

Modern formats

Modern conventions for organization and format are best, although there are alternative approaches (many firms have their own styles). The formats suggested here are common. Each format is described and then a comparison is provided below. Following that, there is general discussion of style and format applicable to the two types of documents.

Legal memoranda

- **Heading and introduction**

Identify the client and how or why the matter or research assignment was referred to you.

- **Issues**

Set out the basic legal questions that you will answer.

- **Summary**

Provide a brief answer to the questions. Brief here means no more than five to ten lines.

- **Statement of facts**

Set out all the important facts. If there is a dispute over the facts, set out both versions. Be as brief as possible. You can set the facts out chronologically or by another method. (See chapter on organization). One study on judges' opinions of briefs identified inadequate statement of facts as the major problem with legal memoranda.

- **Survey of pertinent statutes**

While this section is optional, your reader will find it helpful to have the applicable statutory provisions set out. If the provisions are long, paraphrase them here, and set them out on an attachment.

- **Survey of precedents**

You must review the relevant, primary precedents governing the facts. It is usually not necessary to prepare a history of the case law; the most recent or definitive cases will suffice.

- **Discussion of each issue**

A dispassionate discussion of the issues and the applicable law is the central purpose of the memorandum. In this section you predict the answers that a court would give if it were faced with your facts, given the pertinent law.

- **Conclusion**

A summary of your predictions about the state of the law and its application to your case. This is where you expand on the brief answer furnished at the beginning.

- **Recommendation**

You recommend the best solution to the problem facing the client. What should the client do? What do you propose to do for the client? These are the questions you answer here.

Legal opinions

- **Heading and introduction**

Identify the client's problem and how the matter came to you.

- **Statement of legal issues raised**

Pose the question the client needs answered. You may need to rephrase the question that was put to you by the client in way that the law can provide an answer, or you may need to reformulate the question as a result of your analysis of the real issue.

- **Brief answer**

Give the shortest possible answer to the question posed, or advise the client what must or must not be done.

You are entitled to _____, because....

Yes, you may _____. However, you cannot _____....

You cannot _____, but you could consider _____

- **Statement of facts on which the opinion is based**

Set out the relevant facts. If you and your client are not aware of all the facts, set out the assumptions you have made. Include a warning that the facts and assumptions set out were considered in the state of the law prevailing on the date of the opinion.

- **Discussion of how you reached the conclusion**

Give your explanation or documentation of the logic and the law, from the client's perspective if possible.

- **Restatement and elaboration of conclusion**

Provide a fuller explanation of your brief answer at the beginning. If your conclusion is negative, or will disappoint or annoy your client, you may want to lead up to it gradually and save the answer until this point in your letter. It may also help to explain the policy behind the law, which is having the negative effect on your client.

- **Recommendations and proposals for action**

Suggest what the client should do, or what you will do for the client once you receive instructions. If your conclusion was negative, you can offer alternative courses of action here. If you recommend that the client send a letter to someone to make a demand or a

proposal, either provide a draft letter, or suggest the relevant wording and request that you see the client's letter before it is sent.

Legal Memorandum

Legal Opinion

Overview

Heading and Introduction

Heading and Introduction

Statement of Legal Issues

Issues

Summary

Brief Answer

Detail

Statement of Facts

Statement of Facts

Survey of Pertinent Statutes

Discussion

Review of Precedents

Discussion of Each Issue

Basis of action

Conclusion

Detailed Conclusion

Recommendation

Recommendation

General style matters

Verb Tense

Most guidelines suggest that you state:

- Facts and court decisions in the past tense.
- Legal rules in the present tense.
- Recommendations prospectively.

Word Choices

In a letter of opinion, you express your considered conclusion based on logic and reason, so the following phrases are seldom appropriate:

I believe ...

I feel ...

I suppose ...

I am leaning toward ...

If you don't know something, say so. If you haven't figured something out, say you are still investigating. State clearly that you are speculating on a given set of assumptions, or that you need to further investigate facts before you can form a certain opinion.

Legalisms

Homer E. Moyer Jr. is a former general counsel of the U.S.. Department of Commerce. In his last official act, he issued a memorandum with this caution:

Avoid legalisms. Latin phrases, abbreviations, and other legalisms are the badges of legal writing. However, they are commonly redundant, usually pretentious, and invariably unnecessary. when legalisms punctuate a paragraph, readability suffers. Like lavish capitalization, frequent exclamation marks, and underscoring for emphasis, legalisms serve as crutches when plain English would nicely suffice. The addition of "*supra*", "*arguendo*," or "*inter alia*" rarely amplifies a thought.

Citations

A legalism, which does not amplify a thought, has no place in modern writing. There are some legalisms you cannot avoid — case citations, for example. But don't cite cases in letters of opinion unless the client is familiar with the case law (for example, accountants with tax cases) or unless the case is groundbreaking.

In legal memorandums, don't let citations interfere with your message. Remember to avoid long introductory phrases in your sentences. It is better to let the citation stand alone at the end of a sentence or paragraph. Statements like this make it difficult for the reader to grasp the point, when it finally arrives:

In **Norton v. Commander**, 1999 (89) ALT 34 at 36, 1999 34 WER 684 at 687, the Court held...

Instead of following that style, state the important conclusion from the case, and then append the citation.

The law is clear that.... See **Norton v. Commander**, 1999 (89)....

Avoid string citations

Cite only the leading case in the text of your letter or memorandum. If you need to cite three or four other cases, put the citations in a footnote. Or use endnotes at the back of your memorandum or as a schedule.

No one reads a long string of citations, especially if it is italicized or underlined. The eye just skips over text blocks with such features. String citations also pose a problem to the reader in connecting the introductory words with the ideas, which follow the list of citations.

Get the citation right

Use a reference source to ensure that you are using the proper style to cite a case. The Canadian standard is *A Uniform Guide to Legal Citations* by Carswell. For U.S. case

citations refer to *A Uniform System of Citation* produced by the Harvard Law Review Association, or *Current American Legal Citations* by Bieber and published by Hein.

Statute references

Most firms have adopted a particular style for references to statutes. When referring to a current provincial statute, highlight the name and leave out the fuller citation. For example, **The Company Act**.

You may need to quote portions of a statute, regulation, article, transcript, or other material. If you want to quote more of the statute for better context, put it in an appendix. Your reader will appreciate being provided the full text of an item such as a city by-law, which may not be readily available in the law office or business office.

Footnotes

Excessive use of footnotes is a common offense among legal writers. Anything, which is essential to understanding the text, should be in the text itself, not in footnotes. In letter opinions, there should be no footnotes. (For authority on this point, see *Lost Words: The Economical, Ethical and Professional Effects of Bad Legal Writing*, Occasional Papers 7, Section of Legal Education and Admissions to the Bar, American Bar Association, Indianapolis, 1994.)

Quotations

Legal writers use too many quotations. Don't quote someone else unless the way the writer has expressed the thought is a gem you cannot equal. When referring to case precedents, summarize or paraphrase whenever you can. When you must quote, be precise in selecting what must be used and what can be cut.

Form and layout

Signposts

Other chapters offered general guidelines on how to use titles, headings and other aspects of form and layout. These are specific suggestions for memoranda and opinions.

Use keywords in headings and titles to make it easier for those who will be filing or indexing the legal memorandums in your office. A title or headings, which pose the question the memorandum answers, will be helpful to future researchers.

Any document longer than three pages needs a table of contents. In short documents, a prose version of the table of contents goes at the very beginning. Extremely long documents may need an index.

Sample Brief Memorandum Form

Memorandum of Law

To: Harvey Easter
From: Jane Smith
Date: January 14, 199-
Concerning: Morton v. Hambrook
Supreme Court of B.C.
Vancouver Registry No. A23456

Our client, JJ Morton, seeks to.... This memo is intended to determine whether...

The legal question to be determined is: What is the obligation of an owner to request that the city make repairs to sidewalks adjacent to his own property?

1. What are the pertinent facts in Morton v. Hambrook?
...(a statement of the facts giving rise to the legal issue)
2. What is the likely conclusion of the Court?
...(a brief statement of your assessment of the state of the law)
3. How is Vancouver City By-Law No. 467A applicable?
...(citation or quotation of applicable statute)
4. What case law has arisen in similar situations?
...(discussion of cases dealing with similar facts or issues)
5. How does the law apply to the facts in this case?
...(your conclusions applying the law to these facts)