

WRITING FOR *THE ELDER LAW JOURNAL*

A. Introduction

Writing for *The Elder Law Journal* is the most important obligation of membership. Notes selected by the Board for publication appear in the Student Note section of *The Elder Law Journal*. Because published student notes provide a valuable resource for scholars, practitioners, and other students, the notes must be thorough and accurate. The quality of student work published in *The Elder Law Journal* reflects the quality of the College of Law. Consequently, the Board of Editors demands excellence in scholarship and craftsmanship as a condition for publication.

B. Topic Selection

The first step in the writing process is selecting a topic. Members are responsible for preparing their own topics. The Board of Editors strongly encourages each member to develop his or her own topic. Selection and preparation of a topic requires an investment of time. By personally developing a topic, the member can probe an area of the law of particular interest to him or her. The member should gather resources and iron out problems early on in the semester, in order to ease pressures that build during the semester. The member must prepare a topic proposal consisting of a general outline, a few explanatory paragraphs, a list of key sources, and a general statement of direction. Members should be aware of preemption (see III.B.2.) and previous Journal topic coverage as they choose a topic.

The Topics Editor provides members further assistance in selecting and developing note topics. Members will be required to meet with the Topics Editor prior to the topic selection deadline. The Topics Editor is also available for further consultation on an as-needed basis.

Additionally, Notes Editors may assist members in selecting an appropriate topic, and in some circumstances, may assign topics. The Editors will, however, strive to assign topics that conform as nearly as possible to the member's preferences. The Editors cannot guarantee that they will be able to assign the topics developed by The Journal in accordance with the member's preferences. All topics are subject to the approval of the Notes Editors.

1. Content

A good journal note adds to the body of law. The note should propose a new solution to a continuing problem in the law or expose weaknesses in existing doctrine. Thus, members searching for a good topic should focus their attention on points of confusion or disagreement, as arise when circuit courts are split on a legal issue, or on proposals to change the law.

2. Preemption

It is the duty of each individual member to check his or her note topic for preemption. A topic is preempted in the following three situations: (1) another law journal article has dealt with the issue and substantially restates your conclusion; (2) you have recommended that a court (usually the Supreme Court) reach a particular conclusion, and the court reaches that conclusion before your article is published; or (3) legislation is enacted that makes the conclusion of your note moot. One can avoid preemption by making a brief survey of the recent law journal treatment of a chosen issue, checking Supreme Court grants of certiorari, or keeping up with legislation. Remember that a topic is not preempted because a number of writers have chosen the topic in the past. Some topics are frequently chosen because they are fascinating, complex areas of the law that deserve in-depth treatment. Only in rare instances has an issue been so extensively discussed that an imaginative writer cannot find a novel way of approaching that issue. So be wary of preemption, but do not abandon a topic simply because others have found it interesting.

C. The Note

The difficulties of organizing and writing a student note often surprise new members. These guidelines will help you avoid common problems and frustrations, especially in the early stages of drafting your note. We hope you will read this section carefully and refer to it when you draft your note.

1. Introduction

After each writer selects a topic, the writer submits an outline within a short time to his or her Notes Editor. The writer and Notes Editor confer and discuss potential problems and solutions. Then the writer prepares three drafts of the note. After each draft, the writer and Notes Editor confer to address stylistic as well as broad substantive and organizational problems. The writer may have the option of submitting an optional draft to the Board of Editors for review by another editor, other than his or her Notes Editor. The writer then submits his or her final draft to the Board of Editors. If a writer's Notes Editor believes, however, that a note is of publishable quality after two drafts, the writer may submit the note for an early publication decision. If the Board accepts the note for publication at that time, the writer need only complete an acceptable post-decision draft. If the Board does not accept the note at that time, the writer may re-submit a later draft of the note (without prejudice) for a decision.

2. The Outline

After selecting a topic, members must submit an outline to their respective Notes Editors. The outline is an important part of the writing process that provides a head start in writing the note by solving organizational problems early in the process. Members thus have more time for polish and style in later drafts. An outline also offers members the full benefit of the editorial process by introducing the topic, research, and analysis to Notes Editors, who may know very little about the topic. This allows Notes Editors to identify potential problems, suggest other approaches or analogous areas of the law, and make informal comments, all of which help members produce high-quality notes.

A note topic will inform both the structure of the outline and the amount of research necessary to prepare the outline. If the analysis concentrates on a few important cases, the outline should include

citations and several sentences summarizing the case holdings. Similarly, members who plan to distinguish or expand upon a commentator's work should summarize the commentator's analysis and provide a citation.

The standard note has five parts:

1. Introduction
2. Background or History
3. Analysis
4. Resolution and Recommendation
5. Conclusion

Some topics or approaches will not fit into this form, but you may find the five-part outline useful as you begin to organize your research and analysis.

3. Summary of a Five-Part Note

a. Introduction

The introduction to a student note should perform three functions. First, the introduction should catch the reader's attention. Next, the introduction should present the controversy or inconsistency in law that you intend to resolve. Finally, a purpose paragraph, or road map, should introduce the reader to the organization of your note.

Everyone agrees that purpose paragraphs are difficult to write. A good purpose paragraph does more than merely list the topics covered in the article. The paragraph should explain how the article is organized and should show how each part relates to the whole.

For example, John White focused his note on an Illinois Supreme Court decision. He began his analysis of the Illinois case by discussing the history of the law in Illinois. He discovered that Illinois appellate courts had been following three different rules before the Illinois Supreme Court decision. John wanted to describe these three different rules and point out the inadequacies of each. He then planned to compare the Illinois Supreme Court's ruling to each of the three rules to determine whether the new rules solved old problems. Dissatisfied with the Supreme Court's solution, John used the law of other jurisdictions to support his proposal of a different rule.

When John composed his purpose paragraph for the note, he avoided the following summary:

The purpose of this note is to show that the Illinois Supreme Court's ruling in *Roe v. Doe* was misguided. The note will discuss the history of the *Smith v. Jones* rule in Illinois. Then the note will compare *Roe v. Doe* to the line of cases beginning with *Smith v. Jones*. Finally, this note will examine the law of California and Delaware and then suggest an alternative to the unfortunate rule now the law in Illinois.

This paragraph describes the order of the note, but not the logic. The paragraph fails to explain the role each section of the note plays in developing John's thesis that the rule of *Roe v. Doe* is incorrect. The following paragraph does a better job of explaining the writer's purpose:

This note proposes that the right to strike, in some form, be incorporated in public sector collective bargaining systems. In support of that proposition, this note will explore the role of the strike in the collective bargaining process and, concomitantly, in public sector negotiations. This note will also review the evolution of public and judicial attitudes toward public employee strikes, focusing on the weaknesses of the doctrinal theories employed to ban the strike. This note, moreover, will illustrate public concerns that must be considered in developing a comprehensive government policy toward public sector strikes. Finally, this note will analyze the statutory impasse resolution schemes utilized by other states. Although Illinois may be among the last states to enact legislation addressing public sector bargaining and impasse resolution, the experiences of other states should aid in developing an enlightened approach to public employee bargaining.

(John P. White, *Public Sector Strikes: Will the Illinois Legislature Answer the Challenge*, 1980 U. ILL. L.F. 869, 871-72.)

This purpose paragraph is not perfect, and you can probably draft an even better one. If you have problems writing a purpose paragraph, reading the introduction of published articles and student notes should help. You may discover that writing the purpose paragraph is one of the best tests to determine whether your note is well organized.

b. Background or History

This section should include any helpful background information about the controversy you are addressing. The length and structure of this section varies depending on the note topic. Make sure you explain why this background is necessary to your topic.

c. Analysis

Again, the nature of your topic will determine the size and structure of this section. The analysis section should incorporate the bulk of your research. A few organizational pointers may help you write this section:

- (1) On drafts, make liberal use of subheadings.
- (2) Make sure the topic sentence of a paragraph succinctly states the purpose of that paragraph. The topic sentence should accurately represent your position in that paragraph. An abstract of a section's topic sentences may help you determine whether the section follows a logical order.
- (3) Summarize each section at the beginning and end of the section. Lack of internal summary is one of the most common weaknesses in student notes.

In the analysis section of the note, your most important goal should be organization. Good organization is crucial to your analysis section because this is where you present the bulk of your research. It is your chance to present the conflict you are exploring in a clear and cohesive manner.

d. Resolution and Recommendation

Your note should include a section resolving the conflict or recommending a solution to the problem you have explored. The analysis section should support and foreshadow the conclusions you draw in the resolution section. Therefore, you should not need to introduce extensive research in the resolution section.

Do not be indefinite in this section; take a position and present a clear opinion. Your proposal should do more than reiterate prior commentators' conclusions. Your proposal should add something to the existing body of legal literature on your topic.

e. Conclusion

The conclusion of a note is a brief summary of the entire note. The conclusion should not state any new propositions. One paragraph will often suffice; more than four paragraphs are usually unnecessary.

4. Drafts of Your Note

The Editors do not expect your first draft to be perfect. The important thing is to get your ideas down on paper so that your editors can suggest changes to your note. A complete first draft, however, including endnotes, is required because it enables your editors to help you improve the note in subsequent drafts. Moreover, a complete first draft consisting of 20 double-spaced pages of text and 20 triple-spaced pages of endnotes is required to receive credit for the Journal and credit for half of the upper-level writing requirement.

5. Student Note Requirements

- a. *Length*: Notes are usually between 30 and 45 double-spaced pages of text and an equal number of triple-spaced pages of endnotes. These are merely guidelines. You should use as much space as you need to discuss your topic fully, but do not "pad" your paper to make it "long enough."
- b. *Margins*: Leave at least 1½ inches on each side, at the top, and at the bottom of the page to allow space for editorial comments.
- c. *Copies*: You must electronically submit the final draft to your Notes Editor. The electronic version must contain a cover page with the student's name. The student's name should not appear in the body of the note. The number of copies and format of earlier drafts may vary according to the discretion of the Notes Editors.
- d. All papers *must be in typewritten form*. No exceptions. Text should be double-spaced in Times New Roman, 12-point type. All endnotes must be triple-spaced.
- e. Please number your pages and proofread your final copy.

6. Extensions

Each member is allowed a total of five (5) late days to be used in any combination among the drafts, *but they may not be applied to the final draft*. Notes Editors must unanimously approve any other request for an extension on a draft deadline. An extension on a draft deadline *will not* affect subsequent draft deadlines. *The Elder Law Journal* reserves the right to impose additional cite-checking assignments or other duties on students who submit unauthorized late drafts or otherwise abuse the extension-granting process. In egregious cases, these abuses may result in the loss of journal credit or termination of journal affiliation. Editors *will not* grant extensions on final drafts submitted for publication decisions.

7. Publication Decisions

Unless otherwise indicated, all publication acceptances are contingent upon the production of an acceptable post-publication decision draft. The Board of Editors reserves the right to make stylistic and other necessary changes in this post-acceptance draft.

Some of the factors that the Board will consider in making publication decisions include:

- (a) Depth of research
- (b) Complexity or importance of the issues discussed
- (c) Organization of the paper
- (d) Depth of analysis
- (e) Creativity of analysis
- (f) Resolution of the issues
- (g) Clarity and style of writing
- (h) Proper citation form

Select members of the Board of Editors review the recommended notes. The Board of Editors then holds a meeting to decide which student notes to publish based upon their review.

