By Popular Demand: Demand Letters

Gerald Lebovits
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By Christy A. Coe

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You don’t always need to litigate to get what your client wants. Sometimes all you need is a letter. In this column, we’ll discuss how to write a demand letter and what to do when you get one.

**Respect basic letter-writing principles when drafting a demand letter.**

Some statutes or rules require attorneys to send a demand letter as a prerequisite, or condition precedent, to suing. Even if the law doesn’t require a demand letter as a condition precedent to litigation, an agreement might. An agreement is the law between the parties. If an agreement dictates the steps to take before suing, both your actions and your demands must comply with the agreement.

You can use demand letters to tell recipients that they can solve a conflict by performing an act or obligation in a given time frame. If the conflict isn’t solved by then, use your demand letter to persuade a court that you gave fair notice to the recipients for them to perform their obligations and warned about the potential consequences of a failure to perform.

**Before you write**

**Research**

Before you write a demand letter, evaluate your client’s chances of succeeding in future litigation. Interview your client, review documents, and conduct legal research. Your letter might not get your intended result if you neglect pre-writing research.

Identify and understand the issue before drafting your letter. Objectively analyze your client’s claim and investigate the facts. Make sure you have the most up-to-date information from your client. Use the information you get, but examine the accuracy of the information. Verify that your client has clean hands and hasn’t been neglecting any part of the contract. If your client is partly responsible for the situation, adapt your demand accordingly.

Get copies of pertinent documents. For example, if your client has agreed to lend money to a friend and they have a written agreement regulating the parties’ obligations and rights, obtain the agreement. Follow the agreement’s prerequisites. If the agreement dictates that a 10-day notice be sent before a lawsuit may be initiated, comply with the agreement.

**Example:** Your client, Ms. Imitate, is reading a newspaper and sees bad reviews about a neighborhood restaurant. The restaurant has the same name as the one she opened six months ago. Alarmed, Ms. Imitate calls you to ask the owner to stop using her restaurant’s name. She doesn’t want those bad reviews to affect her business. You write a demand letter to the party at your client’s request. In response, the other restaurant owner asserts that he’s been using the trademark longer than Ms. Imitate has, and sues her.

In this example, pre-writing research could have helped Ms. Imitate make a decision in light of the facts and avoided unintended consequences.

Once you’ve prepared, the research stage concludes with your identifying your letter’s purpose and audience, including your reader’s legal experience, educational level, language skills, age, and physical, emotional, and mental condition.

Writing demand letters

Once you’re ready, start drafting. Be clear, concise, accurate, and straightforward. A professional and effective demand letter can be structured using these guidelines.

**Form**

Demand letters follow similar rules as other formal letters:

- **Heading.** Include your contact information, the client’s contact information, and the current date. Unlike other letters, you don’t need a “regarding,” or “re,” line to indicate the purpose of your letter. On the left, write the recipient’s contact information.

- **Salutation.** Usually takes the form of Dear –
If you drown your letter in unnecessary information, your reader will be at sea.

what action the recipient should take to solve the situation. Keep the introduction short and concise to avoid confusing readers with unnecessary detail.9 This’ll put them on clear notice of what’ll follow.

• **Body.**
State facts. Explain the law supporting your client’s position. Address the recipient’s misbehavior and your client’s position. Base your demand on a legal foundation, such as breach of contract. Explain which clause of a contract was violated and how. Go into clear, specific detail about the action you expect from the letter’s recipient. It could be to do something or to stop doing something. Explain not only what needs to be done but how it must be done, who must do it, the time frame for completion, and the steps required for the recipient to address your client’s needs.

• **Deadline.**
Explain the consequences of not complying with the demand and applicable deadlines. This’ll urge the recipient to take action, and it shows you’re serious that your demands be met.10

• **Closing.**
Close your letter professionally. Example: “Respectfully yours.”

• **Sign** your letter.

Respect basic letter-writing principles when drafting a demand letter. Address why you’re entitled to what you’re asking for. Otherwise, why would your readers comply? Put yourself in their shoes; the reason for your demand must be clear. Example: “The contract provides that the buyer must pay $5,000 in exchange for the car he bought from our client. The undersigned never received any part of the $5,000.”

Organize your facts chronologically. If the exact dates of the events are unclear, prefix the date with the phrase “on or about.” Example: “We discussed this matter on or about June 15, 2016.”

Articulate the time period you’re giving the recipient to respond to your demand. The period must be reasonable: It must be realistic and sufficient for the person to respond to your request. Example: “You have 15 business days to repair the window or to pay me $250 in cash or certified funds.”

State what you plan to do if the recipient doesn’t respond to your demand on time. Example: “If you do not fix the situation within 15 business days, the undersigned will hire a professional to repair the window at your expense and commence legal action against you for financial compensation.”

**Tone: professional but firm**
As is always the case when writing to a potential adversary, your letter should be formal. Adapt your tone; every case is unique. Ethical considerations and notions of professional civility should guide your tone and the content of your letter.11

Know what you’re aiming for, and try to achieve it in a one- or two-page demand letter. Pay special attention to your language. Take your audience into account.12 Use active verbs and no legalese. Be courteous but firm. This writing style will capture your readers’ attention and make them feel that your demand is serious. Don’t be harsh, humorous, or snarky. Don’t display sarcasm or anger.13 Don’t threaten to raise criminal or disciplinary charges. Don’t use your letter to embarrass, blame, shame, or delay.14 Don’t offer the recipient legal advice.15 You never know where your demand letter might end up. It could be in the hands of a judge, the media, or a disciplinary committee.

**Work Toward Resolution**
Encourage solutions to the problem. Demonstrate that you’re willing to consider creative options to benefit everyone. Show that you want to find a mutually beneficial solution and that you’re open to working with the other side toward that outcome. Example: “As your project deadline is approaching soon, our client will continue construction work on the site once a written promise to comply with the demands is received from you.” A reasonable and open attitude helps if the dispute spirals toward trial.16

Seize the opportunity to show you’re open to means other than litigation, such as mediation or arbitration, to settle the dispute. Parties on all sides will often prefer to resolve a dispute without going to court. Example: Your client, Mr. Quiet, lives in a co-op building in Queens, New York. For the past three months, his next-door neighbor has been playing the drums loudly and past the hours the co-op rules allow. Mr. Quiet talked to his neighbor about his issue a few times, but the disturbances continue. Mr. Quiet consults you for advice. Knowing that your client is willing to do whatever it takes to solve the situation, write in your demand letter that you’d like to solve the dispute out of court.
There are many advantages to alternative-dispute settlement. Ultimately, reaching a settlement without litigation will allow both parties to save time, money, heartache, and more. Trials come with unintended costs. Your client will want to avoid them. A trial often means that both parties lost control over the outcome of the dispute.

Be firm. Use demand letters to show that even if you’re open to settle, you want the issue resolved. Convey that if the recipient doesn’t take steps to solve the conflict, you won’t hesitate to sue.

Facts
Provide information about the alleged wrongdoing. State facts and use them to convey that your request isn’t trivial. Answer persuasively and in advance any inevitable question you might receive in response. Example: “Why didn’t the plaintiff complain of shoulder pain until five months after the accident?”

Be concise. Conciseness will encourage the recipient to read your letter and help contextualize the claim. Don’t include irrelevant or unnecessary details.

Consider the following. Your client, Mr. Bank, owns a commercial building in Syracuse, New York. He tells you that Mr. Enessef, one of his tenants, has been giving him checks without sufficient funds for the past two months. Mr. Enessef has been ignoring your client’s calls and emails. Mr. Bank is coming to your office today seeking your advice after his unsuccessful attempts to speak with Mr. Enessef.

Your solution to Mr. Bank’s situation is to write a demand letter—a rent demand—to Mr. Enessef. The demand letter’s body will include three things:

An instruction to Mr. Enessef to perform a certain act and why, (2) a set period within which the act must occur, and (3) a warning of the consequences if the recipient does not comply.

Your demand letter might look like this: “Dear Mr. Enessef: (1) Take notice that you owe rent to Mr. Bank, your landlord, for the following period: $3,000 for May 2016 and $3,000 for June 2016, for a total of $6,000. (2) If you do not pay the total rent due within the next 15 days from the date of the service of this notice, (3) Mr. Bank will initiate a summary proceeding to evict you.”

Demand clearly what and when you want it done
You can seek a specific outcome, such as requesting that a recipient obey a contract or refrain from doing something. Your request must be precise so the recipient can respond accurately. The recipient shouldn’t wonder what you’re asking for. If you drown your letter in unnecessary information, your reader will be at sea: The focus of your demand will be lost. That’ll make it seem like your claim is weak and that you’re on a fishing expedition. Be clear and concise. Less is more.

Avoid using phrases that suggest your demand is based on personal observations. Avoid “I feel” or “It is our belief.” And don’t be overly cautious in presenting your contentions. Avoid “It appears that” or “It is suggested that.” Your cowardly assertion won’t persuade.

Enduring the problems the other party causes is never pleasant. Ask recipients to remedy their faults. Ask for what you’re entitled to—you don’t aim for less—but be reasonable. Recipients are entitled to a reasonable time to respond to your request; not allowing enough time will defeat your goals.

Example: A few weeks ago, you notified Walter Damage, your landlord in Lake George, New York, about leaks coming from your bathroom ceiling. Noting Damage’s inaction in fixing the plumbing, you write him a demand letter requesting that he fix the leaks without delay or you’ll take legal action against him. You can’t stand living in these conditions. You want the renovation work to start as soon as possible.

Being reasonable means that even if you want the work finished in a day, it isn’t realistic to ask Mr. Damage to find a professional qualified for this kind of renovation, for him to hire the professional, for the professional to be available, and for the work to be done right away. A reasonable demand offers him sufficient time to respond to your request. Perhaps a two-week notice—to hire the worker and for the worker to complete the renovation work—is reasonable in this situation. The reasonableness of a notice will always depend on the circumstances of each situation.

Sending
When you send a demand letter, follow through with what you say you’ll do if the time period you set expires. The recipient might not address your demand appropriately, and your issue might end up in court. Send your letter once you’re certain you’re ready, both legally and mentally, to take the matter to the next phase if the recipient doesn’t comply with your demand.

Don’t bluff.
Demand letters shouldn’t be sent lightly. Make sure your client understands why you’re sending one. Send-
ing demand letters when you’re not ready to follow through with your threat of further action will affect your credibility. Your next demand won’t be taken seriously. Send a demand letter only when a situation needs to be resolved or when your client wants to solve a dispute and is seriously considering legal action.22

**Keep records**

When you send demand letters, keep a record of what you wrote and when you sent it. A contract or statute might not require that notice be sent by certified mail or by another method in which the recipient must sign for the letter. Even so, you should send the notice by a method that produces a signed receipt.23 A delivery receipt is useful to track the time since the recipient has received notice of the situation. Keep this receipt. If the recipient does nothing in response to the demand, or if the recipient refuses to comply, having this receipt along with a copy of the demand letter will allow you to prove that the recipient received the demand letter and knew your demands. You can use the receipt to prove that a fair notice of performance was given to the recipient and that the recipient failed to comply timely with the demand.24

**Privilege**

According to the New York Court of Appeals in *Front, Inc. v. Khalil*, a demand letter sent during the preliminary stages of an anticipated action will be subject to a qualified privilege to protect a writer in a future defamation action from what’s stated in the letter “[i]f the statements are pertinent to a good faith anticipated litigation.”25

Be careful with what you write, therefore. Never make a false declaration. If you do, a privilege might not apply to your letter. A qualified privilege is subject to “the requirements of good faith, an interest to be upheld, a proper purpose, and publication in a proper manner and to proper parties only. The person claiming the privilege, moreover, must stand in such relation to the circumstances as to justify the language used.”26

**Responding**

Receiving a demand letter is stressful, but don’t rush your response. Before responding, analyze the demand and assess your options. When responding to demand letters, remember the relevant information discussed above and take your time working through the three key stages:

1. **Analyze**
   
   Before answering a demand letter, consider some relevant questions. Verify whether the claim is well-founded. Does the adverse party have the right to demand what’s demanded? Is the claim reasonable? If the demand seeks money or performance, is the relief sought reasonable?

   Consider settling the dispute. Measure the efforts it’ll take to comply with the demand against what it’ll take to contest the case in court, including attorney fees, time, missing work, and the uncertainty of the outcome. Is all this worth it? Consider whether the chances that a judge will rule in your favor outweigh the time and money it’ll cost you and your client to go through the judicial process.

2. **Prepare**
   
   Whether you want to negotiate with the claimant or fight it out before a judge, be organized and efficient.

   Recall the chain of events: chronologically, what led to what. Write it all down. If documents support your demand, gather and organize them. You’re trying to convey that you’re telling the truth. It could be letters, bills, emails, pictures — anything that’ll support your argument. If other people were involved, note their contact information as witnesses who’ll support you.

3. **Respond**
   
   If you recognize that you’re wrong and that the claimant is entitled to what’s claimed, you may agree to the demand and act accordingly.

   If you disagree with the demand, you may contact the claimants or their lawyer, if they’re represented, to explain your position and negotiate. You can also tell them that you refuse to comply with their demand and explain why. Doing nothing and waiting to be sued is the last option. It doesn’t show you’re willing to cooperate, and it buys you a bushel of trouble.

**Conclusion**

You can’t always get what you want through litigation. But a letter is sometimes all you need.

Gerald Lebovits (Glebovits@aol.com), an acting Supreme Court justice in Manhattan, is an adjunct professor of law at Columbia, Fordham, and NYU. For their research, he thanks judicial interns Ted Mulvany (Fordham) and Rosalie F. Lacoursière (University of Ottawa).

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5. Adapted from id.
6. Rappaport, supra note 3, at 51.
9. Rappaport, supra note 3, at 45.
13. Edwards, supra note 11, at 244.
16. Id. at 28.
18. Collins, supra note 4, at 62.
21. Moore, supra note 1, at 64.
22. Id.
23. Id.
24. Id.
26. 43A N.Y. Jur. 2d Defamation and Privacy § 120.