Preface Acknowledgments		
I INT	TRODUCTION TO LAW	1
	1. Legal Writing and Law	3
§1.1	Legal Writing Is Decisional Writing	3
§1.2	Writing Skills Can Profoundly Affect a Lawyer's Career	3
§1.3	Where Law Comes From	4
\$1.4	The Common Law	5
§1.5	Law's Vocabulary	6
	2. Rule-Based Reasoning	9
§2.1	The Inner Structure of a Rule	9
§2.2	Organizing the Application of a Rule	17
§2.3	Some Things to Be Careful About with Rules	18
$\S 2.4$	Causes of Action and Affirmative Defenses	19
Exerci	ise Rule 11 of the Federal Rules of Civil Procedure	21

		Contents
	3. Issues, Facts, Precedents, and Statutes	23
§3.1	A Precedent's Anatomy	23
Exerc	·	
	Folding Box Co.	25
§3.2		31
Exerc	<i>ise II</i> Analyzing the Meaning of Roberson v. Rochester Folding Box Co.	33
§3.3	· ·	33
	ise III Analyzing the Meaning of §§ 50 and 51 of the New	33
	York Civil Rights Law	34
§3.4	How Statutes and the Common Law Interact	34
II		
	TRODUCTION TO LEGAL WRITING	37
	4. Predictive Writing	39
§4.1	How Predictive Writing Differs from Persuasive Writing	39
§4.2	The Documents Lawyers Write	40
§4.3	How to Predict	40
Exerc	ises Nansen and Byrd	46
	5. Inside the Writing Process	49
§5.1	Product and Process	49
§5.2	Five Phases of Writing	50
§5.3	Planning the Work	50
§5.4	Researching and Analyzing	51
\$5.5	Organizing Raw Materials into an Outline	52
\$5.6	Producing a First Draft Rewriting	53 53
§5.7 §5.8	Polishing	55 55
	6. More About Writing	57
§6.1	Writing and Thinking Are One Process	57
§6.2	Your Readers	58
§6.3	Voice	58
§6.4	Overcoming Writer's Block	59
§6.5	Plagiarism	60
§6.6	Professional Tone	61

§6.7 For <i>All</i> Writers — Even the Famous Ones — Writing Is Very Hard Work		
§6.8	Don't Imitate Older Judicial Writing, Even If You Find	62
y0.0	It in Casebooks	63
III		
GEI	NERAL ANALYTICAL SKILLS	65
	7. Selecting Authority	67
§7.1	Why Authority Matters	67
§7.2	How Courts Are Organized	68
	§7.2.1 State Courts	69
	§7.2.2 Federal Courts	69
§7.3	Sources of Law	70
	\$7.3.1 Primary Authority	70
	\$7.3.2 Secondary Sources	71
\$7.4	The Hierarchy of Authority	72
§7.5	How to Use Nonmandatory Precedent and Secondary	
	Sources to Fill a Gap in Local Law	73
	\$7.5.1 Laying the Foundation	74
	\$7.5.2 Filling the Gap	75
§7.6	How Courts Use Dicta	76
§7.7	Nonprecedential Opinions	77
Exerc	ise The Hierarchy of Authority	78
	8. Working with Statutes	81
§8.1	Five Tools of Statutory Interpretation	81
§8.2	The Statute's Words	82
§8.3	The Statute's Context	83
\$8.4	Canons of Statutory Construction	83
§8.5	Interpretations from Nonmandatory Authority	84
\$8.6	Legislative History	84
§8.7	An Example of Statutory Interpretation at Work	85
\$8.8	How to Present Statutory Analysis in Writing	91
Exerc	ise I Plagiarism and the Board of Bar Examiners	92
Exerc	ise II The Ironwood Tract	92

		Contents
	9. Working with Precedent	93
§9.1	Eight Tools for Working with Precedent	93
§9.2	Synthesis	94
§9.3	Determining Policy from Precedent	94
§9.4	Analogizing and Distinguishing	95
§9.5	Testing for Realism	95
\$9.6	An Example of the Precedent Skills at Work	96
	\$9.6.1 The Client's Story	96
	\$9.6.2 Four Precedents	97
	\$9.6.3 Using the Precedent Analysis Tools	101
Exerci		104
Exerci	ise II Emil Risberg's Diary	104
	10. Working with Facts	105
§10.1	What Is a Fact?	105
§10.2	, e	107
§10.3	· ·	107
§10.4	, ,	-
Exerci	ise The Menu at the Courthouse Cafe	111
	GANIZING PROOF OF A CONCLUS LAW	SION 113
	11. A Paradigm for Organizing Proof	of a
	Conclusion of Law	115
§11.1	Why We Need to Organize Proof of a Conclusion of I	Law 115
§11.2	A Paradigm for Structuring Proof	116
§11.3	Why Readers Prefer This Type of Organization	119
§11.4		120
	\$11.4.1 Varying the Sequence	120
	\$11.4.2 Varying the Depth	120
	\$11.4.3 Combining Separately Structured Analyses	121
Exerci	ise Changing Planes in Little Rock	121

	12.	Varying the Depth of Rule Proof and Rule Application	125
§12.1	Introdu	action	125
§12.2	Conclu	sory Explanations	126
§12.3	Substar	ntiating Explanations	127
§12.4	_	ehensive Explanations	127
§12.5		Explanations	130
Exerci	se	Punitive Damages and Bedbugs	130
	13.	Combining Proofs of Separate Conclusions	
		of Law	135
§13.1	Introdu	action	135
§13.2	How to	Organize Where More Than One Element Is at Issue	135
§13.3	How to	Organize Where More Than One Claim or Defense Is at Issue	138
§13.4	How to	Organize Alternative Ways of Proving a Single Conclusion	139
§13.5	How to	Organize When You're Writing About Separate but	
	Related	Issues	139
§13.6	How to	Start Working with Multi-Issue Situations	140
	14.	Working with the Paradigm	143
§14.1	Using t	he Paradigm Formula to Outline and to Begin Your First Draft	143
§14.2	Rewriti	ng: How to Test Your Writing for Effective Organization	145
Exerci	se	Teddy Washburn's Gun	148
V	DICT	IVE ANALYCIC DOCUMENTS	150
PKE	DICI	IVE ANALYSIS DOCUMENTS	153
	15.	Interviewing the Client	155
§15.1		and Lawyers	155
§15.2	The Int		156
	\$15.2.1	8	156
	\$15.2.2		157
		Listening and Talking  How to Conclude	158 158
	01.0.2.4	LIOW TO COLICINAE	1:08

		Contents
	16. Office Memoranda	159
§16.1	Office Memorandum Format	159
§16.2	Writing an Office Memo	164
\$16.3	How to Test Your Writing for Predictiveness	165
	17. Email Communication	167
§17.1	Professional Tone and Appearance	167
	\$17.1.1 Keeping It Professional	168
	\$17.1.2 Writing the Email	169
	§17.1.3 Making the Email Easy to Read	169
	Email and Confidentiality Problems	170
	Email Pitfalls	171
	Communicating Legal Analysis in an Email Memo	173
§17.5	How to Test Your Emails for Professional Effectiveness	174
	18. Oral Presentations to Your Supervising Lawy	yer 177
§18.1	Preparing	178
	\$18.1.1 Getting the Assignment	178
	\$18.1.2 Researching	178
	§18.1.3 Writing Out Your Analysis	178
	§18.1.4 Whittling Down the Analysis to the Initial Summary	179
§18.2		179
§18.3	Typical Questions	181
§18.4		182
§18.5	Mistakes to Avoid	182
	19. Client Advice Letters	183
§19.1	Advice in Writing	183
§19.2	Style and Tone in a Client Advice Letter	184
§19.3	How to Organize a Client Advice Letter	184
<b>X</b> / <b>T</b>		
VI	IED AL WIDITING CIVILLE	100
GEN	NERAL WRITING SKILLS	189
	20. Paragraphing	191
\$20.1	How Paragraphing Reveals Your Organization	191

\$20.2 \$20.3 \$20.4 \$20.5 Exerci	Thesis Sentences, Topic Sentences, and Transition Sentences The Two Most Common Ways of Botching a Paragraph's Beginning How to Test Your Writing for Effective Paragraphing			
Exerci		Paragraphs) Escape from Prison (Paragraph Unity, Coherence,	198	
		and Length)	199	
	21.	Effective Style	201	
§21.1	Clarit	y and Vividness	201	
§21.2		seness	203	
§21.3		fulness	205	
\$21.4		uation and Other Rules of Grammar	208	
§21.5		To Test Your Writing for Effective Style	209	
Exerci	se	Kalmar's Driveway	219	
	22.	Quotations	221	
§22.1	Quota	ition Format	221	
§22.2	How t	o Test Your Writing for Effective Use of Quotations	223	
Exerci	Exercise The First Amendment			
VII THE	_	FT TO PERSUASION	229	
	23.	Introduction to Motions and Appeals	231	
§23.1	Introd	luction to Persuasion Through Motions and Appeals	231	
,		1 What Happens During a Motion	231	
		2 What Happens During an Appeal	232	
§23.2		oles of the Brief and of Oral Argument	234	
§23.3	How J	udges Read Briefs	235	
	24.	Developing a Persuasive		
		Theory of the Case	239	
§24.1	Strate	gic Thinking	239	
§24.2		ies: Of the Case, of the Motion, of the Appeal	240	
§24.3	Devel	oping a Theory: Be Open to Possibility	240	
			XX	

		Co	ntents
\$24.4	Develo	ping a Theory: Process	241
§24.5		Evaluate Your Theory	243
Exerci	se	Escape from Prison? (Developing a Theory)	244
	25.	Telling Your Client's Story in a Statement	
		of the Case (or Facts)	247
§25.1	The Ba	sics	248
§25.2	The Ba	sic Tools of Persuasive Storytelling	248
§25.3	The O <sub>l</sub>	pening	249
§25.4	Tips fo	r Effective Storytelling	250
§25.5		g with Bad Facts	252
§25.6		ocedural History	253
§25.7		Evaluate Your Statement of Facts	254
§25.8	Story E	thics	254
Exerci			255
Exerci	se II	Escape from Prison? (Rewriting Fact Statements)	256
	26.	<b>Developing Persuasive Arguments</b>	259
\$26.1	What I	s an Argument?	259
§26.2		udges Expect from Written Argumentation	260
§26.3		of Legal Arguments	261
	\$26.3.1	Motivating and Justifying Arguments	261
	\$26.3.2	Policy Arguments	262
	\$26.3.3	Brainstorming Arguments	264
	\$26.3.4	Selecting and Organizing Your Arguments	264
	\$26.3.5	Stating Rules Clearly and Persuasively (Rule and Rule Proof)	266
	\$26.3.6	Working Carefully with the Facts (Fact Application)	267
§26.4	How to	Handle Adverse Authority and Arguments	268
§26.5	Argum	entation Ethics	269
\$26.6	Evaluat	ting Your Arguments	270
	27.	Handling the Procedural Posture	273
§27.1	Why P	rocedural Postures Matter	273
§27.2	Types of	of Procedural Postures	273
	§27.2.1		274
	\$27.2.2	Motions Challenging Other Aspects of the Way in	
		Which the Litigation Began	275
	\$27.2.3	Motions Challenging the Quality of a Party's Evidence	275
	\$27.2.4	Miscellaneous Case Management Motions	276
	\$27.2.5	6 Appeal	276
§27.3	Writin	g in a Procedural Posture	276
§27.4	Resear	ching to Account for Your Case's Procedural Posture	278

	28.	Motion Memoranda	281
§28.1	Motio	n Memorandum Format	281
\$28.2	Writir	ng a Motion Memorandum	284
	29.	Appellate Practice	285
\$29.1		late Brief Format	285
\$29.2		ng the Appellate Brief	289
		<ul><li>Developing a Theory of the Appeal</li><li>The Process of Writing a Brief</li></ul>	289 289
§29.3		ing the Standard of Review and the Procedural Posture Below	291
§29.4		ations on Appellate Review	295
	30.	Point Headings and Subheadings	297
§30.1	How I	Points and Headings Work	297
§30.2	The B		298
\$30.3		rocess of Creating Point Headings: Brainstorming Arguments	300
\$30.4		mportance of Facts	301
§30.5	How t	o Evaluate Your Headings for Effectiveness	301
	31.	<b>Questions Presented</b>	<b>30</b> 3
§31.1	Introd	uction	303
§31.2	Four V	Ways of Structuring a Question Presented	304
§31.3		ng an Effective Question Presented	306
§31.4		o Evaluate Your Questions Presented for Persuasiveness	307
Exerci	se	G.G. v. Gloucester County School Board	311
VI			0.1
INT	OTE	IE COURTROOM	315
	32.	Oral Argument	317
§32.1	Your 7	Three Goals at Oral Argument	317
§32.2		ure of an Oral Argument	318
§32.3		ions from the Bench	320
§32.4		ry, Affect, and Style	322
§32.5		lities and Customs of the Courtroom	324
\$32.6	_	ration for Oral Argument	324
§32.7	State v	7. Dobbs and Zachrisson: An Oral Argument Dissected	326
			vvii

			Contents
APP	END	ICES	339
	A.	Statute Analysis Exercises	341
	B.	<b>Precedent Analysis Exercise</b>	353
	C.	Sample Office Memorandum	361
	D.	Sample Email Memo	369
	E.	Sample Client Advice Letter	373
	F.	Sample Motion Memorandum	377
	G.	Excerpts from Appellant's Fourth Circuit Brief in G.G. v. Gloucester County School Bd. (2016)	391
	H.	Excerpts from Appellee's Fourth Circuit Brief in G.G. v. Gloucester County School Bd. (2016)	411
Index			429