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

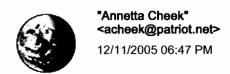
b. Nominalizations. Nominalizations, which turn nouns into verbs, tend to make written passages longer than necessary. Additionally, they make writing weaker. You could strengthen your document by scrubbing out a number of nominalizations. Here are a few examples:

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).



To <rules_comments@ao.uscourts.gov>

bcc

Subject Comments on proposed style changes to rules of civil procedure

Comments on proposed style changes to rules of civil procedure

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



cmtsoncivilrulesfinal.doc