

**Follow Up to June 25, 2019 Question
From Chairman Collins**

Re: Shall vs. Will

Question:

Dr. Collins requested information regarding the college's change of policy language from "shall" to "will."

Answer:

In 2018, the college began the process of changing language in its policy from the word "shall" to "will." This is based on several references to the confusing meaning of the word "shall" as outlined below.

- Nearly every jurisdiction has held that the word "shall" is confusing because it can also mean "may, will or must." Legal reference books no longer use the word "shall." Even the Supreme Court ruled that when the word "shall" appears in statutes, it means "may."

The editor of Black's Law Dictionary wrote that "In most legal instruments, "shall" violates the presumption of consistency... which is why "shall" is among the most heavily litigated words in the English language.

If you mean mandatory, use the word "must." If you mean prohibited, use, "must not." https://www.faa.gov/about/initiatives/plain_language/articles/mandatory/

- "Shall" is the most misused word in all of legal language. To correctly use the word "shall," confine it to the meaning "has a duty to." <http://www.Legalwriting.net>
- Avoid using "shall" or "will" in writing policies and procedures unless futurity, a strong promise, or a threat is intended. http://www.urgoconsulting.com/resources/useof_shall_will_inpp.php
 - Futurity: If you aren't satisfied within 30 days, Acme will refund your money in full.
 - A strong promise: In hiring and staffing, we will not discriminate based on age, race, creed, ...
 - A threat: Violators will be prosecuted to the full extent of the law.
- In most legal instruments, *shall* violates the presumption of consistency: Words are presumed to have a consistent meaning in clause after clause, page after page. Which is why *shall* is among the most heavily litigated words in the English language (with hopelessly inconsistent court holdings).

My own practice is to delete *shall* in all legal instruments and to replace it with a clearer word more characteristic of American English: *must*, *will*, *is*, *may* or the phrase *is entitled to*.

http://www.abajournal.com/magazine/article/shall_we_abandon_shall/

- **Use active voice.** **Active voice** makes it clear who is supposed to do what. ... In an **active** sentence, the person or agency that's acting is the subject of the sentence. In a passive sentence, the person or item that is acted upon is the subject of the sentence. <http://www.plainlanguage.gov>

Resource:

Kim Davison

Chief of Staff

972-985-3781

kdavison@collin.edu