

# DEFENSIVE DOCUMENTATION from Hiring to Firing



**STEVEN MIERL**  
1607 West Avenue  
Austin, Texas 78701  
smierl@cornellsmith.com  
(512) 328-1540



1

## THE IMPORTANCE OF DOCUMENTATION

- Employer Complied with Policy/Disciplinary Procedures
- Demonstrate Consistent Application
- Preserve (or Refresh) Memory
- Employer Complied with the Law

*Remember who is actually on trial:  
Documentation can make or break your case!*



2

# Documentation Fundamentals

- Prepare Promptly
- Important Incidents
- Policy/Job-Related Standards
- Be Specific
- Objective – avoid subjective
- Rules apply to email, text and social media
- Manager notes?

## THE APPLICATION

At-will status

No oral contracts

Arbitration / Class Action / Jury Waiver

Release (current / prior employers)

Affirmation / After Acquired Evidence

Background check authorization

# THE INTERVIEW NOTES

- AVOID PHYSICAL DESCRIPTIONS TO REMEMBER CANDIDATES
- AVOID SUBJECTIVE COMMENTS
- FOCUS ON OBJECTIVE QUALITIES OF PROMISING CANDIDATES

# THE OFFER LETTER

- At Will Status / No oral contracts to the contrary
- Contingencies (drug testing, background check, signing NDA)
- Initial Position & Compensation
- Benefits – subject to change
- Relocation reimbursement (cap)

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Defensive Documentation from Hiring to Firing

Also available as part of the eCourse

[2024 Essential Employment Law eConference](#)

First appeared as part of the conference materials for the  
2024 Essential Employment Law: A Practical Course in the Basics session  
"Effective and Defensive Documentation from Hiring to Firing"