

CONTENTS

| | |
|--|-----------|
| <i>Preface</i> | xvii |
| <i>Acknowledgments</i> | xix |
| | |
| CHAPTER 1 | |
| INTRODUCTION TO JUDICIAL WRITING | 1 |
| | |
| CHAPTER 2 | |
| JUDICIAL ETHICS | 3 |
| A. Ethics Rules for Judges | 5 |
| B. Ethics Rules for Judicial Clerks and Interns | 6 |
| C. Ethics and Social Media | 7 |
| D. Consequences | 8 |
| E. Chart of Ethics Guidelines and Rules | 9 |
| | |
| CHAPTER 3 | |
| THE JUDGE'S PURPOSE AND AUDIENCE | 11 |
| | |
| CHAPTER 4 | |
| WRITING RESEARCH AND BENCH MEMOS | 13 |
| A. Common Parts of a Trial Court Research Memo | 14 |
| 1. Memo Heading | 14 |
| 2. Question Presented | 15 |
| 3. Brief Answer | 16 |
| 4. Facts | 16 |
| 5. Discussion with Legal Analysis | 17 |
| a. Issue Statement or Conclusion | 18 |
| b. Rule Statement | 19 |
| c. Explanation of the Law | 21 |
| d. Analysis | 22 |
| e. Conclusion | 24 |
| 6. Conclusion and Recommendation | 24 |
| B. Model Research Memorandum with Annotations | 25 |
| C. Common Parts of an Appellate Court Bench Memo | 29 |
| 1. Caption | 31 |

| | |
|---|-----------|
| 2. Introduction | 31 |
| 3. Statement of the Issue and Short Answer | 32 |
| 4. Facts and Procedural History | 33 |
| 5. Standard of Review | 35 |
| 6. Discussion | 37 |
| 7. Recommendation | 40 |
| D. Model Bench Memo with Annotations | 41 |
| | |
| CHAPTER 5 | |
| WRITING TRIAL COURT DOCUMENTS | 49 |
| A. Common Parts of a Trial Court Order | 50 |
| 1. Case Caption | 51 |
| 2. Introduction | 52 |
| 3. Background | 53 |
| 4. Legal Standard | 55 |
| 5. Discussion with Legal Analysis | 58 |
| a. Single-Issue Analysis | 59 |
| i. Conclusion or Issue Statement | 59 |
| ii. Rule and Explanation of Relevant Law | 60 |
| iii. Analysis | 61 |
| b. Multi-Issue Discussion Sections | 63 |
| 6. Conclusion and Order | 64 |
| 7. Judge's Signature and Date | 64 |
| B. Model Trial Court Order with Annotations | 65 |
| C. Jury Instructions | 70 |
| 1. Review the Pleadings and Outline the Claims | 73 |
| 2. Compile Instructions from All Sources | 73 |
| 3. Master Your Subject and Present a Neutral Approach | 74 |
| 4. Supplement Where Needed | 75 |
| 5. Organize the Instructions Logically | 76 |
| 6. Proofread for Plain Language | 79 |
| D. Model Jury Instructions with Annotations | 81 |
| | |
| CHAPTER 6 | |
| WRITING AN APPELLATE OPINION | 85 |
| A. How to Write an Appellate Opinion | 86 |
| 1. Identify the Issues | 86 |
| 2. Outline and Draft Each Section | 88 |
| a. Review Samples, Create a Template, Start with the Case Caption | 88 |
| b. Introduction | 88 |
| c. Standard of Review | 91 |
| d. Background | 93 |

| | |
|---|-----|
| e. Discussion | 94 |
| i. Roadmap | 95 |
| ii. IRAC or CREAC Analysis of the Issues | 96 |
| f. Decision | 100 |
| 3. Proofread to Perfection | 102 |
| B. Model Appellate Opinion with Annotations | 103 |

CHAPTER 7

WRITING DISSENTS AND CONCURRENCES 109

| | |
|---|-----|
| A. Common Parts of a Dissent or Concurrence | 111 |
| 1. Conclusion and Reason for Writing Separately | 112 |
| 2. Rule and Explanation of the Law | 115 |
| 3. Analysis with Incorporated Facts | 117 |
| a. Style and Substance | 117 |
| b. Incorporated Facts | 121 |
| 4. Conclusion Describing Desired Outcome | 121 |
| B. Finalize and Proofread | 122 |
| C. Model Concurrence and Dissent with Annotations | 123 |

CHAPTER 8

JUDGES' WRITING STYLES 129

| | |
|------------------------|-----|
| A. Tell a Story | 130 |
| B. Keep It Short | 133 |
| C. Avoid Jargon | 137 |
| D. Show with Examples | 139 |
| E. Start with a Bang | 141 |
| F. Persuade with Power | 143 |

CHAPTER 9

GRAMMAR, PUNCTUATION, AND WRITING STYLE CHECKUP 147

| | |
|---|-----|
| A. Basic Grammar, Punctuation, and Style Checkup | 148 |
| 1. Sentences—Fragments, Subject-Verb Agreement, and Run-Ons | 148 |
| a. Fragments | 148 |
| b. Subject-Verb Agreement | 149 |
| c. Run-Ons | 150 |
| 2. Commas | 152 |
| a. Comma Rule No. 1: Use Commas to Set Off Nonrestrictive Clauses | 153 |
| b. Comma Rule No. 2: Use the Serial Comma | 154 |
| c. Comma Rule No. 3: Use Commas After the Day and Year in Dates | 154 |

| | | |
|-----------|---|-----|
| d. | Comma Rule No. 4: Use Commas to Separate Elements in Locations | 155 |
| e. | Comma Rule No. 5: Use Commas Around Clauses, Phrases, and Conjunctive Adverbs for Clarity | 155 |
| 3. | Semicolons | 156 |
| a. | Semicolon Rule: Use a Semicolon to Separate Complex Items in a List | 156 |
| 4. | Colons | 156 |
| a. | Colon Rule: Place a Colon Only After a Complete Clause | 157 |
| 5. | Modifiers | 157 |
| a. | Modifier Rule No. 1: Avoid Unclear Placement of Modifiers | 158 |
| b. | Modifier Rule No. 2: Avoid Dangling Modifiers | 158 |
| 6. | Pronouns | 159 |
| a. | Pronoun Rule No. 1: Make Pronouns and Antecedents Match | 159 |
| b. | Pronoun Rule No. 2: “It’s” Is a Contraction, Not a Possessive | 160 |
| c. | Pronoun Rule No. 3: Pronouns Should Refer to an Existing Antecedent | 160 |
| d. | Pronoun Rule No. 4: “Who” Is for Subjects; “Whom” Is for Objects | 161 |
| 7. | Apostrophes | 161 |
| a. | Apostrophe Rule No. 1: For Singular Nouns, Add an Apostrophe and an “s” | 161 |
| b. | Apostrophe Rule No. 2: For Plural Nouns, Add Just the Apostrophe | 162 |
| c. | Apostrophe Rule No. 3: For Singular Nouns Ending in “s,” Follow Rule 1 or 2 Consistently | 162 |
| d. | Apostrophe Rule No. 4: Use Contractions Conversationally and Sparingly | 163 |
| 8. | Hyphens | 164 |
| a. | Hyphen Rule No. 1: Hyphenate Phrases with Multiple Adjectives | 164 |
| b. | Hyphen Rule No. 2: Hyphenate When Ambiguity Could Result | 164 |
| c. | Hyphen Rule No. 3: No Hyphen Follows Words Ending in “-ly” | 165 |
| B. | Advanced Grammar Principles | 165 |
| 1. | Active and Passive Voice | 165 |
| 2. | Parallelism | 166 |

| | |
|---|-----|
| 3. Quotations | 168 |
| a. Quotations Rule No. 1: Use Double Quotation Marks for Quotes | 169 |
| b. Quotations Rule No. 2: Commas and Periods Always Go Inside Quotation Marks | 169 |
| c. Quotations Rule No. 3: Use Brackets, an Ellipsis, or Both to Show a Change to a Quote | 170 |
| d. Quotations Rule No. 4: For Essential, Longer Quotes, Indent the Quote as a Text Block | 170 |
| 4. Em Dashes and Parentheses | 171 |
| C. Good Books on Good Writing | 173 |
| | |
| CHAPTER 10 | |
| RESEARCH AND CITATION CHECKUP | 175 |
| A. Jurisdiction: The Reach and Structure of American Courts | 176 |
| B. Creating a Research Plan | 181 |
| 1. Develop and Refine Your Research Questions | 181 |
| 2. Start with Secondary Sources | 183 |
| 3. Know How to Start: Primary Authorities | 184 |
| 4. Know When to Stop: Primary Authorities | 185 |
| C. Citation Checkup | 187 |
| 1. Consistency Is Key | 188 |
| 2. Perfecting Citation Practices | 189 |
| D. Researching from Beginning to End | 191 |
| | |
| <i>Index</i> | 193 |