

## PLAIN LANGUAGE

# The mighty vertical list

BY JOSEPH KIMBLE

Perhaps no other technique does more to make legal drafting clear and readable than the vertical list.<sup>1</sup> Equally important is the use of more structural parts and subparts, with their attendant headings and subheadings. I've touted the value of these techniques in this column before (November 2020, January 2022, April 2023), but they are worth revisiting.

Here I'll concentrate only on vertical lists, with examples that are mostly from *Essentials for Drafting Clear Legal Rules*, the book that Bryan Garner and I published last year. He and I have been involved in rewriting five sets of federal court rules,<sup>2</sup> and the examples are from that work. The book is available free online. Just search for the title.

Not This:	But This:
In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties.	If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that: (A) defendants' pleadings and replies to them need not be served on other defendants; (B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and (C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.
Old Fed. R. Civ. P. 5(c).	Current rule 5(c)(1).

Not This:	But This:
Such notice shall identify the law enforcement or Federal intelligence agency and any member of such agency on behalf of which and the period of time in which the defendant claims the actual or believed exercise of public authority occurred.	The notice must contain the following information: (A) the law-enforcement agency or federal intelligence agency involved; (B) the agency member on whose behalf the defendant claims to have acted; and (C) the time during which the defendant claims to have acted with public authority.
Old Fed. R. Crim. P. 12.3(a)(1).	Current rule 12.3(a)(2).

Not This:	But This:
If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying familiarity with the record of the trial, may proceed with and finish the trial.	Any judge regularly sitting in or assigned to the court may complete a jury trial if: (1) the judge before whom the trial began cannot proceed because of death, sickness, or other disability; and (2) the judge completing the trial certifies familiarity with the trial record.
Old Fed. R. Crim. P. 25(a).	Current rule.

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 41 years. To contribute an article, contact Prof. Kimble at Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at [kimblej@cooley.edu](mailto:kimblej@cooley.edu). For an index of past columns, visit [www.michbar.org/plainlanguage](http://www.michbar.org/plainlanguage).

Now a few specific points. First, you may need to restructure the sentence to put the list at the end, where it belongs.

Not This:	But This:
If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper . . . .	The court may conduct hearings or make referrals . . . when, to enter or effectuate judgment, it needs to: (A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter.
Old Fed. R. Civ. P. 55(b)(2).	Current rule.

Second, even provisions that don't at first seem to lend themselves to a list may be converted into one with a little ingenuity.

Not This:	But This:
(d) <b>Juvenile Adjudications.</b> Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.	(d) <b>Juvenile Adjudications.</b> Evidence of a juvenile adjudication is admissible under this rule only if: (1) it is offered in a criminal case; (2) the adjudication was of a witness other than the defendant; (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and (4) admitting the evidence is necessary to fairly determine guilt or innocence.
Old Fed. R. Evid. 609(4).	Current rule.

Third, the vertical list is especially helpful for avoiding ambiguity caused by a modifier that follows a series — a trailing modifier.

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

The mighty vertical list — use it liberally in your drafting.

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## ENDNOTES

1. For the science behind the value of lists, see Mika, *Lists in Legal Drafting: How Brain Science Can Help Student Drafters Produce Documents That Are Easier to Read and Comprehend*, 21 *Scribes J Legal Writing* 75 (2023–2024) <[https://www.scribes.org/wp-content/uploads/2024/08/Scribes\\_vol21\\_09\\_Lists\\_in\\_Legal\\_Drafting.pdf](https://www.scribes.org/wp-content/uploads/2024/08/Scribes_vol21_09_Lists_in_Legal_Drafting.pdf)> [<https://perma.cc/MSE5-TD5U>] (all websites accessed June 13, 2025).

2. See Kimble, *Redrafting All the Federal Court Rules: A 30-Year Odyssey*, 107 *Judicature* 24 (no 3, 2024), available at <<https://judicature.duke.edu/articles/redrafting-all-the-federal-court-rules-a-30-year-odyssey/>> [<https://perma.cc/25M7-5H6B>].



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