

# 1. The Basics of Legal Aid Writing

## Basics of Legal Writing

In legal writing, the ability to convey complex information in a clear, precise, and professional manner is not just a skill—it's a necessity. Legal documents, whether they are contracts, briefs, memos, or correspondence with clients and others, must be crafted to ensure that their intended audiences understand them. This section of the toolkit reviews the fundamentals of legal writing, a cornerstone for any legal professional aspiring to communicate effectively and persuasively.

By mastering these fundamentals, legal professionals can enhance their writing skills, ensuring their documents achieve the desired clarity, impact, and professional standards.



## Clarity and Precision

A fundamental component of effective legal writing is the ability to articulate ideas with clarity and precision. This section emphasizes the importance of avoiding ambiguity and employing

clear, concise language. The writer's goal should be to make the document accessible, leaving no room for misinterpretation. In this section, the toolkit explores techniques to achieve simplicity in writing while ensuring that the legal nuances and complexities are preserved.

- **Choose Words Carefully**

- Try to use words that precisely convey the intended meaning. Avoid vague terms that can lead to multiple interpretations. For example, instead of saying "a considerable distance," specify the exact distance.<sup>1</sup>
- Use plain language (see below in this toolkit) over complex language whenever possible. This does not mean reducing the legal accuracy of the document; instead, it's about choosing words that are accessible to the intended audience without compromising legal substance.

- **Avoid Legal Jargon, Latin Phrases, and "Law French"<sup>2</sup> when possible**

- While using legal terminology is sometimes unavoidable, excessive use of jargon, Latin phrases, and the like can obscure meaning and alienate readers who may not be familiar with such terms. When specialized legal terms are necessary for non-legal audiences, briefly explain them to assist with understanding.

- **Use Active Voice**

- Active voice (as opposed to passive voice) clearly identifies the action of a sentence and who is performing it. The use of active voice makes writing more direct. For example, instead of saying, "The complaint was filed by the attorney," write, "The attorney filed the complaint."

- **Use Short Sentences and Paragraphs**

- Long sentences and dense paragraphs can confuse readers and obscure the point. Break down complex ideas into shorter, more manageable sentences. Similarly, keep paragraphs focused on a single idea to improve readability<sup>3</sup> and comprehension.

- **Avoiding Ambiguity**

- Ambiguity<sup>4</sup> in legal documents can lead to misunderstandings, misinterpretations, and disputes, potentially resulting in costly litigation and adverse legal outcomes. By using plain and unambiguous language, legal writers make it more likely that their intent<sup>5</sup> is understood by the audience.

- **Use Proper Grammar and Punctuation**

- One might think legal writers would not need to be reminded that proper grammar and punctuation are essential. Use of proper grammar and punctuation can provide clarity and precision, demonstrate professionalism, and ensure effectiveness and consistency in understanding. Improper use of grammar and punctuation can have severe consequences for clients. For example, the lack of an Oxford comma forced Oakhurst Dairy in Portland, Maine, to settle an overtime case filed by their delivery drivers for \$5 million.<sup>6</sup>
- For more, see Grammar and Punctuation

- **Provide Context**

- Writers should provide enough background and setting for the legal issues, facts, and arguments in their documents. Sufficient context in legal writing enhances clarity and helps provide the necessary information for interpretation, decision-making, and enforcement.

- **Cite Sources**

- Citing sources in legal writing is essential for ensuring that the writing is authoritative, credible, and ethically sound. For more on citation tools, see Citation.



## Structure and Organization

The structure of a legal document is its backbone, providing a logical flow that guides the reader through the argument or information being presented. This section will cover effectively organizing content, using headings and subheadings, and employing lists and bullet points to enhance readability and impact.

- **Tone and Style.** Legal writing does not exist in a vacuum; it must be tailored to its audience, whether a client, a colleague, or a court. This section dives into the nuances of adopting an appropriate tone and style, including the right balance of formality and professionalism. Readers will learn how to write persuasively for their intended audiences, adapting their approaches as necessary to engage and inform.
- **Formality.** Legal writing tends to be very formal. Legal documents use specialized terminology and phrases with specific meanings within the legal context. However, excessive legal jargon or overly complex language can obscure meaning and alienate readers. See Plain Language in this toolkit. Striking the right balance between using technical legal terms and ensuring the document is understandable is crucial.

- **Professionalism** in legal writing is demonstrated through a respectful tone, attention to detail, and adherence to the Rules of Professional Conduct. Documents should be well-organized, properly formatted, and free of errors.
- **Formatting.** The visual aspect of legal documents plays a crucial role in their effectiveness. Proper formatting ensures that a document is professional in appearance and enhances the reader's ability to navigate and understand the material. Legal writers should refer to their local jurisdiction rules and legal style manuals (see references at the end of this toolkit) for guidelines on formatting elements (margins, font choice, spacing, headings, etc.) to create visually appealing and functional documents.

## Writing to the audience

Understanding one's audience is critical to effective legal writing. The audiences for legal documents vary widely, from judges and lawyers to clients and the general public. Each group has different expectations and levels of familiarity with legal concepts.

- **Who is the audience?** Legal writers should tailor their tone, language, and complexity of information based on who will be reading the document. For example, a brief submitted to a court may use more technical language than a letter explaining a legal matter to a client.
- **Clarify legal concepts** when necessary. Explaining legal terms and concepts is a good practice unless the audience are members of the legal profession.
- **What is the purpose of the document?** Persuasive or objective? The author must know whether their document is meant to persuade an audience or if it is intended to be objective. When the goal is to persuade, such as in a pleading<sup>7</sup>, the author should focus on structuring their document in a way that logically presents the case, leading the reader to their desired conclusion through clear and compelling reasoning.

## Check Jurisdictional Rules

Legal formatting and citation rules vary from one jurisdiction to another. While general citation principles remain consistent across different style guides, specific jurisdictions may have their own unique citation and formatting requirements.

Before submitting to a tribunal any legal document, filing, or publication, the advocate must review their jurisdiction's citation and formatting rules.

For example:

- Rule 32 – Form of Briefs, Appendices, and Other Papers, Federal Rules of Appellate Procedure<sup>8</sup>

- Style Manual for the Supreme and Appellate Courts of Illinois
  - New York Courts Style Manual
  - Oregon Appellate Courts Style Manual
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1 In legal writing and communication, there are instances where employing a degree of vagueness or less specific language might be strategically advantageous. This approach, often adopted to protect a client's interests or maintain a strategic advantage in negotiations, must be used carefully and ethically within the bounds of the Rules of Professional Conduct.

2 "Law French" is a historical language that was used in the legal systems of England which developed into a specialized legal language used in legal documents, court proceedings, and statutes. Today, remnants of Law French can be found in the English language with terms such as "estoppel" and "chattel". [https://www.law.cornell.edu/wex/law\\_french](https://www.law.cornell.edu/wex/law_french)

3 Readability is the ease with which one can understand a written text

4 Ambiguous: capable of being understood in two or more possible senses or ways. <https://www.merriam-webster.com/dictionary/ambiguous>

5 This is not to say that ambiguity does not have a place in legal writing, as it often is strategically employed in situations where flexibility is needed to accommodate future changes in circumstances or when parties to an agreement wish to leave room for interpretation to facilitate negotiation and compromise.

6. The First Circuit US Court of Appeals ruled that the absence of an Oxford comma introduced sufficient ambiguity to favor the plaintiff delivery drivers. <https://www.npr.org/sections/thetwo-way/2018/02/08/584391391/maine-dairy-drivers-settle-overtime-case-that-hinged-on-an-absent-comma>

7 Pleading is the beginning stage of a lawsuit in which parties formally submit their claims and defenses.

<https://www.law.cornell.edu/wex/pleading#:~:text=Pleading%20is%20the%20beginning%20stage,submit%20their%20claims%20and%20defe>

8 The set of rules and processes followed in appeals courts

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