



BEST PRACTICE - PREPARING LEGAL CORRESPONDENCE AND DOCUMENTS

A GUIDE FOR LEGAL SUPPORT STAFF

About This Guide

The NSW Support Staff Committee best practice guides are designed to provide guidance to support staff in relation to the various aspects of their role. They are prepared by the members of the NSW Support Staff Committee in consultation with an expert advisor at their monthly meetings at the Law Society of NSW.

About the NSW Support Staff Committee

The NSW Support Staff Committee was formed in 2018 to represent administrative professionals within the legal profession. The Committee aims to bridge the gap between legal staff and support staff and provide administrative staff within the legal profession with:

1. A platform for networking and socialising with colleagues to improve morale, happiness and passion within support staff in the legal profession;
2. Access to mentors, educational seminars and other further learning resources to improve the knowledge and skills of support staff in the legal profession; and
3. Provide a voice to administrative professionals to raise concerns and discuss issues relevant to them in a confidential setting.

The Committee is comprised of 15 members representing various law firms, areas of law and administrative roles within the profession.

Acknowledgments

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Tessa has worked exclusively in Family Law since 2013. Prior to specialising in family law, Tessa worked as a Solicitor at an international commercial law firm in Sydney before commencing work as a Legal Associate to two Judges in the Family Court of Australia. Tessa finished work with the Court in 2015 and commenced working at a leading boutique family law firm. Tessa is now a Senior Associate in the Family & Relationship Law team at Lander & Rogers.

Tessa was recently recognised as a Rising Star in Family Law in the 2018 Doyle's Guide. Tessa is the Chair of the NSW Young Lawyers Family Law Committee, and the Young Lawyer representative on the NSW Family Law Committee, she also draft headnotes for the Family Law Reports published by Lexis Nexis.

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PREPARING LEGAL CORRESPONDENCE AND COURT DOCUMENTS

Part of your role as a legal administrative employee may be to assist your supervising solicitor/s in the preparation of legal correspondence and court documents. Your supervising Solicitor/s often manage incredibly heavy workloads, and your assistance in preparing initial drafts of correspondence and documents is invaluable.

Your involvement with this process may vary from role to role and firm to firm, but may include:

- Generating blank form letters and documents;
- Data entry of information into documents;
- Preparing an initial draft of correspondence and/or documents;
- Collating any relevant enclosures to letters and annexures to court documents;
- Sending correspondence, electronically or via post, DX or courier;
- Filing court documents; and/or
- Serving court documents.

This best practice manual has been created to provide guidance for legal support staff in all aspects of preparing legal correspondence and documents.



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DEVELOPING YOUR LEGAL WRITING SKILLS

In order to prepare effective legal correspondence and documents, you will need to develop your legal writing skills. For some, this may come naturally. However, for most people, your drafting skills will gradually develop over time during the course of your career. There are a number of things that you can do to assist you in developing your legal writing skills.

Learning from Dictation

If you type from dictation, you should pay attention to the way that your supervising solicitor drafts their own letters and documents. Take note of the way they write and the form of their letters, and learn from them. You will notice that each solicitor tends to have their own individual style of writing. When preparing draft correspondence and documents, you should adopt the style of writing that your supervising Solicitor uses, as your Solicitor's name is the one that is being attributed to the correspondence or document.

Legal Terminology

Become familiar with the relevant legal terminology. This is certainly something that you will become more familiar with the longer that you work in law. It may assist to review some files, reading the correspondence and documents on the file. If there are any terms that you aren't familiar with, feel free to ask a colleague or perform a web search to learn what it means.

The most valuable resource for legal drafting are your firm's precedents. Most law firms have a library of basic letters and documents that may provide you with an idea of how to draft your correspondence and documents.

Using Precedents

Perhaps the most valuable resource for legal drafting are your firm's precedents. Most law firms have a library of basic letters and documents that may provide you with an idea of how to draft your correspondence and documents. However, be wary of blindly following precedents - you must ensure that you fine tune these letters and documents to the specific circumstances of the matter.

If there isn't a specific precedent for the letter or document that you are creating, it may be the case that a previous matter has used a similar letter or clause. You can ask your colleagues if they have prepared anything in relation to the subject topic, or perform a search of your firm's document management systems. When saving correspondence and documents that you have created to your file management system, it may be helpful to include a brief description about the subject matter, eg. "Affidavit re parenting arrangements" or "Letter to client - advice re notice of demand". Not only does this assist you with your general file management, but it also assists when you are attempting to locate a letter or document for future use as a precedent.

It may be helpful to create a folder on your computer for certain letters or documents that you create that you may wish to use again.

Don't forget that your firm's precedents and the precedents that you create whilst employed at your firm are the property of the company and you should not retain these if you leave the firm. Ensure that you are aware of your firm's policies in relation to this.

SPELLING AND GRAMMAR

Correct spelling and grammar are crucial for effective legal writing. Using the incorrect spelling and grammar can make your correspondence appear unprofessional and even result in unnecessary misunderstandings. Every legal professional should have a grasp of basic spelling and grammar skills.

Spelling

Correct spelling is an absolute necessity when preparing legal correspondence and court documents. Each piece of correspondence and every document that you create is, in most cases, being paid for by a client - it is important that they are of a very high quality and do not contain unnecessary mistakes. It is particularly problematic when spelling mistakes are made frequently.

There are a number of common spelling errors that you should watch out for:

- The incorrect use of two, too and to;
- The incorrect use of they're, their and there;
- Remember: I before E except after C (although be aware of the exceptions);
- Examples of tricky legal words to keep an eye on:
 - Privilege;
 - Judgment;
 - Defendant;
 - Liaise;
 - Subpoena;
 - Affidavit;
 - Colleagues.

If you struggle with spelling, it may assist you to finetune your proofreading skills. Double check all of your documents and pay particular attention to the spellchecker and that handy little red underline. Although your supervising solicitor should check all documents that you produce, it will cause them unnecessary frustration if they find constant spelling errors. Even if you are a bad speller, the key here is to pay attention and to learn from your mistakes - don't keep misspelling the same words!

Apostrophe Catastrophe

Incorrect use of apostrophes is incredibly common within the legal profession. Always remember:

- **Apostrophes should be used for contractions to indicate an omission**

For example: That's a lot of a discovery ("that's" being short for "that is");

It's too much for me to photocopy before close of business ("it's" being short for "it is")

- **Apostrophes should be used to indicate possession.**

- For names or titles that do not end in S, an apostrophe should be placed in between the end of the name and the S

For example: The Defendant's documents.

- For names that end in S, an apostrophe should be placed after the S

For example: James' dog bit the Plaintiff.

- An apostrophe is placed after a plural to indicate where more than one person owns something

For example: The parties' home is to be placed on the market for sale.

Capitalisation

In law, you will come across a number of words that will typically be capitalised. Subject to your area of law and your firm's individual style guide, you should generally capitalise the following words:

- Names of government departments and courts (e.g. the Department of Family and Community Services, the Supreme Court of New South Wales)
- Party titles (e.g. Applicant, Respondent, Defendant, Appellant)
- Names of court forms (e.g. Affidavit, Subpoena, Summons)

SPELLING AND GRAMMAR (CONTINUED)

Citation

Although it is unlikely that you will need to use citation regularly, there are certain circumstances where you may need to be aware of the correct way to cite cases and legislation.

For cases, only the case name should be italicized. The year will follow after the case name in brackets, followed by any reference to the publication. By way of example:

Mabo v Queensland (No 2) (1992) 175 CLR 1

ACCC v Reckitt Benckiser (Australia) Pty Ltd (No 7) [2016] FCA 424

For legislation, both the name of the legislation and the year should be italicized. The jurisdiction should follow in brackets, followed by the specific section or part of the legislation in normal case. By way of example:

Evidence Act 1995 (NSW)

Family Law Act 1975 (Cth)

Correct References to Judicial Officers

It is extremely important to refer to judicial officers by their correct titles. As the judicial officers in each court are addressed by different titles, you will need to become familiar with the correct titles for each court. The correct titles for each court are as follows:

- District Court - Judge
- Family Court of Australia - Justice
- Federal Circuit Court of Australia - Judge
- Federal Court of Australia - Justice
- High Court of Australia - Justice
- Industrial Relations Commission of NSW - Justice
- Land & Environment Courts - Justice
- Local Court - Magistrate
- Supreme Court of NSW - Justice
- Retired Judge - The Honourable (name)
- Other court officers, such as:
 - Associates
 - Registrars

Proofreading

In order to ensure that your work is of the highest standard, it is necessary to proofread your work. There are many methods of proofreading and you should find one that suits you; some people like to proofread as they type from dictation - reading every word as it is typed. Others prefer to read over their correspondence and documents after they have finished typing.

Ideally, you should proofread at each step of the process - when you are drafting the document, before you provide the draft to your supervising solicitor and before the document or correspondence is released.

It will also assist your solicitor if you proofread the work that they have prepared. It is always helpful to have a fresh set of eyes look at someone's work, and your solicitor will be very grateful if you pick up on any errors and flag these with them.

PREPARING CORRESPONDENCE

Step 1 - Make a plan

The first step of preparing any item of correspondence is to plan it. Questions you might like to ask yourself are:

- Who will it be addressed to? Think about your intended audience.
- What is its purpose?
- Is there a precedent I could use?
- Should all of these issues be raised in one item of correspondence, or would it be better to set the issues out in separate letters?
- How would I like the correspondence to be sent? Can it be sent electronically via email, or are there original documents that must be sent via registered post or delivered by courier?
- In what order would I like to address these issues?

Step 2 - Create your draft letter

Once you have a plan, you can start writing and prepare your first draft!

There are a few things to think about at this stage:

- **Language** - Legal correspondence should have a formal tone, but should not contain overcomplicated legal terminology. Don't forget about who your audience is - you will write with a different style of language in correspondence to other Solicitors than you will in correspondence to your client. Members of the legal profession should avoid using strong emotional language in their correspondence as it can appear as being inflammatory, and look unprofessional.
- **Structure** - In terms of the structure of your letter, you should ensure that it flows well. Appropriate use of paragraphs improves the readability of your correspondence as it is incredibly difficult for people to read a large block of text. If the letter addresses a number of issues, you may wish to use headings to break up the letter.
- **Don't forget about your purpose** - Each piece of legal correspondence should have a purpose.

Once you have completed your first draft, you can then review and refine your draft letter until you are satisfied that it is ready to send to your supervising solicitor.

Step 3 - Send the draft correspondence to your supervising Solicitor and make any requested amendments

All legal correspondence must be reviewed and signed off by a practicing Solicitor. Once you have finished your draft, send it to your supervising Solicitor for them to confirm if it is okay to send, or to make any changes.

Don't get upset if there are a lot of changes made to your draft letter. Always check what it is that your supervising Solicitor has changed and ask them why they did so. Adopt these changes in your drafting in future correspondence. Making mistakes is the best way to learn!

Step 4 - Send your correspondence

Once your supervising Solicitor has given the correspondence the okay, you are ready to send it!

Check the method of sending and make the appropriate arrangements that are required to do so. These days, most correspondence will be sent via email.

Before you release the correspondence:

- Do one final proofread, ensuring that there are no errors before it is sent. Pay attention to any dates or deadlines that are set out in the letter and ensure that these have been updated if the initial draft wasn't prepared on the same day that it is being sent.
- Ensure that you are sending the correspondence to the correct recipients (including those that are being copied into the correspondence).
- Ensure that all of the attachments are included with the correspondence. If you are transmitting a large volume of material electronically, be aware of any email size limits within your firm and for your recipient.
- For emails, ensure that you have a clear subject line that will allow your recipient to easily identify the email.
- If you require delivery confirmation, ensure that you request same. For hard copy correspondence, via registered post or for emails, via the electronic delivery confirmation methods available on your emailing system.

Step 5 - Additional tasks after the correspondence has been sent

Once your correspondence has been sent, you can attend to filing your correspondence in accordance with your firm's filing policies.

It will also be helpful to diarise in your and/or your Solicitor's calendars any deadlines that you have set out in the letter for a response or any action that you have requested to be taken by the recipient.

PREPARING COURT DOCUMENTS

Step 1 - Generating court forms and basic data entry

The first thing that you will do when preparing court documents is to generate your court forms.

You should make sure you have the right form for the right jurisdiction, and ensure it is the most up to date version of that form. Courts have been known to reject court forms if they have been prepared on an outdated version of the form. To ensure that you are always using the up to date version of the form, you should always generate a fresh form using your document systems or directly from the court website, rather than simply saving over a previous version of a form. It looks incredibly unprofessional if you are required to have a client attend upon the office for a second time to sign documents, just because it has been prepared on the incorrect form.

Once you have generated your form, you will need to enter the basic information for your matter into the forms. Become familiar with who your parties are and where your client fits in - are you acting for the Applicant/Plaintiff or the Defendant/Respondent? Ensure that your form correctly records all of the parties in your matter, and that all information required to be entered is accurate and up to date - take note of the correct spelling of names, dates of birth and addresses for service of documents. If your court forms are automatically generated with the parties' details (i.e. through Law Docs, Leap, Affinity or other similar system), you should always double check these details as well.

To assist you in the preparation of your court forms, many of the court websites have brochures and guides that outline the procedure for preparing and filing those forms, which can be incredibly helpful when you are preparing a certain form for the first time. If you prepare a certain document regularly, it may also assist to develop your own checklist guide to ensure that all of the information you are to include and procedural steps you must take have been attended to, prior to filing your court form.

Step 2 - Prepare any necessary supporting documents

Some court forms may require additional documents to be lodged in conjunction with the form that you are preparing. By way of example:

- Some applications will require you to file an Affidavit of your client in support of the relief that they seek;
- Some Affidavits may require you to collate documents in support of your client's evidence, usually referred to as annexures or exhibits;
- For family law proceedings, you may be required to file a Financial Statement (for financial matters) or a certificate confirming that the parties have attended family dispute resolution (for parenting matters).

If you have not prepared the necessary accompanying documents to the form that you seek to file, it is unlikely that the court will accept it for filing, so you should always ensure these are prepared at the same time as the main document that you are preparing.

Step 3 - Draft the Court documents

It is unlikely that you will be asked to draft Court documents yourself, unless you are employed in a senior PA or paralegal role. Drafting Court documents requires a certain level of skill that can only come from experience or from further study. You must have exceptional drafting skills, and be aware of the relevant legislative and case law and the relevant court rules including the rules of evidence.

If you are interested in assisting your Solicitor by undertaking complex legal drafting, you might like to look into undertaking a paralegal course which teaches the information that you will be required to know in order to do so. There are a number of further learning options available for legal support staff, such as:

- A Certificate / Diploma of Legal Services, available through NSW TAFE; or
- An Associate Degree (which is the paralegal equivalent of the Law Degree that all legal practitioners must undertake) such as:
 - The Associate Degree of Law (Paralegal Studies), available through Southern Cross University;
 - The Associate Degree of Legal Studies, available through Charles Darwin University; and
 - The Associate Degree in Legal Practice (Paralegal), available through RMIT University.

Step 4 - Proofread and send the draft documents to your supervising Solicitor for them to finalise

All court documents must be reviewed and signed off by a practicing Solicitor. Once you have finalised your draft document including one final proofread, send it to your supervising Solicitor to settle the document.

Step 5 - Finalise the documents

Once your supervising solicitor has finalised the documents, you will need to make arrangements for them to be signed. Different court forms will usually have different requirements for signing, including but not limited to:

- The document is to be signed by your client but does not require a witness to your client's signature;
- The document is to be signed by your client in front of a qualified witness who may be:
 - Someone over the age of 18 who doesn't know your client;
 - A Justice of the Peace; or
 - A practicing solicitor.
- The document is to be signed by your client in front of more than one qualified witness; or
- The document may be signed by the client's legal representative, on behalf of their client.

Make sure that you are aware of the requirements for swearing or affirming the document, and make those necessary arrangements.

Step 6 - File or lodge your documents

Once you have finalised the documents and they have been signed as required, they will usually need to be filed or lodged with the relevant court or other legal authority.

Ensure that you have the correct number of copies for lodging the document. There may be different requirements for each court as to how many copies they require - most courts usually require one copy for the court, one for client and one for each other party involved. Make sure that you are familiar with how many copies are required. If you are unsure, you may be able to contact the appropriate court registry and ask them what their specific requirements are.

You will need to make arrangements for the correct filing fee. You should become familiar with the required fees and any relevant payment processes - for example, some courts will no longer accept cheques for payments of filing fees.

Step 7 - Serve your documents

Once the documents have been filed with the court, they will need to be served on any other parties to the matter. There are specific rules for who documents must be served upon and the methods for which they must be served. These must be strictly adhered to, in order for your client's relief to be heard before the court.

Hot Tip - Become Familiar with the Relevant Court Rules

As legal support staff, it is not necessary for you to know in detail the legislation that applies to your area of law. However, if you are preparing legal documents, it will be helpful for you to become familiar with the relevant court Rules that apply to the documents that you are preparing. These court rules will guide you on several aspects of the process, including:

- What supporting documents may be required;
- How any annexures or exhibits must be collated;
- Who is able to sign and witness the documents; and
- Who is to be served with court material and the method for which it must be served.

Find out what rules apply to the jurisdiction that you work with, review and become familiar with them. You should also keep an eye out for any updates to these rules and when they might change.