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Organization: Giving the Reader a Roadmap

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Organization

There are two keys to good organization. The first is the organizational scheme. Legal documents should contain logical subdivisions that accurately reflect the law. The second is signposting. The reader needs cues to your organizational scheme.

1. Organizational scheme

Lawyers are accustomed to breaking legal questions into parts. Elements and factors are common examples. Most first-year law students could rattle off the elements of a negligence claim as duty, breach, cause, and harm. Somewhere in the bowels of their first year, those students will learn that causation has two sub-parts, cause in fact and foreseeability. Thus, a motion or brief addressing a negligence claim would logically be divided into four sections, one for each element. The section on causation would then logically be divided into two subsections, one on cause in fact and one on foreseeability.

Problems can arise when the lawyer has a lot to say about one (or more) of the topics or little to say about others. A lawyer faced with an unwieldy section may decide to break it in two. Returning to the negligence example, the lawyer might decide the duty section is too long and instead write two duty sections, one about the common-law duty and one about the statutory duty. The lawyer might decide the causation section is too long and instead write two causation sections, one about cause in fact and one about foreseeability.

While this might seem perfectly logical to the lawyer, consider the document from the reader's perspective. The reader knows there are four elements to a negligence claim, but the document contains six sections. The disconnect between the organizational structure of the document and the reader's expectations based on knowledge of the law causes the reader to begin to doubt the lawyer's expertise. The safer, more persuasive approach would be to organize the document into four sections, then subdivide the longer sections into subsections. Meeting reader expectations will enhance the lawyer's credibility.

This does not mean, however, that every document must be divided into sections that match the structure of the law. Consider the lawyer who has little to say about some topics. In the negligence example, the lawyer may be drafting a motion for summary judgment against the negligence claim. The lawyer's client may not contest duty. In that instance, there's no sense in writing a section that makes a point for the other side. Instead, the lawyer should omit a section on duty. To deviate from the structure of the law without conflicting with reader expectations, the lawyer needs to use good signposting, our next topic.

Of course, not all legal issues are as neat or simple to organize as a discussion of negligence. Sometimes the real work comes in discerning the structure of the law. Often judicial opinions will provide guidance. The lawyer can examine multiple opinions on the

topic to look for patterns in how the judges break the issue into pieces. Sometimes, unfortunately, a pattern will not be discernible. In that situation, the lawyer will have to determine how best to impose structure on chaos. There, too, good signposting will help.

2. Signposting

Signposting refers to the cues the author gives the reader about how a document will be organized. Good signposting keeps the reader from feeling lost. A reader who knows where a document is going—and then finds that the document actually goes there—will gain confidence in the author. You want to be the reader’s trusted guide.

Signposts are so powerful that they can create the illusion of a well-organized document even if the document has organizational flaws. Take our negligence discussion divided into six sections rather than four. If the document contained a roadmap that previewed the six sections, and then headings that matched the roadmap precisely, the reader would likely trust the author and consider the document well organized, even though in reality the organization could have been improved. Similarly, if the lawyer has a persuasive reason for not wanting to follow the structure of the law, such as eliminating discussion of a point that does not favor the lawyer’s position, the lawyer should acknowledge the law’s structure but then provide a roadmap of the structure that will follow. This will enable the reader to follow the organizational scheme the lawyer has chosen. Likewise, the lawyer who has to impose structure on chaos will gain the reader’s confidence through clear signposting of the structure the lawyer has imposed.

Good signposting techniques include:

- a synopsis at the beginning of the document;
- an introduction that orients the reader to the issues and the facts;
- a roadmap each time a discussion is subdivided, identifying the divisions that will follow;
- headings that identify the contents of each section;
- thesis sentences stating the point of each paragraph; and
- transitions to guide the reader from one point to the next.

2a. Synopsis

Every legal document should start with a brief statement of what the document is about. In memos and appellate briefs, this comes in the form of questions presented. If the questions are well written, the reader is quickly oriented to the facts and law at issue. In letters, the opening paragraph should likewise alert the reader to the contents and conclusion of the letter. For example, you might begin a letter to a client by saying something like this:

You asked me whether the non-compete agreement that Mr. Alsafar signed when he joined Knight Enterprises is enforceable. I have concluded that a court would likely enforce the agreement and enjoin Mr. Alsafar from working at Day Industries.

Or your letter to your opponent might start this way:

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