



Simple, concise, direct

Pleading in Plain English

by Raymond P. Ward

In legal writing, plain English is good, and legalese is bad. Many of us lawyers accept that premise and apply it to briefs and memoranda. But often, we fail to apply it to pleadings. We should cure that failing.

There are at least three reasons why we should plead in plain English. First, when we plead in legalese, we erect a language barrier between ourselves and those whom we serve. By pleading in plain English, we help break down that barrier.

Second, most judges prefer plain English to legalese. Most judges think that lawyers who use legalese have less prestige, are less smart, and are ranked academically lower. Bryan A. Garner, *The Winning Brief*, at 146 (1999). If you want your judge to think that you're one of the better lawyers, use plain English.

Third, the Federal Rules of Civil Procedure and most state equivalents require plain English. Rule 8(e)(1) requires pleadings to be "simple, concise, and direct." An answer must state defenses "in short and plain terms." FRCP 8(b).

We should know the basic rules of good legal writing: avoid needless repetition and wordiness; prefer active voice to passive voice; use plain language instead of archaic lawyerisms.



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Let us apply these rules—along with Rule 8—to draft an answer for our fictional client Schmidlap.

The introduction

The introduction of any pleading need only identify the nature of the pleading, the party who is filing the pleading, and—for an answer—the pleading that it is in response to. The usual introductory verbiage, "Now into court, through undersigned counsel, comes..." accomplishes none of these purposes. And most judges don't like the "Now comes" opener. They prefer a simpler, more direct style: "Defendant Schmidlap answers the plaintiff's complaint as follows."

Denials and admissions

Too many answers contain several pages with one sentence mind-numbingly repeated over and over: "The allegations of paragraph [3] of the complaint are denied." Repeating the same sentence dozens of times is no way to be concise.

Rule 8(b) provides a short, simple way to deny any number of allegations. We can deny hundreds of paragraphs of a lengthy complaint with one sentence: "Schmidlap denies all allegations of the complaint except as otherwise admitted below." This single sentence eliminates much needless repetition, and it lets us quit worrying about whether we accidentally admitted something by forgetting to deny it.

If for some reason you wish to specify the paragraphs of the complaint that you are denying, there's no reason why you can't combine all your denials in one paragraph. The same goes for admissions. Thus, Schmidlap's answer might contain these two paragraphs:

1. Schmidlap denies paragraphs 1, 3, 5, 7, and 11 through 127 of the complaint.
2. Schmidlap admits paragraphs 2, 4, and 6 of the complaint.

Notice that we are applying some basic principles of good writing. We are using the active voice, saying "Schmidlap denies" rather than "the allegations are denied." We are also avoiding redundancy by shortening "the allegations of paragraph 1 of the complaint" to "paragraph 1 of the complaint." Finally, we are

referring to Schmidlap by name rather than the procedural title "defendant." Most courts prefer this. See, e.g., Federal Rule of Appellate Procedure 28(d).

Admitting in part and denying in part

If a paragraph of a complaint is partly true, Rules 8(b) and 11 require you to admit the part that is true. Just keep it short, concise, and direct. And use the deny-everything-except technique to avoid lengthy denials. For example:

Schmidlap denies paragraph 8 of the complaint except to admit that he sold a widget to Smith.

Pleading lack of knowledge

"The allegations of paragraph [5] are denied for lack of knowledge or sufficient information to justify a belief therein" is bad writing. Yet many of us who would never write like that in briefs frequently do so in pleadings. Rule 8(b) requires the pleader who lacks knowledge to say so, and that has the effect of a denial. To obey Rule 8(b), plead lack of knowledge like this:

Schmidlap lacks knowledge or information sufficient to form a belief whether paragraphs 8, 9, and 10 of the complaint are true.

The concluding prayer

Too many answers conclude like this: "Wherefore, premises considered, defendant prays that this answer be deemed good and sufficient, and that after all due proceedings are had herein..." 22 words saying absolutely nothing. If you wouldn't put such gobbledygook in a brief, don't put it in a pleading either. Just tell the court, in simple, concise, and direct terms, what you want it to do. "For these reasons, Schmidlap prays that the Court dismiss Smith's complaint at Smith's cost."

If you follow these suggestions, you will comply with Rule 8's requirement that your pleadings be concise, simple, and direct. You will appease the judge, who will think you are smarter than your opponent who continues using legalese. And you will help break down the language barrier between lawyers and the public.