

Professional Perspective

# How to Write A Research Memo

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# How to Write A Research Memo

Contributed by [Aaron Goodman](#), Baker McKenzie

A legal research memo comes in many forms—from broad 50-state surveys to more nuanced research on a particular point of law—but, whatever the form, attorneys would be well advised to ensure that they fully understand the task entrusted to them before they start typing. While the results may vary and there is no substitute for experience, attorneys who tackle the assignment with the recommended approaches noted below are more likely to find an appreciative supervising attorney, deliver better work product, cut down on the number of drafts required to arrive at a final product, and, most importantly, please the client.

## Understand the Assignment

Not all memos are created equal. In fact, the scope of work, budgeted time and expense, and expected result can vary wildly. For example, there is a huge difference between a comprehensive study in bet-the-company litigation, versus a narrow assignment on a specific nuanced area of the law in a smaller matter. The former may require a leave-no-stone-unturned comprehensive assault on the full body of law dating back to English common law, whereas the latter is more akin to a sniper shot—requiring quick and efficient laser-focused research and analysis. This is one of the common pitfalls in memo writing. Drafters will write at length when a short summary analysis was required; or, conversely, provide a summary analysis and conclusion when the assignment called for a more in-depth study. Neither is particularly useful if the assignment called for a different approach.

Unlike motion practice, memos tend to favor more of an objective analysis, while at the same time honing in on and identifying legal authority that is both good and bad. For example, a memo is typically not the place for argument on the reasons applicable case law should result in a win over an opponent. Rather, the memo more often explores different interpretations of the law, which can then allow for a discussion of the relative strengths and weaknesses of the parties' anticipated positions. In this way, a memo will likely provide a more fulsome view of legal authority than court briefing, which is more one-sided and persuasive in nature. That is not to say that memos are necessarily non-partisan, most are not. Rather, the underlying research and writing that go into a memo are intended to advance the party's position by better understanding all of the relevant authority. The supervising attorney or client may then use the memo to make certain strategic case and business decisions.

As a result, before getting started, drafters should endeavor to understand the scope of the assignment, including any limitations (time for completion or budgetary constraints), the universe of relevant legal authority (national, single or multiple states, appeal circuits, Supreme Court, etc.), key questions or issues, and the desired structure (form, format, length, prose, bullets).

For information that may be useful, see [Form - New Litigation Project Questionnaire](#) and [Checklist - Getting the Assignment](#).

## Conduct Smart, Informed Research

You have the assignment. It was emailed along with a series of other emails attaching various related materials, and perhaps with notes, questions, or guiding thoughts on the issues to be addressed. But there is often information missing. Perhaps a broader factual background is needed from the client, or the assigning attorney. Or maybe the approach suggested by the supervisor has baked in certain assumptions and those assumptions either don't make sense or require explanation.

The key now is to identify the mission critical questions, which should be asked at the first possible opportunity. Don't be bashful about asking questions, on the front end, to gain clarity about the assignment. Drafters should first spend the time to think critically about the problem at hand. Think about what clarity as to the assignment or additional information is needed from the supervisor, and, if applicable, what information is needed from the client. However, you are responsible for carefully reading appropriate case materials and gathering an understanding of relevant issues, so don't ask basic questions that can likely be answered by a little careful reading.

## Write Your Questions Down

This helps focus any conversation with supervisors, who will often not have time to get into the weeds on the issue. Some useful ways to frame your thoughts in order to identify informational gaps are to ask (and answer for yourself):

- Why is the research being done?
- What sources of information will be relevant to this line of study?
- Are there any areas of research that should be left out?
- Are there any questions that have not been asked but should be?
- Should the research be limited to a certain body of law (practice area or jurisdiction)?

Critically, it is the writer's job to dig into, understand, and own the issue, whether or not sufficient information was provided with the assignment. If you need more information, consider the following potential paths to clarity.

**Ask the Supervising Attorney.** Although it may be difficult to get face time with a supervising attorney, that should be the first stop and scheduled as soon as practicable after you realize you need more information in order to efficiently and completely tackle the project. In fact, the supervising attorney may set up a call or meeting to discuss the memo after issuing the assignment.

**Ask Others on the Case.** If the supervising attorney is not available, who else is on the case? Perhaps there is another attorney who can provide background information or forward relevant materials (maybe they are more senior or maybe they've just been on the case longer).

**Practice Note.** Although not ideal, it is sometimes necessary to begin a project without full clarity. Judgment calls are required sometimes to infer the scope of the assignment based on the complexity of the issue, the significance of the research, the personal preferences or style of the supervisor (or, possibly, the client), and the amount of time that should be spent on the project. For example, if you can easily explore an issue by making a series of assumptions whereby you would provide a memo that says "if X, then Y but if A, then B," you may want to consider doing so. But it is important to quickly learn when it is necessary to jump up and down shouting (metaphorically speaking) because the questions just cannot wait; whether that means walking into a supervisor's office or sending an email with "PLEASE READ NOW" in the subject line. These judgments are tough, but are an opportunity to demonstrate maturity to supervisors.

For information that might be useful during your research, see [Checklist - Starting Your Research](#) and [Checklist - Narrowing Your Research](#).

## Know Your Audience

Before beginning to write a memo (or, really, anything), the drafter should have an audience in mind. If it is not clear upfront who the audience is, drafters should consider including this question on the short list of mission-critical things to discuss with the supervisor. Weighing the immediate and potential audience for any writing is important because it may guide the form, style, or even the analysis and discussion a drafter should include in the final product.

In considering the audience for a memo (a motion, or a letter, for that matter), attorneys should think beyond the obvious. Perhaps the memo is to the partner or supervising attorney, to the client, or to the file, but:

- What will the memo be used for once it is completed?
- Who is likely to receive a copy of the memo?
- What is the knowledge base of those who will receive the memo?
- Is this memo for an existing client with known preferences?
- Is this memo for a new client, so it will be a first impression?
- Is the document publicly saved on the office document management system?

**Practice Note.** Attorneys would do well to understand that any writing has the potential to be widely circulated and to leave a lasting impression, as it will be associated with their name and representative of their work product.

## Find a Good Example

One of the best ways to learn the practice of any office or to tackle a new assignment is to find a good example or three. Emulating final work product that is said to be a "good example" can go a long way towards helping frame out and focus many aspects of a memo. At the same time, this will help remove much of the guess work required when starting from

scratch. It is also a common practice to ask for examples or samples across all levels of legal writing. No need to reinvent the wheel when one can simply improve upon one that was already built. It is worth simply asking supervisors or other colleagues for any examples of similar work when the memo is assigned.

The office document management system, whether it is fully digital or includes some hard copy documents, may also have answers. Search for memos and motions previously prepared by the group or the assigning attorney. Seeing what was done in the past can go a long way towards educating drafters on the form, format, style, and approach that may not have been explained but is expected. In addition, depending on the circumstances, public records or information may also be highly relevant and informative.

## Think About Structure

There are many different ways to format or structure a memo. Some supervisors or clients may even have a form, format, or structure that is preferred or even required. Structure really comes down to how to best deliver the answers arising from the question or questions presented. For shorter memos, headings, sub-headings and more formal structure may be less important. However, for longer memos containing many pages of keen analysis, it is important to make the end product as useful and reader-friendly as possible. No matter how brilliant the work may be, readers cannot be expected to sit down with a thirty-page memo and read it like a book, cover to cover. Perhaps they will but, more likely, a supervisor or client will want to be able to quickly get the gist of the analysis and conclusions drawn from the research. If those answers are hidden within the larger body of the memo, readers may become quickly frustrated no matter how well written the memo happens to be.

Summary findings and conclusions should be stated upfront, in an introduction, executive summary, or the like. The structure should then lead readers to easily find the analysis supporting those findings. Within the body of the memo, headings, numbering, formatting, and even bullet-points may be useful to organize the research and call out important issues in a way that is easily digested by the reader.

## Be Clear, Concise, and Balanced

The purpose of any memo is largely to document and communicate research and analysis on a particular topic or issue. That usually means that the writing is meant to be functional, easily accessible, and perhaps to serve as a primer for the case and other work to come. To achieve those goals, it may be useful to fall back on the IRAC format (Issue, Rule, Analysis, and Conclusion) learned during first-year legal writing in law school. The key is to write in an organized fashion, using direct (rather than passive) voice as often as possible. This will help drafters present their research both clearly and more concisely.

Memo writing should also not shy away from “bad” answers. The purpose of a memo is generally not to find the desired result (although it may ultimately be used to argue one side of an issue or the other)—i.e., research needs to address the relevant authority even if it cuts against a particular position. Failure to include negative cases may result in a skewed view of the law, expose a party to serious strategic risk, and could even result in sanctions against a party or counsel. Drafters must understand the difference between advocacy in the courtroom and presenting a fully informed balanced analysis in a memo, which can then be used to form the basis of the strategic approach in the case.

## Provide More Than a Conclusion

The meat and potatoes of any memo is the analysis, including a primer on the law, the factual circumstances at issue, and how the law applies to these facts. Keeping that in mind, the partner, judge, or other assigning attorney often already knows the general law at issue. What they are looking for is thoughtful considerations beyond a good analysis of the facts and law, although that is certainly a necessary ingredient. Here, again, is another pitfall that often catches attorneys, who believe they have completed the assignment and are left mouth half-open and wearing an expression of disbelief after the supervising attorney hands back their memo saying, “You didn't tell me anything I didn't already know.”

While the specific audience and work scope may be telling as to what is expected or needed in the final product, a memo should not only inform but also make recommendations as to strategy and next steps. This is the “so what?” part of the memo. In other words, if this is the law and these are the facts:

- How does the client best proceed in the litigation?

- Is further research or investigation needed?
- What discovery is needed to further develop the facts, in terms of written discovery, depositions, and the like?
- Is there an area of undeveloped law that could be expanded?
- Does the client need to take immediate action to limit certain exposure?
- What options does the client have going forward?

In this way, the memo leaves the reader, whomever it may be, with a recommended going-forward strategy, options, or next steps. This component is often the weakest part of many memos but is surely the most important. So test yourself before handing in—what you think is—the final draft. Read the introduction (setting up the premise of the problem), then immediately flip to the conclusion (providing the recommended next steps and proposed strategy). The conclusion should satisfactorily answer the premise laid out in the introduction and the reader should not need to look anywhere else to understand the strategic options and recommendations flowing from the research; if it doesn't, fix it. Why? Partners, clients, and judges often do just that: read the conclusion first and then go back if they want further explanation or clarity on a more nuanced point of law. This is your opportunity to advise your supervisor or the client on what to do next.

For additional guidance on writing your memo, see [Checklist - Writing Up Research Results](#) and [Checklist - Proofreading](#) and [Checklist - Bluebooking](#).