



**MaryBeth LippSmith**  
LIPPSMITH LAW



**Asher Isaacs**  
ISAACS LAW GROUP, P.C.

## Do yourself a favor: Hire a ghost writer

### A TRIAL LAWYER'S FORTE MAY NOT EXTEND TO LAW AND MOTION PRACTICE OR APPELLATE BRIEFS

Have you ever found yourself staring down the deadline for an important motion or appeal and felt overwhelmed, wondering how you will find the time and energy to produce the high-quality work the task requires?

Do you sometimes take stock of your practice and relish in your ability to bring in strong cases, work through written discovery, take effective depositions, advocate for your client during mediation, and try a case from start to finish, but lament the lack of time spent honing the research and writing skills necessary to prepare exceptional written advocacy?

Do you worry that you cannot afford to siphon time away from important litigation tasks to devote focused attention to your motion and appellate practice?

Do you have concerns about adding staff to your practice and taking on the responsibility of training an attorney to develop research and writing skills?

Maybe you have considered whether to bring a writ or appeal in a case with strong facts and a compelling trial court error but dread the prospect of slogging through the unfamiliar appellate process on your own.

If you have found yourself in any of these conundrums, you should consider hiring a ghost writer. Contracting with a ghost writer for discrete projects will allow you to continue focusing your time and energy on the parts of your practice you do best. Meanwhile, someone with writing expertise will help take your motion and appellate practice to the next level at a reasonable cost. A highly skilled and experienced ghost writer will enable you to deliver the kind of work product that will get your client results without straining your already stretched resources.

#### What is a ghost writer?

You have probably heard of a ghost writer outside the legal context. From celebrities to CEOs and professional athletes to politicians, ghost writers help write social media and blog posts, articles, speeches, and even books – whether self-help manuals or memoirs. The public often knows little about the ghost writer behind the words, but, without the ghost writer, those written projects might never exist.

The same general idea applies in the legal context. A ghost writer drafts a legal brief without putting his or her name on the filing. A ghost writer performs this function just like the attorney retained to work on a matter but without taking public credit for the document.

Ghost writers review pleadings, documents, and other items in the record. They consult with the hiring attorney and conduct legal research. Ultimately, they synthesize and distill that information into a document that meets your drafting needs. These writing projects may range from drafting legal memoranda informing case strategy to trial court briefing, whether oppositions to demurrers or summary judgment, discovery motions, post-trial motions, requests for attorneys' fees, or motions in limine. Ghost writers also draft appellate briefs or writs, as well as any supplemental letter or other briefing the reviewing court may order during the pendency of an appeal.

In short, an experienced and skilled ghost writer will provide high-quality, comprehensive, in-depth legal research and concise, well-reasoned legal writing.

#### Why hire a ghost writer?

When working on a contingency basis, efficiency reigns supreme. A trial

lawyer seeks to obtain the best possible outcome for a client, always mindful of the resources necessary to reach that result. When considering whether to hire a jury consultant, expert witness, or ghost writer, a trial lawyer must consider the potential recovery in a case against the costs the lawyer is willing to invest to bring about that outcome. Trial lawyers making these considerations need the reward reaped from hiring a third party to warrant the outlay of resources. Hiring an accomplished ghost writer makes that calculus a bit easier because a ghost writer can benefit your practice in many ways.

#### *Experience and skill*

A trial lawyer often retains an expert or consultant, a move critical to the success of a case. Retaining a skilled and experienced ghost writer may also prove vital to a favorable outcome.

As trial lawyers know well, lawyers are not fungible. Each lawyer across myriad practice areas offers unique skills, experiences, and abilities. After all, trial lawyers are not born, they are made. Masterful trial lawyers do not stumble into good luck. Instead, they develop their skills in many ways, by attending seminars, working with and observing more experienced advocates during trial, attending trial lawyer college, and participating in the Trial Advocacy Project. Above all, skilled trial lawyers share one thing in common: extensive trial experience.

#### Look for a judicial clerkship

Ghost writers are also made. They have considerable writing experience. This experience often includes law review

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during law school and a federal clerkship upon graduation. Clerkships not only provided invaluable insight into how courts make decisions, but they also telegraph that these lawyers started their careers as strong writers and then participated in a year-long intensive writing boot camp with some of the brightest legal minds. Following clerkships, these dedicated writers have further grown their skills throughout their legal writing careers.

Writing is a unique skill, much like being a trial attorney. Legal research, analysis, synthesis of information and concise, persuasive writings are all skills acquired only through years of dedicated experience and training. Attorneys working exclusively as ghost writers or offering ghost-writing services have top-notch writing experience. These lawyers make their living writing. They write all day long, every day they are working, every year they practice law. Writing is their livelihood.

In short, ghost writers have the substantial, real-world writing experience and skill that will benefit your practice.

#### ***Exceptional writing***

For better or worse, motions and appeals are typically won (or lost) based on the briefs. Sure, oral argument may refine the basis for a win, but the court hearing the motion or appeal often comes into the hearing with a fairly settled view on the outcome, given the briefing. When faced with an important motion or appeal, trial lawyers should not hope the necessarily limited time they can devote to a motion or an appeal will eke out a win. A trial lawyer should never leave such an important brief to chance. A skilled ghost writer can help ensure the brief filed is high quality, on point, and persuasive.

A full-time writer who provides ghost writing services is dedicated to the specific job at hand: completing a polished, ready-to-file brief or writing project from start to finish. A ghost writer puts in the time needed to get the job done and is not constrained by the other facets of a litigation practice that pull a trial lawyer in many directions at once. While a trial lawyer may only find 10 or 15 hours in a

week to devote to motion practice, ghost writers devote all of their time to writing. Writing is what they do.

#### ***Solve staffing shortages***

Many trial lawyers find themselves longing for another associate during peak busy times, such as when the deadline for opposing a dispositive motion looms or during a long or complex trial. On the other hand, these trial lawyers may worry that when the briefing deadline has passed or trial has concluded, the return to a more normal workflow will not justify hiring a full-time attorney. Unfortunately, hiring a full-time attorney requires a significant investment of time and capital and becomes a fixed expense.

Ghost writers solve this problem. A ghost writer can help carry your practice through highly pressured times without adding to your firm's payroll. Ghost writers work on a project basis that does not add to overhead; the hiring attorney pays only for the time needed for the ghost writer to complete the limited task.

#### ***Increase efficiency***

Lawyers who concentrate full time on legal research and writing can accomplish these tasks more efficiently than an attorney who handles only the occasional appeal, writ, or dispositive motion. While hiring a ghost writer requires an expenditure of resources that would not be necessary if a trial lawyer handled a matter in-house, a ghost writer generally will be able to complete the project more quickly than someone whose practice focuses on trying cases. Likely, the ghost writer will also produce a superior finished product. With the time not spent preparing an unfamiliar brief, trial lawyers and their staff can focus on the litigation work they do best.

#### ***Fresh perspective***

Trial lawyers may find themselves unable to see a case's weak points or struggling to pivot from an unsuccessful strategy or tactic. Trial lawyers may also find it difficult not to take any bitter entanglements with opposing counsel personally. In addition, they may encounter difficulty evaluating an unfavorable ruling from the court with objectivity.

A ghost writer joins the matter with new eyes and a healthy dose of distance from a case's everyday pressure points.

A ghost writer, therefore, brings a fresh, outsider's perspective, which may provide invaluable insight as to the best way forward. Small firms and sole practitioners, in particular, may benefit from the fresh perspective and critical viewpoint an outside writer adds to a case.

#### ***Level the playing field***

A trial lawyer knows firsthand about the lopsided staffing on many cases. Often, opposing counsel has access to greater resources, sometimes to the point of seeming unlimited. These bigger firms employ numerous lawyers and staff cases with multiple layers of attorneys. Some of these lawyers include highly skilled and experienced partners and senior attorneys who work on opposing briefs. Perhaps a junior associate will draft all or portions of a brief. Maybe a mid-level associate will review and edit that brief, adding additional arguments and citations and refining the arguments. A senior associate then provides yet another level of review to edit and enhance the brief. Finally, the partner or partners on the case conduct a final review of the briefing to perfect the arguments and fine-tune the brief. On the other side, it may just be the lead trial lawyer, perhaps with an associate; the cards may feel stacked against you.

Hiring a ghost writer presents an efficient option to level some of the staffing disparity on a case. An accomplished ghost writer can help match the skillset and intensive scrutiny opposing counsel can afford to put into their briefs. Adding a ghost writer to your team provides another set of practiced eyes to evaluate the best arguments, devise how to address the weaker contentions, and fashion those considerations into a highly readable piece of advocacy.

#### ***Time***

Time ranks among a lawyer's most precious resources, and many lawyers face competing demands on this limited commodity. While ghost writers cannot add to the hours available in a day, they do give the gift of time.

Contracting with a ghost writer frees a trial lawyer to work on more pressing

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matters, such as evaluating potential cases, tending to clients, conducting discovery, and preparing for trial. Knowing a competent ghost writer is handling important writing projects allows trial lawyers to renew their focus on aspects of a case only they can handle.

Hiring a ghost writer also allows a trial lawyer to focus on business development. Without help researching and writing, trial lawyers may find themselves too overwhelmed to attend conferences and networking events or to focus on marketing their firms. Inviting a ghost writer into an important project gives trial lawyers some freedom to continue to grow their practice.

Finally, a ghost writer may allow trial lawyers an ability to protect personal time to pursue outside interests, take a vacation, or spend time with family. Ghost writers provide some insurance against burnout, to which solo practitioners are particularly susceptible. (Mangan, *How to Recognize and Prevent Lawyer Burnout* (Aug. 1, 2019) Lawyerist <https://lawyerist.com/blog/recognize-prevent-lawyer-burnout/> [as of Oct. 9, 2019].)

#### **Reduce stress**

In addition to providing trial lawyers with more time to recharge, ghost writers can reduce a hiring lawyer's stress in other ways. Many trial lawyers thrive in the courtroom in front of the judge and jury, while the thought of writing an appellate brief causes them to break out in hives. Retaining a ghost writer allows trial lawyers to spend time on the aspects of lawyering they enjoy and at which they excel (e.g., business development, depositions, and trial), while delegating tasks they may fear or loathe (e.g., research and writing). At a time when our profession has what the American Bar Associate has called "a depression epidemic," hiring a ghost writer may provide one way to ameliorate the chronic stress so prevalent among attorneys. (Urban, *Stress Management: How to Reduce the Pressures of the Profession* (Feb. 12, 2019) Law Technology Today <<https://lawtechnologytoday.org/2019/02/stress-management-how-to-reduce-the-pressures-of-the-profession/>>; Port, *Lawyers weigh in: Why is there a depression epidemic in the profession?* (May 11, 2018)

ABA Journal <[www.abajournal.com/voice/article/lawyers\\_weigh\\_in\\_why\\_is\\_there\\_a\\_depression\\_epidemic\\_in\\_the\\_profession](http://www.abajournal.com/voice/article/lawyers_weigh_in_why_is_there_a_depression_epidemic_in_the_profession)> [as of Oct. 9, 2019].)

#### **What does the ideal ghost writer look like?**

When considering a ghost writer, make sure to review both the candidate's credentials and writing samples. Ask yourself whether the ghost writer's skills appear to match the positions listed on a resume. Some helpful credentials include positions that require writing acumen, with a bonus for experience working closely with a judge.

A potential ghost writer must have writing experience, and plenty of it. Be sure, however, to evaluate the quality of this experience. If a ghost writer has only worked on non-dispositive motions in small cases, that person may not provide the best fit for drafting an appellate brief. If a ghost writer has frequently moved from one practice area to another, he or she may not be the disciplined and truly skilled attorney you seek.

Take a careful look at the quality of the writer's work. Are the writing samples provided better than what your firm could realistically produce in the time allotted and given the press of business? Would you be happy to put your name on the kind of sample provided? Remember that you are entrusting your reputation to this ghost writer; it is a decision that should not be taken lightly.

A writing sample should demonstrate clear and concise writing, presented in an organized, readable fashion. Even if the sample covers a practice area unfamiliar to the hiring attorney, the brief should make cogent sense and provide legal citations and persuasive arguments understandable to any legal practitioner reading the brief.

Pay close attention to the tone of the writing samples. A trial lawyer may take a flashier and, perhaps, more argumentative approach in front of a jury. A judge or panel of judges will review a brief, however, which requires a softer and more objective touch. An experienced ghost writer, particularly one who has worked closely with a judge, has invaluable

insight into the appropriate tone for written arguments and the most effective manner to persuade a court in favor of a particular argument or point.

While not absolutely necessary, hiring a ghost writer who has experience with the specific project or subject matter will save time (meaning, the ultimate cost to the hiring attorney) as well as potential headaches down the line. For example, if a potential ghost writer has no experience with class actions, it may be a mistake to hire that person to draft a motion for class certification or for final approval of a class action settlement. Likewise, a ghost writer with no experience in the employment context may have to take some time to learn that area of law, and the invoice billed to you may reflect that learning curve.

Make sure the ghost writer you are considering is available to meet the applicable time frame, accomplish the project in mind, and make an arrangement that suits your needs. Provide the project information to the potential ghost writer, including the type of written project, the deadline for filing, and the deadline for the ghost writer to provide a draft brief for your review, comment, and editing.

As part of this process, work out the business aspects of the engagement. Most ghost writers will provide an agreement covering the details, although this process does not need to involve a formal contract.

A referral from a colleague may give you the best insight into a potential ghost writer. The endorsement of a trial lawyer whose judgment you respect and whose outcomes you admire goes a long way. Even without a referral, ask the candidate whether other attorneys in the same practice area have used this ghost writer. If so, that provides some assurance that the writer has familiarity with the area of law and is skilled enough to warrant repeat business.

Before hiring a ghost writer that seems like a good fit, make sure to conduct a conflict check as to both parties and counsel. If necessary, make an addendum to any agreement with the

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client to add the ghost writer to the retainer.

Finally, while it may seem basic, confirm that a potential ghost writer has access to major legal research tools. A ghost writer who wishes to use a hiring attorney's credentials may not provide the skill level and rigor necessary for the job. Lack of access to a research engine like Westlaw or Lexis should give the hiring attorney pause.

### Other considerations

Try to establish whether the ghost writer wants to work a limited number of hours or has chosen ghost writing as a career or as a major part of his or her practice. Oftentimes, a writing project requires dedication, including working late nights and weekends to meet a deadline. Is the ghost writer under consideration willing to put in the time required?

Along the same lines, ask the ghost writer whether he or she will remain

available after turning in a draft to make edits, to respond to new and additional information as the project progresses, and to see the project through to completion. If a ghost writer has a busy practice of his or her own, he or she may not have the time to return to a project to make edits following the trial lawyer's review. Trial lawyers hiring a ghost writer with limited availability after completing the first draft may encounter frustration at having to finish a project they thought they had delegated.

Many writing projects, such as writs or trial motion practice, require urgency. Perhaps the court has set tight deadlines, or the other side has filed an unexpected but potentially devastating motion. Question ghost writing candidates to determine if they share the same sense of urgency to complete a high-quality project in a short time frame. Finding out too late that a contracted ghost writer does not have the same sense of urgency may leave a trial lawyer flat-footed and scrambling to meet a deadline.

*MaryBeth LippSmith is the founder of LippSmith Law in Los Angeles, where she specializes in appeals. She served as a term law clerk to the Honorable Dorothy W. Nelson on the Ninth Circuit Court of Appeals from 2002 to 2003 and as her career law clerk from 2011 to 2015. MaryBeth also served as a capital habeas staff attorney at the Central District of California from 2005 to 2011. You can reach her at marybeth@lippsmithlaw.com.*

*Asher Isaacs is the founder of Isaacs Law Group, P.C. He has clerked for the Honorable Harry Pregerson on the U.S. Court of Appeals for the Ninth Circuit and for the Honorable Audrey B. Collins on the U.S. District Court for the Central District of California. He spent several years practicing business and entertainment litigation. For the past 15+ years, he has worked exclusively as ghost writer, drafting trial and appellate court briefs in state and federal court for small firms and solo practitioners. You can reach him at asher@adisaacsclaw.com.*

