

Writing an Open Memo

Writing memorandums is a common task for law firm associates. To write a good memo, you need a full understanding of the legal issues involved in a given set of facts. Westlaw® will help you research the law, analyze the facts, and assess your client's standing under the law. This quick reference guide shows how you can use Westlaw to develop a research strategy, update your legal research to make sure it is up-to-date, and then write a clear and compelling memorandum.

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The Open Memo

An open memo is an objective office memorandum that law firm associates are frequently asked to provide to senior attorneys. Based on a set of facts involving a particular client, you'll be expected to thoroughly research the relevant law, objectively analyze the facts under that law, and accurately assess how your client will fare based on the state of the law.

To write a satisfactory open memo, you must first understand the legal issues involved. When you are given an assignment, be sure to take notes. Don't hesitate to ask questions of the person who assigned the memorandum to help you narrow the issues involved. Once that is accomplished, you can proceed to the following tasks:

- Develop and complete a research plan based on relevant secondary and primary resources.
- Update your legal research to make sure it is good law.
- Write a clear and objective analysis and conclusion.

Following are tips on how to use Westlaw to accomplish these tasks.

Developing a Research Strategy

Your research plan will in all likelihood include both secondary sources and primary sources. The assignment and your personal preference will dictate which sources you choose to begin your research.

Secondary Sources

Secondary research sources (e.g., legal encyclopedias, annotations, hornbooks, treatises, and law reviews) are vital legal research tools, even though courts aren't obligated to follow them. These resources can provide you with several major benefits.

- **Starting point:** If you know very little about a subject area, secondary sources can quickly reveal the major concepts, terms, and procedures used by practitioners in that area. As a result, you will be better equipped to search the indexes and tables of contents of digests and primary sources.
- **Citations:** These materials are good preliminary sources of citations to cases, statutes, and administrative materials.
- **Authority:** Some secondary sources are considered sufficiently authoritative by the courts that they can be cited themselves to persuade a court of your position.

Secondary sources such as *American Law Reports* (ALR®) and *American Jurisprudence 2d* (Am Jur® 2d) are often ideal starting places for your research. ALR is known for its annotations, each of which is a legal memorandum summarizing case law relevant to a specific legal point. Am Jur 2d contains more than 400 titles covering a range of state and federal legal topics. Use ALR and Am Jur 2d to gather background information, determine the applicable primary law, and find leads to other secondary materials. Both sources are available on Westlaw in the ALR and AMJUR databases, respectively.

Primary Sources

Primary research sources include case law, statutes, and administrative decisions. West provides valuable research aids to help you research primary law, both in books and on Westlaw.

Case law

Cases reported in West's® National Reporter System® or on Westlaw feature editorial enhancements created by West attorney-editors. Editorial enhancements typically include the following:

- a synopsis—a paragraph-length summary of the facts, procedural posture, and main holdings of an opinion.
- headnotes—sentence-length summaries, each condensing a point of law discussed in the case.
- key number classifications—assignment of each point of law to one or more West topics, subtopics, and classification numbers (key numbers). You can use these topics and key numbers in West digests to find other cases discussing similar points of law.

Digests are print compilations of the headnotes created by West attorney-editors. The headnotes are assigned West topic and key numbers. They are then organized by topic and key number and printed in a digest, which you can search for opinions discussing points of law related to your issue.

On Westlaw, the Custom Digest contains the complete topic and key number outline used by West attorney-editors to classify headnotes. You can use the Custom Digest to find topic and key numbers related to your issue and to retrieve cases with headnotes classified under those topic and key numbers.

Statutes

The *United States Code* (USC) is the official version of federal statutory law. Since 1927, West has published an annotated version of the USC, the *United States Code Annotated*[®] (USCA[®]). In addition to the text of federal statutes, the USCA contains the following:

- annotations of cases and attorney general decisions
- references to regulations and secondary sources
- historical information regarding the enactment, amendment, revision, and repeal of statutory sections
- cross-references to other sections within the USCA

You can search the USCA and its annotations on Westlaw in the United States Code Annotated database (USCA). Annotated statutes for all 50 states and the District of Columbia are also available on Westlaw. Check the Westlaw Directory for database names and identifiers. In addition, Westlaw gives you access to session laws, pending bills, legislative history, and other research aids.

Updating Your Legal Research

Because you want to present the most current law available, you will need to update your research. The KeyCite[®] citation research service, available exclusively on Westlaw, tells you whether your case, statute, administrative decision, or regulation is good law. You can use KeyCite to quickly obtain both history and citing references for your document.

Simply enter the citation of your document on Westlaw and KeyCite history information is displayed. KeyCite status flags, described below, enable you to quickly identify and evaluate information in KeyCite.

KeyCite Status Flags



A red flag warns that the case or administrative decision is no longer good law for at least one of the points of law it contains or that the statute or regulation has been amended by a recent session law or rule, repealed, superseded, or held unconstitutional or preempted in whole or in part.



A yellow flag warns that the case or administrative decision has some negative history but hasn't been reversed or overruled; that the statute has been renumbered or transferred by a recent session law; that an uncodified session law or proposed legislation affecting the statute is available (statutes merely referenced, i.e., mentioned, are not marked with a yellow flag); that a proposed rule affecting the regulation is available; that the regulation has been reinstated, corrected, or confirmed; that the statute or regulation was limited on constitutional or preemption grounds or its validity was otherwise called into doubt; or that a prior version of the statute or regulation received negative treatment from a court.

H A blue H indicates that the case or administrative decision has some history.

C A green C indicates that the case or administrative decision has citing references but no direct history or negative citing references or that the statute or regulation has citing references.

Writing Your Memo

Determining the Format

At the time you receive the memo assignment, ask whether the person assigning it has a particular format or organizational scheme in mind. Also inquire as to where you can find samples of similar memos. One possible format is described below:*

1. a caption identifying the author, recipient, date, and subject of the memo;
2. a statement of the issue or question presented, including the relevant facts and legal rule;
3. an answer or conclusion that states your assessment of a likely ruling on the question presented, with a short explanation;
4. a statement of facts that sets out the legally relevant facts as well as important background information; and
5. a discussion or analysis section that sets out a detailed analysis of the legal issue.

*From Fay Rosenfeld, *Summer Associates: How to Ace Those Writing Assignments*, N.Y.L.J., June 4, 2001, s10, col. 1.

Writing and Revising

If you are having difficulty beginning the actual writing process, try any of the following methods to get started:

- Develop a detailed outline.
- Create a flow chart, visually presenting the flow of information.
- Start with the statement of facts or other point within the memo instead of with the first sentence.

Allow yourself time to revise and edit your memo several times. In early drafts, just get your ideas on paper without focusing too much on format, then reorganize and refine your thoughts. Make sure you've stated the law and facts accurately and that your ideas are arranged logically. You may realize that you need to reorganize portions of your memo or conduct additional research.

In later drafts, focus on grammar, punctuation, and spelling. Make sure your citations are in the proper format, whether you are following *The Bluebook*, the *ALWD Citation Manual*, or another source.

Proofreading

Do a final review for typographical and grammatical errors, using the following techniques:

- Read the material out loud. You often can hear mistakes that your eyes have missed.
- Ask a colleague to read your document. Do not rely on the spell-check feature on your computer, as it won't find incorrect or missing words.
- Check margins, titles, and headings as well as font size, capitalization, and underlining.

Helpful Writing Resources

You can find many articles on Westlaw containing useful tips for writing open memos as well as other types of professional documents such as client letters and court briefs. A few of these articles are listed below. To retrieve them on Westlaw, type the citation listed in brackets after each article in the *Find by citation* text box in the left frame of the tabbed Law School page.

Articles

Christopher M. Anzidei, *The Revision Process in Legal Writing: Seeing Better to Write Better*, 8 *Legal Writing* 23 (2002).

[8 legwrit 23]

Donna E. Artz, *Tips on Writing and Related Advice*, 5 *Perspectives: Teaching Legal Res. & Writing* 113 (1997).

[5 perspec 113]

John Bae & Jane Malmo, *Be a Good Storyteller: Tips for Acing a Writing Assignment*, 10/14/2002 *Tex. Law*. 31.

[10/14/2002 tex law 31]

Bryan A. Garner, *An Approach to Legal Style: Twenty Tips for the Legal Writer*, 2 *Scribes J. Legal Writing* 1 (1991).

[2 scribe 1]

Gerald Lebovits, *You Think You Have Issues? The Art of Framing Issues in Legal Writing—Part I*, 78-MAY *N.Y. St. B.J.* 64 (2006).

[78-may nystbj 64]

Kenneth F. Oettle, *The Writing Process Begins with Getting the Assignment Straight*, 171 *N.J.L.J.* 842 (2003).

[171 njlj 842]

Suzanne E. Rowe, Legal Research, *Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 *Stetson L. Rev.* 1193 (2000).

[29 stetson l rev 1193]

Books

In addition to your own legal writing textbook, you may want to consult one or more of the following publications:

Lynn Bahrych & Marjorie Dick Rombauer, *Legal Writing in a Nutshell*[®] (3d ed. 2003).

Martha Faulk & Irving M. Mehler, *The Elements of Legal Writing: A Guide to the Principles of Writing Clear, Concise, and Persuasive Legal Documents* (1996).

Bryan A. Garner, *Legal Writing in Plain English* (2001).

Terri LeClercq, *Expert Legal Writing* (1995).



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