WRITING TIPS . . .

CLIENT COMMUNICATIONS: DESIGNING READABLE DOCUMENTS

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Under the best of circumstances, communicating complex legal matters is difficult, even when your reader understands the law and can think them through clearly and objectively. But that difficulty is multiplied when the reader does not grasp the legal issues or, worse, has no real interest in them—indeed, may even recoil from an objective discussion that threatens personal or professional loss. These are some of the obstacles that make writing for clients a demanding skill that too few lawyers ever master. But perhaps the greatest obstacle is not in clients but in the lawyers themselves.

To communicate well with clients, you have to write in ways that accommodate your client's needs and limitations. To do that, you have first to address your own, in at least two ways. First, you must learn to be more explicit than will feel natural or even tolerable, in both your language and your explanations of the underlying bases of your reasoning. Few clients will fully understand all of your terms and concepts, and even those who do rarely think like lawyers. It is challenging to explain the distinctive logic of the law, a logic that, though you learned it through hard struggle, now seems so natural. Lawyers sometimes think: *My task will be so much easier if I can just teach my clients a little law*. But that is a vain hope. So you have to adapt your documents—*and your thinking*—to fit them.

Second, you must learn to see each issue from the client's view. Clients ultimately will rarely share your perspective on any legal issue. Their final commitment is not to the law, but to their own advantage. They usually want immediate solutions and rarely care about your respect for the full nuance and complexity of the law. What lawyers judge to be the most admirable legal writing makes most clients roll their eyes and think of lawyer jokes—and then to demand: *Just tell me what to do*, or worse: *Find a way that I can do what I want*, or worst of all: *Don't let me lose what I've got*.

In our last column, we explained how you can accommodate clients' needs with a style that is true to the law but accessible to them.[1] In this one, we show you how to organize documents in ways that help clients understand your legal reasoning and advice from their distinct perspective.

The General Principles

There are six basic principles for creating a coherent organization in documents for any professional setting:

Offer Readers a Framework for Understanding

1. Create a relatively short opening segment that prepares readers for the story and argument to come.
2. State (or at least forecast) the point of each document at the end of its opening segment.
3. If the document is long, offer a road map and briefly summarize the parts.

Offer Readers Lots of Visual Road Signs

4. Divide the body into distinct sections. Arrange them in an order that helps readers see their connections, and be sure that readers recognize the principle behind that order before they read on and then are reminded of it as they go.
5. Design each document so that readers can immediately identify (i) where the introduction to the document ends, (ii) where its conclusion begins, and (iii) where each major section begins and ends. You do that most effectively by using headings and white space, but those key junctures should also be clear from your language.

[1] *Client Communications: Delivering a Clear Message*, 12 Perspectives: Teaching Legal Res. & Writing 127 (2004).

Repeat for Larger Segments

6. Repeat the first four principles for every section and then again for every subsection longer than two pages: Create for each section and subsection (i) a short opening that frames the segment that follows, (ii) a sentence at the end of every opening that states the point of its segment, and (iii) distinct subsegments arranged in a useful and evident order. You may not want to use headings for segments shorter than a page, but make all key junctures clear from your language. (For short sections, you can also omit the road map.)

These principles reflect what readers need: They want to know where your document will take them, where they are as they read, and what are the main ideas or recommendations they should remember.

When a whole document follows those principles, readers should be able to absorb it in a series of increasingly detailed passes by reading only what immediately follows headings at each level of structure.

- At the most general level, a reader can get a sense of all the most important information by reading just the title or subject line, the introduction, and the conclusion.
- For a more detailed overview, a reader can then read the headings and openings to major sections, or for still more detail, the headings and openings of subsections.
- If you organize paragraphs by those principles, then a reader can even skim them in the same way.

Never force your readers to study every word of a document unless they need a finely detailed understanding of its argument or advice. That is not to say you should hope for mere skimming; certainly not that you should only write beginnings and endings with care. But when your documents ask readers unfamiliar with the law to consider difficult material, you dare not trust that readers will in fact *read and understand it all*. The top-level structures that make documents easier to skim successfully are also what help us read most easily and understand most accurately.

Applying the Principles in Client Communications

Clients need extra help in recognizing the organization of your documents for the same reason that they need a particularly clear style: they don't know enough to understand legal discussions as easily as lawyers do, and they are so invested in the outcome that they will almost unavoidably interpret what you write through the lens of their hopes and fears. Readers who do know the law can anticipate much of the structure and substance of your document; even so, they will be grateful for any help you give them to read more quickly and easily. Explicit structure is a courtesy to your legal readers; for the rest, it's a necessity.

Give Special Attention to Openings

Because clients have fewer resources for recognizing the kind of story and argument you are developing, you can help them most by making clear what to expect in what follows. And if there is any chance that your detailed legal discussion will confuse or mislead them, you owe it to them to be sure that they start with a clear grasp of the least they have to know and act on.

Set Expectations Before Your Clients Begin Reading

Your introduction is the most important tool for setting a reader's expectations, but don't neglect the small but often decisive things you can do before readers get there. Use an informative subject line, even on documents formatted as letters. Don't just state the general topic; be specific enough that your reader can anticipate the issue and your main points.

Not: ERISA Considerations
But: Five Steps for Ensuring ERISA Compliance in Restructuring the Adams Pension Fund

Even before clients get to that initial subject line, you can help them prepare for what is to come. Call or e-mail the client ostensibly to tell him or her that a letter or memo is coming, but primarily to give him or her a quick précis of the issues and, if you know it, your advice. For an important document, include a brief cover letter as an executive summary—not an abstract of the full contents but what business writers call a "takeaway," what you want the client to remember after he or she has forgotten the details.

Introduce the Context, the Problem/Question, and the Solution/Answer

Keep your introduction short, but make sure that it accomplishes these four tasks, usually in this order:

1. *Remind readers of how this document relates to what they have seen or heard before.* Even if your client is fully aware of the context for the document, he or she may not recognize what parts of that context are most relevant to the issue at hand.
2. *State the specific problem or question your document addresses*. Clients tend to focus on the big problem they need you to solve, but individual documents normally address only a piece of the larger issue. So be sure that your introduction focuses on the precise issue the document addresses, including (if they are not obvious) the specific consequences of not resolving the immediate problem—such as not resolving the larger one.
3. *State your main point, including what the reader must do in response to the document.* Although it is technically possible to save all or part of your main point for the end, it is always less helpful and, for client communications, risky. They are too likely to get lost or confused before they get to it—or not get to it at all.
4. *Summarize, if possible, your reasons in support of your point or advice.* You don't need to turn your introduction into an extended abstract of the whole, but readers will know better what to look for if they know the general outlines of your argument.

For letters, you can lay out these four elements in a paragraph or two:

> As you recall, in a conference call on June 2, 2004, we discussed the exclusivity and first-refusal proposals with representatives of Clearlines.com. *context* Clearlines now claims that in this call we made promises that we do not recall, that we did not intend to make, and that are not reflected in our contemporaneous notes. *problem* This letter summarizes that conversation and lists talking points for any further conversations with Clearlines. Please review it carefully now and again before any contact with Clearlines so that there can be no possibility of further confusion on these issues. *resolution/recommended action*

In memos, these four elements correspond to the standard opening parts: brief introduction [context] + question presented + brief answer. For complex issues, it may take several pages to lay out all four elements. Here is an abbreviated example:

> Client routinely imports goods that qualify for duty-free treatment under the Generalized System of Preferences ("GSP") of the Trade Act of 2002 ("the Act"). Goods qualify under GSP if they meet the Act's requirements for local content percentage at the time of importation. However, when exchange rates change rapidly, goods can rise above or fall below the required local content percentage between the time of shipping and the time of entry. Accordingly, Client intends to adopt practices to identify GSP discrepancies and file appropriate claims to obtain refunds of duty paid on late-qualifying goods or to pay duty on goods that lose qualification in transit.
>
> Question Presented
>
> What procedures are available for Client to amend claims for GSP qualification of imported goods?
>
> Brief Answer
>
> U.S. Customs offers four procedures to amend claims for GSP benefits.
>
> - Before liquidation, importers can file a Supplemental Information Letter ("SIL") for each occurrence or a quarterly Post-Entry Amendment ("PEA") listing multiple occurrences.

- Within 90 days of liquidation, importers can file an Administrative Protest or Petition.
- More than 90 days after liquidation but before Customs initiates an action for unpaid duties, importers can file a Prior Disclosure to limit its penalties.

We recommend that Client make every effort to identify GSP discrepancies as soon as possible and to file quarterly PEA reports. Regular PEA reports reduce the risk that Client will fail to report a discrepancy and thereby pay unnecessary duties or be subject to penalties on unpaid duties. Any discrepancies discovered after liquidation should be reported as soon as possible, using the appropriate procedure.

Never Save Crucial Information for the Conclusion

It's almost never a good idea to follow the IRAC organization that many learn in law school—Issue-Rule-Analysis-Conclusion. The mistake is even greater when writing for clients: they are almost sure to get lost in the law long before they reach the conclusion. But the biggest mistake is to give readers something that *feels* like a conclusion at the end of the introduction, and then to save for later important uncertainties, qualifications, limitations, or applications for your answer: a client is likely to act on the apparent conclusion up front, possibly to his or her (and your) detriment. Do not for example, offer this apparent good news at the beginning of a letter or memo,

> Client faces no impediments in either U.S. or Faraway Country law to its proposed scheme for importing widgets into the Philippines.

only to take it back at the end:

> Although Client's importation scheme faces no legal impediments, Faraway Customs has wide-ranging discretion and often acts to protect influential domestic companies from foreign competition. Client can expect to face numerous procedural impediments that will generate significant delays and cost increases.

Also avoid saving necessary practical advice for the end:

> Although Client's importation scheme faces no legal impediments, Faraway Customs has wide-ranging discretion and often acts to protect influential domestic companies from foreign competition. Client can reduce the risk of interference from Faraway Customs if it enlists a major domestic company to play a role in the distribution of the imported goods.

Some writers wonder whether there might be an exception to this rule for bad news. Surely it's better to save bad news for the end, after you've had a chance to prepare readers for it? This question has a simple answer, if we consider it from the reader's point of view: Get bad news out early. You won't "soften" bad news by withholding it. Few writers are good enough to hide bad news very long, and the news will seem even worse once readers begin to anticipate it. Even if you think you are good enough to work up to bad news, most readers feel manipulated when you do.
So don't try to "reason" your way to a bad-news conclusion, thinking you can convince your readers of its inevitability, or at least its correctness. If they pay you to be right, they want to know your right conclusion; then they'll ask you to justify it.

Put Your Client in the Question and Answer

In most cases, you'll decide what to tell a client through the framework of a general legal standard: once you understand the standard, you can apply it to the client's specific situation. But clients almost always understand legal advice more quickly and accurately through the framework of their immediate situation: once they understand how the law applies to them, they may sometimes be ready to consider the general legal principles that explain that application. So whenever possible, state your question and answer in the opening, not in terms of a general legal principle but in terms of the client's specific situation.

You can best prepare clients to understand your legal analysis if you state issues in three parts:

1. A circumstance

2. Its legal consequence
3. Its practical effect

For example:

> If Client copies the listings in Big Bell's phone book for its own phone book but those listings were compiled through mechanical means without original thought or expression, *circumstance* then Client's use falls within the standard for fair use *legal consequence* and client cannot be prohibited from using the listings. *practical effect*

If you later want to explain your conclusion in terms of the underlying legal standard, make two simple changes: replace the client and its specific circumstances with the general legal terms that define the standard, and replace *if* with *whenever* (which helps you remember to add necessary provisos).

> Whenever published materials are compiled through mechanical means without original thought or expression, no matter how much effort was involved, *circumstance* then those materials qualify for the fair use exception to copyright protection *legal consequence* and others cannot be prohibited from using them. *practical effect*

That *if-then* or *whenever-then* construction is probably the clearest way to state a legal standard not just for clients but for any readers who need to apply the standard to specific facts. The character-action structure of each clause helps readers match the story in the standard to the story in the facts.[2] The *if-then* logical structure helps readers sort facts by their relevance. It explicitly articulates the condition and consequence in a cause-and-effect order, so that readers can determine which facts are dispositive for a particular decision, which are mere background, and which are consequences.

Give Special Attention to Headings and White Space

Even when you aid clients in all the ways we've described, they can easily lose their way in a document organized around patterns of reasoning they do not know and so cannot anticipate. And they are even more likely to get lost—or not even try to find their way—if what they face are dense pages where one long gray paragraph follows another.

So the more you break up a document with headings and white space, the less intimidating it will appear. More importantly, you help clients navigate even a complex document, in two ways. Clients can use the headings as an outline, both as an overview before they delve into the details and as regular signposts reminding them where have been, are now, and will go. And if they do get lost in a particularly dense section, you minimize that loss: they can skip to the next one, use its heading to reorient themselves, and start reading again.

Headings

A heading is most informative when it shows readers how its section fits into the structure of the document in three ways:

1. It relates its section to the flow of the document by (a) recalling key concepts that tie together the entire argument and (b) introducing any new key concepts that uniquely characterize the section that follows.[3]
2. It relates its section to the sequence of the document by using numbers or at least formatting to indicate the order and "level" of its section (first main section, third subsection, second sub-subsection, etc.).
3. It relates its section to the logical organization of the document by stating or forecasting the main point of its section.

Not every heading can do all three at once, but each one should do at least the first two.

[2] *See Telling Clear Stories: A Principle of Revision That Demands a Good Character*, 5 Perspectives: Teaching Legal Res. & Writing 14 (1996).

[3] *See So What? Why Should I Care? And Other Questions Writers Must Answer*, 9 Perspectives: Teaching Legal Res. & Writing 136 (2001).

For example, these headings are vague:

Copyright Protection

Fair Use

They announce only the general topic of a section. They would be more informative with more specific key concepts:

Client's Exemption from Copyright Protection

Fair Use: Four Key Criteria

Those headings would be still more informative with numbers to indicate their order and level:

3.0 Client's Exemption from Copyright Protection

3.2 Fair Use: Four Key Criteria

In a very short document, you can omit numbers and format headings to indicate their level (as in this column). But use numbers if your document has more than three main sections or if the sections are longer than two pages. Lawyers often prefer traditional outline numbering: roman capitals for main sections, capital letters for subsections, etc. But that requires readers to remember where they are in the sequence. For client communications, we recommend multilevel Arabic numerals, as in our example.

The most informative headings are those that most fully reflect the gist or main point of their section:

3.0 Client Can Use Big Bell Material Without Copyright Violation Because Mechanically Generated Information Qualifies for Fair Use

3.2 Four Criteria of Fair Use: Nature of the Work, Intended Use, Amount of Borrowing, Market Effect

To create an informative heading, do this:

1. Start by identifying the main point of its section, which should be at or near the end of the opening to the section.
2. If you do not find one there, look at the end of the section (in which case, you should consider moving it up front).
3. If you can find no point at all, revise so that the section does make a point.
4. Once you have identified the main point, circle its key concepts.
5. If it has few or only general ones, revise the point so that it anticipates those specific concepts you develop in the section.

For example, compare these sentences for "pointedness":

Client's freedom to use Big Bell material is determined by the principles of fair use.

Client's freedom to use Big Bell material is determined by the four key criteria for fair use.

Client's freedom to use Big Bell material is determined by the four criteria for fair use: nature of the work, intended use, amount of borrowing, and market effect. In this case, the first criterion is the key factor.

That last point provides a model for the most informative and therefore more helpful heading.

White Space

We all know how dismaying, even intimidating a solid gray page can be, much less one after another. Readers get little help from a page with no more visual structure than margins and an occasional paragraph indentation. Such pages give no visual signals to the structure of their content and so further burden already burdened readers struggling to understand just the bare meaning of that content. Headings add important visual structure to your pages, giving readers both visual and verbal clues to the organization of your document. But you have other resources for adding white space that breaks up the look of the page and visually reinforces the verbal structure of its content.

Here are some ways to use white space to help readers see the structure of your information.

- Use bullets to state parallel items (as here).
- Use numbered lists when you want your client to follow directions in a particular order (as in the two lists in the previous section).

- Break out complex paragraphs into outline form.
- Use underlines sparingly, but do use them to emphasize something that your client cannot afford to overlook.
- Alternatively, use one-sentence paragraphs (sparingly) to set off crucial information.
- Double-space long quotations (though the better course is to avoid long quotations whenever possible).
- Organize complex correlations into tables and complex quantitative information into charts.

You learn the law in law school, summer internships, a judge's chambers, and the first year or two in a law office or legal division. You learn how to write exams for test readers, memos for colleagues and judges, and briefs for courts. When you are learning legal writing, almost all of your readers know more about the law than you do, and so they read a lot into your writing that you didn't have to say. Moreover, they are usually willing readers.

Clients don't have that advantage: they usually know a lot *less* about the law than you do, and they *don't* want to read what you write. So you can't take anything for granted, least of all their willingness to work through complex issues. The problem is, you can't misrepresent complex issues by dumbing them down. You have an obligation to present your clients with your best understanding of their situation, given the law and their needs, no matter how complex that understanding might be. But you have an equally important responsibility to present your complex understanding in ways that accommodate their limitations as fully as you possibly can.

And here's a bonus for learning how to communicate clearly with clients: once you do, you know how to communicate clearly with a court or a colleague. In fact, it's not a bad idea to think of a court or a colleague as your client, one that happens to know a great deal about the law, but is also overworked, juggling many matters at once, burdened with thousands of pages to read, and so desperately grateful for whatever help you can give in the way of making your documents as crisply clear and easy to read as you can make them.

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