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Recommended Citation

K.K. DuVivier, Plain English Part IV: Keep It Straight, Tabulate, 27 Colo. Law. 67 (July 1998).

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The Scrivener: Modern Legal Writing



Plain English Part IV: Keep It Straight, Tabulate

by K.K. DuVivier

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This column addresses tabular presentation of complex material, which is the fourth of six “clear writing techniques” set out in the SEC’s proposed rules to require that disclosures be written in Plain English.¹ The first three of these techniques were discussed in the January, March, and May 1998 *Scrivener* articles.²

Tabulation

A tabular presentation, also called a “tabulation,” is a structural technique that breaks out complicated material into a laundry-list format. These lists may be preceded by “bullets” (•), numbers, or letters.

Only two of the SEC’s six techniques focus on form choice instead of word choice.³ Yet, the choice of form has a significant impact on how information is communicated, and sometimes on whether it is communicated at all. Tabulations are often the clearest form to present complicated information for two reasons.

First, as with the use of shorter sentences and paragraphs, tabulations create more “white space” or visual resting spots for readers. Thus, the readers have more energy to assimilate the information provided.

Second, tabulations facilitate communication because they provide information immediately. Without even reading words, the audience can determine the specific number of items and their relationship to one another through the visual structure. Thus, the form reinforces the substance you seek to communicate through the words.

Use in Legal Writing

Tabulations are especially helpful for setting out complex factual information in securities disclosures or for setting out

the elements of a statute or court rule. The SEC’s proposed rules for securities disclosures recommend tabulations “when-ever possible.”⁴ Similarly, the Standing Committee on Federal Rules of Practice and Procedure urges the use of tabulations in its booklet called “Guidelines for Drafting and Editing Court Rules.”⁵

In contrast, tabulations have a more limited role in most other forms of legal writing. Tabular presentation works well for lists and serves much like an outline. Therefore, tabulations are useful in paragraphs that introduce the organization of a memo or brief or in paragraphs that introduce the components of a statutory or common law test.

However, aside from their use in introductory paragraphs, tabulations are rarely appropriate in the legal analysis portion of a memo or brief. Tabular presentation is less effective when the components in the list need fleshing out. Thus, the depth of analysis required in most memos and briefs does not fit easily into the outline format of a tabulation.

Conventions for Use

Although many word processing programs automatically create bullet lists, numbering or lettering is preferable for two reasons. First, bullets may be considered too informal for a legal brief. Second, by using numbers or letters, the readers can determine immediately how many subdivisions will follow.

When you find an appropriate place for using tabular presentation, here are some conventions to follow:

1. Introduce a tabulation by using a phrase, such as “the following,” that foreshadows what will be coming.⁶

Example: Except as these rules provide otherwise, the following papers must be served on every party:

2. Put your subject and verb at the beginning of the sentence, then enumerate at the end.⁷

Example (Fed. R. App. P. 10—before proposed revisions):

(a) The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401 or through e-mail to: duvivier@spot.colorado.edu.

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docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(After proposed revisions):

(a) The following items constitute the record on appeal:

- (1) the original papers and exhibits filed in the district court;
- (2) the transcript of proceedings, if any; and
- (3) a certified copy of the docket entries prepared by the district clerk.⁸

3. List each item in parallel grammatical form—e.g., starting with all verbs (as in this list of four conventions) or all nouns (as in the “revised rule” example below).⁹ In addition, each item in the list should be of the same weight or class, and items of the same weight or class should be listed separately.¹⁰

Example (before revision):

The front covers of the briefs and of appendices, if separately printed, shall contain: (1) the name of the court and the number of the case; (2) the title of the case (see Rule 12(a)); (3) whether the proceeding in the court is an Appeal or a Petition for Review and from what body below—court, agency, or board; (4) what the document is titled (e.g., Brief for Appellant, Appendix); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

(Revised rule as published for comment in April 1996):

The front cover of a brief must contain:

- (A) the number of the case centered at top;
- (B) the name of the court;
- (C) the title of the case (see Rule 12(a));
- (D) the nature of the proceeding (e.g., Appeal; Petition for Review) and the name of the court, agency, or board below;
- (E) the title of the document, identifying the party or parties for whom the document is filed; and
- (F) the name, office address, and telephone number of counsel representing the party for whom the document is filed.¹¹

4. Punctuate by placing a semicolon after each item in the list except the last. Generally, it is helpful to place an “and” or an “or” before the last item to show whether the list is conjunctive (and) or disjunctive (or).¹²

Conclusion

Tabulations can be a powerful device for communication. They help convey your ideas through the combined impact of the words and the visual structure. In formal legal writing that requires extensive explanation, they should be used sparingly. However, when introducing the structure of an analysis, listing the components of a rule, or setting out complicated facts in a disclosure, tabulate to help your readers keep it straight.

NOTES

1. 62 Fed. Reg. 3152, 3156 (Jan. 21, 1997).

2. DuVivier, “Plain English Part I: Secrets from the SEC,” 27 *The Colorado Lawyer* 35 (Jan. 1998); DuVivier, “Plain English Part II: Shorter Sentences and Lighter Luggage,” 27 *The Colorado Lawyer* 27 (March 1998); DuVivier, “Plain English Part III: Choosing the Right Words,” 27 *The Colorado Lawyer* 31 (May 1998).

3. *Id.* at 3156.

4. *Id.*

5. Garner, “Guidelines for Drafting and Editing Court Rules 17-25” (printed and distributed by the Administrative Office of the United States Courts, 1996).

6. *Id.* at 23.

7. *Id.* at 22.

8. *Id.*

9. *Id.* at 23. See also Wydick, *Plain English for Lawyers*, 3d ed. (Durham, N.C.: Carolina Academic Press, 1994) at 47.

10. Garner, *supra*, note 4 at 18. See also Wydick, *supra*, note 8 at 46.

11. Garner, *supra*, note 4 at 21 (“before revision” version modified to highlight a few points made in the “revised rule” version).

12. Wydick, *supra*, note 8 at 47.

COLORADO SUPREME COURT VACANCY: APPLICATIONS DUE JULY 10

A vacancy will occur on the Colorado Supreme Court as a result of the retirement of Chief Justice Anthony F. Vollack, effective August 1, 1998. The Supreme Court Nominating Commission will meet in the near future for the purpose of reviewing applications for this vacancy.

To be eligible for appointment to fill this vacancy, an applicant must be a qualified elector of the state of Colorado and must have been licensed to practice law in Colorado for at least five years. The annual salary of a Supreme Court Justice is \$94,000. The person appointed to fill this vacancy will hold office for a provisional term of two years and then until the second Tuesday in January following the next general election. Thereafter, if retained, the judge will serve a term of ten years.

Applications may be obtained from the Clerk of the Supreme Court, State Judicial Building, 2 E. 14th Ave., Denver; the office of any District Administrator of the twenty-two judicial districts of the state of Colorado; or from any member of the Supreme Court Nominating Commission. Applications also are available in PDF format on the Supreme Court's homepage at <http://www.courts.state.co.us/scao/press/benchpress.htm>.

Applications must be filed with the Ex-Officio Chair, Chief Justice Anthony F. Vollack, Colorado Supreme Court, 2 E. 14th Ave., Denver, CO 80203-2116, at the earliest possible time, but in any event must be received no later than **5 P.M. on Friday, July 10, 1998. Late applications will not be considered.**

Applications will be kept confidential, except that the names of the nominees submitted to the Governor will be made public immediately after submission to the Governor.