



LAWYER TO LAWYER MENTORING PROGRAM

WORKSHEET LL

LEGAL WRITING

Worksheet LL 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, techniques for efficient legal research, etc.

WHAT WENT WELL?

Start by sharing with each other a brief story of something that went well in your practice this week:

Share your reflection by on one of these questions: What caused the good event? What does it mean? How did you contribute? Others? How can you have more such events in the future?

ACTIVITIES FOR TODAY

- 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 lawyerisms
 - 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 court 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 Tennessee Rules of Professional Conduct 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. To the extent that you have knowledge about different online research tools, 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 which 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.

ACTION STEPS

End the session by discussing what action steps you can take to either improve or set yourself up for future success based on today's discussion. Discuss how one or more of your Signature Strengths can help you achieve success in these steps.

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 W. Wydick, *Plain English for Lawyers* (5th ed 2005)

TENNESSEE RULES OF PROFESSIONAL CONDUCT

III. ADVOCATE

RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless after reasonable inquiry the lawyer has 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.

RULE 3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal; or

(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; or

(3) in an ex parte proceeding, fail to inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(b) A lawyer shall not offer evidence the lawyer knows to be false, except that a lawyer who represents a defendant in a criminal proceeding, and who has been denied permission to withdraw from the defendant's representation after compliance with paragraph (f), may allow the client to testify by way of an undirected narrative or take such other action as is necessary to honor the defendant's constitutional rights in connection with the proceeding.

(c) A lawyer shall not affirm the validity of, or otherwise use, any evidence the lawyer knows to be false.

(d) A lawyer may refuse to offer or use evidence, other than the testimony of a client who is a defendant in a criminal matter, that the lawyer reasonably believes is false, misleading, fraudulent or illegally obtained.

(e) If a lawyer knows that the lawyer's client intends to perpetrate a fraud upon the tribunal or otherwise commit an offense against the administration of justice in connection with the proceeding, including improper conduct toward a juror or a member of the jury pool, or comes to know, prior to the conclusion of the proceeding, that the client has, during the course of the lawyer's representation, perpetrated such a crime or fraud, the lawyer shall advise the client to refrain from, or to disclose or otherwise rectify, the crime or fraud and shall discuss with the client the consequences of the client's failure to do so.

(f) If a lawyer, after discussion with the client as required by paragraph (e), knows that the client still intends to perpetrate the crime or fraud, or refuses or is unable to disclose or otherwise rectify the crime or fraud, the lawyer shall seek permission of the tribunal to withdraw from the representation of the client and shall inform the tribunal, without further disclosure of information protected by RPC 1.6, that the lawyer's request to withdraw is required by the Rules of Professional Conduct.

(g) A lawyer who, prior to conclusion of the proceeding, comes to know that the lawyer has offered false tangible or documentary evidence shall withdraw or disaffirm such evidence without further disclosure of information protected by RPC 1.6.

(h) A lawyer who, prior to the conclusion of the proceeding, comes to know that a person other than the client has perpetrated a fraud upon the tribunal or otherwise committed an offense against the administration of justice in connection with the proceeding, and in which the lawyer's client was not implicated, shall promptly report the improper conduct to the



tribunal, even if so doing requires the disclosure of information otherwise protected by RPC 1.6.

(i) A lawyer who, prior to conclusion of the proceeding, comes to know of improper conduct by or toward a juror or a member of the jury pool shall report the improper conduct to the tribunal, even if so doing requires the disclosure of information otherwise protected by RPC 1.6.

(j) If, in response to a lawyer's request to withdraw from the representation of the client or the lawyer's report of a perjury, fraud, or offense against the administration of justice by a person other than the lawyer's client, a tribunal requests additional information that the lawyer can only provide by disclosing information protected by RPC 1.6 or 1.9(c), the lawyer shall comply with the request, but only if finally ordered to do so by the tribunal after the lawyer has asserted on behalf of the client all non-frivolous claims that the information sought by the tribunal is protected by the attorney-client privilege.

Comment

Misleading 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.