

ASPEN PUBLISHERS

A Practical Guide to

Legal  
Writing  
& Legal  
Method

John C. Dernbach  
Richard V. Singleton II  
Cathleen S. Wharton  
Joan M. Ruhtenberg  
Catherine J. Wasson

Third Edition



Wolters Kluwer

Law & Business

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A Practical Guide to

# Legal Writing & Legal Method

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# Legal Writing & Legal Method

Third Edition

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*To our families and friends—  
for their love, support, and patience*



## Acknowledgments

A great many people, both students and teachers, encouraged us to publish this third edition. That this book is still being used, more than twenty-five years after it was first published, is a reflection of their support.

This edition is informed by the teaching and law practice experience of its authors. John Dernbach (government law practice and teaching) and Richard Singleton (private law practice) are joined in this edition by three legal writing directors—Cathleen Wharton, Joan Ruhtenberg, and Catherine Wasson.

At Widener University Law School, the administration and faculty have been consistently supportive of this book; we are especially grateful to Acting Dean Michael Goldberg and Vice Dean Loren Prescott for their support of the third edition. Greg Gelfand's detailed comments on the second edition were most helpful. Full-time and adjunct members of the Legal Methods faculty tested some of the new examples and exercises in the classroom. Paula Heider and Kim Peterson were unfailingly helpful with secretarial support. Robert Altenburg, Class of 2008, provided research and editorial assistance.

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The late Fred B. Rothman believed in this book from the beginning. His decision to publish the first edition made all the rest possible.



Our greatest debt is to our students, both past and present, at six different schools over more than a quarter century. We hope they have learned as much from us as we have learned from them.

A good lawyer is much more than a professional. A good lawyer is a craftsman, applying his or her talents with imagination, diligence, and skill. Although the practice of law requires a combination of negotiation, counseling, research, and advocacy skills, there is one skill upon which all others depend: The good lawyer, the craftsman, must be able to write effectively.

Effective legal writing combines two elements—legal method and writing. Legal method is the process of applying legal rules to specific, factual situations and drawing justifiable and well-organized conclusions. Law school, it is often said, is designed to teach you to “think like a lawyer.” The myriad legal rules presented in torts, civil procedure, property, and other courses are important, but law school courses should also instill the logic or method of law. A good lawyer knows how to resolve a particular problem, even though he or she may not yet know the relevant legal rules.

A thorough understanding of the legal problem-solving process is of little value, however, unless the analysis can be communicated on paper. Good legal writing is in many ways the same as good writing in general. Legal writing should be clear, precise, and complete, yet fully understandable to a layperson. Although it may be surprising, good legal writing is not a legalistic style of Latin phrases and archaic words.

Effective legal writing is hard work. Nothing is included without good reason, and nothing of significance is omitted. Each word in each sentence is chosen or structured with care. If the document reads smoothly and intelligently, it is not usually because it was easy to write. The reverse is more often true; the document that was easy to write is often muddled. The beauty of well-crafted writing is that the final product masks the painstaking and difficult process by which it was created. The good writer—the craftsman—makes it *look* easy.

The good writer also understands his or her audience. Not surprisingly, the audience is most often lawyers. It includes friendly or supportive lawyers, lawyers for the opposing side, lawyers who are judges, and lawyers who are clerks. They have different experiences and legal skills, but you should assume that they understand legal method and legal writing and that they bring certain expectations to what they read. They don't necessarily know the law relevant to a particular problem, so they expect that a memorandum or brief will explain it. They have a good noses for the strengths and weaknesses of legal conclusions, so they expect conclusions to be explained and counterarguments answered. They are sensitive to the real-world consequences of decisions based on legal documents, so they take these documents seriously. And they are busy—often

extremely busy and working under a deadline—so they expect memos and briefs to be as direct, easy to read, and understandable as the material will allow.

This book is designed as a legal writing text, primarily for first-year law students. Its value as a learning tool is based on two classroom-tested premises. First, the fundamental principles of legal writing and legal method can be reduced to a series of fairly simple guidelines. Second, these guidelines can best be learned by practice, particularly by working through highly focused exercises. More than a quarter century with the first two editions of this book has confirmed these premises.

This book provides practical guidance in the basic skills of legal writing and legal method.<sup>1</sup> Each chapter covers a specific topic such as organization, precedent, or advocacy. Most chapters set out a short series of principles or guidelines. These guidelines are explained, justified, and then illustrated with hypothetical legal problems. The book shows good and bad ways of applying these guidelines to the problems and explains why one way is better than the others. Exercises of varying complexity, which afford an opportunity to learn and apply the rules, are provided at the end of each chapter (except Chapters 16 and 20). The illustrations and exercises are based on altered or abridged versions of real cases and statutes, citations to which are set out in the Bibliography.

The book is divided into five parts. The first three parts focus on analytical and writing lessons that are common to most legal documents. These three parts introduce the law (Part A) and explain basic concepts of legal method (Part B) and legal writing (Part C). Although the examples used in these parts tend to be based on legal memoranda, the guidelines in these parts also apply to briefs and other legal documents. The last two parts of the book show how these guidelines apply to the writing of memoranda (Part D) and briefs (Part E) and give additional guidelines for writing these types of documents.

Although the book offers a step-by-step approach to legal writing and legal method, you need to be aware that legal writing is a recursive process. You may outline a memorandum or brief, begin writing, and then find you need to change your outline. You may find, as you edit your explanation of how a particular statute is applicable to your case, that the statute is not applicable. The steps in this book do not, in other words, move inevitably from “earlier” to “later” because you will often find yourself going back to “earlier” steps.

The book integrates and synthesizes many of the fundamental lessons of other law courses. It explicitly states the basic principles of legal method and provides a way of learning this method by explicating the thinking and writing necessary to analyze specific legal problems.

The materials in this book are intended to be straightforward, manageable, and easy to understand. After the guidelines are understood in this context, they can be applied to legal writing assignments and to more complex situations. With time and analysis, the finer points of legal writing and legal method can be mastered. Ultimately, this book provides tools that will be helpful wherever you go in the practice of law.

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<sup>1</sup> Legal research, basic grammar, and citation form are not discussed. These subjects are covered in detail elsewhere, and there is little value in summarizing them here.

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