

Happy Warriors Against *Herein*: Ten Rules for Creating Better Legal Documents

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As a general counsel, I see a steady flow of all sorts of legal documents — briefs, memos, contracts, terms sheets, purchase agreements, talking points, and even an occasional letter. The more I read, the more melancholy I become. When I see words like *herein*, *aforementioned*, and *witnesseth*, I know that the document will be stiff and hyperformal, and that the author will write things like “the Securities and Exchange Commission” followed unnecessarily by “(‘the SEC’ or ‘the Commission’).” There will be section headings that are difficult to follow, like “V(3)(a)(iii).” There will be ALL CAPS IN PLACES, which are difficult to read and make the author seem ANGRY. And there will be appendixes that I’ll have to flip to instead of having the core information on the page in front of me. When I read “Notwithstanding anything to the contrary contained herein,” I just . . . sigh . . .

There’s blame all around. Practicing lawyers blame the law schools, which rarely give meaningful feedback on writing and teach students from poorly written cases. Other critics blame law firms, which train associates to get the deal done or brief filed, not on how to improve their written communication or change well-settled (if terrible) legal forms.

There is no shortage of advice about how lawyers can write more succinctly, clearly, and logically. There are also books, articles, and websites on style, grammar, and typography. But against decades (centuries, really) of *hereins*, it’s a steep climb to

freedom. Bryan Garner thinks that lawyers are afflicted by the Dunning–Kruger effect, which causes lawyers to “have no clue that they don’t write well.”¹ Whatever the cause, we know the effect — written work that slows down business, keeps lawyers anchored in the past, and is bad for the soul.

My colleagues and I at First Data are happy warriors in this fight. We follow ten rules that make our written work easier to read and nicer to look at. Our business partners get crisper, plain-English documents that help them move faster. Our clients get easier-to-understand contracts, and they aren’t oppressed by legalese. Our deals can move more quickly because we don’t get bogged down in irrelevant legal detail. When we apply the rules and eliminate the *hereins*, we sound and act more like counselors and less like technocrats. Applying the rules gives us a sense of mission, craft, and pride. It adds delight to our work.

Our ten rules are not a substitute for good writing. Using the active voice, avoiding nominalizations, being concise, and doing many other things are the keys to graceful, effective prose. But that takes years of practice. Our business partners need real-time advice, and we must respond quickly — often in writing — knowing only part of the facts and some of the law. So our ten rules are designed to help our lawyers produce better work product *immediately*.

The rules are grouped into three categories: Rules 1 through 3 help eliminate antiquated words, phrases, and lawyerish bad habits. Rules 4 through 7 are about typography — the style of the written word — where seemingly small decisions have a big impact. Rules 8 through 10 help create a better-designed document. And we include two bonus rules that don’t make the top ten but are worth mentioning.

And now, the ten rules.

¹ Bryan A. Garner, *Why Lawyers Can’t Write*, A.B.A. J. (Mar. 1, 2013).

Rule 1: No *Herein*

Legal documents are full of antiquated words that give our writing “a legal smell, but carry little or no legal substance.” So Rule 1 uses blunt force.² The “No *Herein*” rule mandates that you *may not use any of the following words or phrases, ever*:

Herein

Hereto

Hereunder

Hereafter

Hereinafter

Hereby

Thereby

Therewith

Whereof

Whereas

In witness whereof

For the avoidance of doubt

Aforementioned

Except as otherwise provided herein

Notwithstanding

Notwithstanding the foregoing

Notwithstanding anything to the contrary

Notwithstanding anything to the contrary contained herein

I’m going to die if I keep reading these kinds of words. There are good alternatives to all of them. Here are a few:

² Richard C. Wydick, *Plain English for Lawyers* 58 (5th ed. 2005); Joseph Kimble, *Lifting the Fog of Legalese* xii (Carolina Academic Press 2006) (“[I]n its effort to be precise and exhaustive, [legal writing] becomes excessively detailed and too often sinks into redundancy, ambiguity, and error.”).

Not: *Herein*

But: *In this section*

Not: *The aforementioned*

But: *These*

Not: *Notwithstanding anything to the contrary*

But: *Read this section. It's really important.*

There are other words and phrases that we use sparingly, if ever. They are not as deadly as the first group, but they are stiff and difficult.

Not: *Pursuant to*

But: *Under*

Not: *Prior to* or *In advance of*³

But: *Before*

Not: *Commenced*

But: *Began* or *Started*

Not: *Brought suit*

But: *Sued*

Not: *Pertaining to*

But: *About*

Not: *Set forth in*

But: *In*⁴

As a litigator, I find Rule 1 easy to follow because litigators control their documents (subject to court rules). It's harder for corporate lawyers because the opposing side will likely start

³ See Kimble, *Lifting the Fog of Legalese* at 161 (“*Prior to* takes the booby prize for the most common inflated phrase in legal and official writing. Why would anyone prefer it to *before*? Try to think of a single literary title or line that uses *prior to*. ‘Twas the night *prior to* Christmas?’”).

⁴ For a great list of these types of words and phrases, see *id.* at 165–74.

with *hereins*, etc. In my experience, you'll convert the other side by explaining the concept of the rules and then demonstrating them in your markup. They'll see the value. (It's also a small tactical win.) But if your opponent is dug into the *hereinafters*, just be a happy warrior in the fight and keep trying.

Rule 2: No *SEC*

Rule 2 is *use abbreviations and acronyms sparingly*, if ever. We call it the “No-SEC Rule” in honor of the following typical paragraph:

The Securities and Exchange Commission (hereinafter “the SEC” or “the Commission”) initiated an investigation of the American Block Company (hereinafter “ABC”) in October 2014. The SEC then brought suit against ABC for violations of Section 10(b)(5) of the U.S. Code (hereinafter “Section 10(b)(5)” or “10(b)(5)”), alleging that ABC’s President, Michael Smith (hereinafter “Smith”), conspired with Robert Jenkins (hereinafter “Jenkins”), the company’s Chief Financial Officer (hereinafter “CFO”), to mislead investors though several statements in the company’s public filings.

After reading that paragraph, I need a drink (hereinafter “Drink”), or I might jump off a bridge (hereinafter “Bridge”), or both.

Give your reader some credit. Everyone knows what *SEC* means, and your reader will understand what *Section 10(b)(5)* is.⁵ Your reader also understands what *CFO* means, and that Michael Smith and Robert Jenkins will be referred to as *Smith* and *Jenkins* after the opening paragraph. Using too many ab-

⁵ Sec. & Exch. Comm’n, Off. of Inv. Educ. & Assistance, *A Plain English Handbook: How to Create Clear SEC Disclosure Documents* 31 (1998) (“Where acronyms, such as REIT, are widely understood to the investing public, they can safely be used without creating confusion.”); see also Bryan A. Garner, *The Winning Brief* 179–80 (3d ed. 2014) (discussing “overparticularization”).

breviations and acronyms and parentheticals disrupts the flow of your text. They are irritating, patronizing, and unnecessary.

Here's the same paragraph revised, incorporating Rules 1 and 2:

In October 2014, the Securities and Exchange Commission began investigating the American Block Company. The SEC then sued ABC, alleging that ABC's President, Michael Smith, conspired with ABC's CFO, Robert Jenkins, to mislead investors through several statements in the company's public filings.

And with a follow-on paragraph:

Specifically, the SEC alleged that Smith and Jenkins, who worked together for almost 20 years, conspired to artificially inflate the company's earnings in 2014 and 2015, and made several misleading statements in earnings press releases and conference calls.

No one reading either paragraph is confused about who Smith, Jenkins, and ABC are, or what *SEC* or *CFO* stands for.

Rule 3: Eliminate Long, Confusing Parentheticals

Lawyers like to be super-specific, so they have a terrible habit of inserting long parentheticals into the middle of sentences. The following example has lots of problems, but focus on the parenthetical in the middle:

Upon expiration of the restricted period with respect to any outstanding Restricted Stock Units granted hereunder that have not previously been forfeited in accordance with this Agreement, the Company shall issue to the Participant as soon as practicable (but no later than March 15 of the year following the year in which the Restricted Period expires, except in the case of any issuance following a Qualifying Termination, in which case such issuance shall occur no later than thirty (30) days following the expiration of the Restricted Period), one

share of Common Stock for each Restricted Stock Unit and such Restricted Stock Unit shall be canceled.

It's hard to follow that paragraph at all, but once the reader is sucked into the “(but no later than . . .)” parenthetical vortex, all hope is lost. It's almost always better to make the parenthetical a separate sentence or sentences. Here's a revision, incorporating Rule 3 (and several other rules):

When the Restricted Period expires for any outstanding Restricted Stock Units granted under this agreement, the Company will issue to the Participant one share of Common Stock for each Restricted Stock Unit, and that Restricted Stock Unit will be canceled. The Company must issue that common stock no later than March 15 of the year after the Restricted Period expires. The only exception is when the Company issues common stock to a Participant following a Qualifying Termination. In that case, the Company will issue common stock no later than 30 days after the Restricted Period has expired.

Rule 4: No ALL CAPS

Lawyers often use ALL CAPS to draw the reader's attention to an important section of a document. Research shows that the *opposite* happens. Reading ALL CAPS is difficult (and irritating) because readers are used to peaks and valleys of normal typeface, leading them along a sentence's path.

This is written in normal casing.

THIS IS WRITTEN IN ALL CAPITALS.

This is written in normal casing and is easy to read:

By way of background, First Data provides secure and innovative payment technology and services to more than six million merchants and financial institutions around the world, from small businesses to the world's largest corporations. Specific

to the payroll industry, First Data sells a payroll distribution service to employers and serves as a prepaid program manager through our subsidiary, Money Network Financial.

This is written in ALL CAPS and is much harder:

BY WAY OF BACKGROUND, FIRST DATA PROVIDES SECURE AND INNOVATIVE PAYMENT TECHNOLOGY AND SERVICES TO MORE THAN SIX MILLION MERCHANTS AND FINANCIAL INSTITUTIONS AROUND THE WORLD, FROM SMALL BUSINESSES TO THE WORLD'S LARGEST CORPORATIONS. SPECIFIC TO THE PAYROLL INDUSTRY, FIRST DATA SELLS A PAYROLL DISTRIBUTION SERVICE TO EMPLOYERS AND SERVES AS A PREPAID PROGRAM MANAGER THROUGH OUR SUBSIDIARY, MONEY NETWORK FINANCIAL.

ALL CAPS **bold** is even worse:

BY WAY OF BACKGROUND, FIRST DATA PROVIDES SECURE AND INNOVATIVE PAYMENT TECHNOLOGY AND SERVICES TO MORE THAN SIX MILLION MERCHANTS AND FINANCIAL INSTITUTIONS AROUND THE WORLD, FROM SMALL BUSINESSES TO THE WORLD'S LARGEST CORPORATIONS. SPECIFIC TO THE PAYROLL INDUSTRY, FIRST DATA SELLS A PAYROLL DISTRIBUTION SERVICE TO EMPLOYERS AND SERVES AS A PREPAID PROGRAM MANAGER THROUGH OUR SUBSIDIARY, MONEY NETWORK FINANCIAL.

To grab the reader's attention, write in normal text and use **bold**, *italics*, or **color**. Or all *three*. You can also be explicit:

Pay attention to this section. By way of background, First Data provides secure and innovative payment technology and services to more than six million merchants and financial institutions around the world, from small businesses to the world's largest corporations. Specific to the payroll industry, First Data sells a

payroll distribution service to employers and serves as a prepaid program manager through our subsidiary, Money Network Financial LLC. The Money Network package of payroll solutions includes the Money Network Card and the Money Network Check, which are explained in more detail below.

Rule 5: Left-Justify, One Space

Research shows that the easiest text to read is left-justified, ragged right.⁶ That looks like this:

On Monday, thanks to swift work on the part of First Data’s SpendTrend team, *The Wall Street Journal* was able to tell the story of how, when, and why consumers were spending over Thanksgiving and Black Friday. In an exclusive feature story, *Journal* writer Suzanne Kapner outlined how consumers sought specific deals online in a piece entitled “Web Sales Hum, but With Smaller Orders.” Kapner told the story of this year’s big shopping weekend. While overall sales were up, the average spent in some key categories declined, “as mobile shopping drove smaller orders and aggressive discounts pushed down prices.”

Fully justified text means that both the right and left edges are flush to the margins. When text is fully justified, the spacing between the words creates small “pools” and “rivers” that cause the eye to stop and constantly readjust, making it more difficult to read.⁷ That problem is made worse by another lawyer bad habit: using two spaces after a period instead of one. The well-settled custom of modern typographers is one space between sentences, not two. This rule causes lawyers a lot of

⁶ See SEC, *Plain English Handbook* at 44; Matthew Butterick, *Typography for Lawyers* 133–34 (2d ed. 2015); Kimble, *Lifting the Fog of Legalese* at 152.

⁷ Some publications use fully justified text, but their paragraphs are generally narrower than a standard legal document, or even an e-mail. Newspapers and magazines, for example, often use fully justified text, but their paragraphs are only an inch or two wide. That makes fully justified text much easier to read.

heartache. But as Butterick says, “You don’t need to like it. You only need to accept it.”⁸

- “Use a single word space between spaces. . . . Your typing as well as your typesetting will benefit from unlearning [the] quaint Victorian habit of using two spaces between sentences.”⁹
- “[O]ne space between words and one space after punctuation marks (including colons and periods).”^{10,11}
- “Chicago advises leaving a single character space, not two spaces, between sentences and after colons used within a sentence”¹²

Here’s the same paragraph fully justified, with two spaces after sentences:

On Monday, thanks to swift work on the part of First Data’s SpendTrend team, *The Wall Street Journal* was able to tell the story of how, when, and why consumers were spending over Thanksgiving and Black Friday. In an exclusive feature story, *Journal* writer Suzanne Kapner outlined how consumers sought specific deals online in a piece entitled “Web Sales Hum, but With Smaller Orders.” Kapner told the story of this year’s big shopping weekend. While overall sales were up, the average spent in some key categories declined, as mobile shopping drove smaller orders and aggressive discounts pushed down prices.”

⁸ Butterick, *Typography for Lawyers* at 41.

⁹ Robert Bringhurst, *The Elements of Typographic Style* 29 (4th ed. 2013).

¹⁰ That’s not to say that there’s not some debate about the issue. See, e.g., *Why Two Spaces After a Period Isn’t Wrong (Or, The Lies Typographers Tell About History)*, Heraclitean River (Nov. 1, 2011), <http://heracliteanriver.com/?p=324> (discussing history of the one-space vs. two-space debate and concluding that “[c]omplaining about the way people space their sentences . . . is being an ass”).

¹¹ Bryan A. Garner, *The Redbook: A Manual on Legal Style* § 4.12 (3d ed. 2013).

¹² *The Chicago Manual of Style* Rule 2.9 (16th ed. 2010).

Rule 6: Choose Your Font

There are two parts to this rule. First, don't just use the default font on your computer screen. Rather, *decide* what font to use. It may seem minor, but your font selection “will be one of the elements that most strongly define[] the design and readability of your document.”¹³ There are two kinds of fonts: serif and sans serif.

serif	sans serif
H	H

Serif typefaces have small lines at the beginning and ending strokes of each letter. Sans-serif fonts have smooth ending strokes. Serif fonts are easier to read than sans serif because the serifs lead your eye from one word to the next.¹⁴ And because serif fonts have a more formal look and feel, they're generally better for legal documents.

You should also consider whether your document will be read on a screen or on paper. Some fonts are made for the *screen*:

Georgia

Arial

Constantia

Some fonts are better on *paper*:

Garamond

Baskerville

Palatino

¹³ SEC, *Plain English Handbook* at 40.

¹⁴ *Id.*; Kimble, *Lifting the Fog of Legalese* at 152.

So if you're writing an e-mail, Georgia is better than Garamond. If you're drafting a term sheet, use Garamond over Georgia.

Although serif fonts are generally better for legal documents, think of that as a strong guideline rather than a rule. Sans-serif fonts feel (and are) more modern, and sometimes they are the better choice. But remember that you're giving up some readability and that, like all other fonts, some sans-serif fonts are better than others.¹⁵

The second part of Rule 6 is about Times New Roman, which over many years has become the default font for many lawyers. Consider the first part of Rule 6 — *choose your font, don't default to it* — and then consider the following from Matthew Butterick's *Typography for Lawyers*:

Fame has a dark side. When Times New Roman appears in a book, document, or advertisement it connotes apathy. It says, "I submitted to the font of least resistance." Times New Roman is not a font choice so much as the absence of a font choice, like the blackness of deep space is not a color. To look at Times New Roman is to gaze into the void.¹⁶

Rule 7: Don't Underline

Underlining is ugly and hard to read. It is a holdover from the typewriter age. Typewriters had no **bold** or *italic*, so the only way to emphasize text was to back up the carriage and type underscores beneath the text.¹⁷ Underlining tells the reader that you are stuck in the past. Instead, use **bold**, *italics*, or *both* to really emphasize your point.

¹⁵ See Butterick, *Typography for Lawyers* at 79, 116–28 (surveying fonts).

¹⁶ *Id.* at 110.

¹⁷ *Id.* at 74; Kimble, *Lifting the Fog of Legalese* at 152. When you combine underlining with the hereinafters of Rule 1, you get the mother lode: "The Securities and Exchange Commission (hereinafter 'The SEC' or 'The Commission')."

- Not: In reasoning about substantive problems, what matters is the evidence, not particular modes of evidence.
- But: In reasoning about substantive problems, what matters is the *evidence*, not particular *modes* of evidence.
- Or: In reasoning about substantive problems, what matters is the **evidence**, not particular **modes** of evidence.

Rule 8: Lose the Romans

The traditional legal numbering system is confusing. It starts with Roman numerals (I, II, III) and progresses to capital letters (A, B, C), then to Arabic numbers (1, 2, 3), and finally to romanettes (i, ii, iii) (a word made up by lawyers to describe this needlessly complex system). *Quick — find section II(C)(5)(iv)!* That’s difficult to *say*, let alone find in a document. Instead of Roman numerals, use tiered numbers for headings:

1. Overview
 - 1.2 Global Business Solutions
 - 1.2.1 Key Initiatives
 - 1.2.2 Competitive Landscape¹⁸

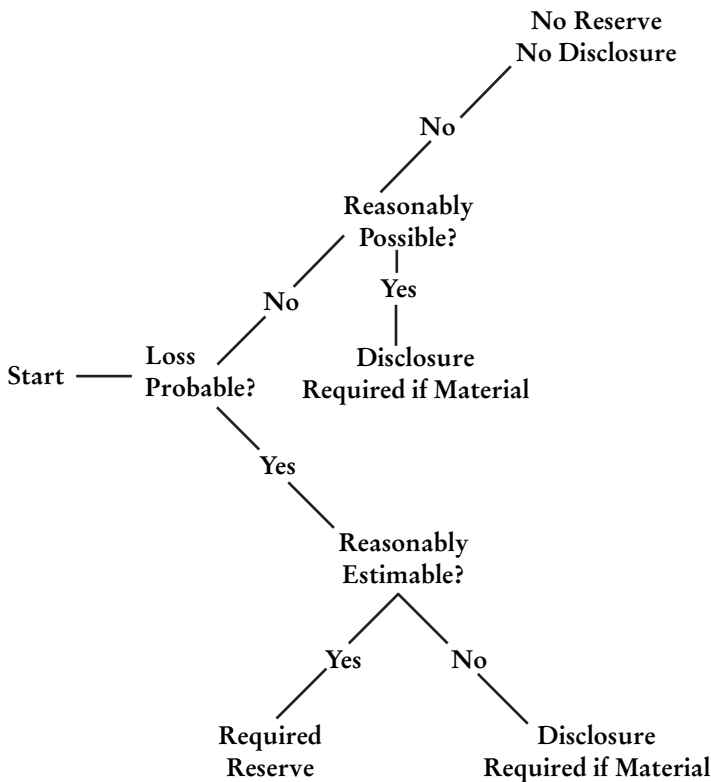
Rule 9: Use More Than Words

Words may be a lawyer’s primary tool, but they’re not the only tool. Well-crafted charts, diagrams, and photographs can make your document more vivid and persuasive. A chart can effectively show factual and legal points, a diagram can explain a statute or rule, and a photograph can save pages of your brief. You should use these kinds of images whenever possible.¹⁹

¹⁸ See Butterick, *Typography for Lawyers* at 106–07; Kimble, *Lifting the Fog of Legalese* at 153. Generally speaking, it is better to use no more than three levels, i.e., don’t go beyond 1.2.2.

¹⁹ See Adam L. Rosman, *Visualizing the Law*, 63 J. Legal Educ. 1 (Aug. 2013).

The flowchart below, adapted from an article about setting litigation loss reserves under accounting standard FAS 5, is a good example. In the article’s text, the authors explain, among other things, that if a litigation loss is “probable” and the loss can be “reasonably estimated,” then the company should set a loss reserve.²⁰ After discussing other aspects of the issue, the authors use this flowchart to explain the concept:



Legal issues often involve a lot of people — plaintiffs, defendants, CEOs, CFOs, boards, other companies, etc. It gets

²⁰ Jessica L. Everett-Garcia, Dan L. Bagatell & Thomas Johnson, *Top 10 Issues to Consider When You Are Sued: Issue #8: Disclosing Litigation and Reserving for Litigation Losses*, Martindale-Hubbell (June 26, 2007), http://www.martindale.com/legal-management/article_Perkins-Coie-LLP_307080.htm.

confusing, and most lawyers use a cheat sheet to keep things straight. Do the work for your reader:

Not: From 2008 to 2010 the Board was made up of Jones, Stephens, Edwards, Kahn, and Veasy. In 2011, Edwards resigned but the Board expanded to include Forester. In 2012, Jones resigned but the Board expanded again to include Shapiro and Galenter. In 2013, Kahn resigned but was replaced by Spellman. Ludlow took Jones’s vacant seat in 2014.

But: From 2008 to 2010 the Board was made up of Jones, Stephens, Edwards, Kahn, and Veasy. In 2011, Edwards resigned but the Board expanded to include Forester. In 2012, Jones resigned but the Board expanded again to include Shapiro and Galenter. In 2013, Kahn resigned but was replaced by Spellman. Ludlow took Jones’s vacant seat in 2014.

Graphically, the Board looked like this over time:

	2008	2009	2010	2011	2012	2013	2014
1	Jones	Jones	Jones	Jones			Ludlow
2	Stephens	Stephens	Stephens	Stephens	Stephens	Stephens	Stephens
3	Edwards	Edwards	Edwards				
4	Kahn	Kahn	Kahn	Kahn	Kahn	Spellman	Spellman
5	Veasy	Veasy	Veasy	Veasy	Veasy	Veasy	Veasy
6				Forester	Forester	Forester	Forester
7					Shapiro	Shapiro	Shapiro
8					Galenter	Galenter	Galenter

Text boxes — short bursts of boxed text in the right margin that point to a specific part of the page — are useful and underused by lawyers. Finance professionals use them very effectively:

Summary View – Apr 2015 Revenue/EBITDA

- **Revenue:** +45M vs Plan @ PYRR, +10% vs PY. versus Plan related to MS, FS, Intl, offset by Corp
- **EBITDA:** +\$20M vs Plan @ PYRR, +1% vs PY. versus Plan related to MS, FS, Intl, offset by Corp

(M)	Apr Actual 2015	Apr Actual 2014	\$b/(w) vs. 2014	%b/(w) vs. 2014	Apr Plan 2015	\$b/(w) vs. Plan	Memo Mar 2015	
Revenue								
Merchant Solutions	123	448	1	1%	333	(16)	323	+3% Core Merchant offset by declines in Prepaid and Telecheck
Financial Services	456	224	2	5%	222	(7)	333	Slower than expected ramp-up of initiatives and lower volumes
International	789	336	12	15%	111	(5)	555	
Corp & Other (incl elim)	10	1	3	20%	5	2	1	
Total Revenue at PYRR	222	112	23	5%	666	(25)	999	
FX	(33)	80	(34)	25%	(11)	(10)	(22)	Intl growth driven by EMEA acquiring and LA
Total Revenue at RR	444	339	4	10%	555	(35)	666	
Expense								
Merchant Solutions	426	123	(18)	-10%	131	(1)	200	Sequential decline of \$13M versus \$2M historically observed Mar–Apr decline
Financial Services	246	45	(4)	-5%	66	4	50	
International	123	678	(11)	-10%	111	2	100	
Corp & Other (incl elim)	22	91	(1)	-20%	66	2	25	
Total Expense at PYRR	111	234	(34)	-10%	333	8	300	
FX	(22)	5	18	5%	(6)	8	(10)	
Total Expense at RR	444	617	(16)	-5%	666	16	400	
EBITDA								
Merchant Solutions	100	250	(10)	-2%	525	(10)	123	
Financial Services	200	50	2	5%	55	5	45	
International	300	25	5	10%	25	(1)	67	
Corp & Other (incl elim)	(100)	(25)	2	10%	(52)	5	(89)	
Total EBITDA at PYRR	200	225	(5)	-2%	225	(15)	123	
FX	(2)	5	(10)	5%	(2)	(1)	(4)	
Total EBITDA at RR	400	225	(10)	-5%	255	(10)	567	

Lawyers should use text boxes too:

5. Term; Termination.

5.1 Term. This Agreement takes effect on January 1, 2014, and terminates on the earliest to occur of (5.2.1) a valid termination by a party under Section 5.2; (5.2.2) the completion of the performance of the Services by the Service Provider; or (5.2.3) [Date].

This is a key section in the contract.

5.2 Termination Rights.

5.2.1 Each of FDC, BANA, and Company may terminate this Agreement for convenience on five Business Days' notice to the other parties.

5.2.2 BANA may terminate this Agreement immediately upon becoming aware of any breach by the Service Provider or any of Affiliates (other than the Company) of Section 4.

←
This is a key section
in the contract.

Rule 10: Embrace Consistency

Systems are more usable when similar parts are expressed in similar ways. What’s true for the heart symbol across social-media platforms (signifying “like”) is true for legal documents too: consistency enables readers to learn new things quickly and focus on the key part of your message.²¹

For our purposes, internal consistency is most important — all parts of each of our documents should fit together logically. This article, for example, uses the same method to introduce each rule:

Rule 1: No *Herein*

Rule 2: No *SEC*

Rule 3: Eliminate Long, Confusing Parentheticals

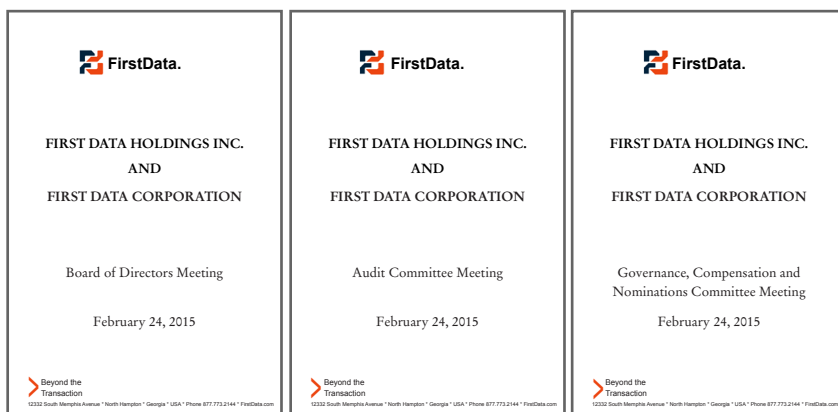
Etc.

It also uses the “Not:” “But:” method consistently in Rules 1, 7, and 9.

The materials for my company’s board of directors, for example, demonstrate good consistency: the three cover pages are identical in font, layout, and style. They share a common framework — the board meeting on February 24, 2015 — but also cover different substantive areas — the full board, the audit committee, and the risk committee. The consistent design cultivates trust: it shows that we have *designed* a system, not cobbled

²¹ See William Lidwell, Kritina Holden & Jill Butler, *Universal Principles of Design* 56 (Rockport 2010); *but see* Ralph Waldo Emerson, *Self-Reliance* 7 (1841) (“A foolish consistency is the hobgoblin of little minds . . .”) (emphasis added).

it together. It also builds credibility by showing a sense of craft and detail:



Imagine what our board would think if the books looked like this:



In early 2016, my company rolled out a new contract for our millions of small- and medium-sized clients. It was a product of our ten rules, including consistency:

Business Solutions Agreement

This Business Solutions Agreement describes the relationship between you and us and how we provide services to you. The words *you* and *your* refer to the person or entity signing this Business Solutions Agreement on page 1. The words *we*, *our*, and *us* refer to Processor and Bank (see page 1) unless we say otherwise.

1 Your Business

- Business legal name:
- DBA/Outlet name:
- Store number:
- Contact name:
- Business street address:
- Business phone / mobile / fax:
- Customer service phone:
- Business e-mail:
- Business website:
- Products/services you sell:

% of orders delivered in: 0–7 days ____; 8–14 ____; 15–30 ____; 30+ ____
 Who performs product/service fulfillment:

Do you use a vendor and/or software to store, process, or transmit transactions, authorization requests, or cardholder data: **{ Yes } { No }**
 (if yes, identify vendor and/or software): {If YES, Need to Allow for Multiple}

2 Information About Your Payment Types

			Average Card Sale: \$
	Total Annual Volume		
	This Outlet	All Outlets	Highest Card Sale:
MC/VISA	\$	\$	\$
Discover	\$	\$	
AMEX	\$	\$	
WEX/Voyager	\$	\$	

3 You and Your Business Ownership

- Your Home Address:
- Date of Birth: **{XX/XX/XXXX}** SSN: **{XXX-XX-XXXX}**
- State of Organization: Month / Year Started:
- Type of Entity:
- Name / % Interest: **{Need to Allow for Multiple}**
- Name / % Interest: **{Need to Allow for Multiple}**

4 Your Tax Information (as shown on tax return)

- Federal Tax ID Number: Type:
- Tax Filing Name:
- Foreign Entity / Nonresident: (if yes, attach IRS Form W-8)

5 Bank Information for Your Settlement Account

- ABA #: [MASKED] DDA #: [MASKED]
- Bank will fund: **[DYNAMIC LANGUAGE]** [Insert funding level]

6 Your Transaction Types

- Card present _____ % Swiped _____ %
- Internet / /Mail / Direct _____ % Keyed _____ %
- Phone _____ %

- 7 Information About You; Credit Check.** The information you give us about you and your business helps us evaluate the financial risks of providing services to you. If we ask, you agree to give us additional information about you and your business. All information you give us about you and your business must be accurate, and if it changes, you must give us your updated information as soon as possible. You understand that as part of evaluating the financial risks of providing services to you, our credit-risk department will run a credit check on the person who signs the Agreement, even if that person is signing on behalf of your business and not in his or her individual capacity, and you authorize us to run the credit check.
- 8 Services, Exclusivity, Fees, and Restrictions.**
- 8.1 Processor and Bank will provide you with the services identified in the Schedule of Services and any other services that you agree in the future to receive and we agree to provide (collectively, Services). If Services are replaced, the replacements are also “Services.” Some of the Services are provided to you only by Processor and not by Bank. (See the Schedule of Services for details.) You agree that, while the Agreement is in effect, we will be your exclusive provider for those Services listed in the Schedule of Services. This exclusivity is a material obligation of the Agreement.
- 8.2 You will pay us the fees for the Services referenced in the Schedule of Fees or elsewhere in the Agreement.
- 8.3 Unless we say otherwise, the Services do not include Telecom Access, and we are not responsible in any way for Telecom Access. You are responsible for obtaining and paying for any Telecom Access you need.
- 8.4 You agree that you will not (a) export or re-export any Equipment (see Section 9) or any Software (see Section 19), or (b) receive or use the Services outside the United States. [Unless we specifically say otherwise, any reference in the Agreement to the “United States” excludes all US territories and possessions.] **[DYNAMIC LANGUAGE – remove for XXX merchants]**
- Agreement* means (a) pages 1 and 2 (Disclosures and Confirmations); (b) this Business Solutions Agreement [(including the Schedule of Services, Schedule of Fees, and American Express OptBlue Program Terms)] **[DYNAMIC if Amex is enabled]** [(including the Schedule of Fees)] **[DYNAMIC if Amex is not enabled]**; (c) any Additional Location Forms for your business; (d) any terms of use, end user license, or similar agreement that accompanies a specific Service, and (e) any future changes to this Business Solutions Agreement (see Section 15).
- Telecom Access* means any service you use to connect to us in order to receive or use the Services, including Internet or other telecommunications services.

There are two bonus rules that don’t make the top ten but are worth mentioning:

Bonus Rule 1: Don’t Use Appendixes

Appendixes rarely contain useful information. They’re usually full of material that bulks up the document but adds little substance. And they force readers to flip back and forth between the main text and the end of the document, which is a distracting

time waste. Use this test: *Is the information important enough to be in the document? If so, it should be in the main text.*

Bonus Rule 2: Use the Serial Comma

The serial (or “Oxford”) comma is the comma before the *and* in a series of words: “I like apples, bananas, and cherries.” The serial comma is more precise, so you should always use it. As Bryan Garner says, “[C]larity demands the final comma.”²²

Summary List of Rules

Putting several of the rules to work, here is a list of the ten rules:

- Rule 1: No *Herein*
- Rule 2: No *SEC*
- Rule 3: Eliminate Long, Confusing Parentheticals
- Rule 4: No ALL CAPS
- Rule 5: Left-Justify, One Space
- Rule 6: Choose Your Font
- Rule 7: Don’t Underline
- Rule 8: Lose the Romans
- Rule 9: Use More Than Words
- Rule 10: Embrace Consistency
- Bonus Rule 1: Don’t Use Appendixes
- Bonus Rule 2: Use the Serial Comma

²² Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 731 (3d ed. 2011).