

My Lawyers Can't Write

How to Set Up or Enhance a Writing Program for Summer and Junior Associates

- **Amy Sladczyk Hancock**, Director of Professional Development, Andrews Kurth LLP
- **Mireille Butler**, Director and Professor, Legal Research and Writing, Pepperdine University School of Law
- **Selina Farrell Brandt**, Assistant Dean for Career Development, Pepperdine University School of Law

WHY WORRY ABOUT WRITING?

Why?

Ask judges and senior lawyers to identify the most disturbing aspect about young lawyers, and they will reply in one voice:

"They can't write."

Why?

Famous quote from Professor Kingsfield in The Paper Chase:

"You come in here with a skull full of mush and you leave thinking like a lawyer."

- This type of thinking no longer cuts it!
- Young attorneys need critical analytical skills, but teaching through studying judicial opinions does not measure up to the demands of the electronic era of today's law practice.

Why?

- The practice of law is highly competitive, and good legal writing will always be essential to the quality of a firm's work product and satisfied clients.
- Although it costs time and money to cultivate associates' legal-writing talent, this talent is just as important as other firm infrastructure such as information technology, marketing etc.

Why?

- Clients are wising up and advising their lawyers that they are not willing to pay for the on-the-job training of first-year associates.
- Many law firms are struggling financially, and the last thing they need is to have first-year lawyers dependent on the firm's resources without generating revenue.
- Some law firms have reservations about making the financial investment required to provide adequate training programs to this non-revenue generating group (who needs specialized training THE MOST!).

Why?

- Associates take legal writing courses in law school but often need to further develop their skills after beginning their associate careers.
- Some associates' legal-writing skills will improve as their careers progress.
- Others will not:
 - They are assigned to projects that do not require intensive legal writing (e.g., document reviews).
 - They started out as poor writers and have not done anything to improve their writing.

Why?

- Associates' lack of good writing skills creates a vicious circle.
 - Good writers have more opportunities to continue improving because they often are assigned a disproportionate number of substantive writing assignments.
 - Poor writers cannot catch up as they do not get many substantive writing projects from their supervisors.
- Over time, the good writers are affected too, because they become overworked and may end up sacrificing the quality of their work product.

Why?

- If firms cultivate their legal-writing talent, they can help new associates improve their legal writing, and they can avoid creating an “unbalanced” legal-writing-talent pool.
- If firms choose to neglect their legal-writing talent, they risk losing good writers through attrition, and risk losing clients as well, because the firm’s work product as a whole suffers.

WHAT DO LAW FIRMS DO?

The Reality

- Most law firms don't offer in-house legal-writing programs. Some firms might require associates to attend short legal-writing seminars, but they often do not offer a comprehensive program.
- Firms ignore reality if they expect new associates to improve their legal writing on their own. Most associates will not invest their free time to improve their legal writing skills.

Some Exceptions – OMM Summer Associate Program

O'Melveny's Advocacy Institute program:

An intensive “appellate advocacy” program designed to highlight several aspects of litigation practice, including legal strategy, research and brief writing, and oral argument before judges.

Some Exceptions – OMM Summer Associate Program

- The program spans two weeks.
- The firm provides summer associates a hypothetical problem (provided by Pepperdine last summer) accompanied by a presentation about writing a clear and compelling brief.
- Each summer associate is paired with another; the teams have one week to research and write their section of the brief.

Some Exceptions – OMM Summer Associate Program

- The teams have an additional week to prepare for oral argument before a panel of judges.
- A partner or senior attorney hosts a presentation describing best practices for oral advocacy.
- Throughout the second week, junior associates often host practice mooted sessions for the summer associate teams.

Some Exceptions – MoFo's Associate Writing Program

- MoFo offers a firm-wide program for all first years shortly after they start called “Practice Basics.”
- First year litigators attend classes on how to write persuasive briefs.
- First year transactional attorneys attend drafting workshops.
- Thereafter, all associates attend at least one writing workshop per year.

Some Exceptions – MoFo's Associate Writing Program

- A dedicated of counsel attorney at the firm coaches associates on litigation training.
- When an associate is identified by a partner as having writing issues (legal analysis, application of law to facts, verbosity, etc.), she provides individual coaching to the associate and works to help remediate the issues.

WHAT CAN YOU DO?

How to Create or Improve Your Firm's Writing Program

- A meaningful in-house legal writing program does cost a firm time and money in the form of your attorneys' billable hours.
- Another option is to hire outside legal writing experts to provide firm-wide training programs.

How to Create or Improve Your Firm's Writing Program

- Bryan Garner offers in-house legal writing programs.
http://www.lawprose.org/cle_seminars/in_house_training.php
- Ross Guberman also offer in-house legal writing programs.
<http://legalwritingpro.com/home/>

How to Create or Improve Your Firm's Writing Program

- The program need not be complex, and there is no reason to resort to outside experts if doing so is cost prohibitive.
- For a somewhat lower cost, you can ask experienced writers to give lunch presentations or short seminars to associates in which they provide tips on how to become a better writer.
- Your firm can also partner with a law school's LRW faculty to create a reasonable-cost writing program.

How to Create or Improve Your Firm's Writing Program – Mentorship

- Another idea is to pair junior attorneys with more senior attorneys for legal writing mentorships.
- Mentorship programs give firms the ability to review and track (as it happens) the improvement in associates' legal-writing skills, instead of waiting to evaluate associates' legal writing during an annual review of the associates' work.

How to Create or Improve Your Firm's Writing Program – Mentorship

- If a mentor decides that a particular associate is not meeting the firm's legal writing benchmarks, the firm can require the associate to attend CLE programs that teach legal-writing skills or take other remedial measures (including making sure the associate is given meaningful writing projects and the guidance necessary to improve).

How to Create or Improve Your Firm's Writing Program – Incentives

- Provide incentives to encourage improvement in legal writing skills:
 - Offer rewards to associates who publish articles in legal newspapers, client alerts, or firm blogs.
 - But perhaps discourage associates from writing law-review articles or similar nonpractice-related projects because the cost of these projects in terms of the associates' time, even considering any limited benefit to the associates, outweighs any benefit to the associates' legal-writing skills.

How to Create or Improve Your Firm's Writing Program – Incentives

- Motivated associates who seek out meaningful writing opportunities and work to improve their legal writing skills will invariably produce better work product for the firm, which will result in greater client satisfaction and retention.
- Firms benefit by being able to market their practice areas and legal-writing acumen by publishing the results of these projects on firm websites.

Contact Information

Amy Sladczyk Hancock
Director of Professional Development
Andrews Kurth LLP
713.220.4552
amyhancock@andrewskurth.com

Mireille Butler
Director and Professor
Legal Research and Writing
Pepperdine University School of Law
310.506.7696
mbutler@pepperdine.edu

Selina Farrell Brandt
Assistant Dean for Career Development
Pepperdine University School of Law
310.506.7439
selina.farrell@pepperdine.edu