



Review and Comment

Collaborate Collegially on Legal Writing

By Lawrence S. Ebner

Have you ever circulated for review and comment what you thought was a well-written draft motion or brief? Then you know how disconcerting it feels when your draft is returned with so much redlining (or undecipherable handwritten edits and notes), that your original is barely visible. How should you, a previously confident legal writer with a suddenly shattered ego, react? Is there any way to prevent this frustrating if not infuriating experience from recurring? And if you are a reviewing partner, senior associate, or in-house counsel, how can your editorial or substantive input be provided in the most constructive and collegial way? Having been on both the drafting and reviewing ends of legal writing projects countless times during the past 45 years, here are some practical tips.

For Drafters

Always edit, and re-edit, your written draft before inviting comments. As a general rule, do not circulate your draft unless and until you believe that it is ready to file in its current form. This not only means that all the substance is there, but also that the organization and headings flow logically, sentences are highly polished, spelling and punctuation are unassailable, citations are complete and correct, and the document (including the caption, Table of Contents, and Table of Authorities) is formatted properly. Do not dash off and circulate any old draft even if you know, from prior experience or word-of-mouth, that your reviewer is likely to rewrite your work extensively just for the sake of doing so.

Deliver your draft on time. Except in extenuating circumstances, do not agree to an unreasonably short internal deadline that will deprive you of enough time to prepare what you consider to be a near-perfect draft. If you need more time, say so as soon as you know. Unless the situation is urgent, be sure that reviewers will have an adequate opportunity to read your draft and provide comments. Try to establish a deadline for receiving their edits and suggestions, so that you have enough time to consider them.



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Genuinely welcome input. When you receive it, do not just reflexively press the "Accept All Changes" button. Instead, carefully consider the edits and comments, and then communicate with the reviewers in person, by phone, or through email or an online document collaboration program. If you need clarification, ask for it. When you disagree with an edit or comment, be polite but not reticent.

When you are the lead attorney on a writing project and you receive "take-it-or-leave-it" edits or suggestions, give them good-faith consideration. Incorporate, revise, or reject each comment from colleagues or a client as you deem appropriate. And then circulate a revised draft with a forwarding email thanking the reviewers for their suggestions. Indicate that you have considered them carefully and incorporated many. In the same email, flag in bullet form any significant suggested edits or substantive comments with which you disagree. A non-defensive explanation of your thinking usually is enough to satisfy reviewers.

Always share your final, as-filed motion or brief with the individuals who reviewed your drafts. Be sure to thank them again for their helpful input (even if it was not so helpful!). Be collegial, even if they were not.

For Reviewers

Meet with the drafter well in advance. Discuss the nature, organization, and substance of the brief or other writing project and set internal deadlines. Leave enough time for internal review and revision, especially if a junior lawyer will be generating the first draft, since in-house counsel tend to frown upon receiving preliminary drafts that a partner or senior associate has not yet approved.

Avoid eleventh-hour surprises. Keep the channels of communication between you and the drafter open throughout the drafting process. Encourage the drafter to contact you to discuss questions or issues that may arise while drafting is underway. Be the author's colleague.

To promote collegiality, depersonalize any critical comments by focusing on the draft, not the lawyer who wrote it. For example, when communicating with the drafter, say, "the draft brief omits a really important point"—not "you forgot to include something really important." Compliments should be sincere, and they

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work just fine when directed to the author as well as the drafter: "You did a really great job researching and writing this very persuasive motion."

Feel free, of course, to suggest specific word changes. Consider, however, inserting marginal comments instead of taking it upon yourself to revise every sentence or paragraph that you believe can be worded better. Explain what needs to be done in terms of an argument's organization, substance, or clarity, but leave it to the drafter to implement your suggestions. This will transform your review into a learning experience for junior lawyers. And it will demonstrate respect and deference to attorneys who already have extensive legal writing experience.

Speak with the drafter in person or by phone in addition to providing your edits and comments electronically. Identify those which you view as the most significant, and discuss why. Invite the drafter to raise questions or disagree. Unless the changes are minor, ask to see a revised draft.

Clarify who should send the polished draft to the client. Emails forwarding drafts to a client should use the first person *plural*: "we are pleased to attach our draft summary judgment motion for your review and comment," or "Susan Smith and I are pleased to attach....,"—*not* "I am pleased to attach...."

Assuming that the project turns out well, provide prompt and positive feedback to the drafter. Even if your name is listed first on the motion or brief, give explicit credit to the drafter.

As these suggestions illustrate, the guiding principle for working successfully with colleagues or clients on a writing project is to initiate and maintain a collegial approach. The dividends will be substantial both now and in the future. **FD**