

The Scrivener: Modern Legal Writing
Reviewing Writing Samples
by K.K. DuVivier
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DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the Scrivener column. Send your questions to: kkduvivier@law.du.edu or call her at (303) 871-6281.

The ability to write well is a critical skill for attorneys, but few law practices have the resources to provide on-the-job help for struggling writers. Consequently, many law firms use writing samples as a way to screen applicants.

Every year, the Office of Career Services at the University of Denver Sturm College of Law asks me to give a workshop from the applicant perspective. Although I cover a bit more in the workshop, overall my advice to students about writing samples is pretty straightforward:

1. **Make them honest.** Applicants should provide a sample that is representative of their best work, yet the sample also should be representative of what applicants could produce on their own in practice. If the only sample students have to submit is a collaborative piece or one that has been heavily edited by a professor or friend, they should disclose this information.
2. **Make them short.** I recommend that students submit a sample that is between five and seven pages. It should be long enough for the reader to get a feel for the writing, but employers rarely need a full twenty-page brief to assess whether it is satisfactory. If employers need more evidence of an applicant's writing ability, I always encourage having other writing samples on hand to offer.
3. **Make them impeccable.** Employers are seeking clarity of thought and clarity of expression. The sample should reflect the best the applicant can produce. Also, it should show the applicant's attention to detail.

In contrast to my student workshops, which are geared toward teaching students what to incorporate in the samples they submit, this article looks at writing samples from a different perspective—from that of the employer. Some may take umbrage at my telling them what to look for. "I know good writing when I see it. Who are you to tell me?" Nevertheless, I hope in this column to alert employers to a few things they may not have considered.

Some reviewers consider a single typographical error an immediate disqualifier for an applicant. There is some justification for this. Good lawyers should make precision a habit, and sometimes a single mistake

can significantly prejudice a client. However, the single-typo litmus test, by itself, may cause employers to pass over some outstanding candidates. Spelling is a mechanical skill and not a good measure of intellectual capability; some people have a natural gift for it, while other very intelligent people do not. As a former Chief Judge of the Colorado Court of Appeals, Alan Sternberg—a very intelligent person and an excellent writer—once wrote in an internal memo to members of the court, "Mistakes inevitable occur."

Employers also might reconsider disqualifying a candidate on the basis of the first few pages of a full memorandum or brief. The forms practitioners prefer for questions presented or statements of the issue vary widely. Some practitioners recommend direct questions; others recommend a structure that starts with "whether." Some begin with a fact summary; others say to weave the facts into the end of the questions. A writer who was schooled in a format different from the one the reader learned may seem off-putting, yet this is not indicative of poor writing overall. Most writers can adjust these sections to reflect the preferences of their readers or a law firm's norms.

Because readers react so differently to these initial pages, I recommend skimming over the questions presented or the statements of the issue and instead focusing immediately on the portion of the sample that illustrates what is most important: the articulation of legal analysis. Consequently, do not be surprised to receive a sample that consists of a cover sheet with some context and then a short excerpt from a Discussion section of a memo or the Argument section of a brief. I often recommend that a student submit only this portion as a courtesy to employers, because it efficiently provides them with the information they need about an applicant's abilities.

As a teacher, I am attuned to writing on a number of levels. I guide students on content and substance, and then on structure, tone, style, and mechanics for helping convey that content. An employer need not be conscious of the specific techniques. Instead, the focus of the review should be evaluating whether the analysis is sound and whether the writer succeeded in effectively conveying the message.

Because lawyers often have more of a presence through their writing than in person, reputations are forged through one's writing ability. As often as not, the written persona is inconsistent with the person we see and hear in the flesh. Law firms appropriately want to confirm that an applicant's written persona is as appealing as the charming person at the interview.

I hope this article helps employers when reviewing applications for associates and law clerks. If you have any feedback, please contact me. Also, I am keeping open the writing survey that was published in the January 2006 issue of *The Colorado Lawyer*¹ until the end of March, so please take a minute to have your voice heard.

NOTE

1. DuVivier, "Eye of the Beholder," 35 *The Colorado Lawyer* 91 (Jan. 2006).