



Become a Trusted Advocate in Emergencies

Legal Writing When Pressed for Time

By Andrew L. Johnson

Every litigator will face the unenviable situation of being assigned an important writing project that ideally would come with several weeks of preparation time, but is due in a few days. Your initial reaction may be a shudder of panic, but there are practical ways to handle this dilemma to reduce anxiety and ensure competent writing.

The Fuse Is Short: Dos. The first thing that a lawyer should do when assigned a writing project with a short fuse is to determine what issues *need* to be addressed. Literary perfection is not the goal. Although it may be interesting to see what the Restatement says about your defense, or to find analogous cases from different jurisdictions, time constraints do not allow for a treatise-quality paper. It will not help you to spend hours researching an interesting ancillary topic if it means that you run out of time to address the necessary issues. Stay focused. Create a list of issues that you need to address and note whether each issue requires research and evidentiary support.

Once your list is complete, assess whether there is sufficient time to complete all necessary tasks adequately. If not, consider whether filing a motion for continuance is an option. Many times, nerve-racking deadlines can be avoided simply by asking for an extension.

But extensions are not always an option, and if not, you need to start tackling your list. If the project is an evidentiary motion that will require exhibits, make plans to obtain your evidence. Securing an affidavit on the actual due date may be difficult, so let your witnesses

know that they will need to review and sign a document. Also, consider whether you can save time and work by incorporating reference evidence that is already on file with the court.

With time short, figuring out where to start may be unnerving, especially when you must write a complex brief or motion with numerous issues. Start writing. Beginning with something relatively easy, such as drafting the background section, will boost your confidence and reduce stress because you are making

With time short, figuring out where to start may be unnerving, especially when you must write a complex brief or motion with numerous issues. Start writing. Beginning with something relatively easy, such as drafting the background section, will boost your confidence and reduce stress because you are making tangible progress.

tangible progress. Knowing that a section has been completed makes drafting the next sections easier. In short, avoid spending so much time researching and preparing to write that you lack time to write.

When you start working on the argument section of the paper, keep a notepad nearby so that you can capture inspirations. Many times, I have been working on one section of a brief when I think of a good idea for another section. Quickly jotting down

the idea means that I do not forget it while I continue to focus on the present section.

Another tip is to consider whether certain tasks can wait until after you file your writing. If you want to make evidentiary objections to your opponent's exhibits, you may be able to file separate objections after your project deadline. And if there will be an oral hearing, you likely can hand the court copies of additional authority during the hearing.

Be cognizant of the project deadline: is it 5:00 p.m., or 11:59 p.m.? Finish your writing several hours before the deadline so that you have time to proofread (or, preferably, have a colleague proofread). You also need a cushion of time to file your writing. Filing a brief with ten minutes to spare leaves no room for error. It is better to file a writing that might not be perfect than to work on the writing up to the deadline and then have it



■ Andrew L. Johnson is a partner in Thompson Coe's Houston office and vice chair of the firm's appellate section. He is board certified in Civil Appellate Litigation by the Texas Board of Legal Specialization. His specialties include drafting appellate briefs, complex motions, jury charges, and expert challenges. Mr. Johnson is a member of the DRI Appellate Advocacy Committee.



stricken because you could not upload it in time. And if a client needs to review your writing before it is filed, send the client an early draft with the caveat that you will send the final draft later.

The Fuse Is Short: Don'ts. My main "don't" is don't use time constraints as an excuse to misrepresent facts or law. If you are unsure about a certain fact, talk to other lawyers on the case who know the facts to confirm that your representations are accurate. Accidentally misstating a fact because you were hurried sets up your opponent to highlight the misrepresentation, which could be devastating to your position. The court may decide to rule for the lawyer who did not seemingly try to mislead the court.

Similarly, make sure that your legal analyses are supported by the law that you cite. While you may not have time to research every issue exhaustively, the authority that you do cite needs to

support what you represent. For instance, in your rush, you may believe that you found a case with a great holding that supports your position. But, if you had taken time to review the case, you would have realized that the dissenting judge made the "holding." If you do not have time to analyze and differentiate every authority that your opponent cites, address the major authorities, particularly binding precedent.

Finally, don't hesitate to ask for help. Discrete research issues, such as looking at a case's subsequent history, or determining when a statute was enacted, are perfect for a colleague to handle while you draft and revise your writing.

Conclusion. The best thing about a tight deadline? It passes. And when other lawyers and clients see your grace under pressure, you will become a trusted advocate in emergencies. 

dri™

Your legal library



LegalPoint is DRI's online, searchable service that gives DRI members **exclusive access to a vast online library** of DRI articles, books and materials.

LegalPoint includes content from:

- ▶ *For The Defense*
- ▶ *In-House Defense Quarterly*
- ▶ Committee Newsletters
- ▶ Defense Library Series (DLS)
- ▶ Seminar Materials
- ▶ DRI Defense Wins Reporter



Go to dri.org/legal-resources.