

DRAFTING LETTERS

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- Before writing a letter, you have to consider who the recipient of the letter is and what is the purpose of the letter being written
- Letters written by legal practitioners have many purposes. They can:
 - i. Persuade → e.g. a letter written to opposing counsel to convince them that your Client's position is legally sound;
 - ii. Inform;
 - iii. Record facts; and
 - iv. Make demands

- + Some letters merely have formal purposes, e.g. to confirm an meeting or notify a client of a trial date
- + Other letters are of such significance that an error in drafting may cause a client to lose his case, e.g. a demand letter will be part of the exhibits during the main trial as this forms the basis of your client's case. You therefore cannot afford to have inconsistencies between the demand letter and the Plaintiff.

FORMAT

- + Information contained in a letter should be arranged in such a way that is both logical and easy to understand
- + A number of conventions have become accepted as forms of letter writing in legal practice
- + In various law firms there may be strict rules about language and format used
- + There may be standard introductory phrases used
- + You need to consider if those conventions attribute to the effectiveness of your communication (e.g. if there is no value added by adding a standard introductory phrase, you may drop it)

FORMAT

- + The best policy is to make the letter simple and easy to understand. Avoid unnecessary complications
- + As a drafter of a letter, your duty is to ensure that the letter conveys exactly what you want it to convey i.e. clear and concise

BASIC FORMAT OF LETTERS

1. Address of the sender at the top → Must have a letter-head, even in the final exam. The letter head should capture 3 things: the name of the law firm; the physical address; the postal address and the letterhead
2. Name and address of the recipient on the left-hand side beneath the sender's address
3. Date at the top directly under the name of the addressee (never forget to date letters)
4. If the letter is sent by registered post, hand or fax, indicate this in bold below the date. If the letter is sent by ordinary post, do not indicate that fact
5. When sending a letter to a particular person in a large organisation, make that fact clear by indicating: 'Attention: Mr./Mrs./Ms. [x]'

BASIC FORMAT OF LETTERS

6. Include references (most organisations have a system of categorising and filing documents. This should be placed before the address of the recipient)
7. By including the above, you create a record of matters that may later become of crucial importance: when it was sent, to whom it was sent, by what mode it was sent, etc.

OTHER COMMON CONVENTIONS IN USE

1. 'Dear Sir/Madam' → this is general but if you know the gender of the recipient, use the appropriate word
2. When writing to an organisation and not a particular person, the common phrase is 'Dear Sir/Madam'
3. In case of specific clients, address them, e.g. 'Dear Mr. Kamau'
4. The subject line should appear directly after the salutation. The function of the subject line is to enable the reader identify what the matter is all about
5. The body of the letter then follows. Effective language must be used here to convey what you want to say
6. Signing off: 'Yours faithfully' is more formal and used by most practitioners as compared with 'Yours sincerely'
7. If you use the salutation 'Dear Sir' the signing off is 'Yours faithfully'; if the salutation is 'Dear Mr. Kamau' then the signing off is 'Yours sincerely'

OTHER COMMON CONVENTIONS IN USE

8. It is a good idea to include the name of the writer at the end particularly if your system of reference does not include this name. It makes it easier for the reader to contact the relevant person
9. Where the letter is urgent and could not be checked or signed by the writer being posted, use a brief phrase like 'Dictated by [x] and signed in his absence by [x]' → If the letter is challenged for error, this phrase may help explain the error
10. The proper practice however is that the legal practitioner is responsible for a letter signed by him/her

OTHER PRACTICAL SUGGESTIONS

1. Consider the recipient of the letter

- + What is their level of education? → e.g. if you are relaying a court order to your client, do not simply repeat the legalese used by the Magistrate/Judge as the client will not understand
- + What is their ability to read and understand technical language?
- + Choose language that is appropriate and respectful

OTHER PRACTICAL SUGGESTIONS

2. Be organised

- + Collect all the information you need before starting the letter. This includes names, addresses and factual details
- + Do your research. If you have to write expressing an opinion, research the law, form an opinion and then write the letter. Prepare a first draft then check for errors before sending the letter
- + Arrange the letter so that the most important information is at the beginning and the rest follows in descending order → e.g. a demand letter should be set out in chronological order
- + If the information carries equal weight, set it out in the most logical way, e.g. a demand letter is best done in chronological order
- + A well organised letter should have one idea per sentence and one idea per paragraph. That way the reader follows the writer with ease

OTHER PRACTICAL SUGGESTIONS

3. Be clear

- + Use the way you speak as a guide → Most people do not use jargon when speaking
- + Write in the active voice. To avoid confusion, there must be a subject and an object in every sentence
- + Refer to actual names and places in the letter
- + Use short sentences

OTHER PRACTICAL SUGGESTIONS

4. Think about presentation and image

- + The Image of the letter counts. Legal practitioners need not only act professional but also look it. Image is reflected in the way the letter looks.
- + All the following are bad for your image as a professional:
 - I. Spelling mistakes;
 - II. Untidy layout;
 - III. Unbalanced spacing;
 - IV. Illegible or smudged typeface;
 - V. Dirty or damaged paper;
 - VI. Untidy folding of finished product;

VII. Mistakes crossed out and re-written in hand;

VIII. Grammatical errors

- Once the letter is sent out, you will not be able to alter it. To prevent embarrassment, look at the letter as a recipient would before sending it
- Letters form a big part of the business of legal practitioners; your letter could mean the difference between successful and unsuccessful practice

DIFFERENT TYPES OF LETTERS

- + (i) Letters to the client
- + Practitioners are under ethical, professional and contractual obligation to keep their clients up-to-date on the progress in their matters. You must update and report to the client regularly
- + You may also need to ask for more information, further instructions, notify clients of a new development, etc.
- + Write to your client in such a way that it is not necessary to explain later what you meant. It is bad practice to try to impress the client with legalese at the expense of proper communication
- + Your aim in writing to your client should be to foster and maintain a good client/advocate relationship

LETTERS TO THE OPPONENT

- + If you are involved in litigation, anything sent to the opponent could be used against your client. Always be very careful about the contents of the letter and the manner in which it is written
- + A letter should never be rude or written in anger → rude letters may cause you embarrassment later
- + Practitioners are colleagues and at a later stage you may be in the uncomfortable position of having to ask a favour of that person you were rude to. It is unprofessional and inappropriate for law practitioners to be rude in their letters
- + More importantly, do not use defamatory statements in your letters
- + Lord Denning, 'The Traditions of the Bar': 'many cases have been won by courtesy and lost by rudeness'

DEMAND LETTERS

- + A demand letter is a letter sent to a possible defendant on the basis of your client's instructions. It sets out the basis of your client's claim and informs the addressee that your client will sue unless the defendant does what the letter demands
- + You are demanding that the other party complies with a legal requirement; or that the other party performs a legal obligation; or, you are demanding that they cease forthwith from engaging in certain behaviour
- + A demand letter precedes law suits and sometimes can lead to the settlement of disputes because it gives a chance to probable defendants to settle the claim out of court and avoid the whole litigation process
- + There are serious consequences if this if it is not drafted properly.
- + A demand letter has cost implications and may affect credibility

DEMAND LETTERS

Guiding rules:

- + The heading should set out your client's case accurately
- + The best heading to use is your client's name and circumstances that link him to the addressee, e.g. 'Assault on [X]'. All the other details then follow in the body of the letter
- + The introductory paragraph should say that you act on behalf of your client and that the letter is being written pursuant to your clients instructions. By doing so, you are establishing that you have mandate to write the letter in terms of information given to you by your client and going forward, you are the point of contact.

DEMAND LETTERS

- + The next paragraphs should briefly state in chronological order the facts on which your client relies
- + Limit the facts to the absolute minimum necessary (just like in pleadings)
- + It is important that the facts are accurate since inaccuracies may jeopardise your case if litigation follows
- + The next step is to draw a conclusion in law from the facts, e.g. 'These statements are defamatory and our client is entitled to claim damages from you as a result'
- + Thereafter make a demand → What relief is your client seeking? Is it a claim for money, specific performance?
- + Usual phrase? 'Our instructions are to claim the amount of Kshs. 1,000,000 in respect of _____, which we hereby do'

DEMAND LETTERS

- + Thereafter set out the consequences of non-compliance with the demand, e.g. your client could sue, cancel a contract etc. → Here you are making a threat, but a lawful one (a threat which your client is legally entitled to make as a result of the facts of the case)
- + To write such a letter, you must be absolutely sure that it is correct both in terms of facts and the legal conclusion → understand the law and facts before you begin writing
- + One of the advantages of drafting a demand letter is that it may convince the addressee that the best option is to settle the matter as opposed to getting involved in litigation

+QUESTIONS???