

DRAFTING LETTERS

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Introduction

- Communication is the core in legal practice.
- Even in the electronic communication environment, legal practitioners would be hard-pressed to communicate without letters.
- A legal letter takes more time to write than an ordinary letter. Why?
- Experience and practice should make this simple and commonplace

- Letter written by legal practitioners have many purposes. They can:
 - Persuade
 - Inform
 - Record facts
 - Make demand

- Such letters can enrage or calm the reader depending on the skill of the writer and the intention of writing the letter.
- Some letters merely have formal purposes e.g. to confirm an arrangement 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.

- All legal letters should be written in clear and concise language so that it is easy for the intended reader to understand its contents.
- Avoid using old-fashioned, outdated words and phrases. Consider what is appropriate language for your reader.
- The form of the letter should be designed to assist the reader get the intended message.

Format

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- Information contained in a letter should be arranged in such a way that it 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 contribute to the effectiveness of your communication.
- 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.
- This may mean engaging your superior to change the format of letters used in a law firm.
- This is encouraged because it is only through thinking and questioning that you will learn.

- If you have faith in the form of your letter, use it unless otherwise convinced.
- By easily conceding to the demands of those expecting a letter to conform to a rigid formula, you may lose the opportunity to produce clear, concise and easily understandable letters
- NB: This does not mean that you must always change what is given as a precedent.

- Some conventions make perfect sense and it would be difficult to imagine a more effective way of operating.
- A legal practitioner's letter should follow basic conventions, changing them when necessary to make the letter more understandable.

- ❑ **The most basic format is:**
- ❑ Address of the sender at the top.
- ❑ Name and address of the recipient on the left hand side beneath the sender's address.
- ❑ Date at the top directly under the name of the addressee. (Important: never forget to date letters).

- ❑ If 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.
- ❑ When sending a letter to a particular person in an large organization, make that fact clear by: Attention: *Mr./Mrs./Miss etc.* The person's name should stand out.

- ❑ Include references. Most organization's have a system of categorizing and filing documents. This should be placed before the address of the recipient.
- ❑ 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 conventions in common use are:**
- ❑ Dear Sir/ Madam: This is general but if you know the gender of the recipient, use the appropriate word.
- When writing to an organization and not a particular person, the common phrase is “Dear Sirs”.
- In case of specific clients address them e.g. “Dear Mr. Kamau”.

- ❑ The subject line should appear directly after the salutation. The function of the subject line is to help the reader identify the matter.
- ❑ The body of the letter then follows. Effective language must be used here to convey what you want to say.
- ❑ Signing off: “Yours faithfully” is more formal and used by most practitioners as compared with “Yours sincerely”.

- ❑ If you use the salutation “Dear Sir” the signing off is “Yours faithfully”; if salutation is “Dear Mr. Kamau”, the signing off is “Yours sincerely”.
- ❑ 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.

- ❑ Where the letter is urgent and could not be checked or signed by the writer before being posted, use a brief phrase like “Dictated by... and signed in his absence by....”. If the letter is challenged for error, this phrase may help explain the error.
- ❑ It is the ideal and proper practice however, that the legal practitioner responsible for a letter signs it.

Body of the letter

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- Letters should be kept simple by using plain language.
- We should move away from jargon in our approach to letter writing.
- Avoid language that has to do with status rather than communication.

Practical suggestions

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- ❑ **Consider the recipient of the letter:**
- ❑ What is their level of education?
- ❑ What is their ability to read and understand technical language?
- ❑ Choose language that is appropriate and respectful.

- ❑ **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, find out the law; form an opinion and then write the letter. Do 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.
- ❑ 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.

- ❑ **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.

- ❑ **Think about presentation and image:**
- ❑ 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:
 - ✓ Spelling mistakes.

- ✓ Untidy layout.
- ✓ Unbalanced spacing.
- ✓ Illegible or smudged typeface.
- ✓ Dirty or damaged paper.
- ✓ Untidy folding of finished product.
- ✓ Mistakes crossed out and rewritten in hand.
- ✓ 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 letters could mean the difference between successful and unsuccessful practice.

Some specific letters

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- ❑ **Letters to the client**
- ❑ Practitioners are under an ethical, professional and contractual obligation to keep their clients up-to-date on the progress in their matters.
- ❑ These are important letters: you should report to your clients 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 be to foster and maintain a good client/advocate relationship.
- ❑ If you use standard form letters, try to regularly update and improve the original.

- ❑ **Letters to opponent**
- ❑ These are the most common of letters that leave practitioner's office.
- ❑ 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.

- ❑ In particular, do not use ambiguous language.
- ❑ Write simply.
- ❑ A letter should never be rude or written in anger.
- ❑ Rude letters may cause you serious 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**
- ❑ Sent to a possible defendant on the basis of your client's instructions.
- ❑ Sets out basis of your client's claim and informs the addressee that your client will sue unless the defendant does what the letter demands.
- ❑ There are serious consequences if this is not done properly.

- ❑ A demand letter has cost implications and may affect credibility.
- ❑ Therefore, it must be written carefully.
- ❑ Guiding rules:
 - ✓ Use same structure and language as any other letter.
 - ✓ Do not head the letter “demand” or “notice”. This does not add sense to your letter.

- ✓ 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 XYX*"
- ✓ 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 in terms of his instructions.
- ❑ By that you are establishing that you have mandate to write the letter in terms of information given to you by your client.
- ❑ That way, only you and not the client may be contacted thereafter.

- ✓ 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 jeopardize 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 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 our clients damages, which we hereby do”***.
- ❑ This is tired (old fashioned) language. Instead try: ***“In terms of our instructions, we demand...”***.

- ✓ The explain 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.
- ✓ The advantage of making proper demand is that your letter may convince the addressee that the best option is to settle the matter than get involved in litigation.