

Appendix A – Civil Rules Style Project Global Drafting Issues

Note – This chart does not include the restyled electronic-discovery amendments to Rules 16, 26, 33, 34, 37, and 45

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
1	<i>“a party or a party’s legal representative”</i>	Only in Rule 60(b).	Use “a party or its legal representative.”	✓
2	<i>“of record”</i> / <i>“on the record”</i> / <i>“upon the record”</i> <i>“into the record”</i>	5(a), 11(a), 26(g)(1), 26(g)(2), 39(a), 43(e), 65(b), 69(a) 51(b), 51(c), 51(d) 25(a)(1), 25(a)(2), 30(b)(4), 30(c), 72(b) 72(a)	In general, use “on the record.” Change 30(c)(2) from “in the record” to “on the record.” (Style rule 5(a), 39(a), and 43(c) don’t use “of record.” In context, the other uses of “of record” (e.g., “attorney of record”) are okay. All uses of “upon the record” have been converted to “on the record” or been deleted. New 72(a) doesn’t use “into the record.”)	✓
3	<i>“action”</i> / <i>“case”</i>	"Case" rather than "action" is used to refer to a pending lawsuit in Rules 1, 9(h), 16(a)(2), 16(a)(5), 16(b)(6), 16(c)(13), 19(a), 26(a)(1)(E), 26(a)(2)(B), 26(a)(2)(C), 26(b)(2), 26(b)(3), 26(f), 26(g)(2)(C), 27(b), 30(a)(2)(B), 30(f)(1), 31(a)(2)(B), 32(c), 50(a)(2), 55(b)(2), 56(d), 57, 63, 65(e), 71A(h), 72(a), 72(b), 73(a), 73(b), 81(c), 83(b).	Uniformly retain “case” as it occurs in current rules. Exceptions: 1) In Rule 1, the former reference to “suits of a civil nature” has been changed to “actions and proceedings.” 2) In Rule 73(a) and (b), changed “case” to “action”	✓
4	<i>“adverse party”</i> / <i>“opposing party”</i>	“adverse party” – 8(b), 12(b), 15(a), 15(d), 27(a)(1), 27(a)(2), 32(a)(2), 32(a)(4), 41(a)(1), 56(a), 56(c), 56(e), 60(b), 62(b), 62(c), 65(a)(1), 65(b), 68 “opposing party” – 13(a), 13(b), 13(c), 13(i), 18(a), 37(a)(4)(A), 59(c).	Use “opposing party” unless “adverse party” is necessary for substantive reasons. Exceptions: “adverse party” is retained in the style drafts of Rules 27(a)(1), 27(a)(2), 32(a)(2), 32(a)(4), 65(a)(1) and 65(b). See Prof. Marcus memo (Style 556) highlighting those places where it may be important to retain “adverse party.”	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
5	“agree” / “stipulate” / “consent”	See the list in STYLE 442.	Note: This issue will be addressed in the top-to-bottom review.	✓
6	“allege” / “aver”	<p>“allege” or “allegation” – 11(b)(3), 11(c)(1), 23(d), 23.1, 56(e)</p> <p>“aver” or “averment” – 8(b), 8(d), 8(e), 9(a), 9(b), (c), (d), (e), (f), 10(b), 22(1), 55(b)(2).</p>	<p>Uniformly use “allege” or “allegation” rather than “aver” or “averment.”</p> <p>Exceptions: Rule 8(e) changes “aver” to “plead. In Rule 9(a)(2), Style Subcommittee suggests changing “a specific negative averment” to “a specific denial.” Rule 10(b) changes “all averments of claims or defenses” to “a party must state its claims or defenses.” Rule 22(1) changes “the plaintiff avers that the plaintiff is not liable” to “the plaintiff denies liability.”</p>	✓
7	<p>“assert” / “state”</p> <p>Which of these verb(s) (or their variants) should be used in describing the act of putting forth in litigation a claim or defense?</p>	<p>“state” – 7(b), 8(a), 8(b), 8(e)(2), 9(b), 9(g), 10(b), 12(b), 12(h)(2), 13(a), 13(b), 13(g), 15(d), 18(b).</p> <p>“assert” – 4(n), 5(a), 8(b), 12(a)(3)(A), 12(b), 13(d), 13(g), 14(a), 14(b), 14(c), 15(c)(2), 18(a), 19(c), 20(a), 20(b), 23(g)(1)(C)(i), 23.1(a), 24(c), 50(c), 50(d), 56(b).</p>	<p>Use “assert” and “state” as in the current rules.</p> <p>Exception: Current Rule 13(a): “pleader is not stating any counterclaim” has been restyled as “pleader does not assert any counterclaim.” Rule 45(d)(2)(A): “expressly assert the claim” has been restyled as “expressly make the claim.”</p>	✓
8	“attorney” / “counsel”	<p>“attorney” appears frequently.</p> <p>“counsel” – 23(c), 23(g), 23(h), 26(a)(1)(E)(iii), 30(b)(4), 32(a)(3), 53(a)(2), and 56(d).</p> <p>“attorney or counsel” – 28(c)</p>	Uniformly use “attorney” when referring to a party’s legal representative.	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
9	<i>“attorney’s fees” / “attorneys’ fees” / “attorney fees”</i>	4(d), 11(c)(1)(A), 11(c)(2), 16(f), 23(g)(1)(C)(iii), 23(g)(2)(C), 23(h), 23(h)(1), 26(g)(3), 30(d)(3), 30(g)(1), 30(g)(2), 37(a)(4)(A),(B), 37(b)(2), 37(c)(1), 37(c)(2), 37(d), 37(g), 45(c)(1), 54(d), 54(d)(1), 54(d)(2)(A), 54(d)(2)(D), 56(g), 58(a)(1)(C), 58(c)(2)	Uniformly use “attorney’s fee(s).”	✓
10	<i>“directed [by the court]” / “ordered [by the court]”</i>	<i>“direct[s]ed”</i> – 4(c)(2), 4(f)(3), 4(g), 4(m), 5(c), 11(c)(1)(B), 11(c)(2), 12(a)(2), 16(a), 23(c)(2)(A), 23(c)(2)(B), 23(c)(3), 23(d), 23(e)(1)(B), 23(g)(1)(C)(iii), 23.1, 25(c), 26(a)(2)(B), 26(a)(2)(C), 26(a)(3), 26(c)(8), 29, 30(d)(1), 32(c), 33(b)(3), 34(b), 37(b)(1), 43(e), 43(f), 49(b), 50(b)(1)(C), 50(b)(2)(B), 50(d), 51(a), 53(b)(2), 53(c), 53(d), 53(e), 53(f), 54(b), 54(d)(1), 54(d)(2)(B), 56(d), 59(a), 62(h), 69(a), 70, 71A(h), 72(b), 73(c), 77, 79(b), 81(c)	In general, use “order” rather than “direct.” Exceptions: Do not make any change in 5(c)(2) (too clumsy); 26(c)(1)(F),(G), and (H) (the introductory words already refer to "ordering"); any of 49 ("direct" seems better for telling the jury what to do); 50(b)(3) (“direct the entry of judgment”); 53(b)(2) (again, too clumsy with "order" already in the sentence; you don't want to say the order orders); and 59(a)(2) (another one directing the entry of judgment). Rule 69(a)(1): “unless the court orders otherwise” has been changed to “unless the court directs otherwise.”	✓
11	<i>“Court in the district” / “court for the district”</i>	<i>“in”</i> – 26(c)(1), 27(a)(1), 30(d)(4), 37(a)(1), 37(b)(1) <i>“for”</i> – 45(a)(2)	Uniformly use “court for the district.” (Style 30 and 37 now omit the reference.)	✓
12	<i>“crossclaim” / “cross-claim”</i>	5(c), 7(a), 8(a), 12(a)(2), 12(a)(3)(A), 12(a)(3)(B), 12(b), 13(g), 13(h), 13(i), 14(a), 16(a)(13), 18(a), 22(1), 41(c), 42(b), 54(b), 55(d), 56(a), 56(b)	Uniformly use “crossclaim” with no hyphen.	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
13	"considered" / "deemed"	<p>"consider[s]/[ed]" – 9(f), 37(b)(1), 50(b), 52(a), 62(c), 78</p> <p>"deem[s]/[ed]" – 5(c), 12(e), 15(d), 17(c), 27(a)(3), 38(c), 40, 41(a)(2), 41(d), 45(e), 47(a), 49(a), 55(b)(2), 56(d), 65(c), 68, 72(b), 77(a),</p>	Uniformly use "considered."	✓
14	"determine" / "decide"	<p>"determine" – 11(c), 12(d), 19(b), 23(c)(1)(A), 26(a)(1)(E), 26(b)(2), 36(a), 50(a)(1), 50(d), 54(b), 54(d)(2)(C), 55(b)(2), 65(b), 65(e), 68, 71A(h), 71(A)(i)(1), 71(A)(i)(3), 72(a)</p> <p>"decide" – 53(a)(1)(B), 53(g)(3), 53(g)(4).</p>	<p>Retain the uses of "decide."</p> <p>On the "determine" list, change the following to "decide": 12(d) [now 12(i)]; 50(a)(1)(A); 54(d)(2)(C); 65(b)(5); 65(e)(3); and 72(a).</p>	✓
15	<p>"action ... brought in a United States district court" /</p> <p>"district court" / "court of the United States" / "United States district court"</p>	<p>27(a)(4)</p> <p>"court of the United States" – 17(b), 23.1, 27(a)(1), 32(a)(4), 41(a)(1)</p> <p>"United States district court" – 1, 27(a)(1), 27(a)(4), 81(a)(4), 81(a)(5), 81(c), 82</p> <p>"district court" – 7.1(a), 9(h), 16(b), 23(f), 27(b), 40, 52(b), 62(c), 62(f), 65(e), 66, 73(a), 73(c), 77(a), 77(c), 78, 81(a)(3), 81(a)(4), 81(a)(5), 83(a),</p>	<p>Rule 27(a)(4) authorizes use of a deposition in an action "subsequently brought in a United States district court." Restyled rule 27 adopts the phrase "later-filed district-court action."</p> <p>The style drafts change "court of the United States" to "United States court," except in Rule 23.1 where it is simply "the court." See Marcus research memos on this issue. STYLE 335 and 428B</p> <p>The style drafts change "United States district court" to "district court" in Rule 27, but retain United States district court in Rule 1.</p> <p>The style drafts generally retain "district court," but sometimes translate it simply as "court."</p> <p>Resolution: Change from "district court" to "court" in 77(c)(1) and 78.</p>	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
16	<i>“entry [enter] upon land” / “entry onto land”</i>	5(d)(1), 26(a)(5), 34(a)	Uniformly use “entry onto land.” (Style 26 omits the reference.)	✓
17	<i>“fails to obey” / “is not obeyed” / “disobedient”</i> <i>[“disobey” does not appear in the rules]</i>	<i>“fail[s][ure] to obey”</i> – 16(f), 37(b)(2), 45(e) <i>“is not obeyed”</i> – 12(e) <i>“disobedient”</i> – 37(b)(2), 70	Uniformly use to “fail[] to obey” as verb phrase. Uniformly use “disobedient” as adjective. <i>Note:</i> Style draft of Rule 12 still uses “is not obeyed” because the sentence is in passive voice.	✓
18	<i>“federal statute” / “United States statute” / “Act or act of Congress”</i>	4(k)(1)(D), 4(n)(1), 4.1(a), 12(a)(1), 17(a), 24(a), 24(b), 24(c), 38(a), 39(a), 39(c), 40, 41(a)(1), 42(b), 45(b)(2), 54(d)(1), 55(b)(2), 62(c), 64, 65(e), 69(a), 71A(h), 81(a)(2), 81(a)(3), 81(e), 83(a)(1)	Uniformly use “federal statute.”	✓
19	<i>“federal law” / “United States law” / “Constitution [and/or] laws of the United States”</i>	4(e), 4(f), 4(h), 4(k)(2), 4.1(b), 17(b), 28(a), 28(b), 43(a), 71A(h), 83(b)	Uniformly use “federal law.” Exception: Rules 4(k)(2)(B) and 17(b)(3)(A) will remain “the United States Constitution and laws.”	✓
20	<i>“Federal Rules of Evidence” / “rules of evidence”</i>	<i>“Federal Rules of Evidence”</i> – 16(c)(4), 26(a)(2)(A), 30(c), 32(a)(1), 32(a)(4), 43(a), 44.1 <i>“rules of evidence”</i> – 32(a), 33(c),	Uniformly use “Federal Rules of Evidence.”	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
21	<p><i>“for good cause” / “for cause shown” / “for good cause shown” / “shows good cause” / “showing of good cause” / “for valid cause”</i></p>	<p><i>“for good cause” – 26(a)(3), 26(b)(1), 32(c), 47(c), 59(c)</i></p> <p><i>“for cause shown” – 6(b), 6(d), 31(a)(4), 45(b)(3), 78(c)</i></p> <p><i>“for good cause shown” – 4(d)(2), 26(c), 33(b)(4), 35(a), 43(a), 44(a)(2), 55(c), 65(b), 73(b)</i></p> <p><i>“shows good cause” – 4(m)</i></p> <p><i>“showing of good cause” – 16(b)</i></p> <p><i>“for valid cause” – 71A(h)</i></p>	<p>Uniformly use “for good cause.”</p> <p><i>Note:</i></p> <p>4(d)(2) and 4(m) have minor variants.</p> <p>(43(a) omits the reference to good cause.)</p>	✓
22	<p><i>“in its discretion”</i></p>	<p>6(b), 16(a), 23(f), 39(b), 43(f), 62(b), 62(c), 71A(h)</p>	<p>Uniformly omit “in its discretion.”</p>	✓
23	<p><i>“in/under [subdivision][“(a)”, etc.]”</i></p> <p>vs.</p> <p><i>in/under “(a)”, etc.</i></p>	<p>Numerous rules.</p>	<p>Note: This issue will be addressed in the top-to-bottom review.</p>	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
24	<p><i>“issue” / “make” / “enter”</i></p> <p>Which verb(s) (or variant) should be used in referring to a judge’s creation (issuance, making, entry) of a court order?</p>	<p><i>“enter”</i> – 11(c)(1)(B), 16(b), 16(e), 25(d)(1), 26(a)(1)(D), 26(f)(4), 37(a)(4)(B), 37(a)(4)(C), 37(b)(2), 53(b)(3), 53(e), 65(b)(2), 72(a),</p> <p><i>“issue”</i> – 4(b), 4(k)(1)(B), 4.1(b), 11(c)(2)(B), 16(b), 65(a), 65(c),</p> <p><i>“make”</i> – 12(e), 16(f), 17(c), 20(b), 23.2, 26(c), 27(a)(2), 27(a)(3), 27(b), 35(b)(1), 37(b)(2), 37(c)(2), 37(d), 41(d), 42(a), 53(e), 56(d), 56(f), 62(g), 71, 78,</p>	<p>Uniformly use “issue” rather than “make” or “enter” in reference to orders.</p> <p>Exception: 1) use “enter” or “entry” in reference to entry of judgment.</p>	✓
25	<p><i>“just” / “appropriate” / “[when] {if} justice so requires” / “which justice requires” / “in the interest of justice”</i></p>	<p><i>“just” / “justice requires” / “interest of justice”</i> – 8(c), 12(e), 13(f), 15(a), 15(d), 16(f), 21, 26(c), 26(d), 27(a)(2), 27(a)(3), 28(b), 35(b)(1), 37(a)(4)(C), 37(b)(2), 37(d), 56(d), 56(f), 60(b), 61, 65(b), 71A(h);</p> <p><i>“appropriate”</i> – 23(d), 23.2, 62(g),</p>	<p>Resolution: In 26(c)(1), omit “that justice requires”; in 28(b)(2), omit “in an appropriate case”; and in 56(f)(3), change “appropriate” back to “just”. See STYLE 462, Kimble memo on “qualifiers and intensifiers.”</p>	✓
26	<p><i>“make any [just?] order”</i></p> <p>Should “any order” always be qualified with a term such as “just”?</p>	<p><i>“may make any order which justice requires”</i> – 26(c)</p> <p><i>“may make such orders in regard to the failure as are just”</i> – 37(d)</p> <p><i>“make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.”</i> 62(g)</p>	<p>Resolution: no changes to style drafts.</p>	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓in far-right column means resolved as noted)	✓
27	"minor" / "infant"	"infant" – 4(e), 4(f), 4(g), 17(c), 55(b)(1), 55(b)(2) "minor" – 27(a)(2)	Uniformly use "minor."	✓
28	"file" / "make" (in reference to a motion)	"make[s] a motion" – 12(g), 27(b), 30(d)(4) "motion made" – 6(b), 12(f), "motion filed" – 52(b) "may ... move" – 56(a), (b)	Style draft of 12(g) retains "make a motion." Style draft of 27(b) adopts: "may move." Style draft of 30(d)(4) translates the current rule language – "suspended for the time necessary to make a motion for an order" to "time necessary to obtain an order." 6(b) and 12(f) retain "motion made" 52(b) retains "motion filed" Style draft of 56(a) adopts "motion may be filed" and 56(b) retains "may move" Resolution: no changes to style drafts.	✓
29	"must" / "may" / "should" "must not" / "may not" "must" / "should"	The issue arises throughout the rules.	Note: This issue will be addressed in the top-to-bottom review. See research reports from Prof. Rowe (STYLE 196) and committee staff (STYLE 209i).	✓
30	"nonjury trial" / "trial without a jury"	"trial without a jury" – 39(c), 52(c), 63 "nonjury trial" – 73(a)	Uniformly use "nonjury trial."	✓
31	"on its own" / "on its own initiative" / "on its own motion" / [note: "sua sponte" does not appear in the rules]	4(m), 5(c), 11(c)(1)(B), 11(c)(2)(B), 12(f), 16(f), 21, 26(b)(2), 26(g)(3), 39(a), 39(c), 59(d), 60(a), 73(b), 81(c)	Uniformly use "on its own."	✓
32	"on motion" / "upon motion"	The issue arises throughout the rules.	Uniformly use "on motion."	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓in far-right column means resolved as noted)	✓
33	<p><i>“On [upon] reasonable notice” / “on notice”</i></p> <p>There are numerous variations on these, as noted here.</p>	<p><i>“[on] [upon] [after] notice”</i> – 4(m), 11(c), 12(a)(4)(A), 12(e), 14(a), 28(b), 35(a), 40, 44.1, 45(c)(2)(B), 53(b)(4), 53(h)(1), 59(d), 67</p> <p><i>“reasonable notice”</i> – 16(d), 26(b)(2), 30(b)(1), 32(a), 37(a),</p> <p><i>“[with] prior notice”</i> – 30(b)(3), 45(b)(1),</p> <p><i>“prompt notice”</i> – 30(f)(3)</p> <p><i>“proper notice”</i> – 37(d)</p>	<p>Resolution: In general, preserve the language of the current rules. In some cases, however, the style drafts adopt “on notice” instead of “on reasonable notice.”</p> <p>One change: Delete “proper” in 37(d)(1)(A)(i).</p>	✓
34	<p><i>“opportunity to be heard” / “opportunity for hearing”</i></p>	<p><i>“opportunity to be heard”</i> – 37(a)(4), 37(c), 53(b)(1), 53(b)(4), 53(g)(1), 53(h)(1), 59(d)</p> <p><i>“opportunity for hearing”</i> – 37(g)</p>	Uniformly use “opportunity to be heard.”	✓
35	<p><i>“pleader”</i></p> <p>Should “pleader” or “party” be used to refer to a pleading party?</p>	<p><i>“pleader”</i> – 8(a), 8(b), 9(a), 12(b), 13(a), 13(e), 13(f), 19(c)</p>	<p>The style drafts substitute “party” for “pleader” in all instances where the current rule uses “pleader” except in Rules 8(a) and 13(a).</p> <p>Resolution: No need to change.</p>	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
36	<i>“permit” / “allow”</i>	<p><i>“allow[ed]”</i> – 4(a), 4(c)(1), 4(d)(2)(F), 4(f)(2), 4(i)(3), 4(l), 6(a), 6(b), 7, 14(b), 16(c)(15), 17(a), 25(b), 27(b), 30(d)(1), 30(e), 32(a)(3)(E), 32(d)(3)(C), 36(a), 37(b)(2)(B), 43(a), 45(b)(1), 45(c)(3)(A)(i), 47(b), 50(b)(1)(A), 54(d), 62(d), 68, 71A(d)(4), 71A(e), 71A(f), 71A(h), 77(c), 77(d),</p> <p><i>“permit[ted]”</i> – 5(d), 5(e), 6(b), 6(d), 8(d), 12(a)(4), 12(b), 12(e), 12(f), 12(g), 12(h)(1), 12(h)(2), 13(e), 15(a), 15(c)(1), 15(d), 16(b)(4), 22(1), 23(f), 24(a), 24(b), 26(b)(2), 26(c), 26(f), 30(c), 32(a)(1), 32(a)(4), 33(c), 33(d), 34(a), 34(b), 36(b), 37(a)(2)(B), 37(b)(2), 37(c)(1), 43(a), 44(a)(2), 45(a)(1)(C), 45(b)(2), 45(c)(2)(A), 45(c)(2)(B), 47(a), 54(d)(1), 56(e), 56(f), 59(c), 65.1, 67, 71A(h), 71A(j), 77(d)</p>	Use “permit” rather than “allow,” except in reference actions that are controlled by a rule. Change “permit” to “enable” in Rules 33(d) and 56(f).	✓
37	<p><i>“prescribed in” / “prescribed by” / “provided in” / “provided by”</i></p> <p><i>“as provided” / “as prescribed” / “in accordance with” / “in the manner provided” / “pursuant to” / “under”</i></p>	various rules	Note: This issue will be addressed in the top-to-bottom review.	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
38	<p><i>“pretrial conference”</i></p> <p>To what extent can this term be used generically for all types of pretrial judge-party conferences (including scheduling, settlement, and status)?</p>	<p>16, 26(a)(1), 26(f), 33(c), 36(a)</p> <p>“Rule 16(b) conference” appears in 26(f)</p> <p>“Rule 26(f) conference” appears in 26(a)(1)</p>	<p>Use “pretrial conference” when reference is generic, but not when it is specific.</p> <p>Style 16 and 36(a) use “pretrial conference” in a generic sense.</p> <p>Style 26 continues to refer to a “16(b)” conference and, internally, to the “26(f)” conference. These specific references were retained and seem appropriate.</p> <p>(Style 33 no longer makes any reference.)</p>	✓
39	<p><i>“question of law or fact”</i></p> <p><i>“issue of fact”</i></p> <p><i>“question of law”</i></p>	<p><i>“question[s] of law or fact”</i> – 20(a), 23(a), 23(b)(3), 24(b), 42(a)</p> <p><i>“issue[s] of fact”</i> – 38(c), 49(a), 49(b)</p> <p><i>“question of law”</i> – 44.1</p> <p><i>“factual contentions”</i> – 11(b)(3), 11(b)(4)</p>	<p>The style draft translates “question of law or fact ” to “legal or factual question” in Rule 20(a), but the style draft retains “question of law or fact” in Rule 24(b), 42(a).</p> <p>Style draft of Rule 38(c) translates “issues of fact” to “factual issues.” Style draft of Rule 49(a) and (b) retains “issue[s] of fact.”</p> <p>The style draft retains “question of law” in Rule 44.1</p> <p>The style draft retains “factual contentions” in Rule 11(b)(3) and (4).</p> <p>Resolution: No changes to style drafts, except in Rule 20(a)(1)(B) change “legal or factual question” to “question of law or fact.”</p>	✓
40	<p><i>“reasonable expenses incurred ...”</i></p> <p>Regarding the motion? For the motion?</p>	<p>11(c)(1)(A), 16(f), 26(g)(3), 30(g)(1), (2), 37(a)(4)(A), (B), and (C), 37(b)(2), (c)(1), (c)(2), (c)(d), and (g), 56(g)</p>	<p>Resolution: ok to vary these, but 11(c) and 26(g) should be consistent.</p>	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
41	"secure" / "obtain"	<p>The rules use "obtain[ed][ing][able]" throughout.</p> <p>Rule 37 used both obtain and secure: "secure" at 37(a)(2)(A) and (B), but "obtain" at 37(a)(4)</p> <p>"secure" otherwise appears only in 1, 62(c), and 62(h)</p>	<p>Uniformly use "obtain."</p> <p>Exception: Rule 1, because of tradition, and Rule 62(c) and (h), which would either need to retain "secure" or use a different phrasing.</p>	✓
42	<p>"service of summons or [other] like process" / "service of process"</p> <p>"after service" / "after . . . is served" / "after being served" / "after . . . has been served"</p>	<p>"service of [a] summons" – 4(d)(1), 4(g), 4(j)(2), 4(n)(2), 5(a), 27(a)(2), 81(c)</p> <p>"service of process" – 4(d)(2)(A), 4(e)(2), 4(h)(1), 12(b)(5), 12(h)(1), 19(a), 5(d), 6(e), 11(c), 12(a)(1), 12(a)(2), 12(a)(3), 12(a)(4)(B), 12(f), 15(a), 16(b), 25(a)(1), 26(a)(1), 31(a)(4), 32(d)(3)(C), 33(b)(3), 33(d), 34(b), 36(a), 37(d), 38(b), 38(c), 41(c), 45(c)(2)(B), 53(g)(2), 56(a), 59(c), 68, 71A(d)(2) 71A(e), 72(a), 72(b), 81(c)</p>	<p>Resolution:</p> <ol style="list-style-type: none"> 1) Change Rule 4(g) to "service of a summons." 2) Change Rule 59(c) from "after service" to "after being served." 3) Change Rule 71.1(d)(2)(A)(v) from "after service of the notice" to "after being served with the notice." 	✓
43	"state in which the district court is <u>located</u> " / "state in which the district court is <u>held</u> "	<p>"located" – 4(e)(1), 4(k)(1)(A), 4(n)(2), 4.1(a)</p> <p>"held" – 6(a), 17(b), 64, 69(a), 81(e)</p>	Uniformly use "state where the district court is located."	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓ in far-right column means resolved as noted)	✓
44	<p><i>“substantial [justice] [rights]” / “substantially [justified] [impair] [verbatim] [unprepared]”</i></p>	<p>8(f), 16(f) (twice), 19(a), 23(b)(1)(B), 25(d)(1), 26(b)(3) (three times), 26(g)(3), 33(d), 37(a)(4)(A), 37(a)(4)(B), 37(b)(2), 37(c)(1), 37(c)(2), 37(d), 45(c)(3)(B)(iii)(twice), 51(d)(2), 56(d)(twice), 61(twice),</p>	<p>Resolution: Delete “substantial” from Rule 8(f). (The style drafts of Rules 1-37 & 45 generally retain the current rule language (repeating “substantially” or “substantial” in the style drafts), while the Rule 38-63 style draft deletes “substantial.” See STYLE 462, Kimble memo on “qualifiers and intensifiers.”)</p>	✓
45	<p><i>“that is” / “who is”</i></p> <p>Which phrase(s) should be used when discussing a party or potential party that can be either a natural person or an organization (i.e., government agency, corporation, partnership)?</p>	<p><i>“that is”</i> – 4(d)(2), 4(h), 9(a),</p> <p><i>“who is”</i> – 4(c)(2), 4(k)(1)(B), 14(a), 17(b), 19(a), 25(d), 26(a)(2)(B), 26(b)(4)(B), 28(c), 31(a)(3), 37(a)(1), 45(b)(1), 45(b)(2), 45(c)(2)(B), 45(c)(3)(A), 63, 65(c), 71, 77(d)</p> <p><i>“party which is”</i> – 11(c)(5)(B)</p> <p><i>“defendant who”</i> – 4(d)(1), 4(k)(1), (2), 14(c)</p>	<p>Resolution: ok to vary.</p>	✓
46	<p><i>“the court shall require ... unless the court finds...”</i></p> <p>restyle to:</p> <p><i>“the court must require ... unless”</i></p> <p>or</p> <p><i>“the court must requireBut the court may not order if...”</i></p>	<p>37(a)(4), 37(b)(2), 37(c)(2), 37(d)</p>	<p>Resolution: ok to vary.</p>	✓
47	<p><i>“trial of all issues”</i></p>	<p>39(a), 71(h)</p>	<p>Uniformly use “trial on ... issues.”</p>	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓in far-right column means resolved as noted)	✓
48	<i>“trial by jury” / “tried before a jury”</i>	<i>“trial by jury”</i> – 38(a - e), 39 (a - c), 42(b), 49(a), 50(a)(1), 55(b)(2), 57, 59(a), 65(a)(2), 71A(h), 71A(k), 79(a), 81(c) <i>“tried before a jury”</i> – 32(c)	Uniformly use “jury trial,” except for 38(a) and 39(a), which retain “trial by jury.”	✓
49	<i>“waive[r]” / “waiving” /</i>	4(many), 8(c), 12(b), 12(h), 24(c), 26(a)(3), 32(d)(1) 32(d)(2), 32(d)(3)(A), 32(d)(3)(B), 32(d)(3)(C), 32(d)(4), 33(b)(4), 35(b)(2), 38(d), 45(c)(3)(A)(iii), 49(a), 53(b)(3), 71A(e), 81(c)	Uniformly use “waiver.”	✓
50	<i>“writing” / “paper”</i>	<i>“writing”</i> – 4(i)(1)(A), 34(a) <i>“paper”</i> – 5(a), 5(d), 5(e), 6(a), 6(e), 7(b)(2), 11(a), 11(b), 11(c)(1)(A), 45(c)(2)(A), 56(e), 65.1, 77(a), 77(d), 79(a)	Resolution: no changes to style drafts.	✓
51	<i>cross-references</i> and <i>hortatory references</i>	Arises frequently throughout the Civil Rules.	Note: This issue will be addressed in the top-to-bottom review.	✓
52	<i>geographic references: “any judicial district of the United States” / “the United States” / “the United States or a territory or insular possession subject to the jurisdiction of the United States”</i>	Rules 4(d)(1)(E), 4(d)(2), 4(d)(3), 4(e), 4(f), 4(g), 4(h)(1), (2), 4(k)(1)(B), 4(l)(2), 4.1(b), 12(a)(1)(A)(ii), 25(a)(3), 28(a), 30(a)(2)(C), 32(a)(3)(B), 44(a)(1), 45(b)(2), 71A(d)(3)(A)	Resolution: No changes to style drafts. (Subcommittee A decided that the restyled rules should continue to use the geographic terms used in the corresponding provisions of the current rules. This decision is reflected in the latest style drafts.) Research and email exchanges on this issue include: STYLE 35, 42, 43, 48, 49, and 118.	✓

#	Issue	Occurrences in the Current Rules	Status/Recommendation (✓in far-right column means resolved as noted)	✓
53	<i>governmental agencies, officers, employees, and other instrumentalities</i>	Rules 4(i), 4(j), 12(a)(2), (3), 13(d), 15(c)(2), 24(b)(2), 24(c)(2), 30(b)(6), 31(a)(3), 32(a)(2), 33(a), 45(b)(1), 54(d)(1), 55(e), 62(e), 65(c), 81(a)(3), 81(f)	Resolution: 1) In Rules 4(i)(2), 4(i)(3) and (4)(i)(4)(B) change to "a United States agency or corporation" and "a United States officer or employee." 2) In the first clause of Rule 5(c)(2), reverse the order of "agency" and "officer."	✓