

## LEGAL DRAFTING METHODOLOGIES

### DRAFTING METHODOLOGIES EXPLAINED

There are six primary methods lawyers utilize when drafting documents. They are broadly classified as follows:

#### FIND, RENAME AND MODIFY

When creating new documents, most lawyers simply start with the last document they created for a similar client and then modify it (cut-and-paste, search-and-replace) to suit the new client. Although this is the most common approach, it has several significant disadvantages:

#### HIGH MARGIN FOR ERROR

The margin for error (and therefore malpractice risk) arises from the fact that Find, Rename and Modify is unstructured, relies on memory, assumes the word processor will "catch" all of the items in need of replacement and requires many steps. Memories fail, word processors don't catch everything and more steps create more mistakes and slower drafting.

#### SLOW

Transcribing voice recordings or hand written notes and cobbling together provisions from other documents makes the process slow.

#### ERRORS OF OMISSION

It's easy to leave something out you should have added to the starting point document.

#### ERRORS OF INCLUSION

It's easy to leave something in that you should have taken out.

#### COMPROMISED DOCUMENTS

In adversarial areas of practice, it's likely that the last document you drafted of a particular type was compromised during the negotiation process. Unless you have a photographic memory and can recall every single change that was made, the document you're starting with is fundamentally flawed.

As a result of the foregoing, Find and Fix is characterized by disorganization, mistakes, and inefficiency; and should be avoided whenever possible. This seminar is all about good alternatives to this approach.

### GOLD STANDARD TEMPLATES

A much better approach than "Find, Rename & Modify" described above is to pull together the best of what a law office knows into precedent forms. These forms are thereafter always used as the starting point when drafting new documents. The Gold Standards identify changeable text and contain every optional provision in the order they could occur, fully annotated. This approach is vastly better than Find, Rename & Modify and costs nothing but time to create.

### GOLD STANDARDS + WORD PROCESSOR AUTOMATION

Some lawyers take the Gold Standards they've built and then improve them by adding in automation features available in their word processor (typically WordPerfect or Word). This can mean utilizing merge functions, "prompt" or "fill-in" fields, macros to expedite the insertion of optional language, and/or better use of Word's AutoText or Quick Parts features or WordPerfect's QuickWords feature. It's fairly easy to create templates and utilize the tools that Word or WordPerfect provides you for automating those templates. Automating the fill-in of names and the

like is fairly easy. However, unless you're a programmer, gathering lists (beneficiaries, trustees, personal representatives, etc.), making language conditional and calculating things (such as he/she, him/her, verb conjugation, list punctuation) is extremely difficult, particularly in MS Word. This approach also assumes that you have a mastery of your word processor and know, for example, how to utilize automatic paragraph numbering, auto-calculating cross references, automatic tables of contents and other higher-end features. If these things aren't built into your templates, then you end up spending a lot of time wrestling with formatting issues and paragraph numbering which can significantly off-set any efficiencies you may have otherwise gained by utilizing word processor automation features. Having said all of that, you should be utilizing this approach at a minimum. This approach is far superior to Find, Rename and Modify and a nice improvement on Gold Standards.

## **GOLD STANDARDS + CASE/MATTER MANAGEMENT SOFTWARE**

Case Management software primarily aids lawyers in organizing case information and items related to a case like documents, emails, and phone calls. A sometimes overlooked fact is that most case management vendors offer integration options for your Word or WordPerfect templates. In Amicus Attorney, Practice Master and Time Matters, for example, you can store your templates within the case management system. When a document is created within a specific matter, the equivalent of merge codes grabs key information (client names, pleading captions – indeed nearly any of the case related database fields). For high volume practices such as Social Security or Workers Comp, a library of word processing templates with linked case or document management fields can streamline workflow, and make document generation take just seconds.

## **SUBSCRIPTION DRAFTING SYSTEMS**

Having become frustrated with the inefficiency of Find, Rename & Modify, or the amount of time necessary to develop and maintain the Gold Standards or the Gold Standards Plus approaches, some lawyers simply subscribe to a commercial system.

Subscription systems are widely divergent in terms of sophistication. For example, there are estate planning drafting systems which enable the user to generate incredibly complex, customized documents which are valid in all 50 states. On the other end of the spectrum, I have seen systems which are nothing more than the most basic and simple forms with fill-in-the-blank technology. In my experience, there's no real link between price and sophistication when it comes to subscription systems. I've seen powerful systems that are fairly inexpensive; and I've seen simple systems that are pricey. Most Subscription Drafting Systems contemplate that you enter information about your client and in return, the system generates customized documents for that client. Some work in Word or WordPerfect; and some utilize their own custom-built word processor environment. Examples of these systems would be the New York State Bar Association's Residential Real Estate Forms Powered by HotDocs<sup>1</sup>, Wealth Docx<sup>2</sup>, ArkBar Docs<sup>3</sup>, Central Ohio Docs<sup>4</sup>, or IllinoisBarDocs.<sup>5</sup>

## **GOLD STANDARDS + DOCUMENT ASSEMBLY SOFTWARE**

Finally, some will take the Gold Standard Templates approach and raise it to another level by utilizing third-party document assembly software in conjunction with their word processor. In effect, these individuals are creating their own commercial drafting systems. In fact, many of the Commercial Systems available are exactly that: a combination of Word and/or WordPerfect and a home-grown or commercially available document assembly program.

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<sup>1</sup> See <https://nysba.org/products/lexisnexis-nysbas-automated-residential-real-estate-forms/>.

<sup>2</sup> See <https://www.wealthcounsel.com/software-for-attorneys/wealthdocx>.

<sup>3</sup> See <https://www.arkbar.com/arkbardocs/home>.

<sup>4</sup> See [http://www.cbalaw.org/CBA\\_PROD/Main/Resources/Legal-Professionals/Central\\_Ohio\\_Docs.aspx](http://www.cbalaw.org/CBA_PROD/Main/Resources/Legal-Professionals/Central_Ohio_Docs.aspx).

<sup>5</sup> See <https://www.isba.org/forms>.