

Comments of PLAIN on the draft rules of civil procedure.
12/11/2005

1. Verbs. Verb strength and clarity could be increased.

a. Passive verbs. Although the committee changed many of the verbs in the document to active voice, more of the remaining passive verbs could be changed, with a resulting increase in clarity and a decrease in text length.

Verb clarity and strength: Passive verbs		
Rule	Current language	Suggested language
26(e)(2)	Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.	The party must disclose any additions or changes to this information by the time the party's pretrial disclosures under Rule 26(a)(3) are due.
39(b)	When No Demand Is Made. Issues on which a jury trial is not properly demanded are to be tried by the court.	The court should (must?) try any issues on which a jury trial is not properly demanded.
52(a)(6)	Findings of fact, whether based on oral or other evidence, must not be set aside unless . . .	The court must not set aside findings of fact, whether based on oral or other evidence, unless . . .

b. Nominalizations. Nominalizations, which turn nouns into verbs, tend to make written passages longer than necessary. Additionally, they make writing weaker. You could strengthen your document by scrubbing out a number of nominalizations. Here are a few examples:

Verb clarity and strength: nominalizations		
Rule	Current language	Suggested language
16(e)	facilitate the admission of evidence.	facilitate admitting evidence
24(b)(3)	The court must consider whether the intervention will unduly delay or prejudice the adjudication. . .	The court must consider whether intervening will unduly delay or prejudice adjudicating. .
49(a)(3)	. . . before the jury retires, the party demands its submission to the jury.	. . . before the jury retires, the party demands that it be submitted to the jury.

2. Opportunities to eliminate legal jargon. Again, while the drafters eliminated much of the legal jargon, some unnecessary examples remain. For some examples, the draft uses a plain term in some places and not in others, creating a consistency issue.

Legal jargon and consistency			
Rule	Current language	Suggested language	Comments
3, 4(d)(1), 17(a), 63, elsewhere	Is commenced	Is begun	Rule 5(a)(3) uses "is begun"
8b, 8b5, 5, 26(g)(1)	Knowledge and information	Information	
8b5 5b3	Various uses of "so", as must so state if a local rule so authorizes	must say so if a local rule authorizes it	
9(b)	a party must state with particularity the circumstances	a party must state the specific circumstances	Your draft uses "specific" in a similar situation in 9(a)(2)
16(b)(2)	but in any event within 120 days after any defendant has been served with the complaint	but within 120 days after any defendant has been served with the complaint	
38(a), 45(b)(2)(C), 54(d)(2)(B)(ii), elsewhere	Statute	Law	Rule 54(d)(1) uses the terms "law" and "statute" interchangeably
42(a)(1)	any or all matters	any matters	
43(d), 53(b)(2)(E), 71.1(d)(2)(A)(iv), elsewhere	Compensation	Payment	
48	A jury must have no fewer than 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c). Unless the parties stipulate otherwise, the verdict must be unanimous and be returned by a jury of at least 6 members.	A jury must have no fewer than 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c). Unless the parties stipulate otherwise, the verdict must be unanimous.	The concept of "at least 6" is in the original language twice.

3. Sentence length. One of your stated intents is to shorten sentences, and in most cases you have succeeded. A few long sentences slipped through, for example in 13(g) and 14(c)(1).



"Annetta Cheek"
<acheek@patriot.net>

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To <rules_comments@ao.uscourts.gov>

cc "Bryan Garner" <bagarner@att.net>, "Joe Kimble"
<kimblej@cooley.edu>

bcc

Subject Comments on proposed style changes to rules of civil
procedure

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Plain Language Action and Information Network (PLAIN)
12/11/2005

To the Secretary of the Committee on Rules and Practice and Procedure
Administrative Office of the United States Courts.
Washington, D.C.

PLAIN is a group of federal employees dedicated to encouraging the
government to write more clearly to its customers. We come from many
different agencies and professions. Many of us are government attorneys. We
maintain a website at <http://www.plainlanguage.gov>

We would like to congratulate the writing and editing team that produced the
draft new rules of civil procedure. This draft is a tremendous improvement
over the current version. It will be easier to use, and thus should save
time and effort, and achieve a higher degree of conformance with the
procedures it outlines.

Of course, all writers are able to find some comments to make on any written
document, and we are no exception in this case. In the attached file, we
discuss a few basic areas where we believe you can make further improvements
in this already excellent document.

We hope you find our comments useful.

Dr. Annetta L. Cheek
Chair
202 267-3939



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