

Drafting Legal Documents

Why Traditional Methods Fail

Barron K. Henley, Esq.

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The legal landscape is changing. Methods and models that have worked in the past may be hampering your ability to grow.

What's wrong with the status quo?

Unquestionably, the most common drafting method used by lawyers is to use old documents as the starting point for new ones. For example, if a lawyer needs a commercial lease for a restaurant tenant in a strip mall, she is likely to try to find an old lease she drafted previously as the starting point. Once the source document is found, it is modified as necessary. While this approach seems logical, it has significant drawbacks.

The first is that a lot of time can be wasted trying to find the starting-point document (sometimes, it is never found).

Second, it is easy to make mistakes such as:

- ▶ including language from the source document that should have been deleted,
- ▶ failing to add language which wasn't present in the source document, and
- ▶ simple clerical errors (word processor search-and-replace exercises rarely catch everything).

Third, in adversarial areas of practice the starting point document the lawyer found was likely compromised in many ways. Going back to the lease example, if the tenant in the prior transaction was represented, there were likely many changes made to the original lease during the negotiation process. As a result, the lease she's now using

is actually a poor starting point because she probably has no idea what changes were made before it was finalized. Finally, whether this approach is fast really depends upon what you compare it to. It is unquestionably faster than starting a new document from scratch, but it is also much slower than incorporating document assembly technology into the process (more on this later).

"While [using old documents as the starting point for new ones] seems logical, it has significant drawbacks."

Consider dictation

Proponents typically argue that dictation is the most efficient way for lawyers to produce documents. However, the cost structure for this approach is dramatically higher due to the fact that it requires a transcriptionist (payroll being every law office's highest cost). A financial analysis of this approach often reveals that while it requires less lawyer time, the overall cost per document is higher than other methods.

Further, a closer look at the process reveals many steps. The lawyer dictates a document (often reading from existing printed documents), then gives the tape or voice file to the secretary who transcribes it, prints it and returns a draft to the lawyer.



"Automation of high-volume legal documents has been an indispensable process for increasing law firm productivity and maintaining profit margins in an era of intense competition."

Richard S. Granat, Law Practice Today

A lack of structure in the dictation, simple mistakes or difficulty understanding the audio reproduction creates a high likelihood that corrections will be required. The lawyer reviews the draft, marks it up and returns it to the secretary to enter the changes. It is printed yet again and the lawyer often compares the most recent version against the marked up previous version to ensure that all changes were entered. Assuming no further adjustments, the document is printed in final form. As a result of all of these steps, the total amount of time required to complete each document is often much higher than the lawyer assumes.

Furthermore, this process creates a 100% dependency upon support staff to produce work product and today's trend is unquestionably headed in the opposite direction.

How drafting methods are decided upon

Most lawyers have at some point tried to find the most efficient and accurate way to create documents. However, their options are limited by: 1) their own skill set, 2) the availability support staff, and 3) the tools they have at their disposal. Furthermore, there are often technologies available for this that lawyers are simply unaware of.

Upgrading the lawyers

Most lawyers have plenty of room to upgrade their own drafting skills by increasing word processor proficiency, learning to type (or type faster) or use speech recognition technology.

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However, even though lawyers will usually admit that technical training would make them more efficient, they often refuse to invest the (non-billable) time necessary to take classes. Even if they do agree to sign up for training, trying to find common available times on every lawyer's calendar for a class is often a logistical nightmare. Further, if the training occurs in the lawyer's office, there are many distractions to pull them out of it.

Sadly, a high percentage of older lawyers have resigned themselves to the expectation that no amount of training will enable them to use the tech tools their younger colleagues have grown up with.

On the other end of the spectrum, younger lawyers tend to have a false sense of security that they're skilled users just because they've been using technology their whole lives. However, professional-level tech skill isn't developed by mere exposure. For example, driving every day doesn't make one a professional driver; and cooking every day doesn't make one a professional chef. The use of technology is much the same.

In order to become a professional, one must undergo specialized training, practice and then demonstrate proficiency. More importantly, your lawyers and staff should be professional-level users of the technology necessary to perform their jobs. In my experience, this is rarely the case and often isn't even an overt objective. I can't tell you how many lawyers have told me "I'm sure I'm the most technologically challenged person in this office." Unfortunately, they usually seem perfectly content with that status, as if there's nothing they can do about it.

Just hire more support staff!

If only it were that easy. For many firms, budgetary constraints and hiring freezes have eliminated the possibility of bringing on more support staff. The ratio of support staff to lawyers is decreasing across the country as the legal industry tries to reduce payroll and become more efficient. Of course, this is also affected by the fact that younger lawyers tend to be more tech savvy and self-reliant in producing work product. Regardless, it's not likely

we'll ever again see the days of one secretary per lawyer.

It's all about the tools

In view of the foregoing, it's likely that the factor most easily addressed is the drafting tools you're using. While some tools require a higher level of skill to use them properly, others actually compensate for a lack of skill and make it difficult for a user to make mistakes (no, I am not crazy). A primary example of such technology is document assembly (also known as document automation).

Document assembly defined

On the most basic level, document assembly is the use of software to quickly and accurately generate customized documents in Microsoft Word or Corel WordPerfect. In other words, document assembly adds significant functionality to your existing word processor. It allows you to capture the consistencies in your documents such as what sections, paragraphs, sentences, and words go where under changing client circumstances.

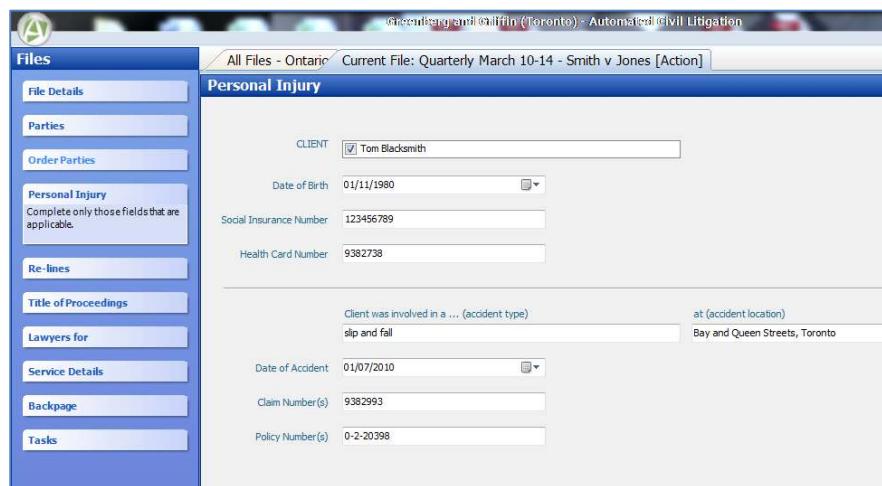
It also allows you to capture the irregularities in your documents. Irregularities include custom provisions and intelligent language building that can accurately consider thousands of inputs to produce the correct phraseology every time.

Instead of cut and paste, you can pick desired options or alternatives from a list or interview. Instead of replacing with your client's name 25 times, you can respond to questions and let the computer do the clerical work. Users must only answer questions in an interview to produce letter-perfect, completely customized documents.

Neither word processing nor computer skills are required. An example of how such an interview might look is shown below.

Document Assembly Software vs. Commercial Drafting Systems

Document assembly software is a tool you can use to automate the documents your firm already uses. By contrast, commercial drafting systems automate document generation, but they include the documents you will use.

A screenshot of a computer screen displaying a software application window titled "Greenberg & Milkin (Toronto) - Automated Civil Litigation". The window shows a "Personal Injury" form. On the left, there is a vertical sidebar with tabs: "File Details", "Parties", "Order Parties", "Personal Injury" (which is highlighted in blue), "Re-lines", "Title of Proceedings", "Lawyers for", "Service Details", "Backpage", and "Tasks". The main area of the window has a title bar "All Files - Ontario Current File: Quarterly March 10-14 - Smith v Jones [Action]". The "Personal Injury" form contains fields for "CLIENT" (Tom Blacksmith), "Date of Birth" (01/11/1980), "Social Insurance Number" (123456789), "Health Card Number" (9382738), "Client was involved in a ... (accident type)" (slip and fall), "at (accident location)" (Bay and Queen Streets, Toronto), "Date of Accident" (01/07/2010), "Claim Number(s)" (9382993), and "Policy Number(s)" (0-2-20398).

The screenshot shows a software interface for managing legal cases. The main window is titled "Greenberg & Milkin (Toronto) - Automated Civil Litigation". It displays a "Personal Injury" form. The left sidebar lists various tabs: "File Details", "Parties", "Order Parties", "Personal Injury" (which is selected and highlighted in blue), "Re-lines", "Title of Proceedings", "Lawyers for", "Service Details", "Backpage", and "Tasks". The "Personal Injury" form contains fields for client information (name, date of birth, social insurance number, health card number), accident details (type and location), and claim/policy numbers. The overall layout is clean and professional, designed for efficient legal document management.

An example of the Personal Injury dialog from Korbitec's Automated Civil Litigation (ACL) software. Details entered into the fields are automatically inserted into forms and letters.

There are pros and cons to creating your own document assembly system versus buying/subscribing to a commercial system which are beyond the scope of this article. However, the point you should take away is that either approach is vastly superior to using old documents to create new ones or dictation/transcription. Further, document assembly software and commercial drafting systems are not mutually exclusive; and many lawyers use both tools.

Document Assembly Players

The dominant player in document assembly software is HotDocs™. Other options include GhostDraft by Korbitec, DealBuilder, Rapidocs, QShift, Pathagoras, Perfectus, ActiveDocs and Exari.

Commercial Drafting Players

There are far too many commercial drafting system players to mention here, but within the realm of litigation, estates and trusts, there are a few extremely popular ones such as Automated Civil Litigation (ACL), WealthDocx™ and Wealth Transfer Planning™. Other options include Cowles Estates Practice

of various types and spending an average of 8 minutes per letter (6.67 hours per week). By automating all of the letters and linking the templates to a master contact database in Outlook, those same documents took only 1 minute each. This freed up 5.84 hours per week; and at \$50 per hour that's a savings of \$1,168/month or \$14,016/year.

Now consider that this firm charges a flat fee of \$45 per letter which is part of their engagement agreement. Spending one minute to generate a \$45 fee translates to an hourly rate of \$2,700.

Other benefits include the ability to reuse the same information across a set of documents (no redundant data entry), higher accuracy, less reliance upon support staff, quickly ramping up new associates and generally doing more work with fewer resources.

If done properly, it's not possible to bill hourly and make money so a review of billing strategies may also be appropriate.

If you're looking for a way to improve your firm's efficiency and profitability, document assembly software and/or a commercial drafting system may be the perfect tools.

System, Drafting Wills and Trust Agreements on GhostFill™ by West®, and Document Production System by Advanced Logic Systems.

Benefits You Can See In the Bottom Line

Here are a few actual examples. An estate planning lawyer in L.A. was spending an average of 10 hours to generate a standard set of documents for which she charged a flat fee of \$2,000. By automating her document generation using HotDocs document assembly software, the time required fell to 1.5 hours while accuracy increased. So her effective hourly rate went from \$200 to \$1,333. These are not unusual results. On the other end of the spectrum, a law firm in Detroit was generating about 50 letters per week

Korbitec's ACL (Automated Civil Litigation) automates the entire process of creating court documents and letters, enabling lawyers and their staff to prepare documents quickly, accurately and efficiently. ACL is easy to use and always up to date with the latest rule changes and court forms.

**For more information, contact
Korbitec Inc. at 800.340.3234 or visit
www.korbitecinc.com**