is not uncommon for experienced paralegals to write case briefs, research memoranda, motions, memoranda of points and authorities, and even appellate briefs.

Legal writing can be intimidating for the most seasoned legal professional. Approaching *your* next legal writing assignment does not need to be a daunting experience if you can remember this mnemonic device:

Every Outstanding Paralegal Knows How to Write Well and Effectively.

The first letter of each word corresponds with a tip to help propel your legal writing skills. If you follow these ten tips, you will be well on your way to torture-free legal writing!

Tip #1 – Establish a G.O.A.L. for your writing project.

Before you put pen to paper or fingertips to keyboard, you must first gather some essential information. This information is the *GOAL* of your project.

- **G** stands for the ground rules for your project. Whether you play golf, Monopoly, or checkers, a thorough understanding of the rules of the game is paramount. The same principle holds true in legal writing. Familiarize yourself with the document format that should be followed, the type font and font size that are required, and the margins that are acceptable. If you are writing a document that will be used internally, be certain to follow the format preferred by your attorney. Use samples of previously submitted work as a guide in completing your assignment. If you are preparing an appellate court brief, you should know the procedure for incorporating references to the record and the transcript. If you have any questions about the technical requirements for your document, ask your attorney or consult the local rules of the court where the document will be filed. Or, call the clerk of court. Because failure to follow the court rules may be grounds for the clerk to reject your filing, it is always prudent to ask questions and get it right the first time.
- **O** stands for the objective of your project. Now that you know the ground rules, you need to know how to “win” the game. What is the purpose of your assignment? Are you writing to inform or to persuade? Are you writing a research memorandum to inform your attorney about the client’s viable defenses under state law? Or, are you writing to persuade the court to deny the opposing party’s motion for summary judgment? Understanding the objective of your project enables you to better approach the way you conduct your research. Keeping the objective in mind also helps you focus and structure your writing, safeguarding against the likelihood that key information will be overlooked or omitted.

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- **A** stands for your audience. Whether you are writing to your attorney, another paralegal, opposing counsel, the client, or to the court, it is important to tailor your writing style, tone, and formality in a manner appropriate for your intended audience. For example, the use of contractions is generally considered too informal when writing to the court, but may be acceptable when writing a research memorandum to your attorney.
- **L** stands for the limitations for your project. When your attorney gives you an assignment, you should confirm the due date. If you are preparing a document that will ultimately be filed with the court, you should also know the filing deadline. Depending upon the type of document you are preparing, it will be important to know the applicable statute of limitations for the cause(s) of action being asserted. Additionally, you should consult the court rules for any restrictions on the number of pages your document may include and the number of exhibits that may be appended.

Tip #2 – Organize your research materials.

Hours of research are meaningless if that seminal case you need is buried somewhere under the piles of paper and stacks of folders on your desk. For easy organization and worry-free retrieval, hole-punch your research materials and file them by category in a three-ring binder. Use color-coded tabs and specially marked dividers to separate your materials into primary and secondary authority, mandatory and persuasive authority, and federal and state authority.

In the upper right-hand corner of the first page of each case you pull, note the client-matter number, the date you retrieved the case, and the legal principle(s) for which the case is important. When you file the case and need to pull it later, you won't have to re-read it to recollect why you printed it out in the first place. Create an index or table of contents of your research materials and update it as necessary. Save the document on your PC and place a hard copy in the binder.

Tip #3- Prepare an outline.

After you've completed your research, but before you begin writing, prepare an outline of the information you will include in your document. Use the required format for your document as a tool in creating your outline. For instance, if you are writing an appellate brief, your outline should mirror each section of the brief, including the statement of the issues, statement of the facts, and argument components. In your outline, for each issue you intend to discuss, include an IRAC (Issue-Rule-Analysis-Conclusion) breakdown.

If you are writing a legal memorandum or appellate brief, list the major points you will address in your argument section and the subheadings that will go under these points. Remember that stronger arguments should appear before weaker ones. After you have prepared a preliminary outline, break it down further into paragraph levels. Briefly identify the topic of each paragraph and list the information that will be included in the paragraph along with the applicable references to authority you will cite. This process may sound laborious, but investing significant time to prepare your outline will actually save you time in the long run.

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Tip #4 – Keep your writing simple and short.

With apologies to your college English instructor, legal writing *ain't* about using flowery phrases or melodic prose to convey your ideas. On the contrary, legal writing is about reducing the complex to the simple. The abstract to the concrete. And the superfluous to the necessary. The line in Rudyard Kipling's poem "If", where he writes of walking with kings but not losing the common touch, sums up what should be your approach to legal writing. Even though you may be addressing attorneys and judges with multiple advanced degrees and countless years of legal experience, you should write your document in such a way that the average person can understand your message. Assume the person who will read your document has never attended law school or graduated from a paralegal program. Keep your writing simple, but don't sacrifice precision. State the facts, raise the issues, support your argument with the authority, and end with an appropriate "call to action." In other words...get to the point!

Good legal writing is also short, or concise. Avoid using multisyllabic words when a shorter word choice will prove just as effective. Substitute a single word for a lengthier phrase. "Filed an action against" becomes "sue" and "with regard to" becomes "concerning." Write in short sentences (25 words or less) to heighten your reader's understanding. Likewise, shorter paragraphs help your reader better digest your message. You don't eat a steak all at once. Rather, you take your time, savoring it piece by piece in several bites. Similarly, you don't want to overwhelm the reader with a paragraph that extends three-quarters of the page. Divide longer paragraphs into more palatable two or three short paragraphs.

Tip #5 – Hold the reader's interest.

Good writing captures the reader's interest at the beginning, builds upon that interest throughout the middle, and satiates that interest at the end. Effective legal writing is no different. As you construct your document, remove all barriers and roadblocks to holding your reader's attention. I suggest you include a built-in navigation device. At the beginning of your document, give your reader a roadmap of where you are going and explain how you intend to get there. Throughout your document, insert mile markers to orient your reader as to how the section he or she is reading fits within the bigger picture.

Prevent reading-induced hypnosis by varying the length of your sentences and paragraphs. Use headings and subheadings as appropriate to break up huge blocks of text on the page. Incorporate sufficient white space to give your readers a visual (and mental) resting place. Emphasize key points or phrases with special formatting such as italics and bold, but be careful not to overdo a good thing. Use bulleted lists as appropriate. Strategically placed graphs, charts, and tables add substantive value to your writing and also help further engage your reader.

Tip #6 – Tie it together with topic sentences and transition bridges.

The previous tip discussed the importance of providing your reader with direction at the outset of your document and guideposts along the way. An effective way to accomplish this is to start each paragraph with a topic sentence to introduce the subject you intend to discuss. End each paragraph with a transition bridge to the next paragraph. Words such as "however," "moreover," and "in addition" can help create a seamless transition between independent, but related,

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thoughts. Using transition language as you move from one point to the next contributes to the overall cohesiveness of your writing.

Tip #7 – Write in active voice.

It is always a good rule of thumb to use active voice in any kind of writing. To do this, arrange your sentence so that the subject performs the action expressed by the verb. In the majority of instances, a sentence written using active voice is more clear and direct than one written using passive voice. Notwithstanding this general principle, there may be times when the facts in your case dictate the use of passive voice. For example, in a criminal case where your attorney represents the accused, you certainly would not want to write, “The defendant assaulted the victim.” Instead, you would write, “The victim was assaulted.”

Tip #8 – Write in positive voice.

Use a glass half-full approach in your legal writing by using positive voice. Change negative statements into affirmative statements. Compare “The defendant should not be prohibited from asserting a contributory negligence.” with “The defendant must be permitted to assert a contributory negligence defense.” Notice how the second sentence reads better and is more direct.

Tip #9 – Avoid legalese and legal jargon whenever possible.

As creatures of habit, we often find it challenging to embrace new ways of doing things. We have a tendency to fall back on the familiar. Thankfully, the foothold this kind of resistance has gained in the area of legal writing is going the way of the pet rock. Law school professors and legal practitioners alike are eschewing the use of archaic legal jargon and legalese. So should you. Legalese and jargon only function to obscure the meaning of your message. Include them only if absolutely necessary. (If you come across an “absolutely necessary” instance, let me know.)

Tip #10 – Edit your writing for the 7 Cs.

After you complete your first draft, carefully review your work and edit for the following:

- **Clarity** – Aim for specificity. Add information if needed to clarify your point. Remove information that makes your point muddy. Rephrase or re-work passages to ensure your point is conveyed clearly and meaningfully.
- **Completeness** – Use the outline you prepared from Tip #3 as a checklist to determine if your document is complete. Review your document to see if you included the required elements and necessary information.
- **Conciseness** – Eliminate unnecessary words and fillers. Remove redundancies. Remember to keep your sentences and paragraphs simple, short, and to the point.
- **Concreteness** – Eliminate lengthy legal phrases and substitute shorter concrete words and phrases. “Apprehended the suspect” becomes “arrested Mrs. Johnson.”

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- **Consistency** – Read through your writing to ensure your use of tenses and pronouns is consistent from beginning to end. Check to see that you used the same word or phrase each time you referred to the same concept. For example, if you use the word “terminated” to characterize what happened to your client in the first section of your writing, you’ll want to change any references to your client being “dismissed” or “fired” that appear later in your document.
- **Continuity** – Review your work for organizational continuity. Sentences and paragraphs should flow logically from one to the next. Read the first and last sentences of each paragraph. If you are able to glean the major points by reading these sentences alone, your writing has excellent continuity.
- **Correctness** – Verify the legal authority you cited is still valid. Double-check your citation format. Review your work to see that you have accurately stated the facts. Finally, carefully proofread your work for spelling, grammar, typographical and other kinds of errors that will detract from your message.

After you have made these revisions, ask a friend or family member who does not have a legal background to read your work. Then, listen to the feedback. Make a second round of revisions as necessary. *And then?* Breathe easy because you are done. Congratulations.

Lisa M. Newman is the Founder and CEO/President of Marigold Consulting in Atlanta, GA. The firm offers interactive personal growth classes, professional development workshops, and corporate training seminars on a variety of topics designed to help participants *bloom out of proportion*. For additional information on these services or to schedule a session for your group, please visit www.marigoldconsulting.com.