By Joseph Kimble

You Be the Judge

All too often, the debate over plain legal language is abstract and theoretical. We form impressions about how legal writing should "sound" or what kind of style will be most "effective" or what courts and clients "prefer." And we misjudge what it means to write in plain language. So this month, let's get concrete.

For more than two years, the federal Advisory Committee on Civil Rules has been involved in a huge project to "restyle" the Federal Rules of Civil Procedure. The project has produced more than 600 documents scrutinizing every sentence, word, and comma, and the restyled rules will be published for comment in February.

Below are some short before-and-after examples. You be the judge. Which one is clearer? Which one would you prefer to read? Which one would you prefer to have written? Which one reflects better on the legal profession?

There is already a body of strong empirical evidence that "plain language saves money and pleases readers: it is much more likely to be read and understood and heeded—in much less time."[1] Now I invite you to consider the evidence of your own senses.

Current Rule 8(e)(2)

When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements.

Restyled Rule

If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

Current Rule 30(g)

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

Restyled Rule

A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend

Current Rule 50(b)

In ruling on a renewed motion, the court may:

(1) if a verdict was returned:

(A) allow the judgment to stand,

(B) order a new trial, or

(C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned:

(A) order a new trial, or

(B) direct entry of judgment as a matter of law.

Restyled Rule

In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

"Plain Language" is a regular feature of the *Michigan Bar Journal,* edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. We seek to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain-English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For more information about plain English, see our website—www.michbar.org/generalinfo/plainenglish/.

Current Rule 56(e)	Restyled Rule
Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.	A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit.

Current Rule 69(a)	Restyled Rule
The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.	The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must follow the procedure of the state where the district court is located, but a federal statute governs to the extent it applies.

Current Rule 71A(k)	Restyled Rule
The practice as herein prescribed governs in actions involving the exercise of the power of eminent domain under the law of a state, provided that if the state law makes provision for trial of any issue by jury, or for trial of the issue of compensation by jury or commission or both, that provision shall be followed.	This rule governs an action involving eminent domain under state law. But if state law provides for trying an issue by jury—or for trying the issue of compensation by jury or commission or both—that law governs.

Joseph Kimble has taught legal writing at Thomas Cooley Law School for 20 years. He is the editor in chief of The Scribes Journal of Legal Writing, *the president of the international organization Clarity, and the drafting consultant on all federal court rules.*

FOOTNOTE

1. Joseph Kimble, *Writing for Dollars, Writing to Please,* 6 Scribes J. Legal Writing 1, 37 (1996–1997) (summarizing the results of dozens of studies).