Be A Better Legal Writer

Discovery Drafting From Associate's Mind

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How to Write Requests for Admissions

Requests for Admissions are sort of the red-headed stepchild of the discovery process. Interrogatories and Requests for Production get all the attention in law school and CLEs, while poor Requests for Admissions (RFAs) sit in the corner, never asked to dance.

But RFAs can provide a good avenue in which to firmly establish undisputed facts at trial. The rules for RFAs vary from state to state so we'll look at Federal Rules of Civil Procedure Rule 36 as a model example:

> (a) Scope and Procedure.
>
> (1) *Scope*. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:
>
> (A) facts, the application of law to fact, or opinions about either; and
>
> (B) the genuineness of any described documents.
>
> (2) *Form; Copy of a Document*. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.
>
> (3) *Time to Respond; Effect of Not Responding*. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.
>
> (4) *Answer*. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information

as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections*. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) *Motion Regarding the Sufficiency of an Answer or Objection*. The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(b) Effect of an Admission; Withdrawing or Amending It. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

So what we're aiming for is a way to skip over any disputes involving facts that are: **known to all parties, relevant, and uncontested**. They can also be used to **authenticate a document before trial**. Effective use of RFAs can help narrow issues in a case and avoid any arguing over proof at trial.

Best Practices For Requests for Admissions

The ideal request to admit is: 1) not trivial; 2) not already acknowledged; and 3) narrow enough that an admission is useful but a denial is subject to impeachment. A request to admit that one in an unfit parent might better be reframed as "admit or deny that your untreated mental health disorder placed the minor child in danger on [date]."

A good place to start when drafting RFAs is to look at the Pattern Jury Instructions for your claim. For example, in Alabama, the Pattern Jury Instructions for Defamation are as follows (in abbreviated fashion):

1. The plaintiff has the burden of proving that the statement that is complained of was false regarding the plaintiff.
2. The plaintiff has the burden of proving to your reasonable satisfaction that the statement that is complained of was defamatory.
3. You can find for the plaintiff only if you are reasonably satisfied from the evidence that the defamatory statement that is complained of was of and concerning the plaintiff.
4. The plaintiff has the burden of proving to your reasonable satisfaction that the defendant published the statement that is complained of.
5. The plaintiff has the burden of proving to your reasonable satisfaction from the evidence that the defendant engaged in some degree of fault in publishing the defamatory statement.

So if I was going to draft RFAs for the plaintiff in a defamation case I might write:

1. Admit that [*name of defendant*] knew that [*complained of statement*] was false when it was declared.
2. Admit that [*name of defendant*]'s [*complained of statement*] lowered [*the plaintiff*] in the estimation of the community or to deter third persons from associating with the plaintiff.

3. Admit that [*name of defendant*]'s [*complained of statement*] was about and/or concerning [*the plaintiff*].
4. Admit that [*name of defendant*]'s [*complained of statement*] was made in the presence of *[named third parties]*.
5. Admit that [*name of defendant*] knowingly and negligently made the [*complained of statement*] even though [*name of defendant*] knew it to be false.

Now, the defendant isn't going to just admit to all of these, they'll likely deny most of them. But they might admit to what named parties were present. Or that the defendant did indeed said/issued the complained of statement. Which means you can tick off an essential element to your claim and not have to worry about proving it at trial.

Timing/Limits on RFA

It's also worth noting that some jurisdiction place limits on the amount of RFAs you are able to serve on another party. If you are in such a jurisdiction, strategically, it's likely your best bet not to blow all your RFAs on the initial round of discovery.

Instead use some of your RFAs to probe for any weaknesses or definitively nail down a necessary fact. Then as discovery moves on you can use the remaining RFAs in a variety of ways that are to your tactical advantage. Use them leading up to a motion for summary judgement, lock in testimony take at deposition, or drop them on the other close to discovery cut-off to pressure them to answer quickly or be unable to answer (thus deeming the RFA admitted).

All in all, RFAs are a useful discovery tool that is worth your time and attention. Take the time to look for discovery guides in your jurisdiction that provide instructions and advice on how to maximize your use of RFAs.

Federal Interrogatory Rule

Again, rules for interrogatories vary from jurisdiction-to-jurisdiction, so let's look at FRCP Rule 33 as an example.

(a) In General.

(1) *Number*. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

(2) *Scope*. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) Answers and Objections.

(1) *Responding Party*. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) *Time to Respond*. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) *Answering Each Interrogatory*. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) *Objections*. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) *Signature*. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Federal Rules of Evidence.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Which provides a start, but we actually have to look at Rule 26(b) for additional details:

(1) *Scope in General*. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

So what we're looking at is the methodology by which one party can pose a limited number of questions to the opposing party as it relates to any non-privileged matter as it relates to any party's claim.

With that in mind, let's look at some general guidelines for how to do this better.

Local Rules

Step one: **Read the local rules**.

Step two: Go back and **read the local rules again**.

Jurisdictions often have their own rules regarding the number of interrogatories. You absolutely cannot assume that every jurisdiction follows the FRCP as a model (25 interrogatories). Be sure to look for:

- *Number of interrogatories*. Interrogatories are usually limited in number. Judges usually don't like it when you try and get cute with this (more below).
- *Format of interrogatories*. Make sure the court does not have a preferred method or style for interrogatories.

Subparts and Compound Questions

Again, you need to head to your local rules and see how they handle compound questions. For example, the California Code of Civil Procedure specifically prohibits compound, conjunctive, or disjunctive interrogatories. That means each numbered question must be self-contained and only ask one specific question. Other jurisdictions have differing rules when it comes to subparts and compound questions. Here is a list with links to the majority of the State's Civil Procedure rules.

Tailored Definitions

Definitions can be included in interrogatories, capitalizing defined words whenever they reappear in the interrogatories For example:

"Identify" as used in these interrogatories shall mean to identify the person's full name, last known address, phone number, and email contact.

But you still need to be careful of running afoul of subparts and compound questions. Interrogatories are meant to be self-contained.

Tailored Definitions Relating to Documents

An area of contention in discovery often surrounds the exact definition as it relates to documents. What exactly is a "document?" What format? Electronic or not? Metadata included or no? This often leads to length definitions of documents as follows:

> "Documents" is an all inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term "documents" includes, without limitation, correspondence, memoranda, interoffice communications, e-mails, minutes, reports, notes, schedules, analyses, drawing, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, tax returns, and financial statements, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example printed, types, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, electronic disk, or other form. Where any of the above-identified is created, modified, and/or maintained in electronic format, "Documents" shall include any and all metadata, and such documents shall be produced or reproduced in their native electronic format with all such metadata intact.

Which is perfectly serviceable and fine, but I guarantee you that your eyes glazed over and you didn't actually read that. As an alternative, might I suggest using the Rules to define "documents" as is the preferred style of Prof. Denis Stearns:

> The word "Document" is intended to include all "writings and recordings" and "photographs," as those terms are defined in Rule 1001 of the Federal Rules of Evidence. The word "document" is also intended to include all that within and defined by Federal Rule of Civil Procedure 34(a)(1)(A) and (B), including Comments to the Rule and case law interpreting the rule.

It's much more difficult for opposing counsel to try and wiggle out of your definition when you are citing to the Evidence and Procedural rules. It also cuts down on the "huge block of text that no one reads" effect.

Vague Interrogatories Beget Vague Responses

In *Pressley v. Boehlke, 33 F.R.D. 316 (1963)*, a Judge commented on a lawyer's lackadaisical interrogatory as follows:

> Question No. 32 reads as follows: "In what way could have avoided the collision?" The defendant objects to this question [on the grounds that it is repetitious, irrelevant, vague and of too general and all inclusive nature]. The objections to this question are without merit. Interrogatories by plaintiff seeking to find out the scope of the defense are proper...Perhaps defendant's real objection is that it is a difficult question to answer and requires a present decision on the position that he will take at the trial.
>
> This is one of the purposes of discovery - to require early evaluation of the case with increased likelihood of settlement. Although his answer now, unless carefully framed, can possibly embarrass him at the trial, it is not, of course, a bar to asserting a different position at the time of trial.
>
> One reason Rule 33 works so well in practice is that vague and argumentative questions usually contain a built-in penalty. Evasive or cryptic answers are ordinarily insufficient. But a cryptic question invites an inscrutable answer. It is said colloquially, **"Ask me a foolish question, and I'll give you a foolish answer."**

"In what way could have avoided the collision?" is such an overly broad and vague interrogatory that it's essentially meaningless. Here are a few responses off the top of my head:

- "I could have not gotten in the car that day."
- "I could have stayed at lunch for an extra half hour."
- "I could have flashed my lights and honked my horn so the opposing party wouldn't have barreled into my car because they were looking down at their cell phone."

Detail Oriented

Interrogatories are (usually) about specificity, not broad strokes. Considering that you've likely only got a limited number, you've got to make the most of them. And because interrogatories are often very fact and case specific, it's hard to make general recommendations. That being said, here are a few suggestions for things that you'll (almost) always want to find out when using interrogatories:

- **Personal/Corporate information of opposing party.** Who they are, where they live, contact information, etc.
- **Identifying information of witnesses.** Who they are, where they live, contact information, etc.
- **Contact information & background of expert witnesses.** Who they are, where they live, contact information, CV, etc.
- **Insurance information.** All identifying information as it regards to insurance carriers, policy numbers, etc.
- **Basis for claims and/or defenses.** Who, what, when, where, why, & how.
-

Interrogatories are an essential part of the discovery process. Don’t be lazy and use stock interrogatories for your cases. These questions are an opportunity to pinpoint areas for future discovery (RFPs, depositions, etc). You need to make the most of the limited questions you have so don't waste them by taking the easy path and using something off the shelf.

How To Write Requests For Production

Lazy lawyers tend to make discovery requests formulaic. They have "stock" or "off-the-shelf" discovery requests they use for almost every case. This make make things easy, but it also means not exercising due diligence when it comes to preparing a case. Not what we want to do.

So let's tackle requests for production (RFPs).

Federal RFP Rule

The rules for RFPs vary from jurisdiction-to-jurisdiction, so let's look at FRCP Rule 34 as an example.

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

> (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:
>
> > (A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or
> >
> > (B) any designated tangible things; or
>
> (2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

> (1) *Contents of the Request*. The request:
>
> > (A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections.*

(A) *Time to Respond.* The party to whom the request is directed must respond in writing within 30 days after being served or — if the request was delivered under Rule 26(d)(2) — within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) *Responding to Each Item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C) *Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

(D) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

So what we're looking at is the methodology by which one party can request to **inspect, copy, test, or sample documents, or electronically stored information, stored in any medium**. With that in mind, let's look at some general guidelines for how to do this better.

Best Practices For Requests For Production

Local Rules

Step one: **Read the local rules**.

Step two: Go back and **read the local rules again**.

Jurisdictions often have their own rules regarding the timing and form of RFPs. You absolutely cannot assume that every jurisdiction follows the FRCP as a model. Be sure to look for:

- *Timing of requests*. Does a scheduling order or discovery plan need to be issued before you can send out RFPs?
- *Number of requests*. Don't assume that there are unlimited RFPs.
- *Format of requests*. Make sure the court does not have a preferred method or style for RFPs.

Know Your Case

When you sit down to draft RFPs, you likely have a pretty good idea of what the case is about, regardless of what side of the aisle you're on. Slip and fall?

Boundary line dispute? Corporate contract dispute? Knowing the case and general background should help you develop the theory and theme of the case. Despite being only in the initial discovery stages, you should already have the end of the case in mind.

You shouldn't be drafting RFPs as a perfunctory, routine measure of going through the motions, but crafting them in such a way that they will provide you relevant evidence that you can use at trial.

Bate Stamping

As long as you have the end of the case in mind, meaning you're preparing for a long slog, you should agree with opposing counsel on a bate stamping scheme. This used to be done manually (I did it when I was a law clerk), but now is often handled in by the discovery software platform you're using. Or it can be done by an office copier. Even seemingly simple cases often involve thousands of pages of documents. Save everyone the headache and agree to a common numbering system.

Document Preservation

Accompanying your RFPs (although likely beforehand), should be a litigation hold letter to any and all parties upon whom you might serve discovery requests. This is a notice to any parties that information they contain may be relevant to a lawsuit and special care needs to be taken to ensure that it is preserved and untampered with. This is especially important considering that many companies now have document destruction policies in which emails, memos, files, etc are destroyed on a regular basis.

Privilege Log

You should also request a privilege log along with your other RFPs. A party may claim that one or more of the documents you are requesting are subject to attorney–client privilege, work product doctrine, or some other privilege. If that is the case, you can rely on FRCP Rule 26(b)(5)(A) (or equivalent local rule)

which states state a party declining to produce documents on privilege grounds must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

Form of Production

In today's digital age, the form in which documents are produced can be just as important as what is produced. DOC, PDF, PPT, XLX, TIFF, BAT, etc. There are all sorts of formats for the storage of data. The specific format in which the data is stored can sometimes provide additional information that might not be apparent if it were presented as a plain text or printed out. It's important that you request documents in their native format.

Metadata

Along the lines of form of production, is metadata - "data about other data." When you draft a document in a word processor, it doesn't just save the text you've typed, it may save: all the formatting information, the time it was saved, the name registered to the software used to draft it, number of edits, persons who have had control of the document, etc. This information can be very important in certain cases.

Given that critical information is often stored in metadata, many law firms will employ software to "scrub" any metadata from production. If you don't request it, you likely won't get it.

Specific and Meaningful

It's difficult to give general advice regarding RFPs because by their very nature, they are case dependent. You likely don't need to request a birth certificate in a

boundary line dispute. You need to request anything that is relevant or would likely lead to the discovery of relevant information. Which is where things get tricky.

If you're too broad with your requests, a party might just send you mountains of documents, very little of it relevant. They'll drown you in production. If you're too narrow, they might not produce all the documents you need because they're wriggling around your request.

So your requests need to be focused in scope, as well as comprehensive. It's a fine line to walk. If you're new to drafting RFPs, there are a few places you can look for guidance:

- *Your firm*. Look for similar cases the firm has worked on pull the RFPs from those cases and see what was requested - and what was produced.
- *Local courts*. Most court documents are accessible online now. If you can find similar cases that were litigated in the past, go online and pull the discovery requests from those cases for review.
- *Model forms*. There are many publishers out there that hire experienced practitioners to write model discovery requests for sale. The cost for these can range from the tens to the thousands of dollars. If you're just starting out in a new practice area or case, it might not be a bad idea to pick some of these up.

RFPs are an incredibly important part of the litigation process. Don't be lazy and use stock requests for your cases. When it comes time to draft RFPs, don't think of it as a boring, routine task. Instead, re-frame it as an opportunity to improve and develop your writing and analytical skills.

How To Write A Legal Memo

Perhaps the most important skill a new lawyer needs to have a firm grasp of is writing. Why? **Writing is thinking.**

It's simple. The amount of information our brains can fit into our short term memory at once isn't a lot. If you never have thoughts that require notes, then all your thoughts are small or unoriginal enough to fit into your tiny short term memory.

Writing allows you to record your short term memory into a format that you can examine and reflect upon, so you can suss out what makes sense, and how it makes sense, and then expand on the original seed. When you expand your thought all the way into a piece of coherent writing, it becomes complete. It would have been impossible for you to have that size of a thought without writing–your brain just isn't powerful enough.

Deconstructing complex situations and problems, understanding the component parts, and then devising a solution to address the problem through analysis and reasoning is a lawyer's core competency.

That's a fancy way to say that lawyers get paid to think for a living.

And if you're going to be tackling serious problems and unique challenges, then you are going to be doing a lot of writing. It's the only way to actually digest the volume of information required. But at the outset of your career, it's unlikely that you are going to be handed significant writing tasks. You've still got your training wheels on. Instead, you'll be handed tasks that will be used to gauge your writing ability - which is code for "we want to see how you think."

How this usually works for law students and new associates is by the time honored interoffice legal memo. **Legal memos might not seem significant, but they are a direct insight as to how you think**. It allows lawyers in a firm to get a measure of the depth of your research capabilities, how you process case law, and the quality of how you present your conclusions. If you can

demonstrate that you know how to write a good legal memo, you're likely on your way to getting a job.

Before You Write

There are a few considerations to keep in mind before you even touch your keyboard or crack a book: **intent, timeframe, and quality**.

Know Your Audience

The most important thing to note before addressing the model template for a legal memo is not some technical aspect of writing. The most important thing to have firmly settled in your mind is an **understanding of the intent of the assignment.**

What is the purpose of the memo? Is the memo for general background knowledge of the law? To prepare for a client meeting? To be used in a hearing or brief? Knowing this will affect your writing.

The other prong of intent is to understand the preferences of the lawyer requesting it. Does the lawyer you're writing the memo for have a particular way they prefer memos to be drafted? Then write the memo exactly the way the want it. Ask their assistant, they'll likely know. Or does your firm have a default memo template? Then you should disregard everything below and conform to the template. When you are new to a firm, you aren't there to reinvent the wheel. You are there to learn.

Always Get A Deadline For An Assignment (if possible)

Is the memo meant to be a quick answer or in depth analysis? Don't spend all day researching an issue when the lawyer who asked for the memo needs it for a call with a client in two hours. Or if the lawyer is going to be out of town for a week and won't look at the memo until they get back, you don't need to kill yourself getting it done or neglect other assignments you might have. If you can help it, never begin work on a writing project unless you have a timeframe for completion, even if it's only a general one.

There Is No Such Thing As A Draft Memo

"This is just a first draft." "This is what I found the first time through." "That should be good enough."

All of these statements are worthless. The lawyer who gave you the memo assignment is busy. They have more on their plate than you. By giving you an assignment, they are entrusting a piece of a case to you. The last thing they want or need is your "rough draft." What they need and want is your best effort. Not pretty good. Not "I tried." They need a work product from you that shows that you pushed yourself. That you obtained as thorough an understanding of the law as possible given the timeframe and then conveyed this understanding efficiently and effectively.

This is your opportunity to display the quality of your thoughts and work. Doubly so if this is the first memo you have ever drafted for a particular lawyer. First impressions matter. **You only have one shot showing that you give a damn about what you're doing.**

But first impressions aren't all that matters. Second impressions matter. So do fifth. And tenth. The quality of your work should never slip. It should actually *improve*. The more writing you do, the more thinking you do, the better you should become at it.

Keeping these these things in mind, here is a template to follow.

Legal Memo Model Template

Memorandum

TO: Assigning Lawyer

FROM: You

DATE: When Memo is Due

RE: [Case/Matter Number] [Client Name] [Matter Name] - [Subject of Memo]

[Optional] Summary of Assignment

If you are in a busy firm with lots of lawyers and a constant churn of cases, then it's probably not a bad idea to get into the habit of including a brief summary regarding the memo. Lawyers are often busy, juggling dozens of cases at once. They might not immediately recall why they asked you to look into the matter at hand. A quick summary will help jog their memory. If you're in a smaller/less busy firm, this might be unnecessary. Example:

[As per our discussion on (date)]/[In response to your email request on (date)], this is a discussion on the state of the law regarding...

Issues Presented

1. Whether [issue X applies to this situation]
2. Whether [issue Y applies to this situation]

Short Answers

1. Yes, [short explanation].
2. No, [short explanation].

These are *short* answers. Often times new lawyers want to expand, clarify, and qualify themselves here. This is not the place for that. This is where you take a stand and state your opinion in two or three sentences. There will be time to address all aspects of the issues in the main portion of the memo.

Facts

Present an overview of the case/matter at hand. Make sure to include details that are of importance to the specific issues presented.

Discussion

[Subheading - first issue]

Generally speaking, always lead with the most important issue first. (See "Discussing Cases" below for how to specifically discuss a case).

[Subheading - second issue]

Address second issue here.

Conclusion

Wrap it up with a statement of what you expect happen. "Given the case law and the facts of this particular matter, issue 1 should..."

Discussing Cases

Just as important as the format of the memo (if not more so), is the manner in which you discuss cases. Almost everyone who has come out of law schools in the past twenty years should be familiar with it, but the general format for discussing legal issues is I.R.A.C.(Issue/Rule/Analysis/Conclusion) or C.I.R.A.C. (Conclusion/Issue/Rule/Analysis/Conclusion). I prefer the latter and it seems to be the growing trend. It helps give the reader an idea of where you are going.

If you want a more specific blueprint of how to discuss cases, I would suggest this approach laid out by Mark Herrmann in his book, The Curmudgeon's Guide To Practicing Law:

> When you are writing a legal memorandum for internal use, there is only one proper way to discuss a case. This is the way:
>
> In *Smith v. Jones*,
>
> 1. Somebody sued somebody for something.

2. The trial court held something. (The trial court did not “discuss” something or “analyze” something or “believe” something; it held something. Ordinarily, a trial court grants or denies a motion, or enters a judgment. Use the proper verb to describe the holding.)
3. The appellate court held something. (Ordinarily, an appellate court will affirm, reverse, vacate, or remand. Use the proper verb to describe the holding.)
4. Now, you can say anything else about the case that you care to.

If you start chatting about the case before you have covered items 1, 2, and 3, I will notice your error. I will change your memorandum and make it right. I will know that you lack self-discipline.

Why do I insist on a rigid formula for discussing cases? Because my clients prefer to win.

Forging Your Own Way

People will read with this and disagree with it. "Well actually, in our firm we do it this way..." Great, do it that way.

There is likely a good reason for it given a firm's culture/size/practice areas/etc. This template is not meant to be the one true path.

It's a blueprint from which to begin. A set of "best practices."

A starting point for you to begin to explore how you want to construct your own legal memos.

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