



HOW TO AVOID WRITING A LOUSY MEMO

An open letter to Connecticut's summer associates

By **ADAM J. COHEN**

Dear Summer Associates:

Welcome to your summer as a lawyer-in-training. After writing academically in college and hypothetically in law school, you'll be doing your first "real" writing as a law firm summer associate over the next few months. This is not only your transition from theory to practice, it's your contribution to advice that a client will rely on — not to mention your shot at a full-time job offer.

I'm writing to tell how not to blow it. Obviously, my suggestions yield to any contrary practices at a particular law firm or the assigning attorney's instructions. But I can otherwise guarantee that a memo will be lousy if it ignores these guidelines.

Intake

When the attorney gives you an assignment, listen intently to the underlying facts and take thorough notes — not dictation. Grasp the "big picture," the client's goals and the purpose of your involvement. Confirm and write down exactly what you're being asked to determine. If you don't have a perfect understanding of the question posed to you, your answer will be wrong.

Ask if you should give periodic updates on your progress and what the deadline is for your finished product. Assume that a formal, hard-copy memo must be hand-

delivered unless you're asked for an e-mail or verbal report.

Preparation

Prioritize your projects by deadline and complexity while taking into account the social agenda and trainings most firms schedule for their summer associates. Consider the approach you'll use to tackle the project, like whether you'll need to find a synopsis to familiarize yourself with the area of law, what sources or bodies of law are likely to be the best starting points, and whether the relevant resources are available at your firm, online, or from a nearby courthouse or library.

If you're unsure, discuss strategies with a mentor or mid-level associate. Think first, and then research, then think again before writing a word of the memo.

Research

Your research should start with the primary binding authority of the proper jurisdiction, and then expand to nonbinding authority if necessary. Do a choice-of-law analysis unless there is clearly only one jurisdiction involved. Citing superseded, amended, or overruled authority is absolutely fatal unless you prove why the earlier version remains binding.

If you just summarize the first few good cases you find, your memo will be lousy. Instead you must confirm, dissect, compare, analyze, question, analogize, and bolster that authority. Is a court opinion consistent with similar lines of authority, based on distinguishable facts, or just wrongly decided? Is a regulation within the agency's rule-making power? What would the counterargument or adversary's theory be?

If your research reveals that additional



facts not provided to you will make a difference, ask the assigning lawyer about them. Also remember that, unlike law schools, your firm (and its clients) have to pay for your online research, so work efficiently and think twice before using pay-per-search databases.

Writing Style

Legal memos serve a strictly utilitarian purpose. Your ultimate audience is the client, although you can presume familiarity with basic legal terms and concepts. The memo must be polished, credible, and readable enough to justify that someone is literally purchasing it to make important personal or business decisions.

The reader needs to know exactly two things: the answer to a specific question and the steps you took to reach it. The language should be professional and intelligent without unnecessary verbiage and legalese (like

Adam J. Cohen (ajc@pullcom.com) is a partner in the Litigation Department of Pullman & Comley in Bridgeport. He is the co-chair of the firm's Recruiting Committee and the Director of its Summer Associate Program.

“hereinafter” and “above-mentioned”). Bluebooking matters because the reader must be able to both rely on your citation and identify the source (like the location and level of the court).

Use very few footnotes and forget SMALL CAPS. Double-spaced, justified text with ample margins and traditional fonts of normal size (for example, Times New Roman, 12 point) make the finished product professional and readable.

Format

Your memo should clearly identify the date, matter, and recipient, and you as the sender. Include the following sections:

Introduction. Start with a sentence or two like “This memorandum is in response to your request for research on whether . . .”

Facts. This section identifies the presumptions on which your analysis depends. Be concise. Omit details that play no role in the steps toward your conclusion. Identify all assumptions you’ve made or were instructed to make. A properly written facts section will help protect you if your conclusion is wrong because of a mistaken assumption and will also guide other attorneys who may use your memo later for other situations.

Question Presented. The question presented should be one sentence long—and it’s by far the most important one in your memo. Make sure it’s the right question; countless summer associate memos offer a great analysis and correct answer for a question *other* than the one asked. Include the essential facts and fully encapsulate the legal issue. The question presented alone should prove you truly “got” the assignment and let the reader understand your conclu-

sion in context without even having to read the facts or analysis sections.

Short Answer. If an assignment is complex enough for a short answer, it will usually be a one-sentence summary of the conclusion sufficient for quick advice to the client in a pinch. It is most often prefaced with either “probably yes” or “probably no.” A “maybe” is never acceptable, and a straight “yes” or “no” is reserved for issues governed by on-point binding authority.

Analysis. This is the heart of any memo, so it will be useless if it skips from a summary of authorities straight to a conclusion. Instead, you need a well-reasoned connection between the two to convince the reader that your answer to the legal question is accurate, sensible, and complete. Like grade-school math, you must “show your work,” and every logical step should cite legal authority. Still, don’t itemize every fact in a case you’re citing—just the ones that show why its holding is relevant to your conclusion.

Your goal is to correctly predict how a court would consider and decide the question. Distinguish significant contrary authorities that an adversary would likely use against you. Explain why your jurisdiction would likely follow any foreign, persuasive, or secondary authority you rely on. If you devoted a lot of time to exploring an area that seemed relevant but turned out to be a dead end, briefly mention that and explain why. If your conclusion will be bad news to the client, don’t sugarcoat it, but then identify the arguments or exceptions that might remain colorable.

Conclusion. Your conclusion should contain everything the assigning lawyer would need to know with only 60 seconds to read your work. Your position should rarely

be less definite than “probably,” followed by a very brief summary of your analysis without legal citations unless they are dispositive. If your conclusion relies on assumptions or uncertainties, make that clear.

Revision

The first draft of a memo is always just a *first* draft. Thoroughly revise it many, many times—both on the macro level (organization, logic, and substance) and the micro level (down to the last comma). Question the purpose, treatment, and placement of every sentence and cite. Then proofread for grammar, spelling, formatting, punctuation, word choice, and citation format. Just like you’d think twice before eating a meal prepared in a messy kitchen, an attorney will doubt the conclusions of a sloppy memo.

Submission

Don’t wait until the last minute to turn in your work, and definitely don’t miss a deadline without explaining the delay well in advance. A deadline of “by Friday” means midday on Friday (not 5 p.m.), and “by the end of the summer” means one week before your last day (to allow for any follow-up). Attach copies of on-point authorities plus important foreign or unreported ones.

If the supervising lawyer asks for revisions, learn from the constructive criticism without getting defensive and make the changes promptly. After a week without feedback, follow up by asking if your memo was what they were looking for. If you get a second assignment from the same lawyer, consider it a compliment. In other words, your memo wasn’t lousy. ■

Good luck this summer.