

## **Rule Restyling Key Principles and Examples**

**Objectives:** Improve the rules' organization, clarity, and consistency, and adopt plainer, more easily understood language.

**Key Resource:** Bryan Garner, *Guidelines for Drafting and Editing Court Rules* (1996).

### **Key Principles:**

1. **Formatting:** To make it easier to find what you are looking for, make generous use of subparts and subheadings. Also use left-side indents so that a rule's hierarchy is displayed graphically.

### **Example: Current Criminal Rule 32.4(a)**

#### **Rule 32.4. Commencement of proceedings**

**a. Form, Filing and Service of Petition.** A proceeding is commenced by timely filing a notice of post-conviction relief with the court in which the conviction occurred. The court shall provide notice forms for commencement of all post-conviction relief proceedings. In a Rule 32 of-right proceeding, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the final order or mandate by the appellate court in the petitioner's first petition for post-conviction relief proceeding. In all other non-capital cases, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the order and mandate in the direct appeal, whichever is the later. In a capital case, the clerk of the Supreme Court shall expeditiously file a notice for post-conviction relief with the trial court upon the issuance of a mandate affirming the defendant's conviction and sentence on direct appeal. Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h). The notice shall bear the caption of the original criminal action or actions to which it pertains. On receipt of the notice, the court shall file a copy of the notice in the case file of each such original action and promptly send copies to the defendant, the county attorney, the defendant's attorney, if known, and the attorney general or the prosecutor, noting in the record the date and manner of sending the copies. If the conviction occurred in a court other than the Superior Court, the copy shall be sent to the office of the prosecuting attorney who represented the state at trial. The state shall notify any victim who has requested notice of post-conviction proceedings.

As revised:

**Rule 32.4. Commencing Proceedings for Post-Conviction Relief**

(a) **Commencement.** A petitioner may commence a proceeding by timely filing a notice of post-conviction relief with the court in which the petitioner was convicted.

(b) **Notice of Post-Conviction Relief.**

(1) **Form.** The court must make available forms that petitioners may use when filing a notice of post-conviction relief. The notice must bear the caption of the original criminal action or actions to which it pertains.

(2) **Timing.**

(A) *As-of-Right Cases.* In a Rule 32 of-right proceeding, the petitioner must file the notice within 90 days after the trial court enters judgment and sentence, or within 30 days after the appellate court issues the final order or mandate in the petitioner's first petition for post-conviction relief proceeding, whichever is later.

(B) *Other Non-Capital Cases.* In all other non-capital cases, the petitioner must file the notice within 90 days after the trial court enters judgment and sentence, or within 30 days after the appellate court issues the final order and mandate in the direct appeal, whichever is later.

(C) *Capital Cases.* In a capital case, the Supreme Court clerk must promptly file a notice for post-conviction relief with the trial court upon issuing a mandate affirming the defendant's conviction and sentence on direct appeal.

(D) *Late Filing.* If a petitioner fails to timely file a notice, he or she may raise claims only under Rule 32.1(d), (e), (f), (g) or (h).

(c) **Filing and Delivery.**

(1) **Filing.** On receipt of a notice, the court must file a copy of the notice in the case file of each action to which the notice pertains.

(2) **Delivery.**

(A) *Generally.* On receipt of a notice, the court [the clerk?] must promptly mail or otherwise deliver a copy of the notice to the defendant, the county attorney, the defendant's attorney (if known), and the attorney general or the prosecutor. If the conviction occurred in a court other than the superior court, the court must may to otherwise deliver a copy of the notice to the prosecutor who represented the State of Arizona at trial.

(B) *Record of Delivery.* The court [clerk?] must note in the record the date when it mailed or otherwise delivered the notice, and the manner used to deliver it.

(3) ***Victim Notification.*** Upon receipt of a notice, the attorney general or prosecutor who represented the State of Arizona at trial must notify any victim who has requested notice of post-conviction proceedings.

2. **Run-On Sentences:** Break-up or simplify overlong sentences.

**Example: From current Rule 32.3**

If a defendant applies for a writ of habeas corpus in a trial court having jurisdiction of his or her person raising any claim attacking the validity of his or her conviction or sentence, that court shall under this rule transfer the cause to the court where the defendant was convicted or sentenced and the latter court shall treat it as a petition for relief under this rule and the procedures of this rule shall govern.

**As revised:**

If a defendant applies for a writ of habeas corpus and attacks the validity of his or her conviction or sentence, the court with jurisdiction over the proceeding must transfer the action to the court in which the defendant was convicted or sentenced. The court to which the action is transferred must treat the action as a petition for relief under this rule and apply this rule's procedures.

**Another example: Current Rule 31.25(b)(1)**

(1) **Briefs filed prior to a decision by the Court to grant review.** Unless otherwise ordered by the Court, an amicus brief in support of a petition for review or a response to a petition for review accompanied by written consent of all parties, or a motion for leave to file the brief shall be filed no later than 21 days after the filing of the response to the petition for review. Such briefs shall comply with the form and length requirements of Rule 31.19(c) exclusive of any appendix.

**As revised:**

(1) ***Briefs Filed Before a Decision Whether to Grant Review.*** Unless the Court orders otherwise, a person filing an amicus brief must file or lodge the brief no later than 21 days after the deadline for filing a response to the petition for review. The brief must comply with Rule 31.19(c)'s form and length requirements, exclusive of any appendix.

3. **Ambiguous Terms:** Avoid using ambiguous terms.

Do not use “shall,” which has lost all meaning over the years. Instead, use “must,” “may,” “should,” “will,” or “is/are,” depending on the context. Note that the word “should” is generally considered the preferred word of choice if a rule’s command is “directory” but not mandatory. And sometimes it is better to use the present tense of the operative verb if the rule does not involve an act or duty of a court or party (e.g., Rule 1.1 “These rules *govern* the procedure in all criminal proceedings” rather than “These rules *shall govern* the procedure in all criminal proceedings”).

Use “enter” or “file” instead of “issues” (e.g., Rule 31.19(a) (“Within 30 days after the Court of Appeals issues its decision”)). Some people understand the term “issue” to mean the date when a judge signs an order rather than the date when the order is filed.

Use “order” instead of “direct” when describing court actions. Courts enter orders, not directions.

4. **Redundant Terms:** Avoid saying the same thing twice, and especially avoid “redundant intensifiers.”

Use “may” instead of “may, in its discretion” (e.g., Rule 16.3(b) “The court, in its discretion, may limit or deny oral argument on any motion.”)). Same for “may, if appropriate.”

Use “must show” rather than “must show affirmatively.”

Use “unless the court orders” rather than “unless the court expressly orders.”

Use “on its own, a court may” not “on its own initiative, a court may.”

5. **Archaic Terms:** Avoid archaic, outdated “legalistic” terms such as “hereto,” “therein,” “thereto,” “hereinafter,” “thereafter,” “therewith,” “wherein.” Either restructure the sentence or use a demonstrative pronoun such as “that,” “this,” “these,” or “those.”

6. **Simpler Words and Proper Word Choice:** Prefer simpler words over the more complex and choose words that have the meaning you intend (not a near-miss). For example:

Use “if” instead of “in the event that” or “on the condition that.”

Use “later” rather than “subsequently.” Similarly, use “after” rather than “subsequent.”

Use “before” rather than “prior to.”

Use “under,” “by,” or “provided in” rather than “pursuant to” or “provided by.”

Use “unless” rather than “provided that.”

Unless there is a temporal element (i.e., something has to happen when an act occurs), use “on” instead of “upon” (e.g., “serve on”, not “serve upon”).

The word “where” is not to be used as a synonym for “if” (e.g., “If there are multiple parties on a side,” not “Where there are multiple parties on a side”). “When” is appropriate in some limited circumstances, but, in most cases, “if” should be preferred to “when.”

Use “a party who” rather than “a party that.”

Use “affected” rather than “impacted.” (e.g., Rule 15.8(c)).

**7. “Of” Phrases:** Minimize the use of “of” phrases. Use possessives if needed.

Use “Supreme Court clerk” rather than “clerk of the Supreme Court” (e.g., Rule 31.19(h)).

Use “superior court clerk” or “clerk” rather than “clerk of the superior court.”

Say “Commencing Proceedings” rather than “Commencement of Proceedings” (e.g., Rule 32.4).

Say “after counsel’s appointment” rather than “after appointment of counsel” (e.g., Rule 32.7).

Say “Supreme Court justices” rather than “justices of the Supreme Court” (e.g., Rule 31.19(h)).

Say “opposing counsel’s brief” rather than “the brief of opposing counsel.”

Say “court’s order” rather than “the order of the court.”

**8. The Active Voice:** Use the active voice, i.e., the subject of the sentence is performing an action, which is reflected by the verb.

**Example:** Rule 32.4(a) “A proceeding is commenced by the timely filing of a notice of post-conviction relief”

**As revised:** “A petitioner may commence a proceeding by filing a notice of post-conviction relief”

**Example:** Rule 32.8—“In superior court, the hearing shall be recorded.”

**As revised:** “In superior court, the court must record the hearing.”

**Example:** Rule 32.9(d)—“For any other relief granted to a defendant, a stay pending further review is within the discretion of the trial or appellate court.”

**As revised:** “For any other relief, the trial or appellate court may grant a stay pending further review.”

## 9. **Comments:**

- (a) ***Deletion of No Longer Useful Comments:*** In reviewing a rule, consider whether any of the comments can be profitably deleted altogether. Some of the comments are so old that they may be of questionable use to practitioners. (*E.g.*, Rule 8.7 (1990 Rule 8 Guidelines in Maricopa County).)
- (b) ***Insertion of a Comment into the Rule:*** If a comment sets forth a requirement not found in the rule and you decide that the requirement is worth retaining, consider adding the requirement to the rule’s text.
- (c) ***“Applicability” Notes:*** Delete notes entitled “Application,” which generally indicate that a rule is not applicable during certain time periods that have long ago expired (*e.g.*, Rules 10.2, 15.7, & 31.17)/
- (d) ***Placement of Comments:*** Currently, some comments appear right after the heading for a rule (*e.g.*, Rule 12). In all cases, if a comment still has currency, it should appear after the end of the rule.