

Chase & Freedman, *Lawyering Process Maps & Professional Identity Formation*, AALS 2024 Clinical Conference – **Writing a Memo to the File: Audience Matters**

Reflecting on the perspective of your audience – their experience, interests, role in the work, and needs – will help you write better, more accessible, memoranda. Whether novice lawyers are aware of this tendency or not, novices generally write memos to the file as if the memo writer is the primary audience. While the memo writer is a part of the audience, a complete picture of the audience is a bit more complicated.

Imagine that a client comes to a law office and has a legal problem. It is not uncommon for one person – a rainmaker, good with clients, and experienced – to conduct the initial meeting and then pass the matter on to a more junior person. Similarly, it is not uncommon for there to be significant delays between initial client meetings and substantial work on a client matter or for a supervising attorney to engage only at the periphery. Finally, lawyers are highly mobile between positions, particularly in the early years of their careers. The audience includes many potential people in a law office: author, supervisor, team member, and subsequent attorney on the case.

These observations about the audience mean that memos are most effective, and worth the time and energy it takes to create them, when they are written taking account of these practical realities. Taking the perspective of a reader who does not share the inferences and immediate experiences of the author makes the memo more useful, whether the reader is a person new to the matter or a person with some familiarity, such as the author six months or a year from now. Further, recognize that experienced professional readers are looking for information relevant to the lawyer's role, tasks, and obligations, not settling in to read a novel.

A good set of assumptions about the reader includes that the reader:

- is a professional,
- is unfamiliar with the specific matter,
- may be unfamiliar with the type of matter,
- does not share the author's inferences or recollections,
- will read the memo in an active rather than a passive state, and
- has heavy demands on their time.

What practices support the described reader? Those that speak to a legal audience, make information easy to locate, get to the point quickly, and require little effort to interpret.

As we will discuss in class, several strategies help create memos that address the needs of the described reader, as follows:

- **Bottom line up front** immediately communicates salient features of the material.
- **Short, crisp sentences** and paragraphs are easy to read.
- **Roadmaps**, although not required, help readers adjust to lengthier memos.
- **Effort to distill salient information** is a value-added lawyer practice.
- **Use of bullet points** draw attention and simplify material.
- **Use of a transparent organizational framework** including headings facilitates reading.

Documents that require significant effort to decipher take more time to read, and time is precious in law practice.

Perhaps the most challenging aspect of writing documents such as this is the writer should not assume the reader is naturally drawing the same conclusions as the writer is, so the writer needs to be self-aware of the writer's inferences and assumptions, and convey some reasoning associated with the operative conclusions and assumptions that are guiding the writer's work on the matter. That said, the writer must still be concise.

Here are some further drafting principles to help you get started:

- Memos to the file are written in prose and use bullets to establish lists where little explanatory information is needed.
- The memo ideally should possess an introduction that identifies something about the firm's relationship to the client and the client's interest, the current status of the matter, and the purpose of the writing.
- The memo can include a variety of segments, such as
 - ✚ a factual summary,
 - ✚ an issue-focused summary,
 - ✚ a summary of the current meeting or new information learned, and
 - ✚ identification of client objectives, conclusions drawn, or decisions made and next steps.
- Headings delineate these and any other major areas (heading language will vary depending on preference) and subheadings will be used to organize topic changes within headings.
- The purpose of the memo, or nature of the activity that led to creating the memo is important. Here are a few common scenarios:
 - ✚ If the document is a counseling memo, and counseling functions as a key issue in satisfying lawyer obligations to clients, there should be a section or subsection that focuses on the key components of client counseling and any decision making by the client that flowed from the counseling. In practice, the memo would be followed by a letter to the client that also summarized the same.
 - ✚ If the memo is a closing memo, it would often reference information that is not adequately captured elsewhere in the file.
 - ✚ Any memo could be produced in subsequent malpractice litigation, so satisfaction of lawyer obligations is important.
- Include an action plan to capture and organize information relevant to the lawyer's obligations.
- In writing memos to the file, student lawyers often default to a chronological account of the interview and/or steps the writer has taken. Instead, the writer should reflect on the information being conveyed and then consciously choose the segments and sequence that will most efficiently give the reader the benefit of the writer's thinking about what is known and next steps to advance the matter.