Essentials for Drafting Clear Legal Rules

Bryan A. Garner
Joseph Kimble

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Published 2024

Bryan A. Garner is president of LawProse Inc., Distinguished Research Professor of Law at Southern Methodist University, chief editor of *Black's Law Dictionary*, and author of more than 25 books on language, advocacy, and law. He is the author of the "Grammar and Usage" chapter of *The Chicago Manual of Style* and of two books with the late Justice Antonin Scalia: *Making Your Case* (2008) and *Reading Law* (2012).

Joseph Kimble taught legal writing and drafting for more than 30 years at Cooley Law School. He has published three books on legal writing: *Lifting the Fog of Legalese*; *Writing for Dollars, Writing to Please*; and *Seeing Through Legalese*. He is the longtime editor of the Plain Language column in the *Michigan Bar Journal*, writes the Redlines column in *Judicature*, and is a senior editor of *The Scribes Journal of Legal Writing*.

This book is a successor volume to Bryan A. Garner's *Guidelines for Drafting and Editing Court Rules*, published by the Administrative Office of the United States Courts in 1996.

Preface

For more than 30 years, one or both of your authors have been style consultants on the projects to redraft — for clarity, consistency, and greater simplicity — all five sets of federal court rules: the Rules of Appellate Procedure (effective in 1998), Criminal Procedure (2002), Civil Procedure (2007), Evidence (2011), and Bankruptcy Procedure (in progress as we write). Joseph Spaniol, a former clerk of the Supreme Court of the United States, has been a stalwart third consultant the whole time.*

Originally, the work entailed editing all amendments to the rules. So successful was that effort that we were asked to revise each set of rules in full. Each set became a multiyear undertaking overseen by specialist advisory committees.

By all measures, these projects have been a success. Fears about the "transaction costs" of these wholesale revisions, such as unintended substantive changes, have proved to be unfounded. Only a handful of these hundreds of rules, and thousands of provisions, have needed adjustments. Even at a glance, readers should see that the revised versions have been substantially improved, often strikingly so.

Readers might consider these guidelines a stylesheet for legal drafters. In a sense, they are just that. But calling them a "stylesheet" unfairly minimizes some of the innovative ideas elaborated here. For example, the principles on placing conditions and exceptions (2.4(A), 2.4(B)) are entirely fresh. To our knowledge, they have no precedent in the literature on legal drafting. The same might be said about the principles on using the double-dash construction (2.4(C)(2), 5.6); on placing adverbs in

* For an overview of that work, see Joseph Kimble, *Redrafting All the Federal Court Rules: A 30-Year Odyssey*, 107 Judicature, no. 3, at 24 (2024).

relation to verb phrases (2.4(C)(3)); and on listing only at the end of the sentence, not in midsentence (3.3(D)). Innovations also appear in the techniques for avoiding interruptive phrases and clauses between subject and verb (2.4(C)(1)); breaking up long sentences (2.4(F)); and omitting needless repetition (4.1(G)). Although this short recitation of them may seem technical and sterile, their cumulative effect enhances readability tremendously. They make rules more effective whether they're being quickly consulted or carefully studied.

Many principles of good drafting, then, have made their debut in these pages; many others are fairly standard, and their value here lies primarily in illustrating how to carry them out. Although all the examples are from court rules, the principles and techniques will apply to all forms of legal drafting.

A few cautions and explanations:

- Naturally, our thinking has evolved since the first edition of this booklet appeared under the title *Guidelines for Drafting and Editing Court Rules*. Because of that evolution and because of the compromise inherent in working with so many committees over the years, the current rules may not always follow every recommendation. No doubt we ourselves could revisit many rules and further improve them.
- As with any set of guidelines, they are sometimes in tension, and the drafter must make a choice — one that often depends on how the content can best be structured in the sentence. For that reason, you might find rules that depart from a given guideline.
- For the most part, the examples show side-by-side versions of the former and current (restyled) rules. Some show the current rule only, and a few more show a current rule on the left and a "Better" version on the right.
- As you might expect, many of the examples reflect more than one principle — not just the one they're illustrating.
- The citations are current as of the time of publication. Of course, the citation for a current rule may change as time goes on. But no matter: the example still illustrates the principle stated.

- Because the bankruptcy restyling was not complete as of the time of publication, those examples show "Proposed style revision" on the right, rather than "Current rule." Assuming that they will be approved as the other sets have been, they should take effect in December 2024.
- We have omitted detailed rationales for the principles. We think there is much to be said for stating them cleanly without pro-and-con arguments and extended rationales.

We would like to thank the many dozens of judges, law professors, and practitioners we've worked with on the Standing Committee on Rules of Practice and Procedure. Over the last three decades, we've invariably learned from them by collaborating with them. This publication is the product of our collaborations.

We are pleased to remind readers that this publication is available for free download on the U.S. Courts website. We hope that it might be a boon to legal-drafting teachers and to their students, as well as to legal drafters everywhere.

Bryan A. Garner
Dallas, Texas

Joseph Kimble
Okemos, Michigan

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1. Basic Principles

1.1 Be clear. Clarity should always be a drafter's paramount concern — creating text that conveys an unambiguous meaning. It is sometimes said that legal instruments must be more than clear: they must be unmistakable. Why? They will inevitably be subjected to adversarial readings. Someone accused of running afoul of a rule will be highly motivated to argue that the text doesn't mandate an adverse ruling.

It's essential, then, to identify instances of vagueness and ambiguity and to sharpen the wording. (See 2.4(D), 2.4(E)(1), 3.3(C), 4.5, and 4.6.) It's also important — as a matter of efficiency if nothing else — to make it as easy as possible for readers to find and understand the information they're looking for. Everything that follows in these pages is directed to that end.

If you need substantive direction for a proposed rule, consider alternative wordings and set them out as possibilities for the body responsible for issuing it.

1.2 Be consistent. Because consistency is a cardinal rule of drafting, use the same term for the same meaning and different terms for different meanings. For instance, before restyling, the Federal Rules of Civil Procedure used these variations, without discernible differences in meaning:

- *for cause shown*, *upon cause shown*, *for good cause*, *for good cause shown*.
- *costs, including reasonable attorney's fees*; *reasonable costs and attorney's fees*; *reasonable expenses, including attorney's fees*; *reasonable expenses, including a reasonable attorney's fee*.

- references to the parties' *consent* or *agreement* or *stipulation* — sometimes with the qualifier *written* or *in writing*.

Through restyling, all such variations have been standardized and simplified.

1.3 Make the draft readable.

A. *Sentence Length*. Prefer short sentences. The average sentence length in good drafting is 25 to 30 words. (See 2.4(F).)

B. *Plain Words*. Use the simplest possible words to express the idea clearly. Avoid legal jargon. (See 4.1(A), 4.7.)

C. *Headings*. Organize the draft logically, with headings and subheadings, so that the reader has bearings. More headings are usually better than fewer. (See 3.2(C).)

D. *Structure*. Use structure to enhance readability and reinforce meaning, especially by using vertical lists. Avoid listing items within long block paragraphs. (See 3.3.)

E. *Document Design*. Besides the generous use of informative headings and vertical lists discussed in Part 3, other techniques will contribute to a well-designed, inviting document:

- Use a good serif font for text, such as Bookman, Cambria, Century Schoolbook, Garamond, Georgia, Palatino, or Times New Roman.
- Use a type size of at least 10 points and preferably 12 to 14 points.
- Put only one space after a sentence-ending period.
- Never underline.
- Never use all caps except possibly for a title.

1.4 Be as brief as clarity and readability permit. This book is replete with illustrations. For more on specific techniques, see 4.1.

2. General Conventions

2.1 Number. Draft in the singular number unless the sense is undeniably plural. Why? A needless plural can give rise to the "plain meaning" argument that two or more are required — an argument that has sometimes prevailed in common-law jurisdictions since the 13th century.*

Not This:	**But This:**
When *issues* not raised by the pleadings *are* tried by express or implied consent of the parties, *they* shall be treated in all respects as if *they* had been raised in the pleadings.	When *an issue* not raised by the pleadings *is* tried by the parties' express or implied consent, *it* must be treated in all respects as if raised in the pleadings.
Old Fed. R. Civ. P. 15(b).	Current rule 15(b)(1).
Nothing in this rule precludes taking notice of plain *errors*	A court may take notice of *a* plain *error* . . . .
Old Fed. R. Evid. 103(d).	Current rule 103(e).
Copies of *notices* required to be mailed to all creditors . . . shall be mailed	*A notice* required to be mailed to all creditors . . . must also be mailed . . . .
Old Fed. R. Bankr. P. 2002(j).	Proposed style revision.

* See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 14, at 130–31 (2012).

2.2 Tense.

A. *In General*. Normally, draft in the present tense, not in the past or future. While in effect, a rule is "constantly speaking." Defaulting to the present tense simplifies drafting.

Not This:	**But This:**
No additional fees *will be required* for filing an amended notice.	No additional fee *is required* to file an amended notice.
Old Fed. R. App. P. 4(a)(3).	Current rule 4(a)(4)(B)(iii).
An order of substitution may be entered at any time, but the omission to enter such an order *shall not affect* the substitution.	An order of substitution may be entered at any time, but failure to enter an order *does not affect* the substitution.
Old Fed. R. App. P. 43(c).	Current rule.
There *shall be* one form of action to be known as "civil action".	There *is* one form of action — the civil action.
Old Fed. R. Civ. P. 2.	Current rule.

B. *Exceptions*. Use the past tense when needed to denote an event that has necessarily already occurred. Use the future tense to denote a future contingency or event.

Examples

The court may permit a party to file a supplemental pleading asserting a counterclaim that *matured* or *was acquired* by the party after serving an earlier pleading. [Using the present tense might create uncertainty about whether the counterclaim somehow depends on a future contingency.]

Current Fed. R. Civ. P. 13(e).

Examples

[T]he court may . . . extend the time . . . if the party *failed* to act because of excusable neglect. [The present tense would work, but the past tense more readily conveys the sense of an event that has happened.]

Current Fed. R. Civ. P. 6(b)(1)(B).

The court should freely permit an amendment when doing so *will* aid in presenting the merits . . . .

Current Fed. R. Civ. P. 15(b)(1).

The notice must also state the name or descriptive title and the address of the officer before whom the deposition *will* be taken.

Current Fed. R. Civ. P. 31(a)(3).

2.3 Voice. Prefer the active over the passive voice. It's a *preference*, not a rule (see C).

A. *In General*. When feasible, rephrase a passive-voice verb by changing it to the active voice.

Not This:	**But This:**
Service *may be effected* by any person who is not a party and who is at least 18 years of age.	Any person who is at least 18 years old and not a party *may serve* a summons and complaint.
Old Fed. R. Civ. P. 4(c)(2).	Current rule.
A stay in a criminal case *shall be had* in accordance with the provisions of Rule 38 of the Federal Rules of Criminal Procedure.	Rule 38 of the Federal Rules of Criminal Procedure *governs* a stay in a criminal case.
Old Fed. R. App. P. 8(c).	Current rule.

Not This:	**But This:**
If it *is claimed* that the writing contains matters not related to the subject matter of the testimony the court shall	If the producing party *claims* that the writing includes unrelated matter, the court must . . . .
Old Fed. R. Evid. 612.	Current rule 612(b).

B. *Converting to an Adjective*. When feasible, rephrase a passive-voice verb by using an adjective.

Not This:	**But This:**
. . . any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment *which may be entered*	. . . any insurance agreement under which an insurance business may be liable to satisfy all or part of a *possible* judgment . . . .
Old Fed. R. Civ. P. 26(a)(1)(D).	Current rule 26(a)(1)(A)(iv).
Proof of service when necessary shall be made by filing with the clerk of the court *by which the subpoena is issued* a statement of	Proving service, when necessary, requires filing with the *issuing* court a statement showing . . . .
Old Fed. R. Civ. P. 45(b)(3).	Current rule 45(b)(4).
. . . a judgment debtor is entitled . . . to *such* stay *as would be accorded* the judgment debtor had the action been maintained in the courts of that state.	. . . the judgment debtor is entitled to the *same* stay of execution the state court would give.
Old Fed. R. Civ. P. 62(f).	Current rule.

C. *Exceptions*. Use the passive voice primarily in three circumstances: (1) when the actor is understood or unimportant (first three examples); (2) when changing to the active voice would undesirably shift the emphasis in the sentence (fourth example); and, similarly, (3) when using the active voice would create a discontinuity between sentences by shifting from one subject to another (last two examples).

Examples

An objection to an error or irregularity in a deposition notice is waived unless promptly *served* [not "unless the objecting party promptly serves it"] in writing on the party giving the notice.

Current Fed. R. Civ. P. 32(d)(1).

In a Chapter 12 or 13 case, the trustee must not distribute to a creditor any payment less than $15 unless . . . . Distribution *must be made* [not "The trustee must make a distribution"] when accumulated funds total $15 or more.

Fed. R. Bankr. P. 3010(b), proposed style revision.

A summons *must be served* with a copy of the complaint. [Not "Whoever serves the summons must also serve a copy of the complaint."]

Current Fed. R. Civ. P. 4(c)(1).

Process — other than a summons under Rule 4 or a subpoena under Rule 45 — *must be served* by a United States marshal or deputy marshal or by a person specially appointed for that purpose. [The emphasis should fall on who must do the serving — hence their placement at the end of the sentence. (See 2.4(G).)]

Current Fed. R. Civ. P. 4.1(a).

Examples

A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion *must be served* under Rule 5 [not "Rule 5 governs service of the motion"] . . . .

Current Fed. R. Civ. P. 11(c)(2).

The election [just mentioned] must be made in writing and signed unless . . . . An election *made* by the majorities required by §1111(b)(1)(A)(i) [not "If the majorities required by §1111(b)(1)(A)(i) *make* the election, it"] is binding on all members of the class.

Fed. R. Bankr. P. 3014(b), proposed style revision.

2.4 Syntax. Use a syntactic arrangement that enhances clarity, logic, and readability.

A. *Conditions*. Place conditions where they can be read most easily, preferably using the word *if*. Use *when* (not *where*) if the sentence needs an *if* to introduce another unrelated clause or if the condition is something that may occur with some frequency.

1. If a condition is relatively short and seeing it first would help the reader avoid a miscue, then put it at the beginning of the sentence.

Not This:	**But This:**
A sentence to pay a fine or a fine and costs, *if an appeal is taken*, may be stayed by the district court or by the court of appeals	*If the defendant appeals*, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay a sentence to pay a fine or a fine and costs.
Old Fed. R. Crim. P. 38(c).	Current rule.

Not This:	**But This:**
The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case *if the debtor fraudulently asserted the claim of exemption*.	*If the debtor has fraudulently claimed an exemption*, the trustee may file an objection to it within one year after the case is closed.
Old Fed. R. Bankr. P. 4003(b)(2).	Proposed style revision.

2. If a condition is long and the main clause is short, put the main clause first and move directly into the condition.

Not This:	**But This:**
When without the parties' consent, either a prisoner petition challenging the conditions of confinement or a pretrial matter dispositive of a party's claim or defense is referred to a magistrate judge, the magistrate judge must promptly conduct the required proceedings.	A magistrate judge must promptly conduct the required proceedings *when assigned, without the parties' consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement*.
Fed. R. Civ. P. 72(b) (intermediate redraft).	Current rule 72(b)(1).

3. If a condition is long but the main clause is just as long or longer — as when the main clause includes a vertical list — put the condition first.

Example

If a party to an adversary proceeding to determine or protect rights in property in the court's custody cannot be served under (b) or Fed. R. Civ. P. 4(e)–(j), the court may order the summons and complaint to be served by:
(1) first-class mail, postage prepaid, to the party's last known address; and
(2) at least one publication in a form and manner as the court orders.

Fed. R. Bankr. P. 7004(c), proposed style revision.

4. Put multiple conditions after the main clause, typically in a vertical list. (For more on vertical lists, see 3.3(A) and (B).)

Not This:

If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper . . . .

Old Fed. R. Civ. P. 55(b)(2).

But This:

The court may conduct hearings or make referrals . . . *when, to enter or effectuate judgment, it needs to*:
(A) *conduct an accounting*;
(B) *determine the amount of damages*;
(C) *establish the truth of any allegation by evidence; or*
(D) *investigate any other matter*.

Current rule.

Not This:	**But This:**
If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule.	**(1)** ***In General.*** (A) *Motion; Grounds for Sanctions*. The court where the action is pending may, on motion, order sanctions *if*: (i) *a party or a party's officer, director, or managing agent — or a person designated under Rule 30(b)(6) or 31(a)(4) — fails, after being served with proper notice, to appear for that person's deposition; or* (ii) *a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.*
Old Fed. R. Civ. P. 37(d).	Current rule.

5. When feasible, expose hidden conditions and make them explicit, using the word *if*. A hidden condition may appear in a long, tangled complete subject (simple subject plus modifiers) (last example).

Not This:	**But This:**
The defenses specifically enumerated (1)–(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial *on application of any party*, unless the court orders that the hearing and determination thereof be deferred until trial.	*If a party so moves*, any defense listed in Rule 12(b)(1)–(7) — whether made in a pleading or by motion — and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferred trial.
Old Fed. R. Civ. P. 12(d).	Current rule 12(i).
In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that	*If an action involves an unusually large number of defendants*, the court may, on motion or on its own, order that . . . .
Old Fed. R. Civ. P. 5(c).	Current rule.

Not This:	**But This:**
(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.	**(B)** ***Objection to an Error or Irregularity.*** An objection to an error or irregularity at an oral examination is waived *if*: (i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and (ii) it is not timely made during the deposition.
Old Fed. R. Civ. P. 32(d)(3)(B).	Current rule.

B. *Exceptions*. Place exceptions where they can be read most easily.

1. If an exception needs to be stated before the sentence can be read without a miscue, state it briefly at the beginning of the sentence.

Not This:	**But This:**
(a) It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, *except to the extent required to show the jurisdiction of the court*.	**(a) Capacity.** **(1)** ***In General.*** *Except when required to show that the court has jurisdiction*, a pleading need not allege: (A) a party's capacity to sue or be sued; (B) a party's authority to sue or be sued in a representative capacity; or (C) the legal existence of an organized association of persons that is made a party. (2) . . . .
Old Fed. R. Civ. P. 9(a).	Current rule.

2. If an exception cannot be stated briefly, put it at the end or in a new sentence beginning with *But*. The exception may even appear in a new subpart (second example).

Not This:	**But This:**
(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, *except that the following defenses may at the option of the pleader be made by motion . . . .*	**(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. *But a party may assert the following defenses by motion . . . .*
Old Fed. R. Civ. P. 12(b).	Current rule.

Example

(a) Compulsory Counterclaim.

(1) ***In General.*** A pleading must state as a counterclaim any claim that — at the time of its service — the pleader has against an opposing party if the claim:

(A) arises from the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) ***Exceptions.*** The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process by which the court did not acquire personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

Current Fed. R. Civ. P. 13(a).

C. *Interruptive Phrases and Clauses*

1. Avoid an interruptive phrase or clause between subject and verb, or verb and object, by moving it elsewhere. Various methods will work.

   - Move a short phrase or clause to the beginning of the sentence. An alternative location for short phrases is in the midst of the verb phrase. (See (C)(3).)

Not This:	**But This:**
The court *at every stage of the proceeding* must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.	*At every stage of the proceeding*, the court must disregard all errors and defects that do not affect any party's substantial rights.
Old Fed. R. Civ. P. 61.	Current rule.

Not This:	**But This:**
The court *upon motion of the defendant* shall transfer the proceeding as to that defendant to another district	*Upon the defendant's motion*, the court must transfer the proceeding against that defendant to another district . . . .
Old Fed. R. Crim. P. 21(a).	Current rule.
The term "petty offenses for which no sentence of imprisonment will be imposed" *as used in this rule*, means	*As used in this rule*, the term "petty offense for which no sentence of imprisonment will be imposed" means . . . .
Old Fed. R. Crim. P. 58(a)(3).	Current rule.

- Convert a long phrase or clause into an explicit condition and put it at the beginning of the sentence. Remember that this may not be the ideal place for a long condition. (See 2.4(A)(1).) But in both examples, the rest of the sentence is longer still.

Not This:	**But This:**
An entity *seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate*, shall file	*If an entity seeks from the estate interim or final compensation for services or reimbursement of necessary expenses*, the entity must file . . . .
Old Fed. R. Bankr. P. 2016(a).	Proposed style revision, 2016(a)(1).

Not This:	**But This:**
A defendant *intending to claim a defense of actual or believed exercise of public authority on behalf of a law enforcement or Federal intelligence agency at the time of the alleged offense* shall	*If a defendant intends to assert a defense of actual or believed exercise of public authority on behalf of a law-enforcement agency or federal intelligence agency at the time of the alleged offense*, the defendant must . . . .
Old Fed. R. Crim. P. 12.3(a)(1).	Current rule.

- Otherwise, generally move a long interruptive phrase or clause to the end of a dependent clause (first example) or to the end of the sentence (second and third examples). Note that in each example, converting to the active voice solves the problem.

Not This:	**But This:**
When evidence *which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose* is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.	If the court admits evidence *that is admissible against a party or for a purpose — but not against another party or for another purpose —* the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.
Old Fed. R. Evid. 105.	Current rule.

Not This:	**But This:**
Preliminary questions *concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence* shall be determined by the court, subject to the provisions of subdivision (b).	The court must decide any preliminary question *about whether a witness is qualified, a privilege exists, or evidence is admissible.*
Old Fed. R. Evid. 104(a).	Current rule.

The deposition *of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party* may be used by an adverse party for any purpose.	An adverse party may use for any purpose the deposition *of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).*
Old Fed. R. Civ. P. 32(a)(2).	Current rule 32(a)(3).

- Occasionally, move an interruptive phrase or clause into a new sentence. This technique improves average sentence length.

Not This:	**But This:**
A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, *authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record*, is admissible as evidence that the records contain no such record or entry.	A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. *For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with (a)(2)(C)(ii).*
Old Fed. R. Civ. P. 44(b).	Current rule.

2. If an interruptive phrase or clause best appears in midsentence — because of what it modifies — use a double-dash construction instead of commas. (For more on dashes, see 4.6 and 5.6.)

Not This:

(1) ***Initial Disclosures.*** . . . a party must, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, *identifying the subjects of the information*;

(B) . . . .

Old Fed. R. Civ. P. 26(a).

But This:

(1) ***Initial Disclosure***

(A) *In General.* . . . a party must, without awaiting a discovery request, provide to other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information — *along with the subjects of that information* — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) . . . .

Current rule.

(f) Service Upon Individuals in a Foreign Country. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, *other than an infant or an incompetent person*, may be effected in a place not within any judicial district of the United States . . . .

Old Fed. R. Civ. P. 4(f).

(f) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual — *other than a minor, an incompetent person, or a person whose waiver has been filed* — may be served at a place not within any judicial district of the United States . . . .

Current rule.

3. Put a short adverbial interruptive phrase in the midst of the verb phrase, not before it; if a modal verb such as *must* or *may* appears in the verb phrase, put the short adverbial phrase immediately after that modal verb.

Not This:	**But This:**
For cause shown, the court may extend the time of any installment, provided	The court may, *for cause*, extend the time to pay an installment, but . . . .
Old Fed. R. Bankr. P. 1006(b)(2).	Proposed style revision.

If a party becomes incompetent, the court *upon motion served as provided in subdivision (a) of this rule* [too long to be put after *may*] may allow the action to be continued by or against the party's representative.	If a party becomes incompetent, the court may, *on motion*, permit the action to be continued by or against the party's representative. *The motion must be served as provided in Rule 25(a)(3).*
Old Fed. R. Civ. P. 25(b).	Current rule.

Not This:	**But This:**
(b) Scheduling and Planning. Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistrate judge when authorized by district court rule, shall, *after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference . . .* [again, too long between the verb parts], enter a scheduling order	**(b) Scheduling.** **(1)** ***Scheduling Order.*** Except in categories of actions exempted by local rule, the district judge — or a magistrate judge when authorized by local rule — must issue a scheduling order: (A) *after receiving the parties' report under Rule 26(f); or* (B) *after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.*
Old Fed. R. Civ. P. 16(b).	Current rule 16(b)(1).

D. *Ambiguous Modifiers*

1. To avoid ambiguity, place a modifier next to the word or phrase it modifies. If moving a misplaced modifier will not cure the ambiguity, rephrase the sentence.

Not This:	**But This:**
The notice shall be published in such newspaper or newspapers as the court may direct *once a week for four successive weeks* prior to the date fixed for the filing of claims.	Before the date fixed for filing a claim, the notice must be published *once a week for four successive weeks* in a court-designated newspaper or newspapers.
Supp. R. Adm. & Mar. Claims F(4) (current rule).	(Better.)

Not This:	**But This:**
In an action begun by seizure of property, *in which no person need be or is named as defendant,* any service	If an action is begun by seizing property *and* no person is or need be named as a defendant, any service . . . .
Old Fed. R. Civ. P. 5(a).	Current rule 5(a)(3).

2. When a modifier immediately preceding or following a series is intended to apply to all the items, make sure that it does so clearly. A modifier that follows a series — a so-called trailing modifier — is especially prone to ambiguity (last four examples). (See also 3.3(C).)

Not This:	**But This:**
Unless this rule provides otherwise, the defendant must be present at: (1) the initial appearance, arraignment, and plea; . . . . [Does *initial* apply to all the items?]	Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at: (1) the initial appearance, *the* initial arraignment, and *the* plea; . . . . [The fix: start the syntax over again.]
Fed. R. Crim. P. 43(a) (intermediate redraft).	Current rule.

The district judge . . . shall modify or set aside any portion of the magistrate judge's order found to be *clearly* erroneous or contrary to law. [Does *clearly* modify *contrary to law*?]	The district judge . . . must . . . modify or set aside any part of the order that is clearly erroneous or *is* contrary to law. [The fix: same as the previous one. Could also reverse the two original items.]
Old Fed. R. Civ. P. 72(a).	Current rule.

Not This:

. . . the court may . . . order . . . that any designated book, paper, document, record, recording, or other material *not privileged*, be produced . . . . [Does *not privileged* modify all the items?]

Old Fed. R. Crim. P. 15(a).

But This:

. . . the court may also require the deponent to produce at the deposition any designated *material that is not privileged, including* any book, paper, document, record, recording, or data. [The fix: move the trailing modifier to the front of the series.]

Current rule 15(a)(1).

(A) *Authority of the Chief Bankruptcy Judge*. When an emergency is declared under (b) and remains in effect for a court, the chief bankruptcy judge may — for all cases and proceedings in the district —

(i) order the extension or tolling of a Bankruptcy Rule, local rule, or order that requires or allows a court clerk, party in interest, or the United States trustee to take an action, commence a proceeding, file or send a document, or hold or conclude a hearing *by a specified deadline* . . . . [Does *by a specified deadline* modify all the items?]

Old Fed. R. Bankr. P. 9038(c)(1)(A) (intermediate redraft).

(1) ***In an Entire District.*** When an emergency is in effect for a bankruptcy court, the chief bankruptcy judge may, for all cases and proceedings in the district or in a division:

(A) order the extension or tolling of a Bankruptcy Rule, local rule, or order that requires or allows a court, a clerk, a party in interest, or the United States trustee, *by a specified deadline*, to take an action, commence a proceeding, file or send a document, hold or conclude a hearing, or take any other action . . . . [The fix: same as the previous one.]

Current rule.

Not This:	**But This:**
Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions *constituting an offense or offenses*. [Does *constituting an offense or offenses* modify both pairs?]	The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, *constituting an offense or offenses*. [The pair of commas help to clarify. Em-dashes might have been better.]
Old Fed. R. Crim. P. 8(b).	Current rule.
These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the United States or an officer or agency thereof. [Does the phrase beginning with *against the United States* modify both items? Repeating *to* before the second item — *to claim credits* — suggests not because it seems to start the syntax over.]	These rules do not expand the right to assert a counterclaim — or to claim a credit — against the United States or a United States officer or agency. [The dashes resolve the ambiguity.]
Old Fed. R. Civ. P. 13(d).	Current rule.

E. *Antecedents*

1. Ensure that an antecedent is clear. Otherwise, you create a miscue or (worse) an ambiguity.

Not This:	**But This:**
. . . it is sufficient that a party . . . makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds *therefor*. [For what?]	. . . a party need only state the action that it wants the court to take or objects to, along with grounds *for the request or objection*.
Old Fed. R. Civ. P. 46.	Current rule.
[T]he court may, on motion, order any person having possession or control of such property or its proceeds to show cause why *it* [the property, clearly] should not be delivered into the custody of the marshal or other person or organization having a warrant for the arrest of the property, or paid into court [how can property be paid into court?] to abide the judgment	[T]he court may, on motion, order any person possessing or controlling the property or its proceeds to show cause: (A) if the property has not been sold, why a marshal or other person or organization having an arrest warrant should not take *the property* into custody; or (B) if the property has been sold or consists of U.S. currency, why *the proceeds* should not be paid into court pending judgment.
Supp. R. Adm. & Mar. Claims C(5) (current rule).	(Better.)

2. When the antecedent is clear, don't hesitate to use a pronoun. A pronoun is perfectly acceptable within a vertical list as well (last two examples).

Not This:	**But This:**
If a party intends to challenge the order disposing of the motion . . . , then the party . . . must file a notice of appeal or amended notice of appeal. *The notice or amended notice* must be filed within the time prescribed by Rule 4	If a party intends to challenge the order disposing of the motion . . . , then the party . . . must file a notice of appeal or amended notice of appeal. *It* must be filed within the time prescribed by Rule 4 . . . .
Fed. R. App. P. 6(b)(2)(A)(ii) (current rule).	(Better.)
A party may amend *the party's* pleading	A party may amend *its* pleading . . . .
Old Fed. R. Civ. P. 15(a).	Current rule 15(a)(1).
The United States trustee shall also receive notice of any other matter if *such notice* is requested by the United States trustee or ordered by the court.	[T]he clerk . . . must send to the United States trustee notice of . . . any other matter if the United States trustee requests *it* or the court orders *it*.
Old Fed. R. Bankr. P. 2002(k).	Proposed style revision, 2022(k)(1).
The party obtaining relief . . . shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to *such adverse party or parties* a copy of the order granting relief.	A party who obtains relief . . . must: (i) immediately give oral notice both to the debtor and to the trustee or the debtor in possession; and (ii) promptly send *them* a copy of the order granting relief.
Old Fed. R. Bankr. P. 4001(a)(2).	Proposed style revision, 4001(a)(3)(A).

Not This:	**But This:**
The bankruptcy court shall decide . . . whether: (1) to hear and determine the proceeding; (2) to hear *the proceeding* and issue proposed findings of fact and conclusions of law; or (3)	[T]he court must . . . decide whether: (1) to hear and determine the proceeding; (2) to hear *it* and issue proposed findings of fact and conclusions of law; or (3) . . . .
Old Fed. R. Bankr. P. 7016(b).	Proposed style revision.

F. *Controlling Sentence Length*. Strive for an average sentence length of fewer than 25 words — 30 words at most. Below are possible techniques for shortening sentences. Clauses and other lengthy items in a vertical list are counted as separate sentences.

1. Break long compound sentences into two or more shorter ones. Don't hesitate to start a sentence with a coordinating conjunction (such as *and*, *but*, *or*).

Not This:	**But This:**
At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion.	At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. [The alternative — *or on its own* — could easily have been added at the beginning as well.]
Old Fed. R. Evid. 615.	Current rule.

Not This:	**But This:**
If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.	If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending district-court action.
Old Fed. R. Civ. P. 27(b).	Current rule 27(b)(3).
In a chapter 7, 11, 12, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.	In a Chapter 7, 11, 12, or 13 case, a state attorney general may appear and be heard on behalf of consumer creditors if the court determines that the appearance is in the public interest. But the state attorney general may not appeal from any judgment, order, or decree entered in the case.
Old Fed. R. Bankr. P. 2018(b).	Proposed style revision.

Not This:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Old Fed. R. Civ. P. 4(m).

But This:

If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Current rule.

Not This:	**But This:**
In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. [Some grammarians would not consider this a compound sentence because no subject appears after *but*; others would say that *presumption* is the implied subject.]	In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.
Old Fed. R. Evid. 301.	Current rule.

2. Pull exceptions and conditions into a separate sentence or a vertical list. (See also 2.4(A)(4), 2.4(B)(2).) Recall that conditions are often not signaled by the word *if*. (See 2.4(A)(5).) With a little ingenuity, you can often assemble them into a list (last two examples).

Not This:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, *except that* the following defenses may at the option of the pleader be made by motion . . . .

Old Fed. R. Civ. P. 12(b).

But This:

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. *But* a party may assert the following defenses by motion . . . .

Current rule.

(h) RECORD SUPPLIED. *When a party is entitled to copies* of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, *and the clerk* of the federal or state court, on demand accompanied by payment or tender of the lawful fees, *fails to deliver certified copies*, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. [Two main conditions; can one be pulled into a separate sentence?]

Old Fed. R. Bankr. P. 9027(h).

(h) Clerk's Failure to Supply Certified Records of Court Proceedings. *If a party is entitled to copies* of the records and proceedings in a civil action or proceeding in a federal or state court for use in the removed action or proceeding, the party may demand certified copies from that court's clerk. After the party pays for them or tenders the fees, *if the clerk fails to provide them*, the court to which the action or proceeding is removed may — after receiving an affidavit stating these facts — order that the record be supplied by affidavit or otherwise.

Proposed style revision.

Not This:

The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice *if the court determines that* a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

Old Fed. R. Bankr. P. 4001(d)(4).

But This:

The court may decide that a motion made under (a), (b), or (c) was sufficient to give reasonable notice of the agreement's material provisions and an opportunity for a hearing. *If so*, the court may order that the procedures prescribed in (1)–(4) do not apply and may approve the agreement without further notice.

Proposed style revision, 4001(d)(5).

Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted *when* the interests of justice require, *or when* an accused is a witness and so requests. [The first sentence is not stated as a condition but can be converted to one.]

Old Fed. R. Evid. 104(c).

The court must conduct a hearing on a preliminary question so that the jury cannot hear it *if*:

(1) the hearing involves the admissibility of a confession;
(2) a defendant in a criminal case is a witness and so requests; or
(3) justice so requires.

Current rule.

Not This:	**But This:**
(3) Trial Preparation: Materials. [A] party may obtain discovery of documents and tangible *things otherwise discoverable under subdivision (b)(1) of this rule* and prepared in anticipation of litigation or for trial by or for another party . . . *only upon a showing that* the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. [Again, the first item in italics is not explicitly stated as a condition but can be treated as one.]	**(3) Trial Preparation: Materials.** (A) *Documents and Tangible Things*. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party . . . . But . . . those materials may be discovered *if*: (i) *they are otherwise discoverable under Rule 26(b)(1)*; and (ii) *the party shows that* it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.
Old Fed. R. Civ. P. 26(b)(3).	Current rule 26(b)(3)(A).

3. Repeat a key word or idea at or near the beginning of the new sentence. This often involves converting a relative clause into a separate sentence (first two examples).

Not This:

(b) Motions and Other Papers. (1) An application to the court for an order shall be by *motion* which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

Old Fed. R. Civ. P. 7(b)(1).

But This:

(b) Motions and Other Papers.

(1) *In General.* A request for a court order must be made by *motion*. *The motion* must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order; and

(C) state the relief sought.

Current rule.

In an action in which jurisdiction is based on diversity under 28 U.S.C. § 1332(a), a party or intervenor must, unless the court orders otherwise, file a disclosure *statement* that names — and identifies the citizenship of — every individual or entity whose citizenship is attributed to that party or intervenor when:

(A) the action is filed in or removed to federal court; and

(B) any subsequent event occurs that could affect the court's jurisdiction.

Fed. R. Civ. P. 7.1(a)(2) (intermediate redraft).

In an action in which jurisdiction is based on diversity under 28 U.S.C. § 1332(a), a party or intervenor must, unless the court orders otherwise, file a disclosure *statement*. *The statement* must name — and identify the citizenship of — every individual or entity whose citizenship is attributed to that party or intervenor:

(A) when the action is filed in or removed to federal court; and

(B) when any later event occurs that could affect the court's jurisdiction under § 1332(a).

Current rule.

Not This:	**But This:**
Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, *the court* may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.	*The court* may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. *The court* may act: (1) on its own; or (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.
Old Fed. R. Civ. P. 12(f).	Current rule.

4. Use an expression such as *must do so* or *may do so* to hark back. This technique often pairs with the previous one.

Not This:	**But This:**
In a case in which the Government intends to offer evidence under this rule, *the attorney for the Government shall disclose* the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.	If the prosecutor intends to offer this evidence, *the prosecutor must disclose* it to the defendant, including witnesses' statements or a summary of the expected testimony. *The prosecutor must do so* at least 15 days before trial or at a later time that the court allows for good cause.
Old Fed. R. Evid. 413(b).	Current rule.

Not This:	**But This:**
If a committee appointed by the United States trustee pursuant to § 1102(a) of the Code consists of the members of a committee organized by creditors before the commencement of a chapter 9 or chapter 11 case, on motion of a party in interest and after a hearing on notice to the United States trustee and other entities as *the court may* direct, the court may determine whether the appointment of the committee satisfies the requirements of § 1102(b)(1) of the Code.	If, in a Chapter 9 or 11 case, a committee appointed by the United States trustee under § 1102(a) consists of the members of a committee organized by creditors before the case commenced, *the court may* determine whether the committee's appointment satisfies the requirements of § 1102(b)(1). *The court may do so* on a party in interest's motion and after a hearing on notice to the United States trustee and other entities as the court orders.
Old Fed. R. Bankr. P. 2007(a).	Proposed style revision.

5. Convert a long condition into a sentence that refers to the rule itself (a reflexive reference).

Not This:	**But This:**
If a lien voidable under § 547 of the Code has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII.	*This rule applies if a lien voidable under § 547 has been dissolved by furnishing a bond or other obligation and the surety has been indemnified by the transfer of or creation of a lien on the debtor's nonexempt property*. The surety must be joined as a defendant in any proceeding to avoid that transfer or lien. Part VII governs the proceeding.
Old Fed. R. Bankr. P. 6010.	Proposed style revision.

G. *Ending Sentences Emphatically*. Try to end sentences emphatically — with a word or phrase that most naturally receives stress.

Not This:	**But This:**
The motion, related papers, and the record of the hearing must be sealed and remain under seal *unless the court orders otherwise*.	*Unless the court orders otherwise*, the motion, related materials, and the record of the hearing must be and remain sealed.
Old Fed. R. Evid. 412(c)(2).	Current rule.

Not This:	**But This:**
The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, *taking into account the convenience of the witness and the parties*.	*After considering the convenience of the witness and the parties*, the court may order — and the subpoena may require — the witness to appear anywhere the court designates.
Old Fed. R. Crim. P. 17(f)(2).	Current rule.

H. *Not Delaying the Verb*. Avoid delaying the main verb in an independent clause. The main verb can be ill-advisedly delayed in several ways that violate other guidelines:

- by piling up conditions before the independent clause — see 2.4(A)(4).
- by inserting an interruptive phrase between the main subject and verb — see 2.4(C)(1).
- by listing at the beginning of a sentence rather than the end — see 3.3(B).

I. *Preferring Positive Form*. Prefer positive statements over negative ones. Negatives can often be replaced by *only if* (last two examples).

Not This:	**But This:**
(2) When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is *not* made *insufficient* by the *insufficiency* of one or more of the alternative statements.	**(2)** ***Alternative Statements of a Claim or Defense.*** . . . If a party makes alternative statements, the pleading *is sufficient* if any one of them is sufficient.
Old Fed. R. Civ. P. 8(e)(2).	Current rule 8(d)(2).

Not This:	**But This:**
A motion for sanctions . . . shall be served as provided in Rule 5, but shall not be filed with or presented to the court *unless*, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial *is not* withdrawn or appropriately corrected.	A motion for sanctions . . . must be served under Rule 5, but it must not be filed or be presented to the court *if* the challenged paper, claim, defense, contention, or denial *is* withdrawn or appropriately corrected within 21 days after service or within another time the court sets.
Old Fed. R. Civ. P. 11(c)(1)(A).	Current rule 11(c)(2).
The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided *may not* be withdrawn *without* the consent of the parties.	A party waives a jury trial unless its demand is properly served and filed. A proper demand *may* be withdrawn *only if* the parties consent.
Old Fed. R. Civ. P. 38(d).	Current rule.
An answering party *may not* give lack of information or knowledge as a reason for failure to admit or deny *unless* the party states that	The answering party *may* assert lack of knowledge or information as a reason for failing to admit or deny *only if* the party states that . . . .
Old Fed. R. Civ. P. 36(a).	Current rule 36(a)(4).

3. Structure

3.1 Organization of Rules

A. *General Principles*. Organize rules logically and clearly so that referring to them will be relatively easy. Do this by adhering as much as possible to these principles:

- Put the broadly applicable before the narrowly applicable.
- Put the general before the specific.
- Put more important items before less important.
- Put a rule before an exception unless the exception can be stated briefly. (See 2.4(B).)
- Put requirements in a sequential order.
- Put contemplated events in chronological order.

Not This:

(a) Form. The summons shall be signed by the clerk, bear the seal of the court [these first two items should come at the end], identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

Old Fed. R. Civ. P. 4(a).

But This:

(a) Contents; Amendments.

(1) ***Contents.*** A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or — if unrepresented — of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) ***Amendments.*** The court may permit a summons to be amended.

Current rule.

B. *Grouping Similar Items*. Group similar items together, preferably introducing them with parallel headings and subheadings.

Not This:

(c) Master's Authority. Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties. The master may by order impose upon a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) Evidentiary Hearings. Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence. [This is part of the master's authority.]

Old Fed. R. Civ. P. 53(c) & (d).

But This:

(c) Master's Authority.

(1) ***In General.*** Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) ***Sanctions.*** The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

Current rule 53(c).

Not This:

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant. [Note: does not belong first; moved to the end.]

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else

But This:

(d) Waiving Service.

[The headings below reflect the reorganization.]

(5) ***Jurisdiction and Venue Not Waived.***

(1) ***Requesting a Waiver.***

to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means; [belongs last in the A–G list]

(C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed; . . .

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing [belongs with (C)].

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown. [Should not have a freestanding sentence after a list. (See 3.3(D).)]

(2) ***Failure to Waive.***

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(3) ***Time to Answer After a Waiver.***

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(4) ***Results of Filing a Waiver.***

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

[Now integrated into (d)(2).]

Old Fed. R. Civ. P. 4(d).

Current rule.

3.2 Structural Divisions

A. *Parts*. The parts of a rule are as follows:

Fed. R. Crim. P. 6(e)(3)(A)(ii)

Rule 6

(e) [subdivision]

(3) [paragraph]

(A) [subparagraph]

(ii) [item]

This is the numbering system used in federal court rules. Other protocols are, of course, used elsewhere.

B. *Corresponding Subparts*. At any level, use a subpart only if there is at least one corresponding subpart.

C. *Headings — In General*. Devise an informative heading for each part. (Note that the separate structural parts are different from items in a list, which normally don't take headings.) Headings are a great help in guiding readers. Although they should be succinct, they needn't be invariably short. And they can benefit even fairly brief provisions (last two examples).

Not This:	**But This:**
(b) Defenses; Form of Denials.	**(b) Defenses; Admissions and Denials.** **(1)** ***In General.*** **(2)** ***Denials — Responding to the Substance.*** **(3)** ***General and Specific Denials.*** **(4)** ***Denying Part of an Allegation.*** **(5)** ***Lacking Knowledge or Information.*** **(6)** ***Effect of Failing to Deny.***
Old Fed. R. Civ. P. 8(b).	Current rule.

Not This:

(b) Scheduling and Planning.

Old Fed. R. Civ. P. 16(b).

But This:

(b) Scheduling.
(1) ***Scheduling Order.***
(2) ***Time to Issue.***
(3) ***Contents of the Order.***
(A) *Required Contents.*
(B) *Permitted Contents.*
(4) ***Modifying a Schedule.***

Current rule.

(c) PRESUMPTION OF SUBSTANTIAL OR CONTROLLING INTEREST; JUDICIAL DETERMINATION. For purposes of this rule, an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest. An entity in which the estate controls or owns less than a 20 percent interest shall be presumed not to be an entity in which the estate has a substantial or controlling interest. Upon motion, the entity, any holder of an interest therein, the United States trustee, or any other party in interest may seek to rebut either presumption, and the court shall, after notice and a hearing, determine whether the estate's interest in the entity is substantial or controlling.

Old Fed. R. Bankr. P. 2015.3(c).

(c) Presumption of a Substantial or Controlling Interest.
(1) ***When a Presumption Applies.*** Under this Rule 2015.3, the estate is presumed to have a substantial or controlling interest in an entity of which it controls or owns at least a 20% interest. Otherwise, the estate is presumed not to have a substantial or controlling interest.
(2) ***Rebutting the Presumption.*** The entity, any holder of an interest in it, the United States trustee, or any other party in interest may move to rebut either presumption. After notice and a hearing, the court must determine whether the estate's interest in the entity is substantial or controlling.

Proposed style revision.

Not This:	**But This:**
(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.	**(b) Service.** **(1)** ***Motion.*** The motion must be served within the time prescribed by Rule 9006(d) and in the manner for serving a summons and complaint provided by Rule 7004. **(2)** ***Response.*** Any written response must be served within the time prescribed by Rule 9006(d). **(3)** ***Later Filings.*** After a motion is served, any other document must be served in the manner prescribed by Fed. R. Civ. P. 5(b).
Old Fed. R. Bankr. P. 9014(b).	Proposed style revision.

D. *Accurate Headings*. Ensure that headings accurately and adequately describe what follows. Even a small change can improve a heading's accuracy.

Not This:	**But This:**
(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in	**(c) Service by Publication in an Adversary Proceeding Involving Property Rights.** If a party to an adversary proceeding to determine or protect rights in property in the court's custody cannot be served under . . . .
Old Fed. R. Bankr. P. 7004(c).	Proposed style revision.

E. *Distinguishing the Parts*. Adopt a scheme for graphically distinguishing the parts, the different levels. As the earlier examples have illustrated, the federal court rules use this one:

Title of the Rule — Larger Bold, Roman

(a) Smaller Bold, Roman

(1) *Bold Italics*

(A) *Unbolded Italics*

(i) (generally used only in lists)

But any consistent scheme will do.

F. *Retaining Familiar Numbers*. If redrafting results in new subparts, try to retain the familiar numbering of oft-cited rules — such as Rule 12(b)(6) of the Civil Rules.

G. *Hanging Indents*. As part of the official format, use hanging (or progressive) indents, which reveal structure cleanly. Unfortunately, publishers often disfavor this format. Do what you can to forestall the problem, as by having those responsible for the rules declare that proper formatting is an essential part of the rules.

Not This:

(2) Service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

(i) handing it to the person;

(ii) leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or

(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

[(C)–(D) omitted.]

Old Fed. R. Civ. P. 5(b)(2).

But This:

(2) ***Service in General.*** A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address — in which event service is complete upon mailing;

[(D)–(F) omitted.].

Current rule.

3.3 Vertical Lists

A. *In General*. As illustrated in places throughout these guidelines, set off parallel or otherwise related items in vertical lists when feasible — and always at the end of the sentence. Put items in the order in which they naturally occur. Use lists liberally. They are essential for good, readable drafting.

Not This:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies.

Old Fed. R. Civ. P. 8(b).

But This:

In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

Current rule 8(b)(1).

In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties.

Old Fed. R. Civ. P. 5(c).

If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

Current rule 5(c)(1).

Not This:	**But This:**
Such notice shall identify the law enforcement or Federal intelligence agency and any member of such agency on behalf of which and the period of time in which the defendant claims the actual or believed exercise of public authority occurred.	The notice must contain the following information: (A) the law-enforcement agency or federal intelligence agency involved; (B) the agency member on whose behalf the defendant claims to have acted; and (C) the time during which the defendant claims to have acted with public authority.
Old Fed. R. Crim. P. 12.3(a)(1).	Current rule 12.3(a)(2).
If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying familiarity with the record of the trial, may proceed with and finish the trial.	Any judge regularly sitting in or assigned to the court may complete a jury trial if: (1) the judge before whom the trial began cannot proceed because of death, sickness, or other disability; and (2) the judge completing the trial certifies familiarity with the trial record.
Old Fed. R. Crim. P. 25(a).	Current rule.

Not This:	**But This:**
The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs.	A plaintiff served with an answer that contains a counterclaim must answer the counterclaim within 21 days after service of: (A) the answer; or (B) a court order requiring an answer, unless the order states otherwise.
Old Fed. R. Bankr. P. 7012(a).	Proposed style revision, 7012(a)(4).

B. *Minimizing Horizontal Lists*. Rather than listing a series of items horizontally at the beginning or in the middle of a sentence, use a vertical list at the end. Often, a phrase such as *the following* will usefully foreshadow what follows. Even when the list is at the end of the sentence, prefer vertical to horizontal (last example).

Not This:	**But This:**
(2) General Rule of Secrecy. A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules.	**(2) Secrecy.** Unless these rules provide otherwise, *the following persons* must not disclose a matter occurring before the grand jury: (A) a grand juror; (B) an interpreter; (C) a court reporter; (D) an operator of a recording device; (E) a person who transcribes recorded testimony; (F) an attorney for the government; or (G) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).
Old Fed. R. Crim. P. 6(e)(2).	Current rule 6(e)(2)(B).

Not This:

(a) Service; When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties.

Old Fed. R. Civ. P. 5(a).

But This:

(a) Service; When Required.

(1) ***In General.*** Unless these rules provide otherwise, each of *the following papers* must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served upon a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

Current rule.

Not This:

If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper . . . .

Old Fed. R. Civ. P. 55(b)(2).

But This:

The court may conduct hearings or make referrals . . . when, to enter or effectuate judgment, it needs to:
(A) conduct an accounting;
(B) determine the amount of damages;
(C) establish the truth of any allegation by evidence; or
(D) investigate any other matter.

Current rule.

Not This:

(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Old Fed. R. Civ. P. 19(a).

But This:

(a) Persons Required to Be Joined if Feasible.

(1) ***Required Party*****.** A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Current rule 19(a)(1).

C. *Using to Avoid Ambiguity*. Vertical lists are especially helpful for avoiding potential syntactic ambiguity.

Not This:

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information . . . or to inspect, copy, test, or sample any designated tangible things *which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served*; or (2) to permit entry upon designated land . . . . [The italicized *which*-clauses seem to modify only *any designated tangible things* and not the earlier *any designated documents or electronically stored information*. And the first *which*-clause seems not to modify item (2).]

Old Fed. R. Civ. P. 34(a).

But This:

(a) In General. A party may serve on any other party a request *within the scope of Rule 26*(*b*):
(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample *the following items in the responding party's possession, custody, or control*:
(A) any designated documents or electronically stored information . . . ; or
(B) any designated tangible things; or
(2) to permit entry onto designated land . . . .

Current rule.

Not This:	**But This:**
Every order . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them *who receive actual notice of the order by personal service or otherwise*. [Again, the italicized clause seems not to modify all the items in the series.]	The order binds only the following *who receive actual notice of it by personal service or otherwise*: (A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B). [The cross-reference would be better as simply *in (A) or (B)*.]
Old Fed. R. Civ. P. 65(d).	Current rule 65(d)(2).

D. *Dangling Text*. Avoid unnumbered "dangling" sections — that is, flush-left text that follows a vertical list and has no numbered designation. Below are possible techniques.

1. Create a new subpart. In the first example, the italicized dangling text in the old rule was fixed by creating a new subpart. In the second example, creating a new subpart allowed a vertical list without leaving dangling text.

Not This:

(a) Form; Issuance.
(1) Every subpoena shall
(A) state the name of the court from which it is issued;

. . .

(D) set forth the text of subdivisions (c) and (d) of this rule.
A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

Old Fed. R. Civ. P. 45(a)(1).

But This:

(a) In General.
(1) *Form and Contents.*
(A) *Requirements*. Every subpoena must:
(i) state the court from which it is issued;

. . .

(iv) set out the text of Rule 45(d) and (e).

. . .

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information*. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

Current rule.

Not This:

(2) Contents. The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records . . . .

Old Fed. R. Civ. P. 71(A)(c)(2).

But This:

(2) ***Contents.*** The complaint must contain a short and plain statement of the following:

(A) the authority for the taking;

(B) the uses for which the property is to be taken;

(C) a description sufficient to identify the property;

(D) the interests to be acquired; and

(E) for each piece of property, a designation of each defendant who has been joined as an owner or owner of an interest in it.

(3) ***Parties.*** When the action commences, the plaintiff need join as defendants only those persons who have or claim an interest in the property and whose names are then known. But before any hearing on compensation, the plaintiff must add as defendants all those persons who have or claim an interest and whose names have become known or can be found by a reasonably diligent search of the records . . . .

Current rules 71.1(c)(2) & (3).

2. When logic allows, rearrange the sentence order.

Not This:

(e) Plea Agreement Procedure.
(1) In General. The attorney for the government and the attorney for the defendant — or the defendant when acting pro se — may agree that, upon the defendant's entering a plea of guilty or nolo contendere to a charged offense, or to a lesser or related offense, the attorney for the government will:

(A) move to dismiss other charges; or

. . .

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case . . . .

The court shall not participate in any discussions between the parties concerning any such plea agreement.

Old Fed. R. Crim. P. 11(e).

But This:

(e) Plea-Agreement Procedure.
(1) ***In General.***
An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach an agreement. *The court must not participate in these discussions*. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

. . .

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case . . . .

Current rule 11(c).

E. *Corrupted Lists*. Never insert within a listed item material that bears on the entire list.

Not This:	**But This:**
If a subpoena (i) requires disclosure of a trade secret . . . , or (ii) requires disclosure of an unretained expert's opinion . . . , or (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, *the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena* . . . . [The italicized clause does not belong in (iii).]	*To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena* if it requires: (i) disclosing a trade secret . . . ; or (ii) disclosing an unretained expert's opinion . . . .
Old Fed. R. Civ. P. 45(c)(3)(B).	Current rule 45(d)(3)(B) [item (iii) having been moved elsewhere].

F. *Bullets*. Use bullets to ease the reading of a list when no citation to any individual item is likely. Dangling text is unobjectionable after a list of bulleted items.

Not This:

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

Old Fed R. Civ. P. 8(c).

But This:

(c) Affirmative Defenses.

(1) ***In General.*** In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- discharge in bankruptcy;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) ***Mistaken Designation.*** If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated . . . .

Current rule.

4. Words and Phrases

4.1 Verbose Phrasing

A. *Unnecessary Words*. Omit every superfluous word. Whenever you have a choice between a longer form (such as *prior to*) and a shorter one (*before*), use the shorter. But never depart from natural idiomatic English.

Not This:	**But This:**
Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.	This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.
Old Fed. R. Civ. P. 11(d) — 30 words.	Current rule — 19 words.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer	(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.
Old Fed. R. Civ. P. 12(a)(2) — 44 words.	Current rule 12(a)(1)(B) — 26 words.

Not This:	**But This:**
In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate.	After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate . . . .
Old Fed. R. Civ. P. 25(a)(2) — 49 words.	Current rule — 24 words.

In any state in which a judgment is a lien upon the property of the judgment debtor and in which the judgment debtor is entitled to a stay of execution, a judgment debtor is entitled, in the district court held therein, to such stay as would be accorded the judgment debtor had the action been maintained in the courts of that state.	If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.
Old Fed. R. Civ. P. 62(f) — 62 words.	Current rule — 38 words.

Not This:	**But This:**
At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held, existing at the time the remedy is sought	At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment.
Old Fed. R. Civ. P. 64 — 67 words.	Current rule 64(a) — 38 words.
This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.	But the court must preserve any party's right to a jury trial.
Old Fed. R. Civ. P. 65(a)(2) — 24 words.	Current rule — 12 words.

B. *Prepositional Phrases*

1. Minimize prepositional phrases. They tend to encumber, and often inflate, sentences. Be especially alert to unnecessary *of*s.

Not This:	**But This:**
In the complaint the title *of* the action shall include the names *of* all the parties, but *in* other pleadings it is sufficient to state the name *of* the first party *on* each side *with* an appropriate indication *of* other parties.	The title *of* the complaint must state all the parties; the title *of* other pleadings, after naming the first party *on* each side, may refer generally *to* other parties.
Old Fed. R. Civ. P. 10(a) — eight total.	Current rule — just four.
A subpoena may be served *by* any person who is not a party and is not less than 18 years *of* age. Service *of* a subpoena *upon* a person named therein shall be made *by* delivering a copy thereof *to* such person	Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy *to* the named person . . . .
Old Fed. R. Civ. P. 45(b)(1) — six total.	Current rule — just one.
Evidence *of* the beliefs or opinions *of* a witness *on* matters *of* religion is not admissible *for* the purpose *of* showing that *by* reason *of* their nature the witness' credibility is impaired or enhanced.	Evidence *of* a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.
Old Fed. R. Evid. 610 — eight total, or six if you count the last four as two multiword prepositions.	Current rule — just one.

2. When feasible, change prepositional phrases to adjectives.

Not This:	**But This:**
Unless otherwise provided by statute or *order of the court*	Unless a statute or a *court order* provides otherwise . . . .
Old Fed. R. Civ. P. 54(d)(2)(B).	Current rule.
. . . any existing *statute of the United States* governs to the extent to which it is applicable	. . . a *federal statute* governs to the extent it applies . . . .
Old Fed. R. Civ. P. 64.	Current rule 64(a).
. . . a *judgment for a sum of money*	. . . a *money judgment* . . . .
Old Fed. R. Civ. P. 67.	Current rule 67(a).
The petition shall be filed with *the clerk of the court of appeals* . . . , with proof of service on all parties to *the action in the district court*.	A party must file a petition with *the circuit clerk* and serve it on all other parties to *the district-court action*.
Old Fed. R. App. P. 5.1(a).	Current rule 5.1(a)(1).

3. When feasible, change prepositional phrases to possessives.

Not This:	**But This:**
Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal	*An appellant's failure* to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal [better: *the appeal's validity*] . . . .
Old Fed. R. App. P. 3(a).	Current rule 3(a)(2).
. . . those portions which relate to the *testimony of the witness*	. . . any portion that relates to the *witness's testimony* . . . .
Old Fed. R. Evid. 612.	Current rule 612(b).
. . . the *credibility of the declarant* may be attacked	. . . the *declarant's credibility* may be attacked . . . .
Old Fed. R. Evid. 806.	Current rule.
A *request by a party* for certification	A *party's request* for certification . . . .
Old Fed. R. Bankr. P. 8006(f)(1).	Proposed style revision.
. . . a genuine question . . . as to the *authenticity of the original*	. . . a genuine question . . . about the *original's authenticity* . . . .
Old Fed. R. Evid. 1003.	Current rule.

4. When feasible, convert [article + noun + *of*] into an *-ing* form.

Not This:	**But This:**
In *the conduct of* the action the court may	In *conducting* the action, the court may . . . .
Old Fed. R. Civ. P. 23.2.	Current rule.
No error in either *the admission* or *the exclusion of* evidence . . . is ground for	. . . no error in *admitting* or *excluding* evidence . . . is ground for . . . .
Old Fed. R. Civ. P. 61.	Current rule.

5. Replace almost all multiword prepositions (also called phrasal or complex prepositions). Prefer *about* over *as to*, *before* over *prior to*, *to* over *in order to*, etc.*

Not This:	**But This:**
. . . a reasonable time . . . *for the purpose of* curing the failure	. . . a reasonable time *to* cure its failure . . . .
Old Fed. R. Civ. P. 4(i)(3).	Current rule 4(i)(4).
. . . the court may take appropriate action, *with respect to* . . . an order for a separate trial *pursuant to* Rule 42(b) *with respect to* a claim	. . . the court may . . . take appropriate action *on* . . . ordering a separate trial *under* Rule 42(b) *of* a claim . . . .
Old Fed. R. Civ. P. 16(c)(13).	Current rule 16(c)(2)(M).

* For an extensive list of multiword prepositions, see Joseph Kimble, "Plain Words," in *Lifting the Fog of Legalese: Essays on Plain Language* 170–71 (2006).

Not This:	**But This:**
. . . whose testimony is expected to be presented *by means of* a deposition	. . . whose testimony the party expects to present *by* deposition . . . .
Old Fed. R. Civ. P. 26(a)(3)(B).	Current rule 26(a)(3)(A)(ii).
At the commencement of and *during the course of* an action	At the commencement of and *throughout* [or *during*] an action . . . .
Old Fed. R. Civ. P. 64.	Current rule 64(a).

C. *Zombie Nouns*. Eliminate zombie nouns — i.e., abstract nouns usually (but not always) ending in the suffixes *-tion*, *-sion*, *-ment*, *-ence*, *-ance*, *-ity* — and make them into verbs. Doing so has several advantages:

- it saves words by helping eliminate prepositional phrases;
- it increases readability by prompting the writer to be explicit about implied actors; and
- it makes sentences more vivid by substituting action verbs for stagnant *be*-verbs.

The examples below — and in (D) following — are from the Federal Rules of Civil Procedure before and after restyling.

– **4(l); now 4(l)(3):** failure to *make proof of* service **/** failure to *prove* service.

– **6(b); now 6(b)(1)(A):** before *the expiration of* the period originally prescribed **/** before the original time . . . *expires*.

– **7.1(b)(2):** upon *any change* in the information that the statement requires **/** if any required information *changes*.

– **11(c)(2)(A); now 11(c)(5)(A):** *for a violation of* subdivision (b)(2) **/** *for violating* Rule 11(b)(2).

– **13(a); now 13(a)(2)(B):** the opposing party *brought suit* upon the claim **/** the opposing party *sued* on its claim.

- **15(c)(3); now 15(c)(1)(C)(i):** *maintaining a defense* on the merits **/** *defending* on the merits.
- **26(g)(3):** if . . . a certification *is made in violation of* the rule **/** if a certification *violates* this rule.
- **30(b)(2); now 30(b)(3)(A):** any party may arrange for *a transcription to be made* . . . of a deposition **/** any party may arrange to *transcribe* a deposition.
- **30(e); now 30(e)(1):** before *completion of* the deposition **/** before the deposition *is completed*.
- **30(f)(2); now 30(f)(3):** *upon payment of* reasonable charges therefor, the officer shall **/** *when paid* reasonable charges, the officer must.
- **41(b):** for *failure of* the plaintiff to prosecute **/** if the plaintiff *fails* to prosecute.
- **45(a)(1)(C); now 45(a)(1)(A)(iii):** *give testimony* **/** *testify*.
- **47(a):** *conduct the examination of* prospective jurors **/** *examine* prospective jurors.
- **49(b); now 49(b)(1):** *make answers to* the interrogatories **/** *answer* the questions.

D. *Collapsing into One Word*. When possible, collapse a clause or a phrase into a single word.

- **11(c)(3); now 11(c)(6):** the conduct determined to constitute a violation of this rule **/** the sanctioned conduct.
- **11(d):** motions that are subject to the provisions of Rules 26 through 37 **/** motions under Rules 26 through 37.
- **14(a); now 14(a)(1):** a person not a party to the action **/** a nonparty.
- **26(a)(1)(D); now 26(a)(1)(A)(iv):** a judgment which may be entered **/** a possible judgment.
- **26(g)(3):** the person who made the certification **/** the signer.
- **30(a)(2); now 30(a)(2)(B):** the person to be examined **/** the deponent.
- **33(b)(3); now 33(b)(2):** the party upon whom the interrogatories have been served **/** the responding party.

- **45(b)(3); now 45(b)(4):** the court by which the subpoena is issued **/** the issuing court.
- **50(d); now 50(e):** the party who prevailed on that motion **/** the prevailing party.

E. *Unnecessary Information*. Don't state the obvious.

The examples below — and in (F) following — are from the Federal Rules of Civil Procedure before restyling.

- **6(b):** When ~~by these rules or by a notice given thereunder or by order of court~~ an act is required or allowed to be done at or within a specified time . . . . [What are you trying to exclude? Why not simply *When an act may or must be done within a specified time*?]
- **7(b)(2):** The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers ~~provided for by these rules~~.
- **7.1(a):** A nongovernmental corporate party ~~to an action or proceeding in a district court~~ must file . . . . [We know the world we're in — the district court.]
- **30(b)(1):** shall give . . . notice . . . to every other party ~~to the action~~.
- **36(b):** Any admission ~~made by a party~~ under this rule . . . .
- **38(d):** A demand for trial by jury ~~made as herein provided~~ may not be withdrawn without the consent of the parties.
- **41(d):** the court may [order] the payment of costs . . . and may stay the proceedings ~~in the action~~ until the plaintiff has complied ~~with the order~~.
- **46:** Formal exceptions to rulings or orders ~~of the court~~ are unnecessary; ~~but for all purposes for which an exception has heretofore been necessary~~ it is sufficient that a party . . . .
- **56(a):** A party . . . may . . . move . . . for a summary judgment ~~in the party's favor~~ . . . .

F. *Intensifiers*. Be wary of intensifiers, which may seem to add emphasis but often have the opposite effect. Minimize them for any of several reasons:

- they often state the obvious;
- their import can be so hard to grasp that it has no practical value; or
- they may create negative implications for other rules.

– **4(d)(2)(A):** The notice . . . shall be in writing and shall be addressed *directly* to the defendant. [How would you address a written notice indirectly?]

– **6(a):** any period of time prescribed . . . by any *applicable* statute. [Are we concerned about an inapplicable statute?]

– **6(b) (and several other rules):** *the court . . . may . . . in its discretion*. [*May* means "has the discretion to"; *in its discretion* is a pure intensifier.]

– **12(b):** may *at the option of the pleader*. [Same theory.]

– **15(d):** *If the court deems it advisable . . .* , it shall so order. [Presumably, the court would not choose to do something inadvisable.]

– **41(d):** the court may make such order for the payment of costs . . . *as it may deem proper*. [Same theory.]

– **53(d):** Unless the appointing order *expressly* directs otherwise. [An order cannot implicitly direct; it means only what it says. And using *expressly* suggests that this order is somehow different from all the other orders in the rules.]

– **56(e):** affidavits . . . shall show *affirmatively*. [Likewise, this rule is not meant to be different from all the other rules that require a party or a document to merely show.]

– **61:** inconsistent with *substantial* justice. [*Substantial* seems to add nothing — or nothing appreciable.]

– **70:** The court may . . . *in proper cases*. [The same theory as in 15(d) above.]

G. *Needless Repetition*. Avoid saying things twice. Legal drafting is prone to this kind of clutter. Clean it up.

1. Trust readers to get a shortened reference to a preceding item.

Not This:	**But This:**
A magistrate judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record *a written order* setting forth the disposition of the matter. Within 10 days after being served with a copy of *the magistrate judge's order*, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in *the magistrate judge's order* to which objection was not timely made. The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of *the magistrate judge's order* found to be clearly erroneous or contrary to law.	When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a *written order* stating the decision. A party may serve and file objections to *the order* within 14 days after being served with a copy. A party may not assign as error a defect in *the order* not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of *the order* that is clearly erroneous or is contrary to law.
Old Fed. R. Civ. P. 72(a).	Current rule.

Not This:

(e) Settlement, Voluntary Dismissal, or Compromise.

(1) (A) The court must approve *any settlement, voluntary dismissal, or compromise* of the claims, issues, or defenses of a certified class.

(B) The court must direct notice in a reasonable manner to all class members who would be bound by *a proposed settlement, voluntary dismissal, or compromise*.

(C) The court may approve *a settlement, voluntary dismissal, or compromise* that would bind class members only after a hearing and on finding that *the settlement, voluntary dismissal, or compromise* is fair, reasonable, and adequate.

[Three additional full references follow in (e)(2)–(4).]

Old Fed. R. Civ. P. 23(e).

But This:

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified . . . class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a *proposed settlement, voluntary dismissal, or compromise*:

(1) *Notice to the Class.*

. . .

(B) *Grounds for a Decision to Give Notice*. The court must direct notice in a reasonable manner to all class members who would be bound by *the proposal* . . . .

(2) *Approval of the Proposal.* If *the proposal* would bind class members, the court may approve *it* only after a hearing and only on finding that *it* is fair, reasonable, and adequate . . . .

Current rule.

2. Pull the repetitious wording into the lead-in to a vertical list.

Not This:	But This:
(b) Capacity to Sue or Be Sued. *The capacity* of an individual, other than one acting in a representative capacity, *to sue or be sued shall be determined* by the law of the individual's domicile. *The capacity* of a corporation *to sue or be sued shall be determined* by the law under which it was organized. In all other cases *capacity to sue or be sued shall be determined* by the law of the state in which the district court is held, except	**(b) Capacity to Sue or Be Sued.** *Capacity to sue or be sued is determined* as follows: (1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile; (2) for a corporation, by the law under which it was organized; and (3) for all other parties, by the law of the state where the court is located, except . . . .
Old Fed. R. Civ. P. 17(b).	Current rule.

3. Merge two provisions that are essentially identical.

Not This:	But This:
(g) Signing of Disclosures, Discovery Requests, Responses, and Objections. (1) Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) *shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address.*	**(g) Signing Disclosures and Discovery Requests, Responses, and Objections.** **(1)** ***Signature Required; Effect of Signature.*** Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection *must be signed by at least one attorney of record in the attorney's own name — or by the party personally,*

The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is . . . .

(2) Every discovery request, response, or objection *made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry*, the request, response, or objection is . . . .

Old Fed. R. Civ. P. 26(g).

if unrepresented — and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is . . . ; and

(B) with respect to a discovery request, response, or objection, it is . . . . [Perhaps *with respect to* should be *for*.]

Current rule.

4. Use a pronoun. In the examples, the pronouns *those* and *this* are demonstrative pronouns. For examples using the personal pronouns *it* and *them*, see 2.4(E)(2).

Not This:

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise *an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity*, the party desiring to raise the issue shall do so by . . . .

Old Fed. R. Civ. P. 9(a).

But This:

(a) Capacity or Authority to Sue; Legal Existence.

(1) ***In General.*** Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) ***Raising Those Issues.*** To raise any of *those issues*, a party must do so by . . . .

Current rule.

Not This:	**But This:**
Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of *evidence of insurance against liability* when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.	Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit *this evidence* for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.
Old Fed. R. Evid. 411.	Current rule.

5. Omit a later reference altogether when it's implicit but clear.

Not This:	**But This:**
Notice of *a judgment or order entered by a district judge* is governed by Rule 77(d) F.R.Civ.P. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of *a judgment or order entered by a district judge*.	Notice of *a district judge's judgment or order* is governed by Fed. R. Civ. P. 77(d). Except in a Chapter 9 case, the clerk must promptly send a copy to the United States trustee.
Old Fed. R. Bankr. P. 9022(b).	Proposed style revision.

H. *Needless Detail*. Think twice before trying to elaborate all the specific possibilities, the particular examples, of a general term. Doing so entails the possibility of inadvertent omission. This guideline is somewhat different from the one in 4.1(E) ("Don't state the obvious.").

Not This:	**But This:**
A pleading which sets forth a claim for relief, *whether an original claim, counterclaim, cross-claim, or third-party claim*, shall contain	A pleading that states a claim for relief must contain . . . .
Old Fed. R. Civ. P. 8(a).	Current rule.
A party may . . . state as many separate claims or defenses as the party has regardless of consistency and *whether based on legal, equitable, or maritime grounds*.	A party may state as many separate claims or defenses as it has, regardless of consistency.
Old Fed. R. Civ. P. 8(e)(2).	Current rule 8(d)(3).

4.2 Words of Authority*

A. *In General*. Use words of authority in accordance with the following glossary:

must	=	is required to
must not	=	is required not to
		is not permitted to (*may not* is acceptable if it cannot plausibly be read as "might not")
may	=	has discretion to
		is permitted to
		has a right to
is entitled to	=	has a right to (prefer *may*)

* For the rationale underlying these conventions, see Bryan A. Garner, *Garner's Dictionary of Legal Usage* 952–55 (3d ed. 2011).

may . . . only	=	(expresses conditional permission)
will	=	(expresses a future contingency)
should	=	(denotes a directory provision — to be used sparingly)

B. *Replacing* Shall. Replace *shall* with *must*, *may*, or some other, more appropriate term.* (For an alternative, see (C).)

Not This:	**But This:**
The clerk *shall*, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.	On the date when judgment is entered, the clerk *must* serve on all parties a copy of the opinion — or the judgment, if no opinion was written — and a notice of the date when the judgment was entered.
Old Fed. R. App. P. 36.	Current rule.
If the summons is in proper form, the clerk *shall* sign, seal, and issue it to the plaintiff for service on the defendant.	If the summons is properly completed, the clerk *must* sign, seal, and issue it to the plaintiff for service on the defendant.
Old Fed. R. Civ. P. 4(b).	Current rule.
[T]he court . . . *shall* make an order . . . specifying . . . whether the depositions *shall* be taken upon oral examination or written interrogatories.	[T]he court *must* issue an order that . . . states whether the depositions *will* be taken orally or by written interrogatories.
Old Fed. R. Civ. P. 27(a)(3).	Current rule.

* For a catalogue of misuses of *shall* in the Federal Rules of Civil Procedure before restyling, along with fixes, see Joseph Kimble, "Lessons in Drafting from the New Federal Rules of Civil Procedure," in *Seeing Through Legalese: More Essays on Plain Language* 87–93 (2017).

Not This:	**But This:**
The order following a final pretrial conference *shall* be modified *only* to prevent manifest injustice.	The court *may* modify the order issued after a final pretrial conference *only* to prevent manifest injustice.
Old Fed. R. Civ. P. 16(e).	Current rule.
The [derivative] action *shall not* be dismissed or compromised *without* the approval of the court	A derivative action *may* be settled, voluntarily dismissed, or compromised *only* with the court's approval.
Old Fed. R. Civ. P. 23.1.	Current rule 23.1(c).
No preliminary injunction *shall* be issued *without* notice to the adverse party.	The court *may* issue a preliminary injunction *only* on notice to the adverse party.
Old Fed. R. Civ. P. 65(a)(1).	Current rule.

C. *Using* Shall. In the alternative to (B), use *shall* exclusively to mean "has a duty to." Avoid it when it does not impose a duty on the subject of the clause. (Note: either the convention in (B) or this convention (C) should appear consistently in one set of revisions; avoid mixing the two.)

D. *Wordy Phrasing for* Shall *and* May. Avoid roundabout wordings to create a duty or grant permission.

Not This:	**But This:**
A party who has made a disclosure under Rule 26(a) or responded to a request for discovery *is under a duty to* supplement or correct	A party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission — *must* supplement or correct . . . .
Old Fed. R. Civ. P. 26(e) (intermediate redraft).	Current rule.

Not This:	**But This:**
Each party *shall have the right to* object for valid cause to the appointment of any person as a commissioner or alternate.	The parties . . . for good cause *may* object to a prospective commissioner or alternate.
Old Fed. R. Civ. P. 71A(h).	Current rule 71.1(h)(2)(C).

E. Must Not *and* May Not. Prefer *must not* to *may not* or *cannot*. The first two both create a prohibition, but there is some risk — usually small in context — that *may not* could be read as "might not." *May not* does have a somewhat softer tone. (See also 2.4(I) for the recommendation to replace double negatives such as *may not . . . unless* with *may . . . only if*.) Use *cannot* to denote legal incapability.

Not This:	**But This:**
After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and *may not* use or disclose the information until the claim is resolved.	After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; *must not* use or disclose the information until the claim is resolved; . . . .
Old Fed. R. Civ. P. 45(d)(2)(B).	Current rule 45(e)(2)(B).

Entry of judgment *may not* be delayed, nor the time for appeal extended, in order to tax costs or award fees, except	Ordinarily, the entry of judgment *may not* be delayed, nor the time for appeal extended, in order to tax costs or award fees. But . . . . [Note: no chance of misinterpreting *may not*.]
Old Fed. R. Civ. P. 58(c)(1).	Current rule 58(e).

F. *Unnecessary Uses of* Shall. Use a present-tense verb, not a *shall*-construction, when simply stating a legal fact or policy.

Not This:	**But This:**
There *shall be* one form of action to be known as "civil action".	There *is* one form of action — the civil action.
Old Fed. R. Civ. P. 2.	Current rule.
The procedure for obtaining a declaratory judgment pursuant to Title 28, U.S.C., § 2201, *shall be in accordance with* these rules	These rules *govern* the procedure for obtaining a declaratory judgment under 28 U.S.C. § 2201.
Old Fed. R. Civ. P. 57.	Current rule.
For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending *shall be deemed to* refer to the court in which the petition for such deposition was filed.	A reference in these rules to the court where an action is pending *means*, for purposes of this rule, the court where the petition for the deposition was filed.
Old Fed. R. Civ. P. 27(a)(3).	Current rule.

4.3 Relative Pronouns

A. *Restrictive*. Use *that*, not *which*, as a restrictive relative pronoun.

Not This:	**But This:**
A pleading *which* sets forth a claim for relief . . . shall contain	A pleading *that* states a claim for relief must contain . . . .
Old Fed. R. Civ. P. 8(a).	Current rule.

Not This:	**But This:**
. . . before a voluntary dismissal or settlement of the claims made by or against the party *which* is, or whose attorneys are, to be sanctioned.	. . . before voluntary dismissal or settlement of the claims made by or against the party *that* is, or whose attorneys are, to be sanctioned.
Old Fed. R. Civ. P. 11(c)(2)(B).	Current rule 11(c)(5)(B).

. . . the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence *which* would be admissible for those purposes if declarant had testified as a witness.	. . . the declarant's credibility may be attacked, and then supported, by any evidence *that* would be admissible for those purposes if the declarant had testified as a witness.
Old Fed. R. Evid. 806.	Current rule.

B. *Nonrestrictive*. Use *which* as a nonrestrictive relative pronoun. The word should always follow a comma, dash, or parenthesis — unless it follows a preposition (as in *by which* or *for which*).

Example

A judge or other person designated by the court may preside over the conference, *which* may be conducted in person or by telephone.

Current Fed. R. App. P. 33.

C. *Remote*. To avoid a miscue caused by a "remote relative" pronoun, normally place the relative pronoun *that* or *which* directly after the word or phrase it modifies.

Not This:	**But This:**
[A] deposition . . . shall begin with a statement on the record by the officer *that* includes	The officer must begin the deposition with an on-the-record statement *that* includes . . . .
Old Fed. R. Civ. P. 30(b)(4).	Current rule 30(b)(5)(A).

Not This:	**But This:**
[A] party shall, without awaiting a discovery request, provide to other parties . . . a copy of . . . all documents, data compilations, and tangible things in the possession, custody, or control of the party *that* are relevant	[A] party must, without awaiting a discovery request, provide to other parties . . . a copy of . . . all documents, electronically stored information, and tangible things *that* the disclosing party has in its possession, custody, or control and may use . . . .
Old Fed. R. Civ. P. 26(a)(1)(B).	Current rule 26(a)(1)(A)(ii).

[E]vidence received upon an application for a preliminary injunction *which* would be admissible upon the trial on the merits becomes part of the record on the trial	[E]vidence *that* is received on the motion *and that* would be admissible at trial becomes part of the trial record . . . .
Old Fed. R. Civ. P. 65(a)(2).	Current rule.

4.4 Conjunctions. For a contrast, use *but* instead of *however* to start a sentence. Don't put a comma after the sentence-starting *but*.

Not This:	**But This:**
Every person is competent to be a witness except as otherwise provided in these rules. *However*, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.	Every person is competent to be a witness unless these rules provide otherwise. *But* in a civil case, state law governs the witness's competency regarding a claim or defense for which state law supplies the rule of decision.
Old Fed. R. Evid. 601.	Current rule.

Not This:

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 104. *However*, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Old Fed. R. Evid. 1008.

But This:

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. *But* in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether:

(a) an asserted writing, recording, or photograph ever existed;
(b) another one produced at the trial or hearing is the original; or
(c) other evidence of content accurately reflects the content.

Current rule.

4.5 Undesirable Vagueness. Sharpen the wording when doing so more clearly achieves the same result.

Not This:

[T]he parties must . . . develop a proposed discovery plan that *indicates* the parties' views . . . .

Old Fed. R. Civ. P. 26(f).

But This:

A discovery plan must *state* the parties' views . . . .

Current rule 26(f)(3).

Not This:	**But This:**
These rules *are intended* to provide for the just determination of every criminal proceeding.	These rules *are to be interpreted* to provide for the just determination of every criminal proceeding . . . .
Old Fed. R. Crim. P. 2.	Current rule.
The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before *a magistrate* at the stated time and place. [Could "magistrate" be any official entrusted with administering laws? Could it be a state magistrate judge?]	A summons must be in the same form as a warrant except that it must require the defendant to appear before *a magistrate judge* at a stated time and place. ["Magistrate judge" is a defined term in the criminal rules, applying only to federal magistrate judges.]
Old Fed. R. Crim. P. 4(c)(2).	Current rule 4(b)(2).

4.6 Ambiguity. Avoid ambiguity, which presents an either/or dilemma in meaning — the worst sin in drafting. Note the clarifying double dashes in the third and fourth examples.

Not This:	**But This:**
When any act is required by these rules to be performed by a debtor *or when* it is necessary to compel attendance of a debtor for examination *and the debtor is not a natural person* . . . . [Because of the structure created by the two *when*s, the italicized clause seems to go only with the second part. But that wasn't the intention.]	[*W*]*hen the debtor is not a natural person and* either *is required* by these rules to perform an act *or must* be compelled to appear for examination . . . .
Old Fed. R. Bankr. P. 9001(5).	Proposed style revision, 9001(b)(5).

Not This:

The plaintiff *shall* also *give security* for costs *and, if the plaintiff elects to give security*, for interest at the rate of 6 percent per annum from the date of the security. [This wording first makes the security compulsory (*shall*), but then suggests that the plaintiff may choose not to give it (*if the plaintiff elects*). The rule can bear only one of these meanings.]

Supp. R. Adm. & Mar. Claims F(1).

But This:

An owner *must give security* for costs *and*, when doing so, *must include* 6 percent annual interest from the date of the security.

[Or:]

An owner *who elects to give security* for costs *must include* 6 percent annual interest from the date of the security.

(Better.)

A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in . . . . [Does each person have the choice to file either one?]

Old Fed. R. Bankr. P. 3002(a).

Unless . . . provides otherwise, *a creditor must file a proof of claim — and an equity-security holder must file a proof of interest* — for the claim or interest to be allowed. [For technical reasons, *equity security* could not be hyphenated before *holder*.]

Proposed style revision.

[T]he trustee or debtor in possession *may prosecute or appear in and defend* any pending action or proceeding by or against the debtor or . . . . [Is it "may (prosecute or appear in) and defend," or is it "may prosecute or (appear in and defend)"?]

Fed. R. Bankr. P. 6009 (intermediate redraft).

[T]he trustee or debtor in possession *may*:

(a) *prosecute — or appear in and defend* — any pending action or proceeding by or against the debtor; or

(b) . . . .

Proposed style revision, 6009(a).

Not This:

(5) ***Rejecting a Plea Agreement.*** If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must on the record:

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally *in open court — or, for good cause, in camera —* that the court may not follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

[Does *in open court — or, for good cause, in camera —* in (B) apply to (A) and (C) as well?]

Fed. R. Crim. P. 11(c)(5) (intermediate redraft).

But This:

(5) ***Rejecting a Plea Agreement.*** If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record *and in open court (or, for good cause, in camera)*:

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

Current rule.

For more examples of ambiguity, see 2.4(D), 2.4(E)(1), and 3.3(C).

4.7 Specific Words and Forms to Avoid.

All cited examples are before restyling.

- ***all of***: delete *of* when possible.
- ***and/or***: use *A or B*, *A and B*, or (if needed for clarity) *A or B or both*.
- ***any***: try *a*, *an*, or *other* instead. But prefer *any* to *if any* (see below).
- ***as to***: prefer *about*, *for*, *of*, *on*, *with*, *to*, *by*, or *in*. E.g., "The accused does not, by testifying upon a preliminary matter, become subject to cross-examination *as to* [read *on*] other issues in the case." Fed. R. Evid. 104(d). **/** "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised *as to* [read *about*] the authenticity of the original . . . ." Fed. R. Evid. 1003.
- ***deem***: use *treated as* or *considered* or a present-tense verb such as *is* or *does*.
- ***every***: prefer *a* or *an*.
- ***except as***: use *unless* when referring to some future action by the court or by the parties. E.g., "*Except as* [read *Unless*] . . . otherwise stipulated or directed by the court, ..." Fed. R. Civ. P. 26(a)(2)(B).

  Except as is acceptable when referring to something that an existing rule does. E.g., "*Except as* otherwise provided in (b), ..."
- ***except that***: use *but* or some other, more pointed term. E.g., "No service need be made on parties in default for failure to appear *except that* [read *but* or *But* (a new sentence)] pleadings asserting new or additional claims . . . ." Fed. R. Civ. P. 5(a).
- ***expire***: try *end*.
- ***following***: if it means "after," write *after*.
- ***forthwith***: use *promptly* (in most cases) or *immediately* (if that's the meaning).
- ***hereof***, ***herein***, ***thereof***, ***therein***, **and the like**: use everyday words instead — especially demonstrative pronouns such as *that*, *this*, *these*, and *those*.

- ***if any***: try placing *any* before the noun. E.g., "[T]he complaint must further show . . . *what voyages or trips, if any,* [read *any voyages or trips*] *she* [read *the ship*] has made since the voyage or trip on which the claims sought to be limited arose . . . ." Supp. R. Adm. & Mar. Claims F(2).
- ***in the event of***: try to change to *if*.
- ***in the event that***: use *if*.
- ***limitation***: unless referring to a statute of limitations, use *limit*.
- ***not later than***: use *no later than* or *within*. The phrasing "*within* 10 days after entry of judgment" is usually better than "*no later than* 10 days after entry of judgment," but the latter may be needed if you want to allow the act to be done before the entry of judgment as well as in the following 10 days.
- ***not less than***: try *no less than* or *at least*.
- ***not more than***: try *no more than* or *up to*.
- ***notwithstanding***: try *despite*.
- ***notwithstanding the fact that***: use *even if* or *even though*.
- ***partially***: use *partly*.
- ***portion***: use *part*.
- ***prior to***: use *before*. E.g., "The court shall inform counsel of its proposed action upon the requests *prior to* [read *before*] their arguments to the jury." Fed. R. Crim. P. 30.
- ***provided that***, ***provided however that***: reword to eliminate all provisos, usually with *if* (for conditions), or *except* or *but* (for exceptions).
- **[the]** ***provisions of***: almost always delete.
- ***pursuant to***: use *under Rule 3*, not *pursuant to Rule 3*; *as authorized by* or *in accordance with* 26 U.S.C. § 1333, not *pursuant to* 26 U.S.C. § 1333. E.g., "Depositions may be taken in a foreign country . . . *pursuant to* [read *under*] an applicable treaty or convention . . . ." Fed. R. Civ. P. 28(b).
- ***said***, *adj.*: use *the*, *this*, or *that*.
- ***same***: use the relevant noun or *it*, *they*, or *them*.
- ***subsequent***: prefer *later*.

- ***subsequent to***: use *after*. E.g., "Immediately upon the entry of an order made on a written motion *subsequent to* [read *after*] arraignment[,] the clerk . . . ." Fed. R. Crim. P. 49(c).
- ***such***, *adj.*: use *the*, *this*, or *that* — unless *such* is used in the sense "of the general type." E.g., "Copies of the reporter's transcript and other papers . . . may be inserted in the appendix; *such* [read *those*] pages may be informally renumbered if necessary." Fed. R. App. P. 32(a).
- ***such*** [*noun* + *s*] ***as***: use *any* [*noun*] *that* or *a* [*noun*] *that*. E.g., "At the close of the evidence or at *such earlier time during the trial as the court reasonably directs* [read *an earlier time during the trial, as the court reasonably directs,*] any party may file written requests . . . ." Fed. R. Crim. P. 30. "[T]he court may, *on such terms and conditions as are just* [read *on just terms*], order . . . ." Fed. R. Civ. P. 26(c).
- ***therefor***: avoid altogether, often merely by deleting it, sometimes by writing *for it* or *for them*.
- ***there is***, ***there are***: delete when possible. Use only if you are referring to the existence of something.
- ***transmit***: use *send* or *forward*. E.g., "The clerk . . . *shall transmit* [read *must send*] the papers in the proceeding or certified copies thereof to . . . ." Fed. R. Crim. P. 20(a).
- ***upon***: prefer *on*. Thus, *service on a defendant*, not *service upon a defendant*. But prefer *upon* when introducing a condition or event — e.g.: "*Upon* being served with a request, a party must . . . ."
- ***utilize***: use the verb *use*.
- ***whenever***: use *if* or *when*. E.g., "*Whenever* [read *When*] a deposition is taken at the instance of the government, or *whenever* [read *when*] a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the court may direct . . . ." Fed. R. Crim. P. 15(c).

4.8 Other Stylistic Preferences

A. *Particular Words*

- ***may . . . only***: this is an alternative to *must not . . . except* for a conditional prohibition. E.g., "A request *may* be served *only* after . . . ."
- ***only***: place this word carefully before the word it modifies.

- ***otherwise***: for emphasis, this adverb should usually end a clause — e.g., "Unless this court *directs otherwise* . . . ," not "Unless this court *otherwise directs*." But sometimes, for the sake of parallel phrasing, this term should precede the verb — e.g.: "Unless *otherwise* directed by the court or stipulated by the parties . . . ."
- ***will***: use for the future tense, not as an imperative.

B. *Cross-References*

1. Minimize cross-references. The prime reason for needless cross-references is an irrational unwillingness to trust the reader to read successive subparts together, as if each textual sliver had to stand alone.

Not This:	**But This:**
(h) Compensation. **(1) Fixing compensation.** The court must fix the master's compensation before or after judgment on the basis and terms stated in the order of appointment . . . . **(2) Payment.** The compensation *fixed under Rule 53(h)(1)* must be paid	**(g) Compensation.** **(1)** ***Fixing Compensation.*** Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order . . . . **(2)** ***Payment.*** The compensation must be paid . . . .
Old Fed. R. Civ. P. 53(h)(1) & (2).	Current rule 53(g)(1) & (2).

Not This:

(2) An objection is timely if:

(A) a party that has been informed of an instruction or action on a request before the jury is instructed and before final jury arguments, *as provided by Rule 51(b)(1)*, objects at the opportunity for objection *required by Rule 51(b)(2)*; or

(B) a party that has not been informed of an instruction or action on a request before the time for objection *provided under Rule 51(b)(2)* objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning Error; Plain Error.

(1) A party may assign as error:

(A) an error in an instruction actually given if that party made a proper objection *under Rule 51(c)*, or

(B) a failure to give an instruction if that party made a proper request *under Rule 51(a)*, and . . . also made a proper objection *under Rule 51(c)*.

Old Fed. R. Civ. P. 51(c)(2) & (d).

But This:

(2) ***When to Make.*** An objection is timely if:

(A) a party objects at the opportunity *provided under Rule 51(b)(2)*; or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning Error; Plain Error.

(1) ***Assigning Error.*** A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and . . . also properly objected.

Current rule.

Not This:

(a) *Except as provided in subdivision (b)*, testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.
(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Old Fed. R. Evid. 704.

But This:

(a) In General — Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.

(b) Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Current rule.

Not This:	But This:
(a) ACCOUNTING REQUIRED. Any custodian required by the Code to deliver property in the custodian's possession or control to the trustee shall promptly file and transmit to the United States trustee a report and account with respect to the property of the estate and the administration thereof. (b) EXAMINATION OF ADMINISTRATION. On the filing and transmittal of the report and account *required by subdivision (a) of this rule* and after an examination has been made into the superseded administration	**(a) Custodian's Report and Account.** A custodian required by the Code to deliver property to the trustee must promptly file and send to the United States trustee a report and account about the property of the estate and its administration. **(b) Examining the Administration.** After the custodian's report and account has been filed and the superseded administration has been examined . . . .
Old Fed. R. Bankr. P. 6002.	Proposed style revision.

2. When using a cross-reference, omit the full citation unless there is a risk of ambiguity. (Note: some current rules do not follow this guideline.) Typical examples when referring to another subpart of the same rule — in hypothetical Rule 4, for instance:
   - 4(a) "Unless (b)(2) applies, the court need not . . . ."
   - 4(c) "The statement must be filed within the time prescribed by (a)(1)."
   - 4(d)(2) "If a party files a notice of appeal before the court disposes of any motion listed in (1) . . . ."

Examples when using a reflexive reference:

- 4(a) "In this rule, X means . . . ." [If there is a risk that "this rule" could be taken to mean just subdivision 4(a), rather than all of Rule 4, then "In this Rule 4, X means . . . ."]
- ". . . must be filed within the time prescribed by this rule."
- "This subdivision (a) governs the filing of . . . ."
- ". . . to receive the benefit of this subparagraph (e)(3)(A)."

But use a full citation to refer to a different rule altogether. If you are in Rule 5, for instance:

- 5(a) "Unless Rule 4(c)(2) provides otherwise, a party must . . . ."

C. *Graphic Devices*. As challenging as it may be, consider using a table or chart to help readers. Here is the one and only chart (as of this writing) in all the sets of federal court rules. It appears as an appendix to the Federal Rules of Appellate Procedure because it relates to multiple rules. It may not be a perfect model, but it's a first.

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 32(f).
- If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
- For the limits in Rules 5, 21, 27, 35, and 40:
  - You must use the word limit if you produce your document on a computer; and
  - You must use the page limit if you handwrite your document or type it on a typewriter.
- For the limits in Rules 28.1, 29(a)(5), and 32:
  - You may use the word limit or page limit, regardless of how you produce the document; or
  - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

	Rule	Document type	Word limit	Page limit	Line limit
Permission to appeal	5(c)	• Petition for permission to appeal • Answer in opposition • Cross-petition	5,200	20	N/A
Extraordinary writs	21(d)	• Petition for writ of mandamus or prohibition or other extraordinary writ • Answer	7,800	30	N/A
Motions	27(d)(2)	• Motion • Response to a motion	5,200	20	N/A
	27(d)(2)	• Reply to a response to a motion	2,600	10	N/A
Parties' briefs (where no cross-appeal)	32(a)(7)	• Principal brief	13,000	30	1,300
	32(a)(7)	• Reply brief	6,500	15	650
Parties' briefs (where cross-appeal)	28.1(e)	• Appellant's principal brief • Appellant's response and reply brief	13,000	30	1,300
	28.1(e)	• Appellee's principal and response brief	15,300	35	1,500
	28.1(e)	• Appellee's reply brief	6,500	15	650
Party's supplemental letter	28(j)	• Letter citing supplemental authorities	350	N/A	N/A

	Rule	Document type	Word limit	Page limit	Line limit
Amicus briefs	29(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief
	29(b)(4)	• Amicus brief during consideration of whether to grant rehearing	2,600	N/A	N/A
Rehearing and en banc filings	40(d)(3)	• Petition for initial hearing en banc • Petition for panel rehearing; petition for rehearing en banc • Response if requested by the court	3,900	15	N/A

5. Punctuation: Some Fundamentals

5.1 Vertical Lists. In a vertical list, put a colon after the introduction (lead-in) to the list. End each item (except the last) with a semicolon. After the next-to-last item, put a conjunction — either *and* or *or*.

Not This:

Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant

(A) who could be subjected to the jurisdiction in the state in which the district is located, or

(B) who is a party joined under Rule 14 or Rule 19 and is served at a place within a judicial district of the United States and not more than 100 miles from the place from which the summons issues, or

(C) who is subject to the federal interpleader jurisdiction under 28 U.S.C. § 1335, or

(D) when authorized by a statute of the United States.

Old Fed. R. Civ. P. 4(k)(1).

But This:

Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

Current rule.

5.2 Introductory Phrases and Clauses. Place a comma after an introductory phrase or subordinate clause.

Not This:	**But This:**
At the arraignment or as soon thereafter as is practicable the defendant may	At the arraignment or as soon afterward as practicable, the defendant may . . . .
Old Fed. R. Crim. P. 12(d)(2).	Current rule 12(b)(4)(B).
In pleading an official document or official act it is sufficient to aver	In pleading an official document or official act, it suffices to allege . . . .
Old Fed. R. Civ. P. 9(d).	Current rule.
When a transfer is ordered the clerk shall transmit	When the court orders a transfer, the clerk must send . . . .
Old Fed. R. Crim. P. 21(c).	Current rule.
If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine	If the producing party claims that the writing includes unrelated matter, the court must examine . . . .
Old Fed. R. Evid. 612.	Current rule 612(b).

5.3 Series. In series, use the serial comma before the conjunction.

Not This:	**But This:**
. . . possession, custody or control	. . . possession, custody, or control . . . .
Old Fed. R. Civ. P. 45(a)(1)(C).	Current rule 45(a)(1)(A)(iii).

5.4 A Series of Conjunctions. Prefer commas to a series of *or*s or *and*s (technically termed "polysyndeton").

Not This:	**But This:**
If a defendant dies or becomes incompetent or transfers an interest after the defendant's joinder, the court may order	If a defendant dies, becomes incompetent, or transfers an interest after being joined, the court may . . . order . . . .
Old Fed. R. Civ. P. 71.A(g).	Current rule 71.1(g).

5.5 Semicolons. If one of the items in a series has an internal comma, separate the items with semicolons.

Not This:	**But This:**
The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.	The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.
Old Fed. R. Civ. P. 72(b).	Current rule 72(b)(3).

5.6 Dashes. Prefer long dashes over parentheses. Embrace dashes, which are greatly underused in drafting. They efficiently set off a midsentence interruptive phrase or a lengthy item at the end of a sentence. But be cautious about overusing them.

Not This:	**But This:**
A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.	A summons — or a copy of a summons that is addressed to multiple defendants — must be issued for each defendant to be served.
Old Fed. R. Civ. P. 4(b).	Current rule.

Not This:

(c) REDUCTION.
(1) In General. . . . when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

Old Fed. R. Bankr. P. 9006(c)(1).

But This:

(c) Reducing Time Limits.
(1) ***When Permitted.*** When a rule, notice given under a rule, or court order requires or allows an act to be done within a specified time, the court may — for cause and with or without a motion or notice — reduce the time.

Proposed style revision.

Within 14 days after the parties' certification, the bankruptcy court or the court in which the matter is then pending may file a short supplemental statement about the merits of the certification.

Old Fed. R. Bankr. P. 8006(c)(2).

Within 14 days after the parties file the certification, the bankruptcy court — or the court where the matter is pending — may file a short supplemental statement about the certification's merits.

Proposed style revision.

An amicus curiae supporting the motion for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the motion is filed.

Old Fed. R. Bankr. P. 8017(b)(5).

An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief — accompanied by a motion for leave to file when required — within 7 days after the motion is filed.

Proposed style revision.

Not This:

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States . . . .

Old Fed. R. Civ. P. 4(f).

But This:

Unless federal law provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed — may be served at a place not within any judicial district of the United States . . . .

Current rule.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

Old Fed. R. Civ. P. 4(d)(3).

(3) ***Time to Answer After a Waiver.*** A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent — or until 90 days after it was sent to the defendant outside any judicial district of the United States.

Current rule.

Not This:

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

Old Fed. R. Civ. P. 29.

But This:

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified — in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified — but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

Current rule.

5.7 Prefixes. Eliminate hyphens separating a prefix from a root word: *nonparty*, *pretrial*, and *postjudgment*, not *non-party*, *pre-trial*, and *post-judgment*.

5.8 Hyphens. Hyphenate phrasal adjectives. And consider using them to tighten the wording, as in the last three examples.

Not This:	**But This:**
civil process clerk	civil-process clerk
district court order	district-court order
trial preparation material	trial-preparation material
an action in any court of the United States or any state	any federal- or state-court action
an action for a declaratory judgment	a declaratory-judgment action
proceedings before grand juries	grand-jury proceedings

Index

From the current chair and past chairs of the
Standing Committee on Rules of Practice and Procedure:

"During the last 30 years, Bryan Garner and Joe Kimble have masterfully led the collaborative effort of the Rules Committees in redrafting the five sets of rules for federal courts in the United States — the rules of civil, criminal, appellate, and bankruptcy procedure, and the federal rules of evidence. Their work has brought clarity and consistency to complex rules that evolved over many years and has enhanced the administration of justice in our federal courts. We recommend this guide to anyone undertaking similar rules work, or anyone seeking to state complex legal requirements clearly, succinctly, and accurately."

Hon. John D. Bates, District of Columbia
Hon. David G. Campbell, District of Arizona
Hon. Lee H. Rosenthal, Southern District of Texas
Hon. Jeffrey S. Sutton, U.S. Court of Appeals for the Sixth Circuit

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