

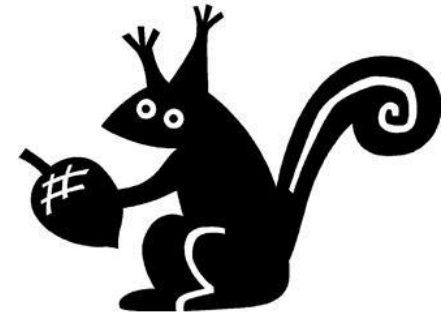
Communicating With Your Client: *Informal Client-Advice Memoranda (Letters)*

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* Most of the material in this lecture is taken or adapted from Linda H. Edwards, *Legal Writing & Analysis* 147-62 (3d ed. 2011) and Kamela Bridges & Wayne Schiess, *Writing for Litigation* 2011).

In a Nutshell . . .



Today You Will Learn About

- I. The Purposes, Nature, and Format of;
 - II. Components (Body) of; and
 - III. General Considerations and Tips for
- Informal Client-Advice Memoranda (Letters).

You will also receive a diagnostic of the top 10 difficulties students had writing this assignment.

But first,

The When-In-Rome Rule . . .



I. Purpose, Nature, and Format



A. Purposes

- **To communicate** your analysis and conclusion to (or recommendation on) the question your client has given you
- **To persuade** your client to take some action (if applicable)

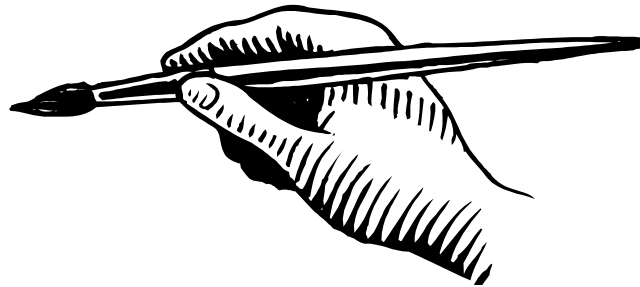
You should do these things in ways that are **helpful** to the client!

B. Nature

- The client-advice memorandum (letter) is a species of **objective writing**.
- This means that it is
 - **objective**: it sets out the pros *and* cons, *but ...*
 - **not neutral**: it has a thesis (i.e., recommendation or conclusion)

B. Nature

- Remember: it's an art, not a science!





C. Format

- Letter (external client)
- Memorandum (“in house” client)

II. Components (Body)



Components

- Body's content and general organization
 1. Opening paragraphs
 2. Fact summary (or variation)
 3. Legal analysis
 4. Advice
 5. Closing (conclusion)

Components

1. Opening paragraph(s):

- Purpose + any background needed for context
- Personal greeting (if appropriate; N/A to your writing in this seminar)
- Client's question/issue (summarized)
- Conclusion (summarized)

2. Fact summary (or variation)

- Purpose
- Express or implicit request for client correction

Components

Sample opening paragraph of client-advice letter (external client; litigation context):

“It was a pleasure to meet with you and your husband last Thursday. I hope that I was able to answer most of your estate-planning questions. During our meeting, you asked me to weigh the tax implications associated with the various trust options. As I will explain in more detail below, I believe that your estate and beneficiaries would benefit greatly from the creation of a spendthrift trust. I have also enclosed a first draft of the necessary trust documents.”

Informal Client-Advice Letters

3. Legal analysis

- Consider
 - Detail level
 - Terminology
 - Division/organization of analysis
- Usual order:
 - Rule (law)
 - Application



Informal Client-Advice Letters

4. Advice

- Remember: potential negative resolutions, etc.
- Options
- Recommendations
- Risks and benefits of each option, recommendation, etc.
- Limits to your analysis or advice

Informal Client-Advice Letters

5. Closing

- Brief summing up
- Next steps (if any)
- Polite Closing (N/A to your seminar writing)

Informal Client-Advice Letters

Sample closing paragraph in client-advice letter (external client; litigation context):

“In conclusion, if we were to file a motion to include a jury instruction on self-defense, I believe the judge would grant the motion. I am concerned, however, that a jury may be willing to find you guilty of the accompanying lesser-included charge of voluntary manslaughter when it would not have found you guilty of murder. I would like to meet with you as soon as possible to discuss further your case strategy and other possible lesser-included offenses. When we meet, I will need you to bring the names and phone numbers for any witnesses to the accident. Please call me at 713-222-2222 to set up an appointment or to discuss any other concerns.”

III. General Considerations and Tips



A. General Considerations

- Consider the **reader**.
 - Knowledge (e.g., general, legal)
 - Mental and Emotional State (e.g., angry, anxious)
 - Personality (e.g., aggressive, relaxed, etc.)
 - Attorney or non-attorney?
- Select your **tone** carefully.

B. Tips



1. Be responsive.
2. Write with your purpose in mind.
3. Explain *why* what you're saying or recommending matters to your client's case or situation.
4. Address the issues directly and precisely.
5. Be concise.

B. Tips



6. Provide a fair assessment: divulge the good, the bad, and the ugly.
7. Limit the amount of underlining, italicizing, bolding, and use of exclamation points.
8. Minimize legal jargon; explain necessary legal terms (if writing to non-attorney client).

B. Tips



9. Be personable, not distant or stuffy.
 - Not so good: “Per your request, enclosed please find a standard form contract. If further information is needed, advise accordingly.”
 - Much better: “I have enclosed the standard form contract we discussed in our meeting yesterday. Please take a moment to review the contract and to let me know if you need additional information.”

Diagnostic: Students' Top 10 Areas of Difficulty in Writing the Advice Memorandum to Rep. Smith



Top 10 Difficulties

1. Writing a scholarly piece, rather than giving practical advice
2. Writing too much
3. Lacking a practical introduction
4. Lacking a recommendation or answer to the questions asked
5. Not beginning with the end
 - Introduction
 - Sections (sub-sections)

Top 10 Difficulties

6. Not ending each section or subsection with a restatement of the conclusion on that issue
7. Lacking “roadmaps”

See the next slide ...



Top 10 Difficulties

7. Lacking “roadmaps”

- Whenever there’s a fork in the road of your discussion, you should consider preceding it with a **roadmap passage**.
- Components of a roadmap passage (generally; it’s flexible):
 - Your overall conclusion
 - Any common rule (*if there is one*)
 - Statement of what is not covered by your analysis (*if any*)
 - Roadmap to what you will discuss

Top 10 Difficulties

8. Lacking “sign posts”





Top 10 Difficulties

9. Leading analysis with the wrong things

See the next slide ...

Top 10 Difficulties

9. Leading analysis with the wrong things

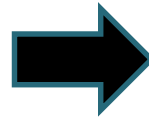
Most effective order:

Pro



Things supporting
thesis

Con



Things undermining
thesis

Pro



Reasons that pro
outweighs con, i.e., why
thesis better /correct
despite con

Top 10 Difficulties

10. Lack of **thesis sentence** to introduce paragraphs

- Whenever possible, introduce paragraphs with a thesis sentence.
- A good thesis sentence
 - tells the reader not only what you will discuss, but *why it matters* and
 - can function as a transition from prior discussion.