

WASHINGTON STATE
BAR ASSOCIATION
Court Rules and Procedures Committee

Jefferson Coulter
Chair

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MEMO

To: WSBA Court Rules and Procedures Committee Members, Judicial
Representatives, and Liaisons

From: Jefferson Coulter, Chair

Re: 2019-2020 Committee Welcome

Welcome to the 2019-2020 WSBA Court Rules & Procedures Committee term! The WSBA Board of Governors recently approved our membership, and I am glad to see both familiar and new names on our roster. Appointees have two-year terms; those who were appointed last year have one year remaining. (Please note: if you want to serve another term, you must reapply in the spring of the last year of your term.)

The primary purpose of this message is to introduce myself and to inform you of scheduling. **The first Committee meeting will take place on Monday, October 21, 2019, from 9:30 a.m. to 1:00 p.m., at the offices of the Bar Association** (1325 Fourth Ave., 6th Floor, Seattle – between University and Union). The following meetings will be on Mondays from 9:30 a.m. to 1:00 p.m.

We will be establishing a conference call during each meeting for those attending telephonically. To participate by conference call, please note these instructions:

Dial access number 1-866-577-9294; dial the entry code when prompted: 55419#

Please save the following Mondays on your calendar for the rest of our season:

October 21, 2019	April 13, 2020
November 18, 2019	May 11, 2020
December 9, 2019	June 8, 2020
January 13, 2020	July 13, 2020
February 10, 2020	August 10, 2020
March 9, 2020	September 14, 2020

A note regarding summer meetings: In the past, the Committee generally has experienced a hiatus during the summer if no rules matters require the Committee's attention. Sometimes, however, situations will require Committee attention during the summer months. For example, the BOG may provide feedback on Committee proposals at its June or July meeting, requiring the Committee to address the same during the summer. Sometimes the Court will ask the Committee

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to review rules or comments during the summer. The Committee serves the Court and must remain attentive to the Court's needs, so please operate under the theory that it is much easier to cancel a meeting than to try to schedule one at the last minute. While we now err on the side of caution and ask you to reserve possible monthly meetings during the summer, it is possible the Committee will not need to meet then.

Please note that meeting materials are only distributed electronically and not in hard copy. Internet access is generally available to Committee members and meeting attendees in the WSBA meeting rooms where our Committee meets, but to be safe, **please bring your laptop or hard copies of meeting materials to each meeting, along with your Washington Court Rules.**

Each year, the Committee reviews sets of court rules pursuant to a schedule established by the Supreme Court. In 2019-2020, the Committee is required to review the Mandatory Arbitration Rules (MAR), Civil Rules for Superior Courts (CR), and Civil Rules for Limited Jurisdiction (CRLJ). We will also continue to review proposals submitted by other groups and organizations and any other issues brought to our attention throughout the course of the year.

Other documents included with this packet include additional information you may find helpful. For more general information about the Committee, you can visit our web page:

<http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Court-Rules-and-Procedures-Committee>

If you have any administrative issues, please contact either one of our two WSBA staff liaisons, Kyla Jones, at 206-733-5941 or KylaJ@wsba.org; and WSBA Assistant General Counsel Nicole Gustine, at 206-727-8237 or NicoleG@wsba.org.

Thank you so much for your willingness to serve! I look forward to working with you during the 2019 – 2020 year.

Jefferson Coulter
Chair

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MEMO

To: Court Rules and Procedures Committee

From: Jefferson Coulter, Chair

Re: 2019-2020 Subcommittees

Our first Committee meeting is on **Monday, October 21, 2019, from 9:30 a.m. to 1:00 p.m.**, at the WSBA Seattle offices. We plan to begin promptly at 9:30, so please feel free to come a little early to eat, meet, and greet. The week before the meeting, you will receive an agenda and materials to read, which will mostly cover introductory and procedural matters.

We will be establishing a conference call during each meeting for those attending telephonically. To participate by conference call, please note these instructions:

Dial access number 1-866-577-9294; dial the entry code when prompted: 55419#

Our Committee considers proposals for rules changes, many of which derive from various subcommittees. These subcommittees meet or confer as needed, between full Committee meetings, and decide what rule changes to propose to the Committee as a whole. Each subcommittee Chair presents subcommittee proposals to the Committee for its vote. Since our subcommittees are crucial engines of our Committee's substantive work, we need you, our Committee members, to serve on these subcommittees.

Pursuant to the four-year cycle established by the Supreme Court, each year brings up a different set of rules for our Committee's attention. In 2019 – 2020, the Court's cycle requires us to review the Mandatory Arbitration Rules (MAR), the Civil Rules for Superior Courts (CR), and the Civil Rules for Courts of Limited Jurisdiction (CRLJ). Our subcommittees will help us meet the Court's required rule reviews.

We will discuss a bit more about our subcommittees at the October 21 meeting, but during 2019 – 2020, our Committee will have at least four main subcommittees based on the review cycle, as well as rule proposals the Committee has received thus far:

1. **MAR Subcommittee.** This new Subcommittee will take the lead in reviewing the Mandatory Arbitration Rules.
2. **CR Subcommittee.** This new Subcommittee will take the lead in reviewing the Civil Rules for Superior Courts.
3. **CRLJ Subcommittee.** This new Subcommittee will take the lead in reviewing the Civil Rules for Courts of Limited Jurisdiction.

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4. **Subcommittee X.** The “none of the above” subcommittee. Every year we get some rules proposals out of cycle (some years more than others). This group generally handles those proposals to ensure that our Committee remains flexible and responsive to the Court’s requests.

If you have a strong background in a particular area, I hope that you will express an interest in the related subcommittee. Although service on multiple subcommittees is not required, you are welcome to serve on as many as you have time and interest to handle.

Our goal is to distribute proposed subcommittee assignments at our October 21, 2019, Committee meeting, so please let Kyla Jones know of your subcommittee preferences ASAP. Let me know if you have any questions.

Subcommittee Chairs will start the process of scheduling subcommittee meetings after October 21.

Again, welcome aboard and thanks for volunteering! I look forward to seeing you (or at least to speaking with you) at the October 21, 2019, meeting.

COURT RULES AND PROCEDURES COMMITTEE

PROTOCOL & PROCEDURES

Rules Cycle per GR 9

Key Provisions

- All proposed rules should be “necessary statewide.” GR 9(a)(4)
- Limit frequency of rule changes so that “minimal disruption in court practice occurs.” GR 9(a)(5)
- Rules should be “clear and definite in application.” GR 9(a)(6)

Sets of Rules Over Which Committee has “Jurisdiction”

- Civil Rules for Superior Courts and for Courts of Limited Jurisdiction (CR and CRLJ)*
- Criminal Rules for Superior Court and for Courts of Limited Jurisdiction (CrR and CrRLJ)
- Rules of Appellate Procedure and Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RAP and RALJ)
- Rules of Evidence (ER)
- Infraction Rules for Courts of Limited Jurisdiction (IRLJ)

* The Committee is authorized to review the Mandatory Arbitration Rules (MAR) and Special Proceedings Rules (SPR) as “adjuncts” to the Civil Rules.

Rules Review Cycle

- 2019 – 2020** **Mandatory Arbitration Rules, Civil Rules for Superior Courts and Civil Rules for Limited Jurisdiction**
- 2020 – 2021 Rules of Appellate Procedure and Rules for Appeal from Decisions of Courts of Limited Jurisdiction
- 2021-2022 Criminal Rules for Superior Courts and Criminal Rules for Courts of Limited Jurisdiction

Projected Time Line

October 2019:	Committee begins its work.
January 2020:	Preliminary Report to Board of Governors (“BOG”) (if necessary).
May/June 2020:	Committee concludes its work.
July 2020:	BOG reviews Committee recommendations.
Summer 2020:	Committee meets, if necessary, and deals with specific requests from the Court and/or feedback from the BOG.
September 2020:	BOG takes final vote on Committee recommendations
October 2020:	Deadline for submission to the Court of suggested rules approved

by BOG.

- January 2021: Proposed rules published for comment in the Washington Reports advance sheets, and on Court & WSBA websites.
- April 30, 2021: Court deadline for receipt of comments on proposed rules.
- July 2021: Rules adopted by Court published in Washington Reports advance sheets and on websites.
- September 1, 2021: Date adopted rules generally become effective.

Suggestions for Efficient and Courteous Committee Meetings

Keeping the following suggestions in mind will foster more efficient and enjoyable Committee meetings, particularly in light of the large size of the Committee. With all of these suggestions come the “rule of reason,” which will inevitably trump some of these suggestions on occasion, and the recognition that Committee members are adults and professionals who know how to comport themselves:

1. Read the materials in advance of each meeting and come prepared to discuss them.
2. There is no dress code. Come as you feel comfortable in a room of fellow professionals.
3. Raise a hand or otherwise let the Chair know that you would like to speak, and then await recognition from the chair before speaking. (If you are participating via telephone, jump in with a request to speak, or wait for the Chair to solicit input from the phone participants, and please identify yourself.) This courtesy enables us to ensure that we tap the insights from the diverse perspectives of our Committee members.
4. We make decisions through parliamentary procedure, guided by the most current edition of Robert’s Rules of Order. This involves motions, and frequently motions to amend (both friendly and otherwise) and to substitute. While we try mightily to do our drafting in subcommittee rather than in the main Committee meetings, inevitably some motions are more complex than others; therefore, when making a motion involving the text of a rule or amendment, consider writing out proposed language in advance, to the extent possible. A written proposal helps to discipline you to formulate motions more carefully, and helps other Committee members understand your motions more clearly.
5. Try to organize your thoughts on a particular proposal before jumping into the conversation. In the context of a particular discussion or motion, assess whether you should offer all of your suggestions the first time you speak, or offer them in series as we turn to sub-issues. Often, speaking only once is preferable. But in any event, once you have spoken on a particular proposal, allow others to express their ideas before you seek to speak again.
6. Strive always to maintain a respectful and collegial atmosphere, which is a hallmark of our work. Committee members should always feel free to disagree with one another, even to

articulate positions that are diametrically opposed. But we pride ourselves on keeping disagreements constructive and not personal. Ultimately, disagreements will be resolved by a majority vote, after which we will need to turn—together—to the next issue. Your foil on one issue could be your ally on the next. In honor of former Chair Roger Wynne, a true master of the art, we call this the All Wynne Together (AWT – pronounced, “ought”) rule.

In addition to bringing a wealth of experience and a unique perspective to the Committee, you might represent particular “constituencies” within the Bar, whether as a member of a group, county bar association, judicial association, or other “specialty” association or group like Washington Defense Trial Lawyers or the Washington State Association for Justice. It is both appropriate and helpful for you to seek input from your particular constituent group(s) and to convey their responses to our Committee. The only caveat is to take care in clarifying whether you are authorized to speak for that organization or group, or merely reporting your insights on what you believe members of that group have said or are likely to say in response to a proposal.

A final thought: The Committee reaches out to numerous groups, organizations, and individuals who have an interest in court rules, and encourages their active participation in both Committee and subcommittee meetings; however, only committee members may vote.

The Important Role of Subcommittees

Most amendments to court rules involve two aspects: (1) a policy decision; and (2) polished language drafted to implement the decision. One of the primary functions of our full Committee meetings is to discuss the policies underlying proposals to add or amend court rules, and to make recommendations to the Board of Governors about what those policies should be. Drafting, however, is usually best done by a smaller group rather than by the full Committee.

We therefore refer most proposals to a subcommittee for review and recommendations.

- ❑ Each subcommittee will have its own Chair, who will convene subcommittee meetings, lead discussions, and ensure that the full Committee gets written materials to consider in a timely manner. Our counsel, Nicole Gustine, and the Committee Chair should be cc'd on all subcommittee communications.
- ❑ Subcommittees generally meet once a month, usually within a week or two after each full Committee meeting.
- ❑ Subcommittee members might be enlisted to help vet a proposal with members of the legal community most likely to be affected by the proposal. Our Committee’s rules proposals and comments help the Court most when appropriate stakeholder input supports and informs them. If the proposal arises from a WSBA committee or section, a representative of that group will usually work with the subcommittee to help it better understand the proposal and consult on proposed changes to it. Anyone interested in a particular proposal—even non-Committee members—should be welcome to participate in subcommittee meetings on that proposal. Please always think of stakeholder involvement

to help make the Committee's work the best it can be.

- ❑ The goal of the subcommittee should be to formulate a recommendation for the full Committee. Sometimes the recommendation will be that the subcommittee considered a proposal and decided that neither the subcommittee nor the full Committee should consider it in any detail. Usually, though, the subcommittee will submit a written report on each proposal. The report includes background information on the proposal and its purpose, the subcommittee's view about the merits of the proposal (perhaps including one or more dissenting views), draft language that the subcommittee has scrubbed and redlined to the existing rule language), and a draft GR 9 cover sheet.
- ❑ Scrubbing proposed text is the primary function of the subcommittees. Be it grammar, punctuation, numbering, consistency, or cross-references, no nit should be too small for the subcommittee to pick. Because drafting in the full Committee can be cumbersome, unresolved textual matters often result in a proposal being referred back to a subcommittee for additional scrubbing. With all of this, of course, comes the rule of reason. Court rules are filled with nits that could keep a motivated picker occupied for years. Resisting that temptation, we try to confine ourselves to the nits we encounter while working on particular proposals. We cannot fix everything in the rules, and we do not fix that which is not broken. But what we set out to fix, we polish as well as we can.

The Committee's and the WSBA's Role as "Consultant"

Proposals for amending court rules often come from individual Court Rules and Procedures Committee members or from other WSBA committees or sections. However, many proposals—in some seasons, the majority of proposals—come from outside the WSBA. Sometimes those proposals will be made directly to our Committee; sometimes the proposals are submitted to the Supreme Court, which will then forward the proposals to our Committee for input.

Neither the Committee nor the WSBA serves as a gatekeeper in these situations. Instead, our role is more like that of a consultant. We work with the proponent to craft an amendment that is well written and, particularly where the proposal is controversial, we will attempt to find compromises that yield a refined proposal that is more likely to gain support from a wider segment of the legal community.

The final product from the Rules Committee is a recommendation to the WSBA Board of Governors. Ultimately, the BOG makes the official WSBA recommendation to the Supreme Court. One or both of those recommendations might be in support of the original proposal or a revised version of it. Likewise, one or both of those recommendations might be against pursuing a particular proposal or even a revised version of it. The Supreme Court, of course, makes the final decision.

To ensure that the WSBA continues to serve its role as a consultant and not a gatekeeper, the WSBA informs the Court about certain proposals that the WSBA recommends against pursuing. In particular, the WSBA will provide to the Supreme Court a summary (including any text submitted by the proponent) and rationale of the BOG's action. With the belief that the Court

would not want a report on every idea that might be generated and discussed within the Committee, or that might arise in casual conversation or correspondence, the WSBA limits this to amendments proposed by the Supreme Court, a bar association, other organization, or individual who has submitted a proposed amendment with a level of formality that indicates that the Court or the proponent seeks review and a recommendation from the WSBA.

General Rules

GR 9
SUPREME COURT RULEMAKING

(a) Statement of Purpose. The purpose of rules of court is to provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and expeditious process. In promulgating rules of court, the Washington Supreme Court seeks to ensure that:

- (1) The adoption and amendment of rules proceed in an orderly and uniform manner;
- (2) All interested persons and groups receive notice and an opportunity to express views regarding proposed rules;
- (3) There is adequate notice of the adoption and effective date of new and revised rules;
- (4) Proposed rules are necessary statewide;
- (5) Minimal disruption in court practice occurs by limiting the frequency of rule changes; and
- (6) Rules of court are clear and definite in application.

(b) Definitions. As used in this rule, the following terms have these meanings:

- (1) "Suggested rule" means a request for a rule change or a new rule that has been submitted to the Supreme Court.
- (2) "Proposed rule" means a suggested rule that the Supreme Court has ordered published for public comment.

(c) Request for Notification. Any person or group may file a request with the Supreme Court to receive notice of a suggested rule. The request may be limited to certain kinds of rule changes. The request shall state the name and address of the person or group to whom the suggested rule is to be sent. Once filed, the request shall remain in effect until withdrawn or unless notice sent by regular, first-class U.S. mail is returned for lack of a valid address.

(d) Initiation of Rules Changes. Any person or group may submit to the Supreme Court a request to adopt, amend, or repeal a court rule. The Supreme Court shall determine whether the request is clearly stated and in the form required by section (e) of this rule. If the Supreme Court determines that a request is unclear or does not comply with section (e), the Supreme Court may (1) accept the request notwithstanding its noncompliance, (2) ask the proponent to resubmit the request in the proper format, or (3) reject the request, with or without a written notice of the reason or reasons for such rejection.

(e) Form for Submitting a Request to Change Rules.

(1) The text of all suggested rules should be submitted on 8 1/2- by 11-inch line-numbered paper with consecutive page numbering and in an electronic form as may be specified by the Supreme Court. If the suggested rule affects an existing rule, deleted portions should be shown and stricken through; new portions should be underlined once.

(2) A suggested rule should be accompanied by a cover sheet and not more than 25 pages of supporting information, including letters, memoranda, minutes of meetings, research studies, or the like. The cover sheet should contain the following:

- (A) Name of Proponent--the name of the person or group requesting the rule change;
- (B) Spokesperson--a designation of the person who is knowledgeable about the proposed rule and who can provide additional information;
- (C) Purpose--the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;
- (D) Hearing--whether the proponent believes a public hearing is needed and, if so, why;
- (E) Expedited Consideration--whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule, notwithstanding the schedule set forth in section (i).

(f) Consideration of Suggested Rule by Supreme Court.

(1) The Supreme Court shall initially determine whether a suggested rule has merit and whether it involves a significant or merely technical change. A "technical change" is one which corrects a clerical mistake or an error arising from oversight or omission. The Supreme Court shall also initially determine whether the suggested rule should be considered under the schedule provided for in section (i) or should receive expedited consideration for the reason or reasons to be set forth in the transmittal form provided for in section (f) (2).

The Supreme Court may consult with other persons or groups in making this initial determination.

(2) After making its initial determination, the Supreme Court shall forward each suggested rule, except those deemed "without merit", along with a transmittal form setting forth such determinations, to the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals for their consideration. The transmittal shall include the cover sheet and any additional information provided by the proponent. The Supreme Court shall also forward the suggested rule and cover sheet to any person or group that has filed a notice pursuant to section (c), and to any other person or group the Supreme Court believes may be interested. The transmittal form shall specify a deadline by which the recipients may comment in advance of any determination under section (f)(3) of this rule. If the Supreme Court determines that the suggested rule should receive expedited consideration, it shall so indicate on the transmittal form. The form may contain a brief statement of the reason or reasons for such consideration.

(3) After the expiration of the deadline set forth in the transmittal form, the Supreme Court may reject the suggested rule, adopt a merely technical change without public comment, or order the suggested rule published for public comment.

(g) Publication for Comment.

(1) A proposed rule shall be published for public comment in such media of mass communication as the Supreme Court deems appropriate, including, but not limited to, the Washington Reports Advance Sheets and the Washington State Register. The proposed rule shall also be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association. The purpose statement required by section (e)(2)(C) shall be published along with the proposed rule. Publication of a proposed rule shall be announced in the Washington State Bar News.

(2) Publication of a proposed rule in the Washington State Register shall not subject Supreme Court rule making to the provisions of the Administrative Procedures Act.

(3) All comments on a proposed rule shall be submitted in writing to the Supreme Court by the deadline set forth in section (i).

(4) If a comment includes a suggested rule, it should be in the format set forth in section (e). All comments received will be kept on file in the office of the Clerk of the Supreme Court for public inspection and copying.

(h) Final Action by the Supreme Court, Publication, and Effective Date.

(1) After considering a suggested rule, or after considering any comments or written or oral testimony received regarding a proposed rule, the Supreme Court may adopt, amend, or reject the rule change or take such other action as the Supreme Court deems appropriate.

Prior to action by the Supreme Court, the court may, in its discretion, hold a hearing on a proposed rule at a time and in a manner defined by the court. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may also designate an individual or committee to conduct the hearing.

(2) Regarding action on a suggested rule:

(A) If the Supreme Court rejects the suggested rule, it may provide the proponent with the reason or reasons for such rejection.

(B) If the Supreme Court adopts the suggested rule without public comment, it shall publish the rule and may set forth the reason or reasons for such adoption.

(3) Regarding action on a proposed rule:

(A) If the Supreme Court rejects a proposed rule, it may publish its reason or reasons for such rejection.

(B) If the Supreme Court adopts a proposed rule, it may publish the rule along with the purpose statement from the cover sheet.

(C) If the Supreme Court amends and then adopts a proposed rule, it should publish the rule as amended along with a revised purpose statement.

(4) All adopted rules, or other final action by the Supreme Court for which this rule requires publication, shall be published in a July edition of the Washington Reports advance sheets and in the Washington State Register immediately after such action. The adopted rules or other Supreme Court final action shall also be posted on the Internet sites of the Supreme Court and the Washington State Bar Association. An announcement of such publication shall be made in the Washington State Bar News.

(5) All adopted rules shall become effective as provided in section (i) unless the Supreme Court determines that a different effective date is necessary.

(i) Schedule for Review and Adoption of Rules.

(1) In order to be published for comment in January, as provided in section (i)(2), a suggested rule must be received no later than October 15 of the preceding year.

(2) Proposed rules shall be published for comment in January of each year.

(3) Comments must be received by April 30 of the year in which the proposed rule is published.

(4) Proposed rules published in January and adopted by the Supreme Court shall be republished in July and shall take effect the following September 1.

(5) All suggested rules will be considered pursuant to the schedule set forth in this section, unless the Supreme Court determines that exceptional circumstances justify more immediate action.

(6) The Supreme Court, in consultation with the Washington State Bar Association, the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Chief Presiding Judge of the Court of Appeals, shall develop a schedule for the periodic review of particular court rules. The schedule shall be posted on such Internet sites as the Supreme Court may determine, including those of the Supreme Court and the Washington State Bar Association.

(j) Miscellaneous Provisions.

(1) The Supreme Court may adopt, amend, or rescind a rule, or take any emergency action with respect to a rule without following the procedures set forth in this rule. Upon taking such action or upon adopting a rule outside of the schedule set forth in section (i) because of exceptional circumstances, the Supreme Court shall publish the rule in accordance with sections (g) or (h) as applicable.

(2) This rule shall take effect on September 1, 2000 and apply to all rules not yet adopted by the Supreme Court by that date.

[Adopted effective March 19, 1982; amended effective September 1, 1984; September 1, 2000.]

General Rules

GR 12.4 WASHINGTON STATE BAR ASSOCIATION ACCESS TO RECORDS

(a) Policy and Purpose. It is the policy of the Washington State Bar Association to facilitate access to Bar records. A presumption of public access exists for Bar records, but public access to Bar records is not absolute and shall be consistent with reasonable expectations of personal privacy, restrictions in statutes, restrictions in court rules, or as provided in court orders or protective orders issued under court rules. Access shall not unduly burden the business of the Bar.

(b) Scope. This rule governs the right of public access to Bar records. This rule applies to the Washington State Bar Association and its subgroups operated by the Bar including the Board of Governors, committees, task forces, commissions, boards, offices, councils, divisions, sections, and departments. This rule also applies to boards and committees under GR 12.3 administered by the Bar. A person or entity entrusted by the Bar with the storage and maintenance of Bar records is not subject to this rule and may not respond to a request for access to Bar records, absent express written authority from the Bar or separate authority in rule or statute to grant access to the documents.

(c) Definitions.

(1) "Access" means the ability to view or obtain a copy of a Bar record.

(2) "Bar record" means any writing containing information relating to the conduct of any Bar function prepared, owned, used, or retained by the Bar regardless of physical form or characteristics. Bar records include only those records in the possession of the Bar and its staff or stored under Bar ownership and control in facilities or servers. Records solely in the possession of hearing officers, non-Bar staff members of boards, committees, task forces, commissions, sections, councils, or divisions that were prepared by the hearing officers or the members and in their sole possession, including private notes and working papers, are not Bar records and are not subject to public access under this rule. Nothing in this rule requires the Bar to create a record that is not currently in possession of the Bar at the time of the request.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation in paper, digital, or other format.

(d) Bar Records--Right of Access.

(1) The Bar shall make available for inspection and copying all Bar records, unless the record falls within the specific exemptions of this rule, or any other state statute (including the Public Records Act, chapter 42.56 RCW) or federal statute or rule as they would be applied to a public agency, or is made confidential by the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, the Admission to Practice Rules and associated regulations, the Rules for Enforcement of Limited Practice Officer Conduct, General Rule 25, court orders or protective orders issued under those rules, or any other state or federal statute or rule. To the extent required to prevent an unreasonable invasion of personal privacy interests or threat to safety or by the above-referenced rules, statutes, or orders, the Bar shall delete identifying details in a manner consistent with those rules, statutes, or orders when it makes available or publishes any Bar record; however, in each case, the justification for the deletion shall be explained in writing.

(2) In addition to exemptions referenced above, the following categories of Bar records are exempt from public access except as may expressly be made public by court rule:

(A) Records of the personnel committee, and personal information in Bar records for employees, appointees, members, or volunteers of the Bar to the extent that disclosure would violate their right to privacy, including home contact information (unless such information is their address of record), Social Security numbers, driver's license numbers, identification or security photographs held in Bar records, and personal data including ethnicity, race, disability status, gender, and sexual orientation. Membership class and status, bar number, dates of admission or licensing, addresses of record, and business telephone numbers, facsimile numbers, and electronic mail addresses (unless there has been a request that electronic mail addresses not be made public) shall not be exempt, provided that any such information shall be exempt if the Executive Director approves the confidentiality of that information for reasons of personal security or other compelling reason, which approval must be reviewed annually.

(B) Specific information and records regarding

(i) internal policies, guidelines, procedures, or techniques, the disclosure of which would reasonably be expected to compromise the conduct of disciplinary or regulatory functions, investigations, or examinations;

(ii) application, investigation, and hearing or proceeding records relating to lawyer, Limited Practice Officer, or Limited License Legal Technician admissions, licensing, or discipline, or that relate to the work of ELC 2.5 hearing officers, the Board of Bar Examiners, the Character and Fitness Board, the Law Clerk

Board, the Limited Practice Board, the MCLE Board, the Limited License Legal Technician Board, the Practice of Law Board, or the Disciplinary Board in conducting investigations, hearings or proceedings; and

(iii) the work of the Judicial Recommendation Committee and the Hearing Officer selection panel, unless such records are expressly categorized as public information by court rule.

(C) Valuable formulae, designs, drawings, computer source code or object code, and research data created or obtained by the Bar.

(D) Information regarding the infrastructure, integrity, and security of computer and telecommunication networks, databases, and systems.

(E) Applications for licensure by the Bar and annual licensing forms and related records, including applications for license fee hardship waivers and any decision or determinations on the hardship waiver applications.

(F) Requests by members for ethics opinions to the extent that they contain information identifying the member or a party to the inquiry.

Information covered by exemptions will be redacted from the specific records sought. Statistical information not descriptive of any readily identifiable person or persons may be disclosed.

(3) Persons Who Are Subjects of Records.

(A) Unless otherwise required or prohibited by law, the Bar has the option to give notice of any records request to any member or third party whose records would be included in the Bar's response.

(B) Any person who is named in a record, or to whom a record specifically pertains, may present information opposing the disclosure to the applicable decision maker.

(C) If the Bar decides to allow access to a requested record, a person who is named in that record, or to whom the records specifically pertains, has a right to initiate review or to participate as a party to any review initiated by a requester. The deadlines that apply to a requester apply as well to a person who is a subject of a record.

(e) Bar Records--Procedures for Access.

(1) General Procedures. The Bar Executive Director shall appoint a Bar staff member to serve as the public records officer to whom all records requests shall be submitted. Records requests must be in writing and delivered to the Bar public records officer, who shall respond to such requests within 30 days of receipt. The Washington State Bar Association must implement this rule and adopt and publish on its website the public records officer's work mailing address, telephone number, fax number, and e-mail address, and the procedures and fee schedules for accepting and responding to records requests by the effective date of this rule. The Bar shall acknowledge receipt of the request within 14 days of receipt, and shall communicate with the requester as necessary to clarify any ambiguities as to the records being requested. Records requests shall not be directed to other Bar staff or to volunteers serving on boards, committees, task forces, commissions, sections, councils, or divisions.

(2) Charging of Fees.

(A) A fee may not be charged to view Bar records.

(B) A fee may be charged for the photocopying or scanning of Bar records according to the fee schedule established by the Bar and published on its web site.

(C) A fee not to exceed \$30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.

(f) Extraordinary Requests Limited by Resource Constraints. If a particular request is of a magnitude or burden on resources that the Bar cannot fully comply within 30 days due to constraints on time, resources, and personnel, the Bar shall communicate this information to the requester along with a good faith estimate of the time needed to complete the Bar's response. The Bar must attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the Bar's response, which may include a schedule of installment responses. If the Bar and requester are unable to reach agreement, the Bar shall respond to the extent practicable, clarify how and why the response differs from the request, and inform the requester that it has completed its response.

(g) Denials. Denials must be in writing and shall identify the applicable exemptions or other bases for denial as well as a written summary of the procedures under which the requesting party may seek further review.

(h) Review of Records Decisions.

(1) Internal Review. A person who objects to a record decision or other action by the Bar's public records officer may request review by the Bar's Executive Director.

(A) A record requester's petition for internal review must be submitted within 90 days of the Bar's public records officer's decision, on such form as the Bar shall designate and make available.

(B) The review proceeding is informal, summary, and on the record.

(C) The review proceeding shall be held within five working days. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

(2) External Review. A person who objects to a records review decision by the Bar's Executive Director may request review by the Records Request Appeals Officer (RRAO) for the Bar.

(A) The requesting party's request for review of the Executive Director's decision must be deposited in the mail and postmarked or delivered to the Bar not later than 30 days after the issuance of the decision, and must be on such form as the Bar shall designate and make available.

(B) The review will be informal and summary, but in the sole discretion of the RRAO may include the submission of briefs no more than 20 pages long and of oral arguments no more than 15 minutes long.

(C) Decisions of the RRAO are final unless, within 30 days of the issuance of the decision, a request for discretionary review of the decision is filed with the Supreme Court. If review is granted, review is conducted by the Chief Justice of the Washington Supreme Court or his or her designee in accordance with procedures established by the Supreme Court. A designee of the Chief Justice shall be a current or former elected judge. The review proceeding shall be on the record, without additional briefing or argument unless such is ordered by the Chief Justice or his or her designee.

(D) The RRAO shall be appointed by the Board of Governors. The Bar may reimburse the RRAO for all necessary and reasonable expenses incurred in the completion of these duties, and may provide compensation for the time necessary for these reviews at a level established by the Board of Governors.

(i) Monetary Awards Not Allowed. Attorney fees, costs, civil penalties, or fines may not be awarded under this rule.

(j) Effective Date of Rule.

(1) This rule goes into effect on July 1, 2014, and applies to records that are created on or after that date.

(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test; the Public Records Act, chapter 42.56 RCW, does not apply to such Bar records, but it may be used for nonbinding guidance.

[Adopted effective July 1, 2014; amended effective September 1, 2017.]

2019-2020 Meeting Schedule

October 21, 2019
November 18, 2019
December 9, 2019
January 13, 2020
February 10, 2020
March 9, 2020
April 13, 2020
May 11, 2020
June 8, 2020
July 13, 2020
August 10, 2020
September 14, 2020

Location: WSBA Offices – 1325 4th Avenue, Suite 600, Seattle

Time: 9:30 a.m. to 1:00 p.m.

Conference Call:

Dial access number: 1-866-577-9294

Entry Code: 55419#

Meeting materials will only be distributed electronically. Please bring your laptop or hard copies of the meeting materials, and Court Rules book to each meeting.



See reverse side for WSBA Expense Policy summary. Please fill out completely and legibly. Reimbursement checks will be payable only to the person/entity incurring the expense, as documented by itemized receipts. **Signed expense reports must be submitted within 60 days of incurring the expense; for expenses incurred in August and September, all forms must be submitted within 30 days of the WSBA fiscal year end (September 30).**

To expedite reimbursement, email one PDF of this form and itemized receipts to your staff liaison at wsba.org.

Otherwise, mail to: Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

<input type="checkbox"/> Employee <input type="checkbox"/> Board <input type="checkbox"/> Committee <input type="checkbox"/> Council <input type="checkbox"/> Taskforce <input type="checkbox"/> Other:	<input type="checkbox"/> CLE <input type="checkbox"/> Section <input type="checkbox"/> Witness <input type="checkbox"/> Panel	Make check payable to (print): Street Address, including City, State, Zip: <input type="checkbox"/> Check if new address E-mail: _____ Bar #: _____ Phone: _____
Staff Liaison: _____		By my handwritten or typed signature below, I certify that: (1) these expenses comply with the WSBA Expense Policy; (2) I am the person or entity entitled to receive reimbursement for these expenses; and (3) these expenses have not been reimbursed by any other source. X: _____ Date: _____

EXPENSE REIMBURSEMENT REQUEST (Itemized receipts required. For handwritten forms use INK only.)

Expense Date:							Category Totals
Event Date:							
Event Name:							
Event Location:							
Transportation	Auto Mileage Total (\$ 0.58/mi)	miles	miles	miles	miles	miles	
	Ground Transportation, Parking, Tolls						
	Airfare (coach/economy only)						
Meals	Breakfast (up to \$12)						
	Lunch (up to \$18)						
	Dinner (up to \$36)						
Lodging (up to \$175/night; \$200/night in Seattle; + tax)							
Other Expenses (itemize):							
Totals							

**EXPENSE AFFIDAVIT REQUIRED IF DETAILED RECEIPT IS MISSING
(No more than \$75 may be reimbursed without itemized receipt)**

By my handwritten or typed signature below, I certify that I incurred the following cost(s) and that I am not seeking reimbursement for alcohol:

Name of Vendor:

Date of Purchase:

Item(s) Description:

Amount Paid: \$

Brief Description of why there is no itemized receipt:

Signature of Purchaser:

Date:

SUMMARY OF WSBA EXPENSE POLICY

GENERAL PRINCIPLE

WSBA depends upon and values the time and talent of its employees and volunteers. As a steward of member funds, WSBA asks for employees and volunteers to help save costs. **WSBA will reimburse out-of-pocket expenses incurred in connection with WSBA business or meetings that are: (1) reasonable, (2) necessary, and (3) appropriately documented, as set forth in the WSBA Expense Policy.** WSBA will not reimburse expenses that are reimbursed from another source; and will not reimburse expenses incurred by spouses, domestic partners or guests, except as otherwise provided by the WSBA Expense Policy.

REIMBURSABLE EXPENSES

In accordance with IRS requirements, any person seeking reimbursement from WSBA must submit a signed, dated WSBA Expense Report, supported by detailed receipts. In the absence of a detailed receipt, up to \$75 may be reimbursed by completing the Expense Affidavit Form located on the front page of this Expense Report.

Meetings: WSBA encourages virtual meetings whenever feasible to accomplish committee, task force, panel, council and section work. Reimbursement of travel expenses to board, committee, task force, council, panel, and section members residing out of state to attend their meetings is limited to the approximate cost of in-state travel.

Transportation: *If travel is necessary*, WSBA will reimburse the lesser of coach-economy air fare or auto mileage. If you drive, WSBA will not reimburse for lodging *en route*, and will only reimburse the lesser cost of coach-economy airfare. Reimbursement for out-of-state meeting travel is limited to the approximate cost of in-state travel (the cost of traveling from the nearest Washington border).

1. **Auto Mileage** will be reimbursed at the IRS Standard Mileage Rate. *Carpooling is encouraged.*
2. **Rental Cars/Other** may be used only when economical compared to other modes of local transportation or if local transportation is nonexistent. Rental charges should be net of any discounts and will be limited to the rental cost of compact or standard-size cars. Reimbursement for any other method of travel (e.g., train) will be reimbursed for the cost of the most economical method of travel.
3. **Ground transportation, parking, tolls:** If travel is by air, please park and shuttle economically. WSBA will reimburse longer term airport parking at the lower of actual parking costs or an airport shuttle to/from your home.
4. **Airfare:** WSBA will only reimburse coach/economy-class air fares. Please book well in advance to obtain lowest possible fares. WSBA reserves the right not to fully reimburse for fares booked less than two weeks in advance of travel. WSBA will not reimburse for use of frequent flyer coupons or air miles. *(Receipt must include name of passenger, credit card used for payment, confirmation that flight was paid in full, date of flight, and departure and destination locations. Credit card statements are not sufficient.)*

Lodging: *If an overnight stay is necessary* (contact your Staff Liaison in advance with any questions), WSBA will reimburse up to the amounts noted on the front page of this Expense Report. Ask your Staff Liaison about WSBA negotiated rates at area hotels. WSBA will not reimburse incidental charges such as entertainment, personal phone calls, etc. *(Reimbursement receipts must include name/location of hotel, guest name(s), date(s) of stay, and breakdown of charges for lodging, meals, telephones, and incidentals).*

Meals: WSBA will reimburse meal expenses (including gratuity), up to the amounts noted on the front page of this Expense Report. In the event of lost receipts, WSBA will reimburse the lower of these rates or the federal per diem rate for the location in which the meal expense was incurred (see www.gsa.gov/perdiem). All-day travelers may reallocate per-meal allowances (e.g., spend more on lunch; less on dinner). Identify all individuals included in a meal reimbursement request.

Note: Alcohol will not be reimbursed and must be segregated from meal expenses.

Other expenses: WSBA will reimburse necessary out-of-pocket office expenses with receipts (actual copying charges up to 15 cents a page; faxes up to 25 cents a page, with a \$5 maximum). WSBA will not reimburse standard office services (e.g., voice mail, telephone connections), personnel costs or professional services.

FOR WSBA USE ONLY – DO NOT WRITE BELOW THIS LINE

Submitted by:		Date:			
Approved by:		Date:	Rush approval:	Date:	
ACCOUNT NAME	ACCOUNT #	DEPT.	JOB CODE	BAR #	AMOUNT
Date Rec'd in AP		Vendor #			Total:

GUIDELINES
FOR DRAFTING
AND EDITING
COURT RULES



BY BRYAN A. GARNER

Originally published: 1996.
Fifth printing: 2007.

In January 1996, the Standing Committee on Federal Rules of Practice and Procedure authorized the Secretary of the Rules Committee to publish for comment a revised draft of the Federal Rules of Appellate Procedure. To help explain the drafting and editing choices reflected in the Appellate Rules, the Standing Committee also authorized the Secretary to publish *Guidelines for Drafting and Editing Court Rules*.

As consultant to the Rules Committees, Bryan A. Garner skillfully constructed these Guidelines to help all those working on the Appellate Rules, as well as those engaged in other drafting and editing projects.

Publication of the Guidelines promotes openness of the rulemaking process to public scrutiny and participation. It is my hope that people who comment on the proposed Appellate Rules — either favorably or unfavorably — will also take time to comment on any of the Guidelines relating to their views.

—ALICEMARIE H. STOTLER, CHAIR
Committee on Rules of Practice and Procedure
Judicial Conference of the United States

Preface

by Robert E. Keeton

1.

Federal Rules of Practice and Procedure ought to be user-friendly. This is the prime characteristic of good rules of procedure. They should be easy to read and understand — as clear in content and meaning as it is possible to make them, and as crisp and readable as clarity permits.

Of almost equal importance is another characteristic. Rules of procedure should be that and no more. They should be substantively neutral. In other words, we should draft procedural rules that neither favor nor disfavor any particular legal interest. To that end, we should do our best to foster institutional arrangements for resolving disputes about substantive issues in the appropriate forums for substantive lawmaking, and to keep substantive issues out of procedural rulemaking. Rules of practice and procedure are used in resolving individual cases and, at their best, are as fair, impartial, and substantively neutral as we can make them.

2.

Even superbly drafted rules are at risk of becoming less consistent, clear, and readable as they are amended. And the need for amendments is inevitable. The only effective remedy for the risks incident to amendment is twofold — eternal vigilance and a commitment to excellence in style as well as content. Fortunately, good style and good content reinforce each other.

3.

The first of the Federal Rules were the Rules of Civil Procedure, drafted in the 1930s. By the year 1990, we had five sets of Federal Rules — Appellate, Bankruptcy, Civil, Criminal, and Evidence — and five Rules Committees of the Judicial Conference of the United States, one each for Appellate, Bankruptcy, Civil, and Criminal (not for Evidence), and a coordinating committee commonly called the Judicial Conference Standing Committee on Rules. Each committee had its own set of consultants and drafters and its own set of stylistic preferences. The predictable result was five sets of

rules that sometimes said almost the same thing, but in different ways and without being clear about whether they meant the same thing. In addition, substantial differences existed both within and among the different sets of rules, without any explanation of why lawyers and judges should have to adjust to so many different ways of behaving in different court proceedings.

Lawyers and judges necessarily have spent — or wasted — precious time thinking, conversing, and writing about ambiguities in the rules. Occasionally a lawyer falls into a procedural trap and a client suffers an injustice that trial and appellate courts, giving due respect to the rules as construed, are unwilling or unable to redress.

4.

When I came to chair the Standing Committee in the fall of 1990, I was tempted by the thought that some of the enormous resources of time and talent being committed to making and interpreting rules might better be redirected. Some resources might be directed toward a long-term aim of combining all the separate sets of rules into one set, integrated in both style and content: the Federal Rules of Practice and Procedure.

Substantive integration would have the benefits of (1) reducing length by stating only once a rule of general application; (2) reducing complexity, even where repetition is warranted, by using precisely the same phrasing when expressing the same idea; and (3) improving clarity by explaining why different phrasing is used to address analogous problems in the different settings — for example, in bankruptcy, civil, and criminal rules. But substantive integration may prove to be an elusive ideal.

Stylistic integration, however, is a different matter: even with different sets of rules, there is much that rulemakers can do to sharpen style. Having a consistent drafting style in all the rules carries major benefits. Foremost among these, of course, is that clear expression promotes clear thought. Variation, elegant or not, impairs clarity: it is seldom commendable where clarity of meaning is paramount.

5.

Good writing of any kind is labor-intensive. Good legal writing is even harder work because content is paramount. One simply cannot arrive at good content without mastery of the subject matter.

Good drafting of a contract, statute, or procedural rule is at least as labor-intensive as good drafting of a judicial opinion, a lawyer's opinion letter, or an article because contracts, statutes, and rules serve as prescriptions for ongoing conduct and relationships. In this context, there must be a heightened sensitivity to such matters as striking an appropriate balance between rigor and flexibility, choosing between hard-edged rules and guidelines for discretion, and determining who among foreseeable actors is to be allowed discretion.

Undertaking to draft all federal rules so that they excel in style as well as content is, to say the least, daunting. The predictable reaction to the proposal to do so runs along these lines: “The federal rulemaking process, even though vested finally in Congress and the Supreme Court, depends in the first instance on volunteer committee members and overloaded staff — including reporters and Administrative Office support staff. Trying to make all federal rules consistent in style asks too much of both the volunteers and the staff.” I fully agree that members and staff of the Judicial Conference Rules Committees are overloaded and underappreciated.

6.

Now that I am no longer a member of any of the Rules Committees, I feel free to add that, with two exceptions, I believe no other entities in our legal culture rival the Rules Committees for the impartial drafting of proposals for legislation or rules. The two exceptions are the American Law Institute and the National Conference of Commissioners on Uniform State Laws — both of which are committed to excellence in drafting.

With a view to the importance of style, in 1991 the Standing Committee on Rules of Practice and Procedure created a Style Subcommittee. Its charge was to review the drafting style of all amendments to federal rules. Because of the importance of this new undertaking, we needed a leader with a demonstrated sense of good writing style. Fortunately, Charles Alan Wright, a dedicated stylist whose writings rank with the best in legal literature, was then serving on the Standing Committee. He accepted the appointment to chair the Style Subcommittee. To serve as the original members of the Subcommittee, I invited Judge George C. Pratt, of the Second Circuit; Judge Alicemarie H. Stotler, of the United States District Court in Santa Ana, California, who now chairs the Standing Committee; and Joseph F. Spaniol, Jr., the former Clerk of the United States Supreme Court. I participated in the Subcommittee’s work, *ex officio*, during 1991–93.

Not long after the Subcommittee began its work, we realized just how time-consuming — and arduous — the detailed work on the rules would be. We saw the need for a style consultant, and with the support of L. Ralph Mecham, Director of the Administrative Office of the United States Courts, we were able to engage Bryan A. Garner, whose books on legal writing the members of the Style Subcommittee were frequently consulting.

Initially, the Style Subcommittee worked on amendments only, but the value of the work was so readily apparent that the Style Subcommittee was asked to produce fully restyled drafts of two sets of rules: the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure. The Style Subcommittee finished preliminary versions of the Civil Rules in 1992, and of the Appellate Rules in 1994.

In the course of those two major projects, however, the membership of the Style Subcommittee had changed. When Professor Wright asked to be relieved of this responsibility upon assuming the presidency of the American Law Institute in 1993,

Judge George C. Pratt became the new chair. And when, that same year, Judge Stotler began chairing the Standing Committee, she likewise resigned from the Style Subcommittee. To fill the two open positions, Judge Stotler appointed Judge James A. Parker, of the United States District Court in New Mexico, and Professor Geoffrey G. Hazard, Jr., of the University of Pennsylvania.

In the fall of 1995, Judge Pratt's term on the Standing Committee expired, and Judge Parker became chair of the Style Subcommittee. Meanwhile, Judge Stotler appointed Judge William R. Wilson, Jr., as a member.

Every member of the Style Subcommittee has served with extraordinary skill and energy.

An important part of the subcommittee's work is to call attention to ambiguities of substantive meaning. But the subcommittee does not make substantive recommendations because the Standing Committee and the five Rules Committees (a Committee on Evidence having been added) are responsible for substantive recommendations.

Despite some initial reservations among committee members about the scope of this undertaking regarding style, the several committees have cooperated generously. This team effort has already developed restyled drafts of Civil Rules and Appellate Rules. These drafts dramatically illustrate how readable and easily comprehensible court rules can be — if, that is, the drafters devote themselves to the clearest possible style.

7.

Out of this team effort has evolved, in addition to early model drafts, another product — the *Guidelines for Drafting and Editing Court Rules*. I am delighted and encouraged that this publication will now be available to everyone who has an interest in improving the quality of legal writing.

Improving and maintaining the style of Federal Rules of Practice and Procedure is a long-term project. The early drafts have already demonstrated, in my view, that benefits far outweigh costs. Also, I believe we can maintain a continuing enterprise whose primary resources are the time and energy of talented professional volunteers — members of the Rules Committees of the Judicial Conference of the United States. This is the group who, with painstaking care, will examine every proposal suggested to them by the Style Subcommittee and will then recommend to the Judicial Conference and the enacting authorities proposed Rules that excel in style and readability as well as fair and impartial content.

—ROBERT E. KEETON
U.S. District Judge
Boston, Massachusetts

Introduction

by George C. Pratt

When Judge Robert E. Keeton, then Chair of the Judicial Conference's Standing Committee on the Rules of Practice and Procedure, asked me to join Professor Charles A. Wright, Judge Alicemarie H. Stotler, and Joseph F. Spaniol, Jr., on a new Style Subcommittee, I expected the work to be a relatively mundane experience of scouting for inconsistencies, typographical errors, and occasional grammatical slipups in the existing rules of practice. Working with Professor Wright, however, was an opportunity I couldn't pass up. His treatise on federal courts had been my bible for many years on both the district and circuit courts, and I envied his clarity of expression and his simple, direct style. I knew I could learn a lot, and perhaps our work might be useful to the entire rules process.

Developing the Guidelines

The Style Subcommittee began its work by reviewing a series of amendments that were being proposed by the four advisory committees. Very soon, however, we recognized a need for guiding principles and a more systematic process. With the aid of our consultant, Bryan A. Garner, we initially agreed on and outlined some basic goals, and then more specific guides for achieving those goals. Our goals, which should apply to all legal writing, were clarity, brevity, and readability.

For clarity, we sought to express each rule in terms and in a form that could most accurately express the idea behind the rule. This meant avoiding ambiguities and developing consistent modes of expression. Readability, we found, could be enhanced by using an outline format, applying it consistently, keeping sentences relatively short, and adhering to a series of conventions on how to treat exceptions, conditions, and qualifying phrases. Brevity is always a hallmark of good legal writing. While we consciously worked for it by eliminating all unnecessary words and searching for shorter, more accurate expressions, in many instances we found that our quest for clarity and readability had automatically given us brevity through shorter, more tightly written rules.

We reached a turning point when the subcommittee agreed to undertake a complete reworking of two set of rules — civil and appellate. We began with the civil rules. Our procedure was to have Bryan Garner first do a restyled version of an entire set of rules. Then the subcommittee would separately review his work, looking first for any inadvertent substantive changes but also making further suggestions on style. Next, we would put our collective thoughts into a final version, which the subcommittee, with an occasional additional edit, would approve for eventual submission to the Civil Advisory Committee.

Having successfully followed that process, we have now completed a restyled version of the appellate rules and substantial work on the civil rules. For various reasons, the appellate rules have moved more swiftly through the Advisory Committee, and in January 1996 the Standing Committee voted unanimously to publish those rules for comment by the bench and bar. As of early 1996, the appellate rules represent a bellwether for the desirability of revising sets of federal rules for clarity and consistency. Ultimately, a restyled set of rules is subject to approval by the Judicial Conference and the Supreme Court, and to review by Congress.

When the Style Subcommittee first went to work, we realized after a few conferences that the matters we were discussing, debating, and agreeing upon represented valuable conventions for our work, and that they needed to be preserved and collected in a coherent, organized manual. We asked Bryan Garner to undertake that task, using his notes from the hundreds of edits and decisions that the subcommittee had already made. Bryan has now formalized his work into this manual, *Guidelines for Drafting and Editing Court Rules*.

Using the Guidelines

The subcommittee has found the Guidelines to be invaluable. They provide a handy reference to the conventions we have previously addressed and agreed on. When Professor Wright and Judge Stotler left us for higher callings, their replacements, Judge James A. Parker and Professor Geoffrey G. Hazard, Jr., quickly picked up the nature and direction of our work by referring to the Guidelines, which permit us to operate from a common base of understanding.

Bryan Garner has always worked closely with the reporters of the respective advisory committees. Using the Guidelines, the reporters now draft their proposed amendments and new rules following what has rapidly become the accepted style for federal rules.

The potential value of these Guidelines is not restricted to federal rulemaking. They could fruitfully be applied to the practice codes and even the substantive statutes of the various states. Even local ordinances would benefit from their use. When clarity and readability of statutes and rules increase, the need for litigation over meaning decreases and voluntary compliance increases.

Outside the rulemaking area, many types of legal drafting — contracts, opinion letters, and even judicial opinions — might be improved if legal writers followed these Guidelines. And it goes without saying that these Guidelines could provide a core for teaching legal writing and legal drafting — areas in which law-school graduates are notoriously deficient.

Lessons Learned from the Style Process

Working on the Style Subcommittee has underscored a number of lessons for many of us. Three in particular stand out in my mind. First, legal drafting is not easy; it is a demanding, exacting discipline that requires careful and constant attention. Second, if the result of any drafting effort is to be successful, style must be an integral part of the process. Third, paying attention to writing style requires us to clarify our own thinking. Clear style demands clear thinking, which is a prerequisite to any effective legal writing.

The Style Subcommittee is grateful to Bryan Garner for his inspiration and guidance through our labors on restyling the rules. His *Guidelines for Drafting and Editing Court Rules* will not only help us as we continue working through demanding, exacting revisions of all the rules; they also will provide continuing benefit to future members of the rules committees and ultimately, through the clarity and readability that these Guidelines can produce, to the legal profession as a whole.

—GEORGE C. PRATT
Retired Judge of the U.S. Court
of Appeals for the Second Circuit and Former
Chair of the Style Subcommittee

Author's Note

The reader might consider these Guidelines a stylesheet for rule-drafters. In a sense, they are just that.

But calling them a “stylesheet” might minimize some of the innovative ideas that the Style Subcommittee, in its work on federal rules, has elaborated. For example, the principles on placing conditions and exceptions (2.4(A), 2.4(B)) are entirely fresh. To my knowledge, they have no precedent in the literature on legal drafting. The same might be said of the principles on using the double-dash construction (2.4(C)(2)); on placing adverbs in relation to verb phrases (2.4(C)(3)); and on enumerating only at the end of the sentence, not in midsentence (3.3(B)). Several principles of good drafting, then, make their debut in these pages.

Many other principles are fairly standard, and their value here lies primarily in illustrating how to carry out those principles in the context of rule-drafting.

The Guidelines contain only a “blackletter” statement of principles, followed by illustrations. I have omitted any detailed explanation of their rationale, which must await publication of *The Elements of Legal Drafting*, forthcoming from Oxford University Press. In any event, there is much to be said for a cleanly stated set of principles uncluttered by pro-and-con arguments and extended rationales.

—BRYAN A. GARNER
Dallas, Texas

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Basic Principles



1.1 Be clear.

- A. Identify instances of vagueness and ambiguity and sharpen the wording.
- B. If you need substantive directions, consider alternative wordings and set them out as possibilities for the decision-maker.

1.2 Make the draft readable.

- A. Prefer short sentences. The average sentence length in good drafting is no more than 30 words.
- B. Use the simplest possible words to express the idea clearly. Avoid legal jargon.
- C. Use a word or phrase consistently to express a single idea. Do not vary your terminology for the sake of “elegant variation.”

1.3 Be as brief as clarity and readability permit.

1.4 Organize the rule to serve clarity, readability, and brevity.

- A. Organize the draft logically, with headings and subheadings, so that the reader has bearings.
- B. Use structure to enhance readability and reinforce meaning.

General Conventions



2.1 Number. Draft in the singular number unless the sense is undeniably plural.

Before

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.

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

Papers filed by an inmate confined in an institution are timely filed if

Fed. R. Civ. P. 25 (a).

After

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.

A *paper* filed by an inmate confined in an institution is timely filed if

(*Rule as published for comment in Oct. 1993.*)

2.2 Tense. Generally, draft in the present tense, not in the past or future.

Before

No additional fees *will be required* for filing an amended notice.

Fed. R. App. P. 4(a)(4).

The pendency of such a suggestion whether or not included in a petition for rehearing *shall not affect* the finality of the judgment of the court of appeals or stay the issuance of the mandate.

Fed. R. App. P. 35(c).

After

No additional fee *is necessary* for filing an amended notice.

A pending suggestion for a rehearing en banc *does not affect* the finality of the appellate judgment or stay the issuance of the mandate.

2.3 Voice. Prefer the active over the passive voice.

A. When feasible, rephrase a passive-voice verb by putting it in active voice.

Before

. . . costs *must be taxed* by the clerk
against the losing party
Fed. R. Civ. P. 76(c)
(intermediate draft).

After

. . . the clerk *must tax* costs against the
losing party

A stay in a criminal case *shall be had* in
accordance with the provisions of Rule
38 of the Federal Rules of Criminal
Procedure.

Fed. R. App. P. 8(c).

Rule 38 of the Federal Rules of
Criminal Procedure *governs* a stay in
a criminal case.

(Rule as published for
comment in April 1996.)

B. When feasible, rephrase a passive-voice verb by using an adjective.

Before

. . . the parties may . . . file a joint
statement that shows how the issues *pre-
sented by the appeal* arose
Fed. R. Civ. P. 75(b)(1)
(intermediate draft).

After

. . . the parties may . . . file a joint
statement that shows how the
appellate issues arose

C. Use passive voice primarily in two circumstances: (1) when naming the actor would unduly narrow the meaning or impede the flow of the sentence; and (2) when changing to active voice would undesirably shift the emphasis from one subject to another.

Examples

When the constitutionality of a statute affecting the public interest *is questioned* in any action, the court must

Fed. R. Civ. P. 24(c)(2) (revised for style).

A party who *has been permitted* to proceed in a district-court action in forma pauperis, or who *was considered* financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization

Fed. R. App. P. 24(a)(2) (revised for style).

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 regularity.

Before

In the interest of expediting decision, or for other good cause shown, a court of appeals may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case *on application of a party or on its own motion*.

Fed. R. App. P. 2.

After

On its own motion or a party's motion, a court of appeals may — to expedite its decision or for other good cause — suspend the provisions of any of these rules in a particular case, except as otherwise provided in Rule 26(b).

1. If a condition is just a few words, and seeing it first would help the reader avoid a miscue, then put it at the beginning of the sentence.
2. If a condition is long and the main clause is short, put the main clause first and move directly into the condition.

Before

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.

Fed. R. Civ. P. 72(b)
(intermediate draft)

After

A magistrate judge must promptly conduct required proceedings *when assigned, without the parties' consent, to hear either a prisoner petition challenging the conditions of confinement or a pretrial matter dispositive of a party's claim or defense*.

3. If a condition and the main clause are both long, foreshadow the condition and put it at the end of the sentence. If there are several conditions, a phrase such as *in the following circumstances* will serve to foreshadow the conditions at the end.

Before

(b) *Interlocutory Sales*. If property that has been attached or arrested is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action, or if the expense of keeping the property is excessive or disproportionate, or if there is unreasonable delay in securing the release of property, the court, on application of any party or of the marshal, or other person or organization having the warrant, may order the property or any portion thereof to be sold; and the proceeds, or so much thereof as shall be adequate to satisfy any judgment, may be ordered brought into court to abide the event of the action; or the court may, upon motion of the defendant or claimant, order delivery of the property to the defendant or claimant, upon the giving of security in accordance with these rules.

Supp. R. Adm. & Mar. Claims E(9)(b).

After

(2) *Interlocutory Sales*.

(A) *In any of the following circumstances*, the court may, on application of a party or some other warrant-holder, order the property or any part of it sold:

- (1) if the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action;
- (2) if the expense of keeping the property is excessive or disproportionate; or
- (3) if there is an unreasonable delay in securing the release of property.

(B) The proceeds, or as much of them as will satisfy the judgment, may be ordered brought into court to await the disposition. Alternatively, the court may, upon a party's motion, order the property delivered to the party, who must give security under these rules.

Before

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it.

Fed. R. Civ. P. 58.

After

(a) Subject to Rule 54(b), *the following rules govern entry of judgment:*

- (1) When the jury returns a general verdict or the court decides that a party may recover only a sum certain or costs, or that all relief should be denied, the clerk shall, unless the court orders otherwise, promptly prepare, sign, and enter the judgment without awaiting the court's direction.
- (2) When the court grants other relief or the jury returns a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, which the clerk shall enter.

4. If a condition states a definitional test to be met — not a standard of applicability — put it at the end of the sentence.

Example

A paper required or permitted to be filed in a court of appeals must be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the paper within the time fixed for filing, except that a brief is timely filed *if it is mailed to the clerk by first-class mail, postage prepaid, and bears a postmark showing that the document was mailed on or before the last day for filing.*

Fed. R. App. P. 25(a) (as revised and published for comment in October 1993).

5. Unearth hidden conditions to make them explicit, using the word *if*.

Before

A party must make advance arrangements with the clerk for the transportation and receipt of *exhibits of unusual bulk or weight*.

Fed. R. App. P. 6(b)(2)(iii).

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 the trial.

Fed. R. Civ. P. 12(d).

After

If the exhibits are unusually bulky or heavy, the party must arrange with the clerk in advance for their transportation and receipt.

If a party so requests, the defenses listed in Rule 12(b)(1)-(7) — whether made in a pleading or by motion — and any motion for judgment on the pleadings under Rule 12(c)(1) must be heard and determined before trial unless the court orders that the hearing and determination be deferred until trial.

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

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

Before

(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*. . . .

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

After

(a) Capacity.

(1) *Except when necessary to show that the court has jurisdiction*, a pleading need not aver:

(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 a named party.

(2)

2. If an exception cannot be stated briefly, put it at the end.

Example

(a) **Compulsory Counterclaim.** 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 arises from the transaction or occurrence that is the subject matter of the opposing party's claim and does not require, for adjudication, the presence of a third party over whom the court cannot acquire jurisdiction. *But the pleader need not state the claim:*

(1) *if, when the action began, the claim was the subject of another pending action; or*

(2) *if the opposing party sued upon 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.*

Fed. R. Civ. P. 13(a) (revised for style).

C. Interruptive Phrases

1. Avoid an interruptive phrase between the subject and the verb by moving it to the beginning or end of the sentence.

Before

The court, *on motion of the Government made within one year after the imposition of the sentence*, may reduce a sentence to reflect a defendant's subsequent, substantial assistance in the investigation or prosecution of another person who has committed an offense

Fed. R. Crim. P. 35(b).

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.

Fed. R. Civ. P. 61.

After

If the Government so moves within a year after sentence is imposed, the court may reduce a sentence to reflect a defendant's later substantial help in investigating or prosecuting another person who has committed an offense

At every stage of the proceeding, the court must disregard all errors or defects that do not affect a substantial right of any party.

2. For an interruptive phrase that must appear in midsentence — because of what it modifies — use a double-dash construction instead of commas.

Before

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81.

After

These rules govern procedure in the United States district courts in all civil actions — whether arising at law, in equity, or in admiralty — except as stated in Rule 81.

Fed. R. Civ. P. 1.

3. Put an 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 adverbial phrase immediately after that modal verb.

Before

If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule *may allow* the action to be continued by or against the party's representative.

Fed. R. Civ. P. 25(b).

After

If a party becomes incompetent, the district court *may*, on motion served according to (a)(3), *allow* the action to be continued by or against the party's representative.

D. *Modifiers*

1. To avoid ambiguity, place a modifier next to the word or phrase it modifies.

Before

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.

Supp. R. Adm. & Mar. Claims F(4).

After

Before the date fixed for the filing of claims, the notice must be published *once a week for four successive weeks* in a court-designated newspaper or newspapers.

2. If moving a misplaced modifier will not cure the ambiguity, rephrase the sentence.

Before

In an action begun by seizure of property, *in which no person need be or is named as a defendant*, any service
Fed. R. Civ. P. 5(a).

After

If an action is begun by seizing property *and* no person is named as a defendant, service

E. Prepositional Phrases

1. Minimize *of*-phrases. They tend to encumber sentences.

Before

The content *of* the notice *of* appeal, the manner *of* its service, and the effect *of* the filing *of* the notice and *of* its service shall be as prescribed in Rule 3.
Fed. R. App. P. 13(c) — (six *ofs*).

After

Rule 3 prescribes what a notice *of* appeal must contain, how it should be served, the effect *of* its filing, and the effect *of* its service.
(Three *ofs*.)

If a notice *of* appeal is mistakenly filed in the court *of* appeals, the clerk *of* the court *of* appeals shall note thereon the date on which it was received and transmit it to the clerk *of* the district court and it shall be deemed filed in the district court on the date so noted.
Fed. R. App. P. 4(a)(1) — (five *ofs*).

If a notice *of* appeal is mistakenly filed in the court *of* appeals, the circuit clerk must note on the notice the date when it was received and send it to the district clerk. It is then considered filed in the district court on the date so noted.
(Two *ofs*.)

2. When feasible, change prepositional phrases to adjectives.

Before

. . . violation of a statute *of the United States*
Supp. R. Adm. & Mar. Claims E(9)(a).

After

. . . violation of a *federal* statute

Unless provided otherwise by statute or order *of the court*,
Fed. R. Civ. P. 54(d)(2)(B).

Unless a statute or *court order* provides otherwise,

Before

The petition shall be filed with the clerk of the court of appeals within the time provided by Rule 4(a) for filing a notice of appeal, with proof of service on all parties to *the action in the district court*.

Fed. R. App. P. 5.1(a).

After

The petition must be filed with the circuit clerk within the time provided by Rule 4(a) for filing a notice of appeal, with proof of service on all parties to *the district-court action*.

3. When feasible, change prepositional phrases to possessives.

Before

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*

Fed. R. App. P. 3(a).

After

An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the *appeal's validity*

F. *Antecedents*

1. Ensure that an antecedent precedes a referent, not vice versa; use a noun twice rather than having a referent precede its antecedent.
2. Ensure that an antecedent agrees in number with its referent.

Before

[T]he court may, on motion, order any person having possession or control of such *property or its proceeds* to show cause why *it* 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 to abide the judgment

Supp. R. Adm. & Mar. Claims C(5).

After

[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.

G. *Sentence Length*. Strive for an average sentence length of fewer than 25 words — 30 words at most.

1. Break long compound sentences into two or more sentences.

Before

Sentence shall be imposed without unnecessary delay, but the court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved.

Fed. R. Crim. P. 23(a)(1),
before 1994 amendments.

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

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

After

Sentence *must* be imposed without unnecessary delay. But if some factor important to sentencing cannot be resolved promptly, the court may postpone sentencing for a reasonable time until that factor becomes resolvable.

A class action must not be dismissed or compromised without court approval. Notice of a proposed dismissal or compromise must be given to all class members as the court directs.

2. For purposes of computing sentence length, count a tabulated or set-off subpart as a separate sentence.

H. *Punctuation*

1. End each subpart (except the last) with a semicolon. After the next-to-last subpart, put a conjunction — either *and* or *or*.

Before

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

After

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 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 where the summons issues;
- (C) who is subject to the federal interpleader jurisdiction under 28 U.S.C. § 1335; or
- (D) when authorized by a federal statute.

2. Place a comma after an introductory phrase or subordinate clause.

Before

When a transfer is ordered the clerk shall transmit
Fed. R. Crim. P. 21(c).

After

When a transfer is ordered, the clerk must send

3. In an enumerated series, use the serial comma before the conjunction.

Before

... books, documents or tangible things
 ... possession, custody or control
 Fed. R. Civ. P. 45(a)(1).

After

... books, documents, or tangible things
 ... possession, custody, or control

4. Prefer long dashes to parentheses.

Before

All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if
 Fed. R. Civ. P. 20(a).

After

Persons — as well as a vessel, cargo, or other property subject to admiralty process in rem — may be joined in the same action as defendants if

5. Eliminate hyphens separating a prefix from a root word: *nonparty* and *pretrial*, not *non-party* and *pre-trial*.

6. Hyphenate phrasal adjectives.

Before

civil process clerk
 district court order
 trial preparation material

After

civil-process clerk
 district-court order
 trial-preparation material

I. End sentences emphatically — with a word or phrase that most naturally receives stress.

Before

Each party adverse to the National Labor Relations Board in an enforcement or a review proceeding shall proceed first on briefing and at oral argument unless the court orders otherwise.
 Fed. R. App. P. 15.1.

After

Unless the court orders otherwise, a party adverse to the National Labor Relations Board in an enforcement or a review proceeding must, in briefing and at oral argument, proceed first.

Structure

3

3.1 Organization of Rules

- A. Organize rules logically and clearly so that referring to them is relatively easy. Do this by adhering as much as possible to these organizational principles:
- Put the broadly applicable before the narrowly applicable.
 - Put the general before the specific.
 - Put more important items before less important.
 - Put rules before exceptions.
 - Put contemplated events in chronological order.

B. Group similar items together, preferably introducing them with parallel headings and subheadings.

Before

(9) Disposition of Property; Sales.

(a) *Actions for Forfeitures.* In any action in rem to enforce a forfeiture for violation of a statute of the United States the property shall be disposed of as provided by statute.

(b) *Interlocutory Sales.* If property that has been attached or arrested is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action, or if the expense of keeping the property is excessive or disproportionate, or if there is unreasonable delay in securing the release of property, the court, on application of any party or of the marshal, or other person or organization having the warrant, may order the property or any portion thereof to be sold; and the proceeds, or so much thereof as shall be adequate to satisfy any judgment, may be ordered brought into court to abide the event of the action; or the court may, upon motion of the defendant or claimant, order delivery of the property to the defendant or claimant, upon the giving of security in accordance with these rules.

(c) *Sales, Proceeds.* All sales of property shall be made by the marshal or a deputy marshal, or by other person or organization having the warrant, or by any other person assigned by the court where the marshal or other person or organization having the warrant is a party in interest; and the proceeds of sale shall be forthwith paid into the registry of the court to be disposed of according to law.

Supp. R. Adm. & Mar.
Claims E(9) (in full).

After

(9) Disposition of Property; Sales.

[Reorganize section as follows:]

(a) Action for Forfeiture.

(b) Sale.

(1) *Generally.*

(2) *Interlocutory Sale.*

(c) Proceeds.

(d) Alternative Interlocutory Remedies.

3.2 Structural Divisions

A. 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]

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

C. Preface a subdivision with a brief descriptive heading. Headings are optional with paragraphs, subparagraphs, and items. Add headings when they will help orient readers.

Before

Rule 23.1. Derivative Actions by Shareholders

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (1) that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court desires.

Fed. R. Civ. P. 23.1 (in full).

After

Rule 23.1. Derivative Actions by Shareholders

- (a) **Prerequisites.** One or more shareholders of a corporation or members of an unincorporated association may, on behalf of the corporation or association, bring a derivative action to assert and enforce a right that the corporation or association has failed to enforce. A derivative action may be maintained only if the plaintiff fairly and adequately represents the interests of similarly situated shareholders or members.
- (b) **Pleading Requirements.** The complaint must be verified and must allege:
- (1) that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership devolved on it after that time by operation of law.
 - (2) that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and
 - (3) the particular efforts, if any, made by the plaintiff to obtain the desired action from the directors or similar authority and, if necessary, from the shareholders or members, and the reasons for not obtaining the action or not making the effort.
- (c) **Dismissal and Compromise.** A derivative action must not be dismissed or compromised without court approval. Notice of a proposed dismissal or compromise must be given to shareholders or members as the court directs.

- D. If redrafting results in new subparts, ensure that the numbering of oft-cited rules — such as Rule 12(b)(6) of the Civil Rules — does not change.
- E. As part of the official format, use so-called “hanging indents,” which reveal structure cleanly.

Before

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when:

- (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or
- (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth

Fed. R. Civ. P. 15(c).

After

(c) Relation Back of Amendments.

- (1) An amendment of a pleading relates back to the date of the original pleading when:
 - (A) the applicable statute of limitations permits relation back; or
 - (B) the amendment asserts a claim or defense that arose from the conduct, transaction, or occurrence set forth

3.3 Enumerations

- A. Set off enumerated items into subparts when feasible. Create new paragraphs, subparagraphs, and items in the order in which they naturally occur.

Before

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written question; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admissions.

Fed. R. Civ. P. 26(a)(5).

After

Parties may obtain discovery by one or more of the following methods:

- (A) depositions upon oral examination or written question;
- (B) interrogatories;
- (C) production of documents or things or permission to enter upon land or other property, under Rule 34 or 45(a)(1)(C), for inspection and other purposes;
- (D) physical or mental examinations; and
- (E) requests for admissions.

Before

The front covers of the briefs and of appendices, if separately printed, shall contain: (1) the name of the court and the number of the case; (2) the title of the case (see Rule 12(a)); (3) the nature of the proceeding in the court (e.g., Appeal; Petition for Review) and the name of the court, agency, or board below; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

Fed. R. App. P. 32(a).

After

The front cover of a brief must contain:

- (A) the number of the case centered at the top;
- (B) the name of the court;
- (C) the title of the case (see Rule 12(a));
- (D) the nature of the proceeding (e.g., Appeal; Petition for Review) and the name of the court, agency, or board below;
- (E) the title of the document, identifying the party or parties for whom the document is filed; and
- (F) the name, office address, and telephone number of counsel representing the party for whom the document is filed.

(Rule as published for comment in April 1996.)

B. Enumerate at the end — not at the beginning — of a sentence.

Before

(a) The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

Fed. R. App. P. 10.

After

(a) The following items constitute the record on appeal:

- (1) the original papers and exhibits filed in the district court;
- (2) the transcript of proceedings, if any; and
- (3) a certified copy of the docket entries prepared by the district clerk.

- C. When introducing an enumeration, consider using a phrase such as *the following* to foreshadow what will follow.

Before

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.

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

After

Except as these rules provide otherwise, *the following papers* must be served on every party:

- (A) an order required by its terms to be served;
- (B) a pleading filed after the original complaint, unless the court orders otherwise because of numerous defendants;
- (C) a discovery paper required to be served upon a party, unless the court orders otherwise;
- (D) a written motion, other than one that may be heard *ex parte*; and
- (E) a written notice, appearance, demand, offer of judgment, designation of record on appeal, or similar paper.

- D. When stating more than one requirement — and the requirements can be stated in parallel form — put them in parallel enumerations.

Before

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.

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

After

In pleading, a party must:

- (A) state in short and plain terms the party's defenses to each claim asserted; and
- (B) admit or deny the averments on which the adverse party relies.

E. Avoid unnumbered “dangling” sections — that is, flush-left text that, following an enumeration, has no numbered designation.

Before

- (1) Every subpoena shall
- (A) state the name of the court from which it is issued; and
- (B) state the title of the action, the name of the court in which it is pending, and its civil action number; and
- (C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and
- (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.

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

After

- (1) (A) A subpoena must:
- (i) state the court in whose name it is issued;
- (ii) state the title of the action, the name of the court in which it is pending, and its civil-action number;
- (iii) command the person to whom it is directed to attend and testify; or to produce and permit inspection and copying of designated books, documents, or tangible things in that person's possession, custody, or control; or to permit inspection of premises at a specified time and place; and
- (iv) set forth the text of Rule 45(c) and (d).
- (B) A command to produce evidence or to permit inspection may be included in a subpoena commanding appearance at a trial, hearing, or deposition, or may be issued by a separate subpoena.

- F. 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.

Before

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.

Fed R. Civ. P. 8(c)

After

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.

If a party has mistakenly designated a defense as a counterclaim, or a counterclaim as a defense, the court must — if justice requires — treat the pleading as if the party had used the correct description.

Words and Phrases



4.1 Verbose Phrasing

A. Omit every superfluous word.

Before

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.

Fed. R. Civ. P. 11(d).

Each court of appeals *by action of* a majority of *the circuit* judges in regular active service may

Fed. R. App. P. 47.

. . . a judgment for a sum of money

Fed. R. Civ. P. 67.

. . . a judgment for the payment of money

Fed. R. Civ. P. 69.

The forms *contained* in the Appendix *of Forms are sufficient* under these rules and *are intended to* indicate the simplicity and brevity *of statement* which the rules contemplate.

Fed. R. Civ. P. 84(a).

When the owner complies with *the requirements of* Rule F(1),
Supp. R. Adm. & Mar. Claims F(2)
(*intermediate draft*).

After

This rule does not apply to disclosures and discovery requests, responses, objections, and motions that are subject to Rules 26 through 37.

Each court of appeals acting by a majority of its judges in regular active service may

(*Rule as published for comment in Oct. 1993.*)

. . . a money judgment

. . . a money judgment

The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.

(*Rule as published for comment in Oct. 1993.*)

When the owner complies with Rule F(1),

B. Uncover so-called “buried verbs” — i.e., abstract nouns usually 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 forcing the writer to be explicit about implied actors; and
- it makes sentences more vivid by substituting action verbs in place of stagnant *be*-verbs.

Before

Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with the clerk of the court of appeals with proof of service on all parties to the action in the trial court.

Fed. R. App. P. 21(a).

Upon *receipt of* the record, the clerk . . .
Fed. R. App. P. 6(b)(2)(iv).

If without substantial justification a certification *is made in violation of* this rule . . .
Fed. R. Civ. P. 26(g)(2).

The complaint shall contain a short and plain *statement of* . . .
Fed. R. Civ. P. 71A(c)(2).

After

A party applying for a writ of mandamus or of prohibition must file a petition with the circuit clerk, with proof of service on all parties to the district-court action.

Upon *receiving* the record, the clerk . . .

If a certification *violates* this rule without substantial justification . . .

The complaint must briefly and plainly *state* . . .

C. Collapse clauses into phrases when possible. For example, instead of *case to be tried without a jury*, use *nonjury trial* or *nonjury case*.

4.2 Words of Authority*

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

<i>must</i>	=	is required to
<i>must not</i>	=	is required not to
<i>may</i>	=	has discretion to is permitted to has a right to
<i>is entitled to</i>	=	has a right to
<i>will</i>	=	(expresses a future contingency)
<i>should</i>	=	(denotes a directory provision)

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

Before

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.

Fed. R. App. P. 36.

No response *shall* be filed unless the court *shall* so order.

Fed. R. App. P. 35(b).

After

On the date judgment is entered, the clerk *must* mail to 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.

No response *may* be filed unless the court orders it.

C. 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: the two should not be mixed.]

*For the rationale underlying these conventions, see BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 939-42 (2d ed. 1995).

D. Avoid roundabout wordings to create a duty.

Before

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

Fed. R. Civ. P. 26(e)
(intermediate draft).

After

A party who has made a disclosure under Rule 26(a) or responded to a request for discovery *must* supplement or correct

E. Change *may not to must not* or *cannot*.

Before

(A) Monetary sanctions *may not* be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions *may not* be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

Fed. R. App. P. 11(c)(2).

In a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, an appeal by the applicant for the writ *may not* proceed unless a district or a circuit judge issues a certificate of probable cause.

Fed. R. App. P. 22(b).

After

The court *must not* impose monetary sanctions:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own initiative, unless it issued the show-cause order before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

If the detention complained of in a habeas corpus proceeding arises from process issued by a state court, the applicant *cannot* take an appeal unless a district or circuit judge issues a certificate of probable cause.

(Rule as published for
comment in April 1996.)

4.3 Relative Pronouns

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

Before

Any such motion *which* is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires.

Fed. R. App. P. 4(a)(5).

After

Any such motion *that* is filed before the prescribed time expires may be ex parte unless the court requires otherwise.

Before

A pleading *which* sets forth a claim for relief . . . shall contain . . .

Fed. R. Civ. P. 8(a).

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement *which* the rules contemplate.

Fed. R. Civ. P. 84.

After

A pleading *that* includes a claim for relief . . . must contain . . .

The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity *that* these rules contemplate.

- B. Use *which* as a nonrestrictive relative pronoun. The word should almost always follow a comma.

Example

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

Fed. R. App. P. 33 (revised for style).

- C. To avoid the problem of the so-called “remote relative,” place the relative pronoun *that* or *which* directly after the word it modifies.

Before

[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 . . .

Fed. R. Civ. P. 26(a)(1)(B).

After

[A] party must, without awaiting a discovery request, provide to other parties . . . a copy of . . . all documents, data compilations, and tangible *things that* are in the possession, custody, or control of the party and are relevant . . .

4.4 Conjunctions

- A. Use *but* instead of *and* to introduce a contrasting idea.

Before

The remedy herein provided is in addition to *and* in no way supersedes or limits the remedy provided by Title 28, U.S.C., §§ 1335, 1397, and 2361. Actions under those provisions shall be conducted in accordance with these rules.

Fed. R. Civ. P. 22(2).

After

This remedy . . . supplements — *but* does not supersede or limit — the remedy provided by 28 U.S.C. §§ 1335, 1397, and 2361, and these rules govern actions under those statutes.

B. For a contrast, use *But* to begin a sentence instead of *However*.

Before

A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule. *However*, in all civil cases in which the United States or an agency or officer thereof is a party, the time within which any party may seek rehearing shall be 45 days after entry of judgment unless the time is shortened or enlarged by order.

Fed. R. App. P. 40(a).

After

Unless the time is shortened or extended by order or local rule, a petition for rehearing may be filed within 14 days after entry of judgment. *But* in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends the time.

(Rule as published for comment in April 1996.)

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

Before

Demurrers, pleas, and exceptions for insufficiency of a pleading *shall not be used*.

Fed. R. Civ. P. 7(c).

The discovery plan must *indicate* the parties' views

Fed. R. Civ. P. 26(f)
(intermediate draft).

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.

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

After

Demurrers, pleas, and exceptions for insufficiency of a pleading *are abolished*.

The discovery plan must *state* the parties' views

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.

4.6 Specific Words and Forms to Avoid

- **as to:** prefer *about, for, of, on, with, to, by, or in*. E.g., “If any difference arises *as to* [read *about*] whether the record truly discloses what occurred in the district court,” Fed. R. App. P. 10(e)./ “The parties are encouraged to agree *as to* [read *on*] the contents of the appendix.” Fed. R. App. P. 30(b).
- **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 appropriate when referring to something that an existing rule does. E.g., “*Except as* otherwise provided in Rule 26(b),”
- **except that:** use *but* or some other, more pointed term. E.g., “[T]he parties may by written stipulation . . . modify other procedures . . . , *except that* [read *but*] stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may . . . be made only with the approval of the court.” Fed. R. Civ. P. 29.
- **except when:** use *unless*. E.g., “*Except when* [read *Unless*] a federal statute or these rules provide otherwise,”
- **except with [+ noun]:** use *unless [+ verb]*. E.g., “*Except with the written consent of the defendant,* [read *Unless the defendant consents in writing,*] the report *shall* [read *must*] not be submitted to the court” Fed. R. Crim. App. 32(b)(1).
- **following:** if it means “after,” write *after*.
- **hereof, herein, thereof, therein, and the like:** use everyday words instead — usually a demonstrative pronoun such as *that, this, these, or 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 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.
- **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).
- **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*] any applicable treaty or convention . . .” Fed. R. Civ. P. 28(b).
- **said, adj.:** use *the*, *this*, or *that*.
- **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*, *that*, or *those*. 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)(2).
- **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 notice to the chief judge . . .” Fed. R. Crim. P. 49(e).
- **upon:** prefer *on*. Thus, *service on a defendant*, not *service upon a defendant*. But use *upon* when introducing a condition or event — e.g.: “*Upon* being served with a request, a party must . . .”
- **whenever:** use *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(b).

4.7 Other Stylistic Preferences

A. *Cross-References.* Omit the full reference to a rule number when not needed for clarity. For example, typically when referring to a provision on the same level within the same rule, subdivision, or paragraph, you might state:

(a) Except as provided otherwise in (b), a party must

But include an appropriate reference when needed for clarity — particularly if the other provision is on a different level or is not near the reference. Repeating the rule number — *subject to Rule 4(h)* — is shorter and better for courts' and practitioners' quotations than *subject to subdivision (h) of this rule*.

B. *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.



WSBA MISSION

The Washington State Bar Association’s mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

WSBA GUIDING PRINCIPLES

The WSBA will operate a well-managed association that supports its members and advances and promotes:

- **Access to the justice system.**
Focus: Provide training and leverage community partnerships in order to enhance a culture of service for lawyers to give back to their communities, with a particular focus on services to underserved low and moderate income people.
- **Diversity, equality, and cultural understanding throughout the legal community.**
Focus: Work to understand the lay of the land of our legal community and provide tools to members and employers in order to enhance the retention of minority lawyers in our community.
- **The public’s understanding of the rule of law and its confidence in the legal system.**
Focus: Educate youth and adult audiences about the importance of the three branches of government and how they work together.
- **A fair and impartial judiciary.**
- **The ethics, civility, professionalism, and competence of the Bar.**

MISSION FOCUS AREAS	PROGRAM CRITERIA
<p>Ensuring Competent and Qualified Legal Professionals</p> <ul style="list-style-type: none"> • Cradle to Grave • Regulation and Assistance <p>Promoting the Role of Legal Professionals in Society</p> <ul style="list-style-type: none"> • Service • Professionalism 	<ul style="list-style-type: none"> • Does the Program further either or both of WSBA’s mission-focus areas? • Does WSBA have the competency to operate the Program? • As the mandatory bar, how is WSBA uniquely positioned to successfully operate the Program? • Is statewide leadership required in order to achieve the mission of the Program? • Does the Program’s design optimize the expenditure of WSBA resources devoted to the Program, including the balance between volunteer and staff involvement, the number of people served, the cost per person, etc?

2016 – 2018 STRATEGIC GOALS

- **Equip members with skills for the changing profession**
- **Promote equitable conditions for members from historically marginalized or underrepresented backgrounds to enter, stay and thrive in the profession**
- **Explore and pursue regulatory innovation and advocate to enhance the public’s access to legal services**



WSBA

BOARD OF GOVERNORS

WSBA VALUES

(adopted January 28, 2016)

Through a collaborative process, the WSBA Board of Governors and Staff have identified these core values that shall be considered by the Board, Staff, and WSBA volunteers (collectively, the “WSBA Community”) in all that we do.

To serve the public and our members and to promote justice, the WSBA Community values the following:

- Trust and respect between and among Board, Staff, Volunteers, Members, and the public
- Open and effective communication
- Individual responsibility, initiative, and creativity
- Teamwork and cooperation
- Ethical and moral principles
- Quality customer-service, with member and public focus
- Confidentiality, where required
- Diversity and inclusion
- Organizational history, knowledge, and context
- Open exchanges of information