

Legal Self-Reliance: Empowering Consumers Through Plain Language

By Julie Clement, Fern Fisher, and Maria Mindlin

This month's column follows on the theme of the February column by Chief Justice McCormack, "Access to Justice Requires Plain Language." Next month's column will do the same. —JK

With coronavirus and social-justice protests now part of the daily fabric of U.S. life, an unprecedented number of people face legal stresses related to health risks, unemployment, loss of insurance benefits, depression, anguish, and the consequent rise of domestic violence, evictions, and foreclosures. Perhaps never has access to comprehensible and trustworthy legal information been more important.

People with legal problems and questions must be able to find the information they need by using the natural, plain-language search terms they are familiar with. Many must now do this on their own without the support of people who helped in the past. Many local courts, including court self-help centers, have closed. Legal-services organizations, social services, and government agencies — already overwhelmed — are inundated by calls and requests for help during this period of upheaval.

Vulnerable, afraid, and isolated

Many people are reluctant to have contact with others because of concerns for their health or immigration status. People may seek help at a distance, which is often not an easy task. They need to know or find the right legal words to identify their needs. For example, a renter threatened with eviction may not know to search for *unlawful detainer*. Even highly educated readers get stumped trying to understand what *notice* and *service* mean. And those who need the information most may not know about do-it-yourself legal instruments to prepare themselves and their families for serious threats they face — potential financial devastation, COVID-related or other hospitalization, deportation, and even death.

Unfamiliar technologies

Although most courts and legal professionals are compensating for closures by using remote technologies for hearings and

services, how well this works for less computer-literate populations is unknown. Many people lack the ability, knowledge, or equipment to use these new technologies. A year ago, few had heard of Zoom. Now it is widely known, but this does not mean that everyone knows how to or can use it. User feedback suggests that many pro se litigants are struggling with this new way of conducting court operations despite increased access for others.¹

Pathways to accessing justice

With greater limitations on court and legal services, consumers are increasingly relying on websites, information sheets, instructions, and video and audio recordings.² The accessibility of printed and recorded words has become even more important. Legal information that is plain, user-tested, and accessible for persons with disabilities can do much to increase usability and meet the unique challenges we face today. More importantly, without such adaptations, access to the threshold of justice is unattainable for most legal consumers.

Which text block is more likely to be read and understood by a self-represented litigant?

Satisfaction of Required Notice

Within seven calendar days after providing this required notice, you must provide documentation showing the inability to pay rent was due to financial impacts of the coronavirus. This requirement can be satisfied with a letter, email, or other written communication that explains the financial impact you are experiencing.

(Postgraduate reading level)

Do I have to give my landlord proof of my financial situation?

Yes. After you notify your landlord that you cannot pay, you have **7 days** to give the landlord proof that your financial situation was impacted by the coronavirus. You can do this with:

- a letter;
- an email; **or**
- another written communication that explains how the coronavirus affected your situation.

(Ninth-grade reading level)

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 37 years. To contribute an article, contact Prof. Kimble at WMU-Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, visit www.michbar.org/plainlanguage.

Plain language: Consumers need it; the law (sometimes) demands it

A handful of governments — national, regional, and local — have enacted plain-language legislation, rules, or guidelines. For example, the Plain Writing Act of 2010 requires federal agencies to use plain language in consumer-facing documents.³ Sadly, effective plain language remains at a nascent stage in many legal settings. While greatly needed by an even larger number of consumers, plain-legal-language consumer information is still the exception. A recent review of the Access to Justice Commissions at the U.S. National Center for State Courts website showed that only Iowa explicitly mentions the need to provide information in plain language as part of its mission or goals statement.⁴

No current standards or certification

Not enough courts use plain language in consumer-facing environments; no courts have established standards or certification procedures for plain-language providers. Absent are discussions of the differences between a plain-language provider and a plain-legal-language provider. Other actors in the legal system would also benefit from standards: law offices, nonlawyer legal-services offices, technology providers, and social services and government agencies that provide legal forms, notices, and other documents that are not in proper plain legal language.

Standard 7.2 of the American Bar Association’s language-access standards for interpreters and translators requires plain-English language as the initial step to a successful translation: wherever written translation is required as part of a language-access plan, there should be plain-English translation first.⁵ But these same ABA standards do not identify the professional standards, qualifications, or process required for plain-legal-language professionals. The current plain-language situation is reminiscent of precertification days for court interpreters when self-certification, an oath, and heaps of faith were the only requirements for hiring court interpreters and translators.

What court and other legal communications should look like

Plain-language experts agree: the goal of plain language is for court users to be able to find what they need; understand what they find the first time they read, see, or hear it; and use that information to access the legal system on their own.⁶

Plain language gives courts increased operational efficiency, while affording court- and legal-system consumers greater access to justice. Each court will do this in its own way. Unfortunately, too few courts (and other legal-services providers) test the effectiveness of their communications to see whether their approach works.

Two examples of state-court messaging on COVID’s impact on court operations

Figure 1: This (partial) court communication is written with an elevated register, using design techniques that hinder readability.

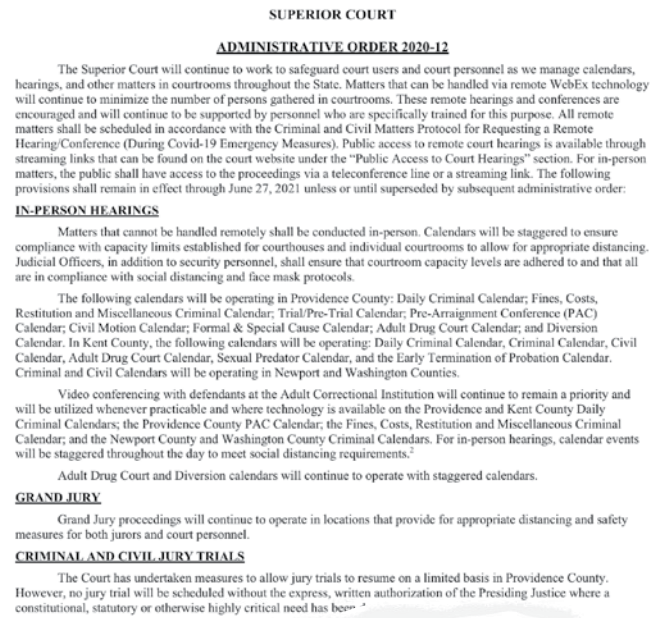
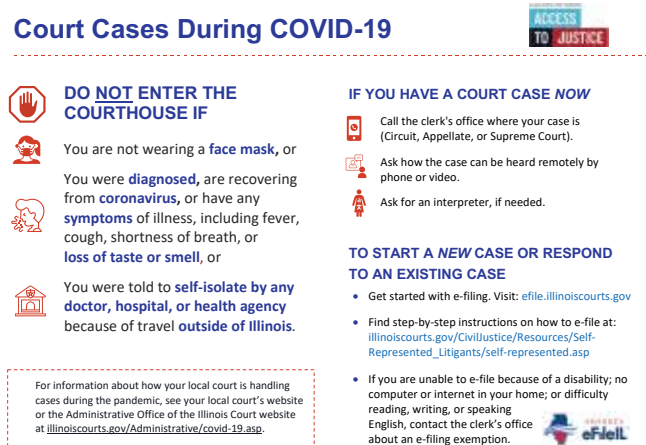


Figure 2: The court communication below is written in plain language, using an intuitive design that helps readers find and understand what they need to know.



Leveraging our investment in language-access resources

Arguably, all state and federal courts have some type of language-access need. All are subject to Title VI of the Civil Rights Act of 1964⁷ and the American Bar Association language-access

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standards of using plain-language texts as a translation platform.⁸ Additionally, courts receiving federal funds are subject to § 508 of the Rehabilitation Act,⁹ including its plain-language requirements.¹⁰ That's because many § 508 beneficiaries have cognitive and learning disabilities that make clear text and audio presentation essential.

As every proponent of plain language reminds us, all people, not just those with disabilities or limited reading skills, benefit from clear, concise writing. If courts and other legal stakeholders were to leverage the § 508 plain-English requirements, they could put those requirements to use for the benefit of the public as a whole. Plain language is not just beneficial before translating or for those with disabilities; it is clear communication that can give all users increased access to the court system and the broader legal system.

Time to define standards and qualifications

Health and other experts tell us that it may be some time yet before widespread coronavirus vaccination or viable treatment is achieved. Why not use this time to:

- survey the state courts' awareness of and adherence to the plain-language laws, § 508 requirements, and ABA standards of using plain-language texts as a translation platform;
- catalogue the supply of existing plain-legal-language resources nationwide;
- establish standards for plain-legal-language professionals to ensure the usability and legal sufficiency of future consumer-facing products; and
- move toward a certification process to ensure that specialists and providers are qualified in plain legal language?

This final point is especially significant. If courts and legal professionals are to enlist the services of plain-legal-language providers, the time has come to clearly delineate who is and is not qualified to "translate" legal language on behalf of the courts and other stakeholders. To that end, we have drafted proposed standards and qualifications and are eager to share them with those interested in pursuing this goal. ■

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ENDNOTES

1. SRLIN Brief: Addressing Remote Hearing Access and Digital Divide for SRLs (SRLIN 2020), Self-Represented Litigation Network (2021) <<https://www.srlin.org/node/1431/resources-addressing-remote-access-and-digital-divide-srls-srlin-2020>> [<https://perma.cc/3NP6-KBWT>]. All websites accessed March 31, 2021.
2. E.g., Bannon & Adelstein, *The Impact of Video Proceedings on Fairness and Access to Justice in Court*, Brennan Center for Justice (September 10, 2020) <<https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court>> [<https://perma.cc/UC9H-5MBP>].
3. *Law and requirements*, plainlanguage.gov <<https://www.plainlanguage.gov/law/>> [<https://perma.cc/P5MZ-GXD4>].
4. See, e.g., ABA Access to Justice Commissions Directory and Structure, https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/atj-commissions/commission-directory/.
5. The American Bar Association's language-access Standard 7.2 states: "To ensure quality in translated documents, courts should establish a translation protocol that includes: review of the document prior to translation for uniformity and plain English usage." *Standards for Language Access in Courts*, ABA (2012), available at <https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.pdf> [<https://perma.cc/GQB6-LUFV>].
6. *What is plain language?* plainlanguage.gov <<https://www.plainlanguage.gov/about/definitions/>> [<https://perma.cc/U99L-9GES>].
7. 42 USC 2000d and 45 CFR 80.
8. ABA Standards for Language Access, § 7.2, available at <https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.pdf>.
9. 29 USC 794d.
10. *Id.* See also *Web Content Accessibility Guidelines (WCAG) 2.0* <<https://www.w3.org/WAI/GL/WCAG20/>> [<https://perma.cc/SKE4-Z3FX>] and Stapleton & Spivey, *The Intersection Between Plain Language and 508 Compliance*, Digital.gov (April 15, 2020), available at <<https://digital.gov/event/2020/04/15/accessibility-intersection-between-plain-language-508/>> [<https://perma.cc/8PPF-7PD3>].