



IN CHAMBERS: EFFECTIVE WRITING TIPS FOR THE JUDICIAL INTERNS AND LAW CLERKS

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Working for and with a judge can be an exciting but intimidating challenge. In many respects, law school is great preparation, and many of the skills you have learned will be invaluable. However, many challenges you will face in chambers can seem quite foreign at first, and there is surprisingly little guidance out there on how to address them. This handout is intended to fill some of those gaps.

A lot of the guidance contained in this handout will, like so many things in law, vary depending on facts and circumstances. For example, this handout is intended to be useful both for full-time clerks as well as summer interns and school-term externs. Of course, the roles of each of these positions differs in some respect, so keep that in mind as you read. In addition, as is elaborated further later on, every judge is different. No matter what, respect his or her wishes at all times and never take anything contained herein or elsewhere as advice to the contrary.

This handout assumes you have received an assignment from your supervisor in chambers and that you are having a hard time with next steps. The goal is not so much to tell you how to write it (there is simply too much variation out there for that), but, instead, to provide some guidance as to what types of questions you can ask and what next steps might look like. If what is contained here is not enough, a comprehensive list of further suggested reading can be found at the end.

The following are central issues to keep in mind when working through an assignment in chambers:

- 1. Audience.**
- 2. Timing and process.**
- 3. Type and scope of assignment.**
- 4. Pre-work/Prewriting.**
- 5. Writing basics.**
- 6. Proofreading.**

¹ By Charlie Dobb (2017), based on an original handout prepared by Scott Meisler and Brian Wahlquist (2005).

1. Audience.

The question of audience is a challenging but critical one in chambers. An obvious member of your audience, but one that bears identifying, is your judge. Keep in mind that ultimately your goal in chambers is to assist him or her in the administration of justice, something he or she has likely done for some time before you have arrived and will continue to do for some time after you depart. As one leading guide to working with a judge suggests: “Whatever the judge’s personal style, most prefer that their law clerks not attempt to impose each clerk’s own style on opinions and court documents.”² So, while most judges will appreciate you engaging with them intellectually and challenging their logic in chambers (and, indeed, many judges cite this as a top benefit of having young legal minds in chambers at all) ultimately what he or she says goes.

In light of all of that, do your best to familiarize yourself with your judge’s tone, style, pet peeves, etc. Do the judge’s opinions tend to follow a certain structure? Does he or she use a (relatively) casual tone, or something more formal? Some judges will provide incoming interns and law clerks with a style guide similar to the ones used by law journals. If yours does, adhere to it. If that is not available, ask the judge or another supervisor for samples of writing that the judge considers superlative and be sure to read a wide sample of the judge’s prior work.

While a judge will almost always be a member of your audience, he or she will rarely be the only member. Who else is in the audience will depend on the type of document you are working on. Document types are discussed in more detail in a following section. Some documents, such as bench or single-issue memoranda, will stay within chambers. Other documents, such as opinions and orders, will be published and widely disseminated. For those documents, the audience will include the parties to the case as well as other judges, lawyers, academics, and the general public.³

2. Timing and process.

By now you are used to a natural but nonetheless frustrating tension in legal writing: good legal writing is largely about (an often long) process but is frequently needed quickly. Unfortunately, this tension is often exacerbated in chambers. Timing may be unusually rushed and deadlines will be critically important. Judges decide real cases involving real parties in real time. Dates for trials, motions hearings, and oral arguments are often established weeks or months in advance and involve busy people and high stakes.

Despite those timing pressures, you will rarely do work as process driven as the work you will do in chambers. For example, a judge may have a clerk start an opinion by preparing an outline, then the judge will review and comment on it, then the clerk will prepare a draft, then the judge will comment on that, then maybe a co-clerk will review,

² FED. JUDICIAL CTR., *LAW CLERK HANDBOOK: A HANDBOOK FOR LAW CLERKS TO FEDERAL JUDGES* 88 (Sylvan A. Sobel ed., 2d ed. 2007) [hereinafter *FJC HANDBOOK*].

³ *See* FED. JUDICIAL CTR., *JUDICIAL WRITING MANUAL: A POCKET GUIDE FOR JUDGES* (2d ed. 2013), <http://www2.fjc.gov/sites/default/files/2014/Judicial-Writing-Manual-2D-FJC-2013.pdf> [hereinafter *FJC MANUAL*].

and then the judge will review again, etc. Judge Kozinski on the Ninth Circuit is rumored to require upwards of 50 drafts of an opinion before it is published!⁴ That process may be even further extended if, for example, other judges who may be signing on to the opinion need to review it.

In sum, in chambers, deadlines are important and process may be prolonged. Therefore, be sure you understand at the outset what the process will be and what deadlines are expected of you. Set intermittent deadlines to keep you focused. If you anticipate being unable to meet the deadline for the assignment, notify the judge or supervisor at the earliest possible moment. Even if you think you will get the document in on time but are not certain, be upfront and honest; the judge might tell you that he or she was not planning to look at the memo that day or might ask another clerk or intern to assist you.

3. Type and scope of assignment.

While instinctively we may associate writing in chambers with opinions, there are actually many types of documents chambers may produce. No matter the assignment, it will be important to identify its goal and purpose early and structure the document accordingly. While there is no finite list of the types of documents courts may produce, there are certain common ones that are worth familiarizing yourself with.

A. The Bench Memorandum⁵

A bench memo is a document that a law clerk (or intern) prepares for the judge to help prepare him or her for oral arguments. The memo will normally contain presentation and analysis of the parties' arguments, the basis for jurisdiction in that court, the relevant case law, and, when requested, the clerk's recommendation on how the judge should resolve the case.⁶ Some judges will also ask their clerk to provide questions that the judge might ask during oral arguments/hearings. While it is expected that you will start your work from the parties' briefs, that should not be where your research ends. Spend time verifying the validity of the parties' positions, and also searching for authority they did not cite.

Bench memos are frequently used by appellate judges. However, trial judges may also request them in advance of a motions hearing. For example, a trial judge preparing to hear a defendant's motion to suppress evidence may ask for a bench memo on the relevant Fourth Amendment or state constitutional jurisprudence.

⁴ Carl Tobias, *A New No. 1 at the 9th Circuit*, L.A. TIMES (Nov. 30, 2007), <http://articles.latimes.com/2007/nov/30/opinion/oe-tobias30> [<https://perma.cc/3EKN-LYEU>].

⁵ This document provides only a cursory introduction to bench memoranda. For a more detailed discussion, see JESSICA KLARFELD, THE BENCH MEMORANDUM (2011) <https://www.law.georgetown.edu/wp-content/uploads/2018/07/The-Bench-Memorandum-Jessica-Klarfeld-2011.pdf> (available on the Georgetown University Law Center Writing Center webpage).

⁶ *See, e.g.*, MARY L. DUNNEWOLD, BETH A. HONETSCHLAGER & BRENDA L. TOFTE, JUDICIAL CLERKSHIPS: A PRACTICAL GUIDE 134-36 (2010).

B. Trial Court Documents⁷

Law school education often focuses on appellate cases. Unless you have taken a course in trial practice or certain clinics, your first day at a trial-level clerkship may be your first substantial exposure to trial documents. Below is a non-exhaustive list of documents that clerks and interns often work on in chambers.

- **Orders** announce the decision of the court on motions. The term “order” is used broadly and can refer to everything from a two-dozen-page order resolving a motion for summary judgment (sometimes also called an “order and memorandum of law”), to a half-page “minute order” (a written order that memorializes a ruling made by the judge orally), to a “letter order” (an informal order sent to the parties in the form of a letter, often used for procedural details such as setting a schedule).
- In cases where the judge is serving as the finder of fact, rather than a jury (a “bench trial”), the judge will issue **findings of fact and conclusions of law** to announce his or her resolution of the matter. As the name suggests, this document will contain facts the court has been persuaded of (often with citations to the relevant portions of the record) as well as legal conclusions regarding those facts.
- A judge will give **jury instructions**⁸ to a jury usually before and after a trial. The instructions are often a combination of proposed instructions from the two sides, form instructions a judge and his or her chambers may use in every case, and “pattern instructions” which are “best practice” type documents issued by professional associations, academics, and similar entities. Because the same or similar issues will appear before a judge repeatedly, it is important to see what types of instructions your judge has given in similar cases and start from those.

C. Appellate Opinions

Along with bench memos, drafting appellate opinions makes up the bulk of many appellate clerks’ experience in chambers. In terms of process, a clerk’s role will vary between chambers. In some, clerks do research and prepare an outline, while the judge actually drafts. In others, clerks prepare an entire first draft in consultation with the judge, who reviews and significantly edits the final product.

In terms of substance, the term “opinion” (like “order,” discussed above) is used broadly. The Federal Judicial Center discusses the term as a spectrum. At one end are what it terms “full dress” opinions (which include a discussion of the facts, legal principles, and governing authorities), at the other end are “summary orders” which just give the disposition (and perhaps the briefest discussion of the issues) and somewhere in the middle are “memorandum opinions,” which address issues that are complex enough to warrant some explanation (these may appear as “per curiam” opinions).⁹ Full dress opinions, at least, will typically include five elements: (1) a brief introduction; (2) the

⁷ This discussion of trial court documents is based largely on the work of Professor Dunnewold and her colleagues. *Id.* at 147-214.

⁸ In addition to the work by Professor Dunnewold and her colleagues, detailed guidance on drafting jury instructions can be found in JENNIFER L. SHEPPARD, *IN CHAMBERS: A GUIDE FOR JUDICIAL CLERKS AND EXTERNS* 157-193 (2012).

⁹ See FJC MANUAL, *supra* note 3, at 3.

issue(s) before the court; (3) material facts; (4) legal analysis and resolution of open legal questions; and (5) disposition and instructions to the court below.¹⁰

4. Pre-work/Prewriting.

This may go without saying, but being accurate on the law and facts is rarely more crucial than when you are working in chambers. The judge you are working for will be relying on you to know the nuances of the law and the relevant factual record. Keep in mind that you will have less on your plate than he or she does (usually a fraction of the docket), and therefore will be expected to take a deeper dive than he or she may be able to.

In practice, this means that pre-work/prewriting will be key. As the next section suggests with regard to writing mechanics, go back to basics for pre-work/prewriting as well. When conducting research, keep notes of what you have covered and where you would like to go next. Start from secondary sources to ensure you do not miss anything and then narrow your focus from there; check every source you are using to ensure it is still good law, etc. Even in chambers, the Georgetown Law Library's research guides and process overviews remain available to you.

Once the research is done, prewriting documents may take on new value in chambers. For example, as already discussed, a judge may want to review a detailed outline of an opinion before allowing you to move forward with a draft. Even if the judge does not, consider preparing one anyway to verify the completeness of your research and the soundness of your logic.

5. Writing basics.

Do not forget everything you have already learned in writing courses. Although those courses may have focused on writing for legal practice or academia, what you learned is equally applicable to writing in chambers. It is tempting to forget the basics when thrown into more complex documents like those you might see in chambers, but resist that urge!

While some documents you encounter may be entirely foreign (jury instructions, for example), many will be familiar. Almost all legal writing relies on a few key fundamentals, and most chambers documents are not exceptions. They are going to rely on the same legal writing principles that you have familiarized yourself with in law school: large- and small-scale organization, topic sentences, roadmaps, case comparisons, and rule synthesis. If these concepts sound foreign to you, it might be a good time to consult some of the Writing Center's useful handouts on these and other fundamental topics.

¹⁰ *Id.*

6. Proofreading.

It may seem obvious, but leave plenty of time to proofread and then do it, carefully. Think of the term “proofreading” broadly. It certainly means what you would typically think of: spelling, punctuation, grammar, bluebook citation, etc. However, it also means checking that cited sources are accurately represented, that all issues from the record (for example, parties’ names and case numbers) are accurate, and even that the logic is sound.¹¹ Until a document is distributed, it is never too late in the process to make both technical and substantive improvement.

Further Reading

CALVERT G. CHIPCHASE, *FEDERAL DISTRICT COURT LAW CLERK HANDBOOK* (2007).

REBECCA A. COCHRAN, *JUDICIAL EXTERNSHIP: THE CLINIC INSIDE THE COURTHOUSE* (2d ed. 1999).

MARY L. DUNNEWOLD, BETH A. HONETSCHLAGER & BRENDA L. TOFTE, *JUDICIAL CLERKSHIPS: A PRACTICAL GUIDE* (2010).

FED. JUDICIAL CTR., *LAW CLERK HANDBOOK: A HANDBOOK FOR LAW CLERKS TO FEDERAL JUDGES 88* (Sylvan A. Sobel ed., 2d ed. 2007).

JOSEPH L. LEMON, JR., *FEDERAL APPELLATE COURT LAW CLERK HANDBOOK* (2007).

ALIZA MILNER, *JUDICIAL CLERKSHIPS: LEGAL METHODS IN MOTION* (2011).

JENNIFER L. SHEPPARD, *IN CHAMBERS: A GUIDE FOR JUDICIAL CLERKS AND EXTERNS* (2012).

FED. JUDICIAL CTR., *JUDICIAL WRITING MANUAL: A POCKET GUIDE FOR JUDGES* (2d ed. 2013), <http://www2.fjc.gov/sites/default/files/2014/Judicial-Writing-Manual-2D-FJC-2013.pdf> [<https://perma.cc/P4W9-M9BY>].

Gerald Lebovitz & Lucero Ramirez Hidalgo, *Advice to Law Clerks: How to Draft Your First Judicial Opinion*, 36 WESTCHESTER B.J. 29 (2009).

Jennifer Sheppard, *The “Write” Way: A Judicial Clerk’s Guide to Writing for the Court*, 38 U. BALT. L. REV. 73 (2008).

¹¹ See, e.g., DUNNEWOLD, HONETSCHLAGER & TOFTE, *supra* note 6, at 269-272; FJC HANDBOOK, *supra* note 2, at 101-02.