



# Diamond Cutting: Editing Advice for Rule Drafting

JASON KUENLE

OFFICE OF THE REVISOR OF STATUTES

OCTOBER 14, 2025

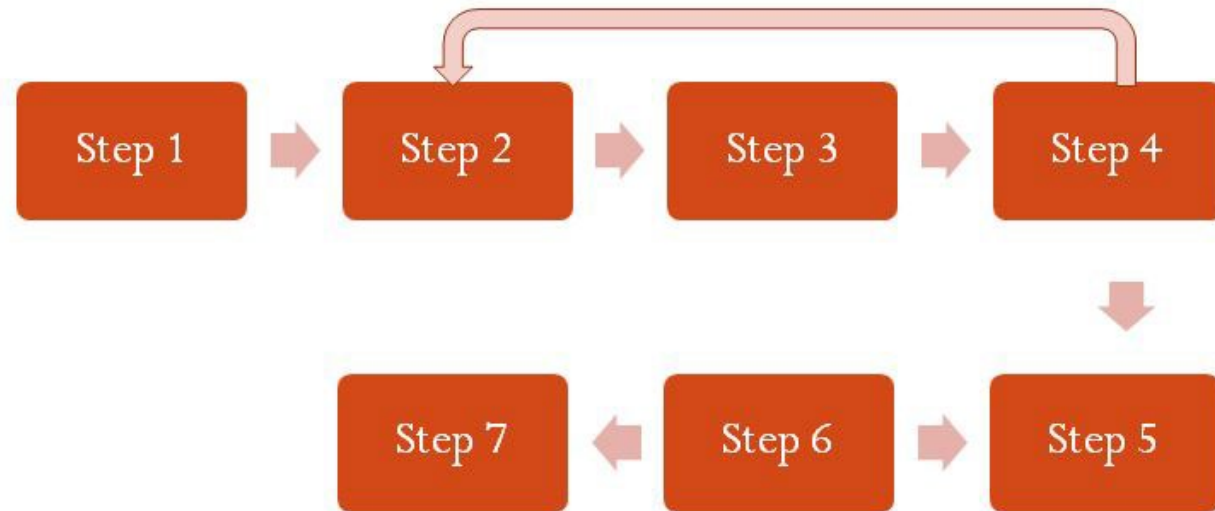
# Roadmap

- ▶ Drafting process
  - From concept to final review
- ▶ Editing
  - Conceptual
  - Grammatical
  - Examples



# Drafting Process

- ▶ Identify goal
- ▶ Research
- ▶ Organize
- ▶ Draft
- ▶ Edit
- ▶ Review



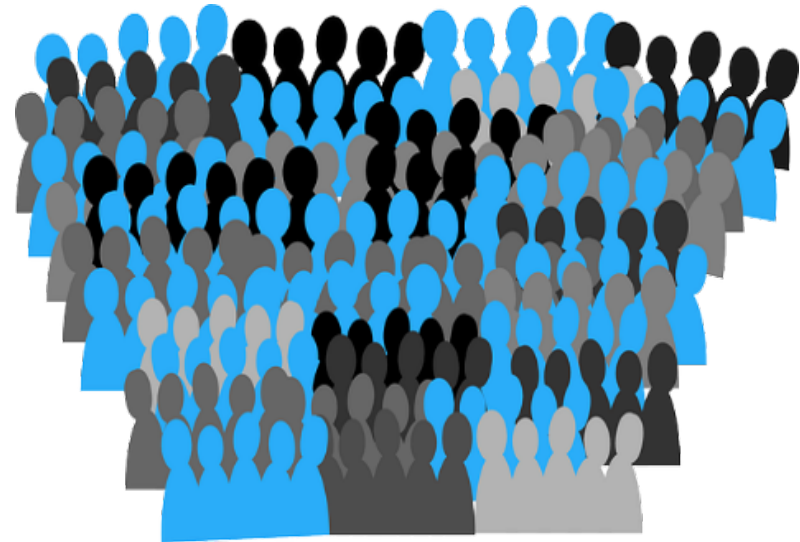
# Understand the Problem

- ▶ What problem are you trying to solve?
- ▶ What is the source of the problem?
- ▶ What policy action can be taken?



# Identify Your Audience

- ▶ Who needs to understand the rule?
  - Knowledgeable parties that must comply
  - The administering agency
  - Other government entities?
  - The courts?
  - The public?



# Policy Research Resources

- ▶ Authorizing legislation
- ▶ Have other states addressed
- ▶ NCSL
- ▶ Model legislation
- ▶ Think tanks
- ▶ Advocacy organizations



# Legal Research

- ▶ Constitutionality
  - Separation of power
  - Individual rights
  - Federal preemption
- ▶ Legal context
- ▶ Fabric of law



**MN Supreme Court Chamber  
at the State Capitol, 1905**

# Legal Context

- ▶ Statutory authorization
- ▶ New language or amendatory?
- ▶ Interaction with federal law
- ▶ Interaction with statutes

State Capitol  
1935



# Fabric of the Law

- ▶ What else needs to be amended?
  - Related rules
  - Conforming changes
- ▶ Does it make anything else obsolete?
- ▶ Revisor's office as a resource

# Meet Your Reader's Needs

## ► Creating a new program

- Definitions
- Program authorization
- Eligibility/selection criteria
- Reports/evaluation

# Keep Parts and Subparts Short

- ▶ The more parts and subparts you have, the more headnotes you can use. This helps users scan for information.

WARNING: Headnotes are not the law!

- ▶ Short blocks of text are easier to summarize meaningfully in a headnote.
- ▶ Short blocks of text with lots of white space are less tiring to read. This aids in comprehension.

# Use Vertical Lists

- ▶ Lists have these advantages:
  - They highlight levels of importance.
  - They help users understand the order in which things happen.
  - They help users see all steps in a process.
  - They add blank space for easy reading.
  - They're an ideal way to present items, conditions, and exceptions.
  - They're citable.

# Tips about Lists

- ▶ Make sure all the items follow from the introductory language
  - Read back each item
- ▶ Choose the right conjunction
  - “any” yields “or”, “all” yields “and”
- ▶ Place breaks correctly
- ▶ Use correct punctuation
  - Chapter 9 colons, commas, and semicolons

# ...But Don't Overuse

## Do This!

(a) The commissioner must deny certification if, at the time the application is submitted, the business is not registered with the secretary of state and:

(1) if the business is a sole proprietorship, does not have a valid federal tax identification number or valid Social Security number; or

(2) if the business has employees, is not registered with the Department of Revenue and the Department of Employment and Economic Development.

## Not That!

(a) The commissioner must deny certification if, at the time the application is submitted, the business:

(1) is not registered with the secretary of state; and

(2) if the business is a sole proprietorship, does not have a valid federal tax identification number or valid Social Security number; or

(3) if the business has employees, is not registered with the Department of Revenue and the Department of Employment and Economic Development.

# Direct and Simple - 3 Basic Rules

- ▶ Draft in the present tense
  - Don't: "the commissioner will assign..."
  - Do: "the commissioner must assign..."
- ▶ Draft in the singular number
  - Don't: "all licensees must..."
  - Do: "a licensee must..."
- ▶ Draft in the active voice

# Verb Voice

- ▶ Active (Actor – verb – direct object)
  - “Jim is eating bacon.”
- ▶ Passive (Direct object – verb – actor)
  - “All the bacon was eaten.”
- ▶ Passive-Aggressive
  - “Thanks for not sharing any of the bacon. I hope it was delicious.”

# Benefits to the Active Voice

- ▶ Active voice makes clear who has the duty.
- ▶ The passive voice can cause ambiguity.
- ▶ When both are written unambiguously, the active voice is shorter and more direct.

# Editing for Shorter Sentences

- ▶ Narrow the goal for each sentence (Conceptual editing)
- ▶ Cut unnecessary words (Grammatical editing)
  - Choose direct verbs
  - Identify noun strings
  - Review sentence structure

# Narrowing the Goal

- ▶ Nonparallel phrases can often be separated into multiple sentences
  - Don't: "The commissioner shall, **in writing and with a copy to the commissioner of agriculture**, report to the legislature on..."
  - Do: "The commissioner shall report to the legislature on... The report must be in writing. The commissioner must provide a copy of the report to the commissioner of agriculture."

# Types of Legal Sentences

## ► Imposing a Duty

- “Must” and “shall” are both mandatory verbs
  - Section 645.44, subdivisions 15a and 16
- Provide a penalty to be clear



## ► Granting Permission

- “May”
  - Section 645.44, subdivision 15
- **Warning:** do not use “may” if you don’t want discretion after a contingency is fulfilled

# Types of Legal Sentences

- ▶ Creating a condition precedent
  - “To be eligible for the program, an applicant must ...”
- ▶ Creating a right or entitlement
  - “Has the right to” and “is entitled to”
  - Don’t forget to say who has the duty to fulfill the entitlement!

# Types of Legal Sentences

## ► Prohibiting

- “Must not” / “may not” / “is prohibited”
- **Warning:** “an application submitted after the deadline may not be approved”
  - (What does this mean? Discretion to disapprove?)

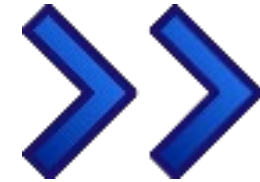


## ► Self-effecting provisions

- “The term ‘airport’ means”; “this subdivision applies”; “section is repealed”

# Choose the Most Direct Verb

- ▶ Verbs like “use”, “provide”, and “implement” often create needless words in a sentence.
- ▶ Look for the more direct verb:
  - “...the process to be used for providing oversight of...”
  - “...the process for overseeing...”
- ▶ Forms of “be” often signify a more direct verb exists
  - “...is applicable to...” becomes “...applies to...”



# Identifying Verbs in Noun Strings

- ▶ To avoid noun strings like this:
  - “Underground mine worker safety protection procedures development”
- ▶ Identify the verbs that have been turned into nouns:
  - “protection” and “development”
- ▶ Rewrite the phrase:
  - “Developing safety procedures to protect underground mine workers” or
  - “Developing procedures to protect the safety of workers in underground mines”

# Placing modifiers

- ▶ Keep modifiers close to what they modify
- ▶ Move generally applicable modifiers to the front
  - Don't: "The closed charter school must transfer the student's educational records within ten business days of closure to the student's school district of residence..."
  - Do: "Within ten business days of closure, the charter school must transfer the student's education records to the student's school district of residence..."



# An Example

“The annuity of a person otherwise eligible for an annuity from the general employees retirement plan of the Public Employees Retirement Association, the public employees police and fire retirement plan, or the local government correctional employees retirement plan must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount, if the person reenters public service as a nonelective employee of a governmental subdivision or returns to work as an employee of a labor organization that represents public employees who are association members under this chapter and salary for the reemployment service exceeds the annual maximum earnings allowable for that age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in any calendar year.”

# The Amendment

~~“(a) The annuity of a person otherwise eligible for If a member who is receiving an annuity from the general employees retirement plan of the Public Employees Retirement Association, the public employees police and fire retirement plan, or the local government correctional employees retirement plan must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount, if the person reenters public service as a nonelective employee of a retirement plan administered by the association is employed by (1) a governmental subdivision employer in a nonelected position not required by law to be covered by a plan administered by the Minnesota State Retirement System, the Teacher Retirement Association, or the St. Paul Teachers Retirement Fund Association, or returns to work as an employee of (2) by a labor organization that represents public employees who are association members under this chapter, and the member’s salary for the reemployment service exceeds the annual maximum salary defined in paragraph (b), the annuity shall be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annuity amount.~~

~~(b) The annual maximum salary means the annual maximum earnings allowable for that at the member’s age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in any effect for the calendar year.”~~

# Reordering Text

~~“(a) The annuity of a person otherwise eligible for~~ **if a member who is receiving** ~~an annuity from the general employees retirement plan of the Public Employees Retirement Association, the public employees police and fire retirement plan, or the local government correctional employees retirement plan~~ **must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount,** ~~if the person~~ **reenters public service as a nonelective employee of a retirement plan administered by the association is employed by (1) a governmental subdivision employer in a nonelected position not required by law to be covered by a plan administered by the Minnesota State Retirement System, the Teacher Retirement Association, or the St. Paul Teachers Retirement Fund Association, or returns to work as an employee of (2) by a labor organization that represents public employees who are association members under this chapter, and the member’s salary for the reemployment service exceeds the annual maximum salary defined in paragraph (b), the annuity shall be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annuity amount.**

~~(b) The annual maximum salary means the annual maximum earnings allowable for that at the member’s age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in any effect for the calendar year.”~~

# Generalizing

~~“(a) The annuity of a person otherwise eligible for If a member who is receiving an annuity from the general employees retirement plan of the Public Employees Retirement Association, the public employees police and fire retirement plan, or the local government correctional employees retirement plan, must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount, if the person reenters public service as a nonelective employee of a retirement plan administered by the association is employed by (1) a governmental subdivision employer in a nonelected position not required by law to be covered by a plan administered by the Minnesota State Retirement System, the Teacher Retirement Association, or the St. Paul Teachers Retirement Fund Association, or returns to work as an employee of (2) by a labor organization that represents public employees who are association members under this chapter, and the member’s salary for the reemployment service exceeds the annual maximum salary defined in paragraph (b), the annuity shall be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annuity amount.~~

~~(b) The annual maximum salary means the annual maximum earnings allowable for that at the member’s age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in any effect for the calendar year.”~~

# New Substantive Language

~~“(a) The annuity of a person otherwise eligible for If a member who is receiving an annuity from the general employees retirement plan of the Public Employees Retirement Association, the public employees police and fire retirement plan, or the local government correctional employees retirement plan must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount, if the person reenters public service~~ as a nonelective employee of a retirement plan administered by the association is employed by (1) a governmental subdivision employer in a nonelected position not required by law to be covered by a plan administered by the Minnesota State Retirement System, the Teacher Retirement Association, or the St. Paul Teachers Retirement Fund Association, ~~or returns to work as an employee of (2) by a labor organization that represents public employees who are association members under this chapter, and the member’s salary for the reemployment service exceeds the annual maximum salary defined in paragraph (b), the annuity shall be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annuity amount.~~

~~(b) The annual maximum salary means the annual maximum earnings allowable for that at the member’s age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in any effect for the calendar year.”~~

# Breaking Out the Definition

~~“(a) The annuity of a person otherwise eligible for If a member who is receiving an annuity from the general employees retirement plan of the Public Employees Retirement Association, the public employees police and fire retirement plan, or the local government correctional employees retirement plan must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount, if the person reenters public service as a nonelective employee of a retirement plan administered by the association is employed by (1) a governmental subdivision employer in a nonelected position not required by law to be covered by a plan administered by the Minnesota State Retirement System, the Teacher Retirement Association, or the St. Paul Teachers Retirement Fund Association, or returns to work as an employee of (2) by a labor organization that represents public employees who are association members under this chapter, and the member’s salary for the reemployment service exceeds the annual maximum salary defined in paragraph (b), the annuity shall be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annuity amount.~~

~~(b) The annual maximum salary means the annual maximum earnings allowable for that at the member’s age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in any effect for the calendar year.”~~

# The Result

“(a) If a member who is receiving an annuity from a retirement plan administered by the association is employed by (1) a governmental employer in a nonelected position not required by law to be covered by a plan administered by the Minnesota State Retirement System, the Teacher Retirement Association, or the St. Paul Teachers Retirement Fund Association, or (2) by a labor organization that represents public employees who are association members under this chapter, and the member’s salary exceeds the annual maximum salary defined in paragraph (b), the annuity shall be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annuity amount.

(b) The annual maximum salary means the annual maximum earnings allowable at the member’s age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in effect for the calendar year.”

# Other Examples

“As part of an initial evaluation, if appropriate, and as part of any reevaluation under this part, or a reinstatement under part 3525.3100, the IEP team and other qualified professionals, as appropriate, shall:

(2) on the basis of the review, and input from the pupil's parents, identify what additional data, if any, are needed to determine whether the pupil has a particular category of disability, as described in Minnesota Statutes, section 125A.02, or, in case of a reevaluation of a pupil, whether the pupil continues to have such a disability, the present levels of performance and educational needs of the pupil, whether the pupil needs special education and related services, or in the case of a reevaluation of a pupil, whether the pupil continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized education program of the pupil and to participate, as appropriate, in the general curriculum.”

# Other examples

“If a permit is required for the operation of a project or if a state agency must approve the engineering design plans of a project, and if the information needed by the agency to reach a decision could not be made available through the master application process, because postconstruction or operation data are required to be collected or evaluated or because the issuance of the permit depends upon a postconstruction facilities inspection or performance demonstration, then that permit or approval may be processed independently from the master application process provided both the applicant and the agency agree.”

# Other examples

“A driver required to maintain a record of duty status under part 8850.8900, subpart 1, shall not fail to have a record of duty status current on the day of examination and for the previous seven consecutive days; except that a driver failing only to have possession of a record of duty status current on the day of examination and the previous day, and who has completed records of duty status for the previous six days up to the day before examination, will be given the opportunity to make the duty status record current.”

# Other examples

“The county board shall make case management services available to all children with severe emotional disturbance and their families who are residents of the county and who request or consent to the services under Minnesota Statutes, section 245.4881, and within the limits in Minnesota Statutes, section 245.486, and parts 9520.0900 to 9520.0926, and to all adults with serious and persistent mental illness who are residents of the county and who request or consent to services under Minnesota Statutes, section 245.4711.”

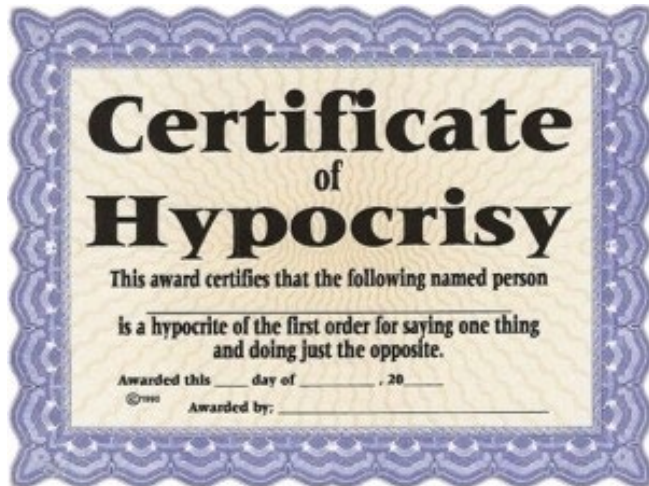
# Other examples

“Except as provided in subpart 3, a case manager providing case management services to an adult with serious and persistent mental illness must have a bachelor's degree in one of the behavioral sciences or related fields from an accredited college or university and have at least 2,000 hours of supervised experience in the delivery of services to adults with mental illness, must be skilled in the process of identifying and assessing a wide range of client needs, must be skilled in setting and monitoring appropriate service outcomes, and must be knowledgeable about local community resources and how to use those resources for the benefit of the adult with serious and persistent mental illness.”

# Going Deeper

- ▶ Good books for learning techniques:
  - Bryan Garner
  - Joseph Kimble
  - General technical writing textbooks

# ...More What You'd Call...Guidelines



- ▶ Follow the rules...mostly
  - ▶ For every drafting rule or principle, there are countless legitimate (and important) exceptions that have legal consequences
- 
- ▶ Remember the primary objective of drafting: to fully and accurately express the desired legal principle and/or policy objective

# Drafting Resources

## Revisor's Office Publications

- ▶ Bill Drafting Manual  
<https://www.revisor.mn.gov/office/2013-Revisor-Manual.pdf>
- ▶ Minnesota Statutes, chapter 645
- ▶ Court Opinions Report  
[https://www.revisor.mn.gov/court\\_opinions/2024](https://www.revisor.mn.gov/court_opinions/2024)

## External Resources

- ▶ *Legislative Drafter's Guidebook: A Practical Guide*, Tobias Dorsey
- ▶ *Legislative Drafting*, Reed Dickerson
- ▶ "Plain Language for Lawyers", Richard Wydick, *California Law Review* 66 (1978): 727-56
- ▶ *Reading Law: the Interpretation of Legal Texts*, Antonin Scalia & Bryan Garner
- ▶ *The Art of the Statute*, Jack Stark

# Questions?

## ▶ Jason Kuenle

- Phone: 651-296-0218
- Email: [jason.kuenle@revisor.mn.gov](mailto:jason.kuenle@revisor.mn.gov)