



KENYA SCHOOL OF LAW

ADVOCATES TRAINING PROGRAMME

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ATP 103 - LEGAL WRITING AND DRAFTING.

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FIRM 6, CLASS E

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ASSIGNMENT

**THE PROCESS THAT AN ADVOCATE SHOULD ADOPT WHEN DRAFTING
TO ENSURE THAT HE/SHE PRODUCES AN EFFECTIVE AND WELL WRITTEN
DOCUMENT**

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1. INTRODUCTION

Legal drafting is an art.¹ It involves modifying of language and sentence into a structure purposed to inform and persuade. The writing process is iterative and consists of a series of recursive steps and stages. It includes the following main phases: prewriting, drafting, revising, editing and proof reading.

2. PHASES OF LEGAL DRAFTING

2.1 Prewriting

Prewriting is the first, and most important stage of drafting, during which writers needs to consider three main factors: topic, audience, and purpose.

Under topic, writers need to consider the client's instructions, the issues that arise from them, and the relevant laws that apply. Writers also need to thoroughly research on the issues.

Under audience, writers need to tailor their work to suit their target audience. For instance, if the audience is a client, writers should purpose to use plain English and expound on legal issues that would be complex for the client to understand.

If the audience is a Court, writers needs to be aware of which court they purpose to approach. For instance, if the Court of Appeal is the target audience, writers familiarize themselves with the Court of Appeal Practice Direction, and Court of Appeal Rules 2010. Some of the requirements of the Court of Appeal Practice Direction regarding documents filed in the Court of Appeal are: they should be on an A4 paper instead of a foolscap, and pages numbered in the top right-hand corner, among others.²

Further, writers need to be aware of the purpose of their drafting or writing. For instance, are they drafting a preliminary objection to challenge the jurisdiction of the Court to determine a matter?

¹ 'The art of Legal Drafting' Whitman LLC ,January 21 2019. <[The Art of Legal Drafting | Whitman Legal Solutions, LLC - JDSupra](#)>_ accessed on 12th May 2022.

² COURT OF APPEAL PRACTICE DIRECTION - CIVIL APPEALS AND APPLICATIONS <https://www.judiciary.go.ke/wp-content/uploads/2018/01/PRACTICE-DIRECTIONS-FINAL.pdf> accessed on 11th May 2022

2.1.1 Examples of Prewriting exercises³

Freewriting: This involves setting a time limit, and jotting down any ideas that come to mind, regardless of grammar or spelling. When time runs out, stop writing and read over the ideas you wrote, and note the relevant and important ones.

Listing: This involves simply listing all of your ideas. This will be helpful in mapping or outlining your ideas, because as you use an idea or dispose of it, you can cross it off your list and move to the next.

Outlining: This involves coming up with a plan for your work, that helps you organize your thoughts and structure your ideas in a manner that effectively communicates them to your reader.

2.2 Drafting phase

In the drafting phase, ideas are transformed into complete thoughts in the form of sentences and paragraphs. The ideas highlighted at the prewriting stage are further developed, elaborated, and organized. This is done with client's needs (established after conducting a client interview and conducting a legal analysis on the existing legal documentation) in mind. The writer paraphrases and summarizes the research conducted into paragraphs, arranging them logically and ensuring that the argument is clear and coherent.

2.2.1 Ideal drafting techniques

- a. Give yourself optimal writing conditions by finding a comfortable position, on a good time of the day to start drafting.
- b. Trick yourself into getting started. Keep research notes in your own words and expand them into phrases, clauses and sentences. This allows you to get to a written draft.
- c. Write what you know best first. This makes you more confident and allows your instincts to guide how you will write.
- d. For the issues or topics you are unsure of, skip a space and revert. This will save on time and allow you to brainstorm on the contentious issue as you work on other issues.

³ University of Maryland, "Prewriting and Outlining", <<https://www.umgc.edu/current-students/learning-resources/writing-center/writing-resources/getting-started-writing/prewriting-and-outlining>> accessed 12th May 2022

- e. Do some exercise by re-reading previous documents, and free writing before starting any draft.
- f. Take it a step at a time by doing manageable chunks of work at a time.
- g. Stay focused by avoiding distractions such as social media, noises and entertainment when you start to draft.
- h. Reward yourself after each completed task by taking a walk or having a cup of tea.
- i. Organize your drafts by creating an electronic file system to track drafts. This will help avoid pitfalls of deleted segments or accidentally changing a well written argument.

2.3 Revising phase

What does revising entail? The prefix re- means again and vise comes from the same root as vision. Therefore, revising is seeing your work in a new way or with a ‘fresh pair of eyes’. It involves the general improvement of the structure and content of the paper. The writer should revisit the organization of the document and its ideas. Grammar, spelling or punctuation are not a priority at this stage.

The revising process entails adding, deleting, and rewriting. As you reread the document, you may spot weaknesses in your argument that might need strengthening. You may also need to restructure the document to make your argument more logical.⁴

2.3.1 What to consider while revising

- a. Develop a revision checklist, which should ask questions such as: have I answered the question I was asked? Will the document meet the reader’s needs? Is the document well organized? Are the ideas well developed? What can be omitted?
- b. Write an after –the –fact outline, which helps to describe what you have actually written. It is done through:
 - i. Making a summary of the paragraphs into phrases
 - ii. Using indentations to distinguish between the main points, sub points and sub-sub points
 - iii. Checking for any needless backtrack, repetition, or missed out points
 - iv. Check the flow to ensure the reader will be led through adequately.

⁴ ‘The writing process’ MIT Global Studies and Languages, <<writingprocess.mit.edu>> accessed 10th May 2022.

- c. Do a self-critique. Assume the role of a critical reader and check the strengths and weaknesses of the document, and use the findings to return to the role of the writer and improve the draft.
- d. Check for unity and coherence. Unity means that every part of the document contributes to the overall theme or idea of the document. Coherence can be achieved through logical organization, such as using IRAC (Issues, Rules, Analysis, Conclusion).
- e. Finally, in revision, it is advisable that you print the work and review it in hardcopy because sometimes, reading it in softcopy can be misleading.

2.4 Editing phase

This stage entails making the writing flawless. The writer should read the first draft to see whether the paper is properly organized, if there is smooth transition between paragraphs, and whether the evidence provided properly backs up his or her argument.

Editing on a content level entails the writer checking whether the document meets the client's goals and concerns addressed. The writer should also ascertain that he or she has accurately identified the legal issues. There is also need to check on the overall structure, structure within paragraphs, clarity, and citations.

It is important to note that editing and proofreading are sometimes used interchangeably however they are different stages of writing that employ different techniques.⁵

2.4.1 How to edit effectively

- a. Read the writing aloud or have someone read it out to you, and mark any parts the reader misspelt or read out wrongly and correct them.
- b. Do the editing on hardcopy, for this helps to avoid any unseen mistakes.
- c. Spend a majority of time editing sections of the document you found hardest to write.

⁵ 'Editing and Proofreading' The Writing Centre, University of North Carolina at Chapel Hill. <[Editing and Proofreading – The Writing Center • University of North Carolina at Chapel Hill \(unc.edu\)](#)>_ accessed on 12 May 2022.

2.5 Proofreading phase

Proofreading is the final stage of the editing process that focuses on mechanical correctness. It focuses on surface errors such as misspellings, omitted words, repeated words, spacing and format, typographical errors and mistakes in grammar and punctuation. Proofreading should be done once the writer has completed all the other editing revisions.

2.5.1 Effective proofreading

- a. Slow down. It should be done at a slow reading rate. Cover other lines with a paper except the line or sentence you are proof reading so as to focus on individual words.
- b. Consider proof reading the last third of your document. There are higher chances of mistake in this section since you or your typist were tired and rushed through them.
- c. If possible, proof reading at completely different times. You can do this on a day after you have drafted the document. Having breaks in between allows your mind to be fresh while proof reading.
- d. Proof read all parts of the document. This include the headings, charts, appendices, captions and page numbers. Double check all the dates, monetary figures and the spelling of every name.
- e. Never fully rely on your computer's spell-checking tool.

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