

**READ THIS
FIRST**

**BEFORE HANDLING
QUESTIONED DOCUMENTS ©**

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READ THIS FIRST **BEFORE HANDLING QUESTIONED DOCUMENTS**

- Know what to do when a client contacts you with a Questioned Document case.
- Many of the mistakes that can make attorneys look bad, such as the mishandling of documents, are caused by inexperienced or poorly trained staff.

A. WHAT TO DO

1. MAKE COPIES:

- a. Make 2 sets of copies of pages with handwriting on them and put them in folders.
- b. Label one folder “Originals” and label the other 2 folders “Copies”. Do **NOT** mix them up.
- c. Use one set of copies for work copies.

2. NOTES:

- a. Make your notes on a separate piece of paper or write on a post-it-note and attach it to the document.
- b. Do **NOT** write on the original documents or on the first generation copies.

3. DOCUMENTS NEEDED FOR COMPARISON PURPOSES:

- a. Samples of handwriting from around the same date as the questioned documents.
- b. Get documents from as close to the date on the questioned document as possible.

• **Real Example:**

Documents from another decade:

An attorney sent me two documents to examine, the questioned from 2000 and the known from the 70's.

- c. Compare legal type documents to legal type documents.
- d. Compare checks to checks. The reason for this is that most people tend to sign legal documents more carefully than they would a check.
- e. When using checks get the whole monthly statement of checks or consecutive check numbers.
 - 1. Do **NOT** take out any checks that you think might hurt the case because those signatures make your client look guilty.
 - 2. Do **NOT** pick only checks that make your client look innocent.
- f. Do **NOT** have your client write his/her signature on a piece of paper and think that is enough to compare to the questioned signature.

- **Real Example:**

In many cases an attorney has handed the client a piece of paper and said, “Sign your name 5 times”, and then sent that to me. If your client is accused of forgery, you can be sure the client will go to great lengths to make the signatures look different from the questioned signature. Even an innocent client can be so nervous that the signature will have tremors and look like a phony signature. If for some reason you cannot find signatures for comparison, let me take the exemplars from your client.

4. **IDENTIFYING THE DOCUMENTS:**

- a. Attach a post-it-note to each page with signatures identifying whether the page contains known or questioned writing.
- b. Write on the note away from the document and attach the note near the handwriting or signature, not on it (indented writing shows up on the document).
- c. Plan ahead. Let the Document Examiner know when you need the opinion.

5. **LETTER OF REQUEST:**

- a. Send a written request of what you want the Document Examiner to determine. For instance, “Compare the known writing of Mr. X, Ms. Y, and Mr. Z to the questioned document to determine who wrote the document in question.”
- b. Please do **NOT** write in “legalese”. Be very clear when describing the documents to be examined.
- c. List every document that you give to the examiner and whether it is a copy or an original.

- **Real Example:**

An attorney wrote a letter of request in long convoluted sentences as if trying to confuse witnesses on cross-examinations.

The following is an excerpt of the confusing letter:

1. Affidavit signed by Mr. A. January 16, 1998
2. Signature pages from Mr. B and Mr. C from Lien
3. Temporary Injunction signed by Mr. A and Mr. B. on January, 1998
4. Lien signed by Mr. B and Mr. C
5. Lien signed by Mr. A and Mr. B and Mr. C
6. Promissory note signed by Mr. A and Mr. C
7. Affidavit signed by Mr. C

Mr. A and Mr. B signed the Lien and the Real Estate Lien of 3 and 4 and then on February 16 Mr. C signed the Lien and the Promissory Note in 4, 5, and 6 and then February 12, Mr. A and Mr. B signed.....

It took an extra hour to figure out which documents were questioned and which were known.

6. GETTING THE DOCUMENTS TO THE EXAMINER:

- a. Make arrangements to get the originals and send them to the examiner as soon as they are available.
- b. If originals are not available, use first generation copies (made from original).
- c. Do **NOT** mix up faxes and copies made off of the originals. Faxes have distortion because they are digital, so use non-faxed documents.

7. BE ORGANIZED:

1. Allow enough time for examination.
2. Please do **NOT** wait until the last minute and then expect a thorough exam. (If you do wait until the last minute, expect to pay extra.)
3. Do **NOT** wait until the deposition to get the original documents (if you wait until the deposition to show the examiner the original documents, you risk having the examiner change opinions because some things may not be visible on the copies that are visible on the originals).

8. THE REPORT:

- a. Decide whether or not you want a written report.
- b. Plan ahead. Let the Document Examiner know when you need the report.
- c. When you receive the report, read over it carefully to be sure you understand all points.
- d. Read it right away so the examiner has time to make any corrections.
- e. Allow enough time to get originals so the report can be written based on the original document and not the copies.

9. **EXHIBITS:**

- a. Exhibits show visually how the examiner came to a conclusion.
- b. Allow enough time for the preparation of exhibits
- c. Let the examiner know what size exhibits you want. For instance, do you want books for each juror, or large exhibits that everyone, including the judge and jury, can see from the distance?
 1. How large?
 2. How many exhibits?

10. **TESTIFYING:**

- a. Plan ahead and schedule a pre-trial/deposition conference.
- b. Let the Document Examiner know when, if, and where there will be a deposition. This will give you an opportunity to discuss qualifications and to be sure you understand the report and exhibits.

11. **TRIAL:**

- a. Plan ahead. Let the Document Examiner know the trial date.
- b. Contact the Document Examiner if anything changes
- c. Don't forget to ask about the opinion and exhibits.
- d. **Let the Document Examiner know when the case settles.**

B. **COMMONLY MADE MISTAKES:**

1. **DAMAGING DOCUMENTS:**

a. **Pointing with Pen**

Do **NOT** point at the original documents with the point of your pen. The reason is you could put a dot on the page that would possibly look like an 'i' dot or make a mark on a letter that might affect the outcome of the examination

• **Real Example:**

Many attorneys tap on the original documents with the point of their pens to point out something, making little ink marks on the handwriting that they want me to examine. Do NOT do that!

- b. Do **NOT** make marks on originals.
- c. Do **NOT** damage the documents (stapling, marking on, setting cup on, spilling coffee, etc.).
- d. Do **NOT** set your drink on or near documents.

- **Real Example:**

A Document Examiner coincidentally was sitting at a nearby table in a restaurant, having lunch with his clients while going over documents in an unrelated case. Someone at their table knocked over a huge glass of ice tea and everyone at the table jumped up shaking off the dripping documents and dabbing the pages with their napkins.

- e. Do **NOT** write on top of the originals. Indented writing can be picked up on the document when using certain methods of examination, and this can be very embarrassing for you. Example: “Tell the ‘bleep’ to keep his ‘bleep’ ‘bleep’ mouth shut”
- f. Do **NOT** staple originals.

- **Real Example:**

In a case involving corporate minutes, a page was inserted in the middle of the stack of stapled pages. The staple was removed from the original set of minutes and a page was inserted and the pages were re-stapled. I solved the case by demonstrating how all the documents except the inserted page had 2 staple holes but the inserted page had only one staple hole. If someone in the attorney’s office had unstapled and the documents and re-stapled them, the evidence would have been damaged.

- g. Leave all documents in the condition and order in which you received them, and do not fold the pages unless they were already folded.

- **Real Example:**

When a legal secretary was asked to enlarge the signatures to fit on the page, she had trouble figuring out how to enlarge it. She folded the original document into a 2x4 inch wad. I was horrified and so was the attorney. The legal secretary had not been properly trained on the importance of meticulous handling of original documents.

2. MAINTAIN A GOOD CHAIN OF CUSTODY:

- a. Do **NOT** mix up the documents and/or forget which is original and which is a copy.

- **Real Example:**

Chain of Custody is important. I requested original documents. The opposing attorney sent “original documents” to the attorney who hired me. When I examined the documents I noticed that the documents were copies, not originals. Neither attorney

could figure when the original documents had been mixed up with the copies and who did it.

- **Real Example:**

The attorney hand delivered the “original document”, which was a yellow lined page from a legal pad. When I examined the document I discovered that the yellow page with handwriting had been put through the copy machine to make it look like original handwriting, but it was a machine-generated copy of handwriting.

3. REMEMBER THE NAME OF THE DOCUMENT EXAMINER YOU HIRED:

- **Real Example:**

I have received documents from people I have never heard of. They call in a panic when they realize what they have done.

4. OTHER HELPFUL EXAMPLES:

a. SECURE THE NOTARY SEAL

Just because a document is notarized does not necessarily mean it is authentic.

- **Real Example:**

Many times, when clients say they did not sign something, it turns out that one of the following things occurred:

The boss told the secretary to notarize something without seeing the person sign it. Someone took the notary seal out of the drawer and signed the notary signature.

b. SENDING FAXES TO THE EXAMINER:

1. Faxes can be examined at the very beginning of a case in order to determine whether there are enough documents and whether the documents are clear, etc.
2. After that it is necessary to try to get original documents and if those are not available or do not exist, first generation copies.

3. There is a difference between faxes and photocopies. Faxes are digital and when enlarged the letters look “stair stepped”.

- **Real Example**

Many times I have received documents that have been faxed multiple times and are of such poor quality that it is impossible to read the type much less the signature.

C. DEALING WITH THE DOCUMENT EXAMINER

1. DOCUMENT EXAMINERS MUST BE UNBIASED:

a. Do **NOT** expect for the Document Examiner to say what you want. We are required to be unbiased and to give you an unbiased opinion.

- **Real Example:**

One attorney got furious in a deposition when I refused to say that one word was written prior to another. There was no way to tell which one was written first.

2. DO NOT LIE TO THE DOCUMENT EXAMINER

You may think you are helping your client, but in the long run, it will backfire if the document examiner has to reverse the opinion, and that could happen in the middle of a deposition or trial.

- **Real Example:**

An attorney said, “I watched the man write this sample of writing spontaneously without copying it.” I asked him if he was sure the man did not have the writing in front of him to look at and practice writing. The attorney repeated, “No, I saw him write it spontaneously without looking at anything.” I testified that it would have been impossible for someone to write something so similar to the questioned document without taking time and copying it. When the truth came out that the person did indeed have the writing in front of him and took his time practicing copying it, I had to change my opinion.

3. ANONYMOUS NOTE CASES CAN OFTEN BE SOLVED:

a. Do **NOT** tell your client, “It’s your word against his,” without checking with the Document Examiner first.

- **Real Example:**

I have solved many anonymous note cases, and most of the time the client has been the one to contact me because the attorney said, “It’s your word against his and there is nothing we can do.” In these cases I have examined the documents, and most of the time have identified the person who wrote the questioned letter, produced an exhibit showing how I came to the conclusion, and the cases settled out of court.

4. NOTARIZED DOCUMENTS CAN BE EXAMINED:

1. Do **NOT** assume it is useless to hire a Document Examiner because the document is notarized. Many forged documents are notarized, and one in case the following happened:

- **Real Example:**

I was delivering a report to an attorney, and he commented, “I wish you could look at the documents my next client is bringing in because the client said she did not sign them. It’s the biggest case I’ve ever had, worth millions of dollars.” When I asked him why he didn’t want me to look at the documents, he said, “Because they are notarized!” I told him that many of the forged documents I examine are notarized. I examined the documents and found that both the client’s signature and the notary’s signature were forged. The attorney was elated.

CONCLUSION:

Handle both known and questioned documents with great care. “Treat them like what they are, valuable pieces of evidence.”