

The Client Letter

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Body

Practitioners recall with (or without) great fondness their first semester writing assignment: the office memorandum or memorandum of law. The purpose of this exercise was likely only vaguely grasped by most first-semester law students. Even more vaguely grasped was the reason for having to follow a particular format when organizing the sections of the memorandum of law.

Not until law graduates have passed a bar exam and are representing clients do they see how researching and writing the memo of law formed a foundation for their thinking as lawyers. This thinking process applies to nearly every area of legal practice whether communicating to a judge, a jury, a client, a senior partner, opposing counsel, the public or an administrative panel. The practitioner's ability to read and understand the law and effectively communicate its application to a specific situation greatly determines his professional success.

After several years in practice, attorneys take for granted that they can identify the legal issue presented to them, perform the required research to understand the law and determine how the law will apply to their client's situation. Whether writing an advice letter to a client, a demand letter to opposing counsel, or a memorandum in support of a motion, attorneys, often unconsciously, use those skills learned in the first two years of law school.

Purpose and Format of the Advice Letter

The advice letter you send to an individual client usually communicates advice that you have given to the client in person at your office, in a phone conversation or in a text exchange. Therefore, the letter is a summary of a previous conversation, answers questions raised in that conversation, and helps the client decide how to proceed.

Format

The format for the advice letter is similar to that of the office memo or memorandum of law assigned in the first year of law school. The opening paragraph states the legal issue the letter is addressing followed by the facts, a discussion of the law as it applies to the facts and a conclusion which is essentially the advice to the client. Often attorneys include headings to lead the client through this process to arrive at the same conclusion.

Tone

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The advice letter to a client should be professional in tone. That is, it should be precise regarding the facts and statement of the law. However, the advice letter may convey support or concern for the client in the situation. This is one way your advice letter to a client differs from an office memorandum. The tone of the letter, while professional, fits the problem for which the client seeks advice. If the client is seeking advice regarding an emotional, familial or grief-provoking dilemma, the tone may be more personal and sympathetic. Also, your explanation of the law and advice to the client should fit the client's level of sophistication, education and legal knowledge.

Your advice letter to an organization or a business will likely be more complex and less often a result of an earlier conversation. The tone of the advice letter to an organization or business will, therefore, be less personal, more succinct and routine.

Any client advice letter should include the following professional letter writing formalities:

1. The date.
2. The client's name and address.
3. The salutation followed by a colon.
4. A reference to the matter being addressed. This could be a case number or a file number or the name of the case. This reference should be included after the client's name and address and before the salutation.

Opening paragraph

Similar to the format used in the memorandum of law, begin by stating the issue or the problem for which the client has sought your advice. The letter is most helpful to the client when the opening paragraph includes an answer to the question or a summary of the advice you give to the client. Knowing this at the beginning helps your client follow your reasoning and application of the law to his or her factual situation. If your advice does not support the client's desired outcome, let the client know that the letter will demonstrate the legal reasons for your position. Most clients appreciate knowing your position immediately and then following your reasons for this position.

Discussion of facts

Include one or two paragraphs outlining the background facts and all legally relevant facts of the situation for which the client seeks advice. This may seem redundant because you and your client have discussed these facts several times. However, this restatement provides the client with the opportunity to revisit the facts and determine whether you both agree on the facts. The client can then clarify any facts that are vague or unclear.

If you have uncovered new facts since you and your client last communicated, let your client know about these new facts. Pointing out that these facts have become known to you since you last spoke will help your client better appreciate your advice. Also, your restatement of the facts establishes that you are limiting your advice to the client on the law as it affects only these facts. If new facts become available to the client, the client will know that your advice may change in light of any new facts.

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Advice regarding the outcome of a legal action

Clearly predict how you think a court, administrative body or a mediator will decide your client's case. Be forthcoming and clear in stating your opinion of the success of a legal action. Avoid terms such as "problematic," "dicey" or "as far as I know."

Organize your prediction and reasons so that your client will understand. Do this by following your prediction with a description of the law (analysis section of a memorandum of law) that a layperson can understand. Use as little legalistic terminology as possible. If you do use a specific legal term be sure to define the term. Using legalese when communicating with your client jeopardizes the trust the client has placed in you because the client could think you are trying to impress or worse, trying to hide something.

Let your client know whether the law is settled or unclear about the client's issue. However, you need not restate the law or your sources. Your client assumes that you know the law.

When your advice sets out options from which the client can select, be sure to set out the following:

1. A clear statement of each available option.
2. An explanation of the risks, advantages and possible success of each option.
3. A description of monetary costs, time and stress involved in each option.

Avoid general or vague language when communicating your opinion as to the success of each option.

Conclusion or restatement of your answer to client's question

Summarize your advice in the final paragraphs. Specify all steps to be taken by the attorney and by the client. Be very specific here. If your client must make a decision, outline the specific method for your client to communicate this decision to you and how the client may obtain more information if needed. This could be a telephone conversation or an office appointment. If your conclusion or advice is that no grounds for a legal action exist restate this conclusion and offer an opportunity to discuss the matter if your client chooses to do so.

Include a parting comment thanking the client for the inquiry and offering further help if needed. Close with the standard closing formalities used by your office such as your signature above your typed name.

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In Practice articles inform readers on developments in substantive law, practice issues or law firm management. Contact Vitaly Gashpar with submissions or questions at vgashpar@alm.com.

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