

## ***DRAFTING LEGAL DOCUMENTS: Practical Resources***

Beatrice A. Tice  
Foreign and Comparative Law Librarian  
University of Michigan Law Library

*Updated 3/23/04*

If you're going to practice law, you're going to draft legal documents. No matter what type of practice you pursue, drafting will be an integral part of your daily work: Civil litigators draft complaints, other pleadings, interrogatories, jury instructions, settlement agreements, appellate briefs, etc. Criminal lawyers draft plea agreements, motions *in limine*, writs of *habeas corpus*, appellate briefs, etc. Transactional attorneys draft contracts of all types, leases, promissory notes, articles of incorporation, etc. Even more than doing research, you will find that legal drafting is in many ways the very definition of practicing law.

Although every document you create will likely be unique unto its situation, it is not necessary to reinvent the wheel every time you sit down to draft. This research guide is intended to provide you with an overview of some of the most useful resources for attorneys in drafting legal documents.

### **"Just Show Me..."**

The best guidance for legal drafting is usually **seeing an example** done by someone else. As a legal term of art, these exemplars are called **forms**. Although such examples will **never be perfectly tailored** to your unique situation, they usually provide enough information to get you started on your own drafting.

Forms are available in many...well, forms. Commercially published **formbooks** provide general drafting information, as well as forms specific to subject, jurisdiction, and document-type. **Court-prepared forms** are standardized forms provided by courts for frequently used pleadings or other court procedures. Your institution may have an **in-house databank** in which legal documents prepared by attorneys have been archived as forms. Your **colleagues** may have ideas about where to find forms. The **matter file** may contain documents that can

be used as forms. Finally, **your own forms file** can be a good source of information!

## **FORMBOOKS**

Formbooks contain **sample legal forms**, couched in standard, court-tested language. Forms usually appear in several alternatives, *e.g.*, a long, detailed form and a short form. Usually optional clauses are included that can be added to the basic form when appropriate.

Formbooks are typically **multi-volume sets, arranged alphabetically by topic**. Forms are accessed by using the index, usually contained in a separate volume, which will point the user to appropriate topics and sections.

Many formbooks include narrative text related to a topic, in addition to forms. Therefore, don't forget to check formbooks as a **secondary source!**

Unfortunately, there is **no easy way to determine the quality** of a particular set of forms for a particular situation. Often the best way to do this is to ask someone with experience (why not a librarian?).

**CAUTION:** Formbooks are very useful sources for exemplars of legal documents. *But they were not drafted with your unique legal situation in mind!* Always exercise extreme caution when relying on a published form. Check and double-check that the form complies with the requirements and practices of your jurisdiction and your institution!

### **General Formbooks**

These formbooks **run the gamut of legal topics**, from "Abandoned Property" to "Zoning." They contain something for everyone.

General formbooks **are not jurisdiction-specific**. Therefore you must **be careful to compare** the language with applicable statutes, regulations and decisions in order to determine that it complies with the requirements of your jurisdiction.

Major sets of general formbooks:

***American Jurisprudence Legal Forms ("AmJur Legal Forms")*** (2d ed., 1971-) [Formbks]. This set contains transactional forms.

***American Jurisprudence Pleading and Practice Forms Annotated ("AmJur Pleading and Practice")*** (1956-) [Formbks]. This is the companion set to AmJur Legal Forms. It includes forms used in litigation.

***West's Legal Forms*** (4<sup>th</sup> ed. 2003-) [Formbks]. Includes forms related to business and commercial issues.

***Nichols Cyclopedia of Legal Forms Annotated*** [Formbks]. Provides forms and secondary source information for commercial issues.

### **Subject-Specific Formbooks**

Many formbooks publish **forms related to a specific subject or area of practice**. These books contain the basic forms and a multitude of optional clauses that may be included to address particular situations. They may also include secondary source materials regarding the subject, thereby functioning as treatises.

To find formbooks on a topic you are interested in, ask a librarian or use a library catalog. Do a keyword search with your topic ("bankruptcy") and the word "forms."

Some examples:

***Fletcher Corporation Forms, Annotated*** (4<sup>th</sup> ed. 1972-) [F615c 1972].

***Herzog Bankruptcy Forms and Practice*** (9<sup>th</sup> ed. 1991-) [H582b 1991].

Simon, David. ***Computer Law Handbook: Software Protection, Contracts, Litigation Forms*** (1990) [S59231c 1990].

***International Child Abduction: A Guide to Applying the Hague Convention, with Forms*** (2d ed. 1993) [JX3 I63 C536 A13 1993].

**Uniform Commercial Code Legal Forms** (4<sup>th</sup> ed. 2003-) [KF886 .N4512x]. Includes forms for states that have adopted the UCC.

### **Jurisdiction-Specific Forms**

These formbooks focus on **legal documents used in a particular jurisdiction**. The most prominent "jurisdiction" is that of the **federal courts**.

Major sets of federal forms:

**Bender's Federal Practice Forms** (1951-) [B4574f 1951]. Forms for all aspects of federal litigation practice. Organized by Rule of Civil, Criminal, Appellate Procedure and Federal Rules of Evidence.

**Federal Procedural Forms (Lawyers' Edition)** (1975-) [Formbks]. Provides forms and secondary source information on numerous federal issues.

**West's Federal Forms** (1952-) [W538 1952]. Organized by type of court (*i.e.*, Supreme Court, district courts, bankruptcy courts, etc.).

Some jurisdiction-specific formbooks **focus on a particular state**. To determine whether formbooks exist for your state, ask a librarian or use a library catalog. Do a keyword search with your state ("California") and the word "forms."

Examples of state formbooks:

Borgsdorf, C. **Michigan Corporate Forms** (2001-) [B7325m 2001].

**California Jury Instructions, Criminal (CALJIC)** (6<sup>th</sup> ed. 1996) [C153 S95jc 1996].

**Trust and Will Provisions: Practical Drafting (New York)** (1987-) [T8727 A54 W689 1987].

### **Document-Specific Forms**

Still other formbooks focus on **specific types of documents**.

## Complaints

Many formbooks provide a framework for complaints of various types. However, since complaints are fact-specific, these forms can provide little more than a general outline. At least one formbook focuses instead on the **causes of action** that make up a complaint:

***Shepard's Causes of Action 2d*** (1997-) [S54825 C374 O31 A1882]. This multi-volume set discusses issues surrounding various causes of action. Near the end of each annotation is a "Sample Complaint" form for each cause of action.

## Interrogatories and Other Discovery

Like complaints, discovery varies greatly according to each fact situation. It also varies depending upon the civil or criminal nature of the action. Several formbooks provide **pattern interrogatories** and other sample discovery forms for use in numerous sorts of actions:

***Bender's Forms of Discovery*** (1963-) [B4575 1963]. Includes forms for interrogatories on all subjects. Volumes 11-16 form a treatise on all types of discovery.

***American Jurisprudence Proof of Facts 3d ("AmJur Proof of Facts")*** (1988-) [Formbks]. Provides "text and sample testimony to assist in proving contested facts." Includes forms for interrogatories, as well as sample deposition testimony.

## **COURT-PREPARED FORMS**

Many **courts prepare forms for frequently-used pleadings** and other filings. These are typically check-the-box and fill-in-the-blank documents that contain standard language; your unique drafting input is kept to the bare minimum. The goal of these court forms is to simplify procedure.

Court forms are often available for summons, form interrogatories, family law pleadings, cost bills, various notices, various orders, various stipulations, various criminal law pleadings, default judgments, jury instructions, etc. etc.

**Often failure to use court-prepared forms is grounds for dismissal, default, or discipline.** When preparing to draft a document, think about checking with the court to determine whether a

court form should be used. The **court website** is a good place to look for available forms.

### **FORMS ONLINE**

Many forms are **available online**. Some of the best places to look are as follows:

**LEXIS and Westlaw:** Many of the formbooks mentioned above are available on LEXIS and/or Westlaw, in full text searchable format. Check the database directories for availability and coverage.

#### ***WashLaw Web Legal Forms***

[<http://www.washlaw.edu/legalforms/legalforms.html>]: Contains links to websites containing numerous forms, including state-specific and jurisdiction-specific forms.

#### ***Lectric Law Library Legal Forms***

[<http://www.lectlaw.com/form.html>]. Purports to be the "Net's biggest collection of free legal forms." Forms divided into categories: Law Practice Forms, Business and General Forms, Premium Forms (state-specific forms of various kinds).

**FedForms** [<http://www.fedforms.gov>]. Provides "'one-stop shopping' for the federal forms most used by the public."

**Findlaw Forms** [<http://forms.lp.findlaw.com>] Provides access to state, federal and bankruptcy forms. Also includes "Form Finder" feature that allows keyword searching of the forms of a particular jurisdiction.

### **IN-HOUSE FORMS RESOURCES**

Many times the most useful forms are those that you find within your own organization. These will reflect the local practice of the jurisdiction and of the organization itself. There are many creative places to look for forms:

#### **In-House Databank**

Your organization may have a **formal or informal in-house databank of documents** drafted in other matters, which you can use

as forms. Often these are in computer databases, but may also be in paper archives.

Especially when you are new to a law firm or legal organization, you should **check some recent forms before you begin drafting a new type of document, even if you think you know what you're doing.** You may pick up local stylistics, conventions, or other quirks that you would otherwise miss.

### The Matter File

Don't forget to **look in the file of the matter for which you're drafting the document.** Frequently someone has already drafted a similar document for that very matter.

### Your Colleagues

One of the best resources for forms is often someone who has recently drafted the same type of document you're creating. Be sure to **ask your colleagues** for forms or ideas about where to find forms within your organization. It is frequently most useful to ask another associate – rather than a partner or very senior associate – because these are the attorneys who will be most involved with the initial drafting of documents. (Partners usually only have time to edit documents, so they have often forgotten where to start!)

### Your Own Forms Files

**Create a document databank** of your own! Whenever you draft a legal document, keep a copy in an appropriately labeled electronic or paper forms file. The next time you need to draft a similar document, you'll have your own good work to use as an exemplar. You'll soon find that your own experience is the best example of all.

### **FOR FURTHER READING...**

Feldman, R.A. ***Drafting Effective Contracts: A Practitioner's Guide*** (2d ed. 1999-) [F31262d 1999].

Brody, S., et al. ***Legal Drafting*** (1994) [L496 D7585 1994].

Child, B. ***Drafting Legal Documents: Principles and Practices*** (2d ed. 1992) [C5361 B229d 1992].

Burnham, S. ***The Contract Drafting Guidebook: A Guide to the Practical Application of the Principles of Contract Law*** (1992)  
[B96708c 1992].