

Style Guidelines for a Set of Local Rules

Author's Note: The United States Bankruptcy Court for the District of Nevada recently completed a lengthy project to revise its local rules. Since many debtors do not have lawyers, Bankruptcy Judge Bruce A. Markell in Las Vegas, who oversaw the revision, assigned me to chair a committee to improve the readability of the new rules and make them more accessible to the public.

To carry out the task, my committee colleague, Ann Bersi of the Clark County District Attorney's office, and I applied standards of good writing and the "Guiding Principles" memo that accompanied the restyled Federal Rules of Civil Procedure. (See the September and October columns.) After the local rules were restyled, I wrote a short set of guidelines to explain what the style committee sought to do and how we did it.

The basic idea is to use plain, simple, direct English and avoid legalese, including most Latin terms. This is consistent with the restyled Federal Rules of Civil Procedure, which are currently out for public comment, and the restyled Federal Rules of Criminal Procedure, which were adopted in 2004. A legal document need not and should not sound like it was written in the time of the Magna Carta.

"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/.

Word Choices

Shall is out. It sounds stilted (no American uses *shall* in ordinary speech). Worse, *shall* is imprecise because it has several possible meanings: use *must* for an imperative, *will* for the simple future, or *may* if the action is optional. But in the negative, *may not* will usually substitute for *shall not*. Sometimes a simple, present-tense verb completely captures the thought. Determine which meaning of *shall* is the one you mean, and use the appropriate word. Incidentally, the word *shall* does not appear in the new Federal Rules of Civil Procedure or the new Federal Rules of Criminal Procedure. If you don't believe it, you can do a search.

Pursuant to is also out. Make it *under* or *in accordance with*. As with *shall*, *pursuant to* does not appear in the new Federal Rules of Civil Procedure or Federal Rules of Criminal Procedure.

Do not use *such* when you mean *the* or *a*. At a dinner party, even lawyers don't say, "Please pass the peas. Such peas are delicious."

Drop *herewith*, *hereinafter*, *hereto*, *aforementioned*, *aforesaid*, *howsoever*, and all similar words. They are almost always unnecessary. Here's the general test: if you would never, ever use a word in actual speech, do not use it in writing.

Most Latin expressions have given way to their English equivalents. So *sua sponte* is now *on its own* or *on its own motion*. But a few remain, including *pro se* and motion *in limine*. In general, avoid foreign words and jargon words when there's an equivalent term in everyday English.

Spelling

Website is one word (lowercase when it's not the first word of a sentence), as is *email*. But *e-filer* has a hyphen to make it easier to read. Eventually, it will probably lose the hyphen, but not yet.

Most prefixes do not take a hyphen. So it's *prepetition* and *postpetition*, not *pre-petition* and *post-petition*. Use a hyphen only to avoid confusion or when the absence of a hyphen makes the word hard to read.

BEFORE:

The debtor or other movant filing a motion or requesting to reopen a bankruptcy case, shall disclose the payment or non-payment of any fee owing in the originally filed bankruptcy case.

AFTER:

Anyone filing a motion to reopen a bankruptcy case must disclose the payment or nonpayment of any fee owed in the original case.

BEFORE:

The court shall approve, disapprove, or modify the discovery plan and enter such other orders as may be appropriate following the first scheduling conference. The court shall also issue an Order Regarding Pretrial and Trial following the scheduling conference.

AFTER:

After the first scheduling conference, the court will approve, disapprove, or modify the discovery plan, enter other orders as appropriate, and issue an Order Regarding Pretrial and Trial.

Citation

When referring to the Federal Rules of Bankruptcy Procedure, spell out the name in full. But when citing a rule, make it Fed. R. Bankr. P. [rule number].

Numbers

All numbers are given as numerals and numerals only, except *one*, which is spelled out. Thus: 3 days (not three days), 10 days' notice (not ten days' notice), 12 or more creditors (not twelve or more creditors). Giving both a spelled-out number *and* a numeral is unnecessary overkill except when you're talking about amounts of money. When you write a check for \$1,000, in addition to writing the numerals, you spell out, "One thousand dollars," to prevent a malfeactor from slipping a little "1" between the "\$" and the "1,000" and turning it into a check for \$11,000.

Capitalization

Most nouns other than proper nouns are lowercase. In German, all nouns are capitalized, but in standard English, only proper

nouns are. There is no need to give deference to *the court* by calling it *the Court*. Similarly, the rules refer to *debtor*, *creditor*, *clerk*, *chapter 7*, *chapter 13*, and the *bankruptcy code*, all lowercase. Titles should be capitalized only immediately before a person's name. Thus: *Attorney General Alberto Gonzalez*, but *The attorney general testified before Congress* or *Acting U.S. Trustee Sara L. Kistler*, but *the United States trustee*.

Write Tight and Be Clear

"Omit needless words." (Strunk & White.) "If it is possible to cut the word out, always cut it out." (George Orwell.) So *It shall be the duty of the debtor to do X, Y, and Z* becomes *The debtor must do X, Y, and Z*; *Service by electronic means* becomes *Electronic service*; *by order of the court* becomes *by court order*.

Avoid the passive voice. Thus: *When a voluntary petition is filed by a partnership* becomes *When a partnership files a voluntary petition*, and *Unless otherwise ordered by the court* becomes *Unless the court orders otherwise*.

Use verbs instead of noun phrases. *Filing a complaint*, not *the filing of a complaint*, and many similar locutions throughout the rules.

Organization

- Each section—rule number and title—is in boldface caps, as in:
LR 7004. LIMITS OF ELECTRONIC SERVICE.
- In subsections, which are the first level below that, there may be captions naming or describing what the subsection contains. If there is a caption, it is underlined:
(b) Contested matters—consent to electronic service.
- Units below subsections do not have captions. ◆

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