

Clinical Legal Writing Survey

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Statement of Informed Consent

Washburn University School of Law supports the practice of protection for human subjects participating in research. The following information is provided so that you can decide whether you wish to participate in a study planned by Professor Tonya Kowalski. You should be aware that even if you agree to participate, you are free to withdraw at any time.

Purpose of the study

I have been both a clinician and a legal writing professor. In clinic, I observed that although we teach a great deal of advanced legal writing, there is no clearly accepted teaching methodology writing in law school clinics. Most clinic students have not yet taken an advanced legal writing course, and most clinicians do not have formal training in legal writing pedagogy. Nor should we ask clinicians to adopt legal writing pedagogy wholesale. This study will identify trends and propose some solutions in a scholarly article. By completing this survey, you are helping to begin a much-needed dialogue about how to make legal writing instruction more effective for clinicians and their students.

Confidentiality and privacy

I will keep your identifying information, including your name, school, and contact information, private and confidential. I will use your responses to study both individual and aggregate information for empirical and anecdotal evidence of trends and possible solutions. The only people with access to the information will be my administrative assistant, Penny Fell, a student research assistant, and me. Assistants will be required to maintain confidentiality at all times.

I may contact individual respondents in order to pursue thought-provoking answers or even to request participation in a follow-up survey. If your responses generate an original idea that contributes to the scholarship, I will also contact you to ask for your permission to give you credit in the published article. No one will be identified in the article or in any other form without his or her express permission.

Participation

Your participation is solicited, but strictly voluntary. Please do not hesitate to ask questions about the study. Please also be assured that your name will not be associated in any way with the research findings. We appreciate your cooperation very much.

Tonya Kowalski, J.D. (Duke '95)
Associate Professor of Law
Washburn University School of Law

By signing or typing my name below, I state that I wish to participate in this study and that I agree to the terms outlined above.

Your signature

Date: _____

Name: _____ Title: _____

Law School _____ Phone: (_____)_____ E-Mail: _____

Instructions

Please feel free to supplement your responses anywhere on the front or back of the survey form as much as you like. Further, even though many of the questions ask you to select from among several options, you are not constrained to those choices. Please select as many options as you need or supply your own.

Background Information

Question 1. Please answer these short biographical questions:

- A. I have been teaching law for _____ years.
- B. I have been a law school clinician for _____ years.
- C. Now or in the past, I also have taught these other courses: _____
- D. My employment status and job security are best describes as:
 - ☐ Tenured
 - ☐ Tenure track with full scholarship expectations
 - ☐ Clinical tenure track with reduced scholarship expectations
 - ☐ Long-term contract
 - ☐ Short-term contract or in a visiting position
 - ☐ Other: _____

Question 2. Which labels best describe your clinic type?

- ☐ Individual, live-client representation
- ☐ Impact litigation with a heavy emphasis on research and writing
- ☐ Transactional
- ☐ Civil/domestic pretrial and trial litigation
- ☐ Criminal pretrial and trial litigation
- ☐ Tribal court practice
- ☐ Appellate litigation
- ☐ Alternative dispute resolution
- ☐ Administrative practice
- ☐ Immigration/Human Rights
- ☐ Intellectual Property/Technology
- ☐ Other: _____

Your School's Legal Writing Faculty and Program

Question 3. What kind of status does your law school grant to *legal writing* professors?

- ☐ Traditional tenure track with full scholarship expectations
- ☐ A special type of tenure track for skills faculty, such as clinical tenure track
- ☐ Long-term (multi-year) contracts
- ☐ Full-time, short-term contracts (approximately one or two years)
- ☐ Adjunct status
- ☐ Upper-division students/work-study status
- ☐ Other: _____
- ☐ I do not know

Question 4. What kind of legal writing curriculum does your school offer?

- ☐ “Standard” first-year curriculum with an emphasis on objective writing in the first term and persuasive writing in the second term
- ☐ Two or more semesters of integrated legal methods/skills, including research, writing, and some simulated clinical skills
- ☐ One semester of basic research and analytical skills
- ☐ Separate courses for research and writing
- ☐ Three or more semesters of required courses
- ☐ Upper-division courses are offered as electives
- ☐ Other: _____
- ☐ I do not know

General Clinic Policies and Procedures for Legal Writing

Question 5. What is your programmatic approach to legal writing in the clinic?

- ☐ There is no unified pedagogical approach; each professor develops her own system for monitoring, developing, and grading students’ written work.
- ☐ We have a set of rules and policies for students to follow, such as deadlines for turning in drafts and final edits.
- ☐ We have a unified set of checklists and writing samples for the students’ use in self-guided instruction.
- ☐ Other: _____

Question 6. To what extent does your clinical program collaborate with your writing program?

- ☐ Legal writing professors train clinicians in skills for communicating with students about their writing.
- ☐ Clinicians work with legal writing professors to help them develop components of a first-year legal skills curriculum.
- ☐ Legal writing and clinical professors meet occasionally to discuss what core skills are and are not covered in the first-year curriculum and to identify areas in which clinic students seem deficient.
- ☐ Legal writing professors teach a one-or-two class segment of the clinical skills seminar each semester.
- ☐ No collaboration so far but some is planned (please describe).
- ☐ No plans for collaboration so far.
- ☐ Other: _____

Question 7. What kind of instructions do your students receive *in advance* for completing different types of clinical writing assignments such as internal memoranda, motions, status memos, client letters, transmittal letters, trial briefs, and so on? (Please rank in order of form most used.)

- _____ Checklists, rubrics, or other written guidelines for *each type* of work product.
- _____ General legal writing guidelines, *undifferentiated* as to type of work product.
- _____ Bank of sample work product for each type of assignment.
- _____ One or more classroom sessions on writing skills.
- _____ One-on-one advice and instructions from supervisor, orally or in writing.
- _____ Other: _____

Question 8. Of the teaching tools described above, which would you most like to see developed for your clinic? Are there any alternative tools or methods that you feel might be helpful?

Response:

Impressions of Student Experience and Skills

Question 9. What prerequisites, if any, must students satisfy before enrolling in your clinic?

- ___ None
- ___ Evidence
- ___ An advanced legal writing course (identify): _____
- ___ Civil or Criminal Procedure
- ___ Trial Advocacy
- ___ Pretrial Advocacy
- ___ Topical subject area related to the clinic such as federal Indian law or Immigration law
- ___ Other: _____

Question 10. What types of work product do students usually produce in your school's mandatory legal writing curriculum?

- ☐ Office (internal/objective) memorandum
- ☐ Client letter
- ☐ Demand letter
- ☐ Motion
- ☐ Trial brief
- ☐ Appellate brief
- ☐ Contract
- ☐ Legislative provision
- ☐ Scholarly article
- ☐ Other: _____
- ☐ I do not know

Question 11. How well do students of *average* ability seem to be able to translate their previous legal writing experience to their clinical writing? (Please check all that apply and explain any overtly inconsistent responses.)

- ☐ Students seem to understand the basic components of a memo or brief; most problems concern subtle nuances in the analysis or providing enough case law examples and authority to support the analysis.
- ☐ Students often provide only a cursory analysis and overlook major document sections like the questions presented or the facts.
- ☐ Students have trouble differentiating between objective and persuasive analysis.
- ☐ Students seem to understand basic case law research and analysis but overlook or underestimate the importance of statutes and regulations.
- ☐ Students understand basic case law research but do not understand how to use secondary sources for greater efficiency, e.g. treatises, form books, and practice guides.
- ☐ Letters frequently lack appropriate tone and language for the type of recipient/audience.
- ☐ Other: _____

Additional comments:

Your Individual Practices and Preferences

Question 12. How do you feel about your current skills and tools to teach and evaluate advanced legal writing concepts in the clinical setting? (Please check all that apply.)

- ☐ I feel comfortable discussing the substantive issues with my students, but have difficulty explaining the steps needed for a proper written analysis, such as how to develop a good analogy to the facts of a case, how to “synthesize” a rule of law from seemingly inconsistent cases and statutes, and so on.
- ☐ I usually can identify even subtle errors in grammar and style, but often correct these problems for the student myself because I do not know how to discuss or explain many of them.
- ☐ I often accept incomplete written analyses and re-write them myself even when there is time for the student to complete another draft; it is sometimes easier than trying to explain what is wrong.
- ☐ I have educated myself about the terminology and concepts used to teach legal writing to the extent that I can help students recall the skills they learned in first year.
- ☐ I do not have time to learn the terminology and concepts used for legal writing courses, but I have developed my own methods and feel comfortable giving oral and written feedback to students and can usually encourage them to develop a complete analysis for their skill level.
- ☐ Other: _____

Question 13. What kind of writing collaboration is feasible in your clinic given time restraints and enrollment?

- ☐ I try to require multiple drafts on major assignments and to provide both written and oral feedback.
- ☐ I often have time to meet more than once with each student on each memo or brief and to provide written feedback on the more difficult assignments.
- ☐ I seldom have time to provide written feedback and tend to rely on shorter, more frequent oral feedback.
- ☐ Students seldom have the opportunity to re-write a project more than once.
- ☐ I often have to take over for a student and re-write major portions to save time.
- ☐ Other: _____

Question 14. If you often have to re-write portions of an *average* student’s product to make it presentable for the court and client, what do you feel are the major causes for this problem, ranked by frequency?

- _____ Students’ bewilderment over how to approach the assignment causes missed internal deadlines.
- _____ Students’ poor time management results frequent extensions or missed internal deadlines.
- _____ The student is unable to provide even a proficient analysis despite adequate time for feedback and re-writing.
- _____ The written product requires a nuanced argument. After the student makes a reasonable attempt to rewrite, the supervisor properly models an advanced solution.
- _____ Time constraints inherent in law practice and clinical teaching make it difficult to meet with students and to provide adequate feedback for continued re-writing.
- _____ Other: _____

Question 15. In what forms do you most often give students feedback on written work product, and which do you feel are the most efficient and effective in the clinical context? Why? (Please rank in order of form most used.)

- _____ Oral
- _____ Margin comments with a few interlineations

Continued on next page . . .

- ___ Pervasive line-editing throughout draft
- ___ Written memorandum to student
- ___ Other: _____

Question 16. When you review a student's work product, how much of your feedback is non-directive vs. directive? (Please check all that apply and rank if some conflicting styles are used.)

- ___ I provide mostly Socratic-style questions and broad advice without re-writing passages.
- ___ I use probing questions on substantive issues, directive feedback for structural flaws, and rarely re-write any passages.
- ___ I edit samples passages for style and grammar and prompt the student to re-write the rest.
- ___ I tend to redline/correct most grammar and style problems for the student.
- ___ I tend to re-write for both style and substance when the student is unable to produce a satisfactory second draft.
- ___ Other: _____

Interest in Legal Writing Teaching Methods

Question 17. What kind of training in advanced legal writing instruction is feasible given your time constraints and level of interest?

- ☐ I do not have time to learn to teach what students should have learned in first-year writing, but would like to learn how to discuss legal writing skills and concepts with students in a way that will help them recall and use their first-year skills.
- ☐ I would like to learn methods for teaching advanced legal writing in clinics, but I am afraid that doing so openly will cause status problems for me as a clinician and for my colleagues or program (i.e. due to the low status or stigma sometimes associated with teaching legal writing).
- ☐ I do not have time to teach a significant legal writing curriculum during our classroom meetings, but would appreciate some tools for providing feedback and checklists to students on a project-by-project basis.
- ☐ I could spend more time on legal writing skills in the classroom and would like to see some proposals for a special writing component in the clinic curriculum.
- ☐ I often do not have enough time to provide extensive feedback or rewriting schedules to students and would like to be able to rely on a manual that aids the student in a greater portion self-guided instruction.
- ☐ Other: _____

Question 18. I welcome any additional comments you can provide here about your experiences, frustrations, and successes in dealing with clinical legal writing. What works well for you now? What problems still seem difficult to solve? What kinds of instructional materials would help you to save time and give your students a more solid set of guidelines?

Response:

___ I wish to be contacted for a telephone interview to share further comments.