

‘LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET KK
INTRODUCTION TO LEGAL WRITING

Worksheet KK is intended to facilitate a discussion about relevant issues surrounding effective legal writing, such as: techniques for the most effective legal writing; how to avoid common mistakes that may cause pleadings to be ineffective; how to effectively use sample legal pleadings and forms; and techniques for efficient legal research, etc.

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- Share with the new lawyer tips for effective legal writing, including:
 - Using active instead of passive voice
 - Using concrete words instead of abstractions
 - Using familiar words instead of “lawyer-isms”
 - Omitting superfluous words
 - Avoiding multiple negatives
 - Using headings and bullet-points when appropriate

- Share with the new lawyer common mistakes that lawyers make in legal writing that may cause pleadings to be ineffective and provide tips for avoiding these pitfalls. Share mistakes you have made in briefs and how you learned from these experiences.

- Discuss the requirements for briefs in your local rules.

- Talk about the fine line between effective persuasion and misrepresentations in legal writing. When does framing the facts of a case in the most positive light cross over into misrepresentation? What ethical obligations does a lawyer have to reveal case law that is negative to a client’s case? *See* Prof. Cond. Rules 3.1 and 3.3.

- Discuss how to properly include emotion (if at all) in brief-writing.

- Discuss how to effectively use sample legal pleadings and forms and where a new lawyer can find such samples and forms. If mentoring in-house, discuss the in-house resources that are available for the new lawyer.

- Talk about how you perform legal research, including different online research tools, and discuss their pros and cons from your perspective. Discuss ways to efficiently use online research tools, especially if the new lawyer is in a small firm setting that prohibits prolonged use of costly online databases. If mentoring in-house, explain the policies for utilizing online research tools, if any are available.

- Provide advice on the legal citation rules.

- Discuss how to properly prepare complaints, including the importance of making sure the complaint asks for everything being sought and applying the notice-pleading requirement to a draft complaint.

RESOURCES

JOHN DERNBACH, A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD (3rd ed. 2007).

BRYAN A. GARNER, THE WINNING BRIEF: 100 TIPS FOR PERSUASIVE BRIEFING IN TRIAL AND APPELLATE COURTS (2nd ed. 2004).

BRYAN A. GARNER, THE ELEMENTS OF LEGAL STYLE (2nd ed. 2002).

RICHARD C. WYDICK, PLAIN ENGLISH FOR LAWYERS (5th ed. 2005).

INDIANA RULES OF COURT RULES OF PROFESSIONAL CONDUCT

RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

View comment at http://www.in.gov/judiciary/rules/prof_conduct

RULE 3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

Comment

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but

must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

View complete rule and comment at http://www.in.gov/judiciary/rules/prof_conduct