Getting Normal: The Move to Letter-Size Paper

Almost three years ago, the Michigan E.L.F. (Eliminate Legal-Size Files) Commission was formed by persons from business and government to promote the use of standard 8½ by 11-inch paper. The commission, chaired by Patrick Clark, is part of a national effort supported by the Association of Records Managers and Administrators and the Business Forms Management Association.

In the three years since, the Supreme Court has issued Administrative Order No. 1987-8 encouraging the voluntary use of letter-size paper in Michigan courts. All court forms approved by the State Court Administrative Office are on letter size. And both the Supreme Court and Court of Appeals have simplified their orders and are using letter size for orders and opinions.

Now Senate Bill 239 has been introduced by Senator Virgil C. Smith, Jr. The bill, originally drafted by the commission, would require that the documents used by state and local public bodies be on letter size. In support of that bill we make this last pass at the subject.

IN FEDERAL COURTS

By *Judy Christie and Steve Harrington*

Harrington: How did the Federal court system institute [in 1983] the rule requiring only letter-size paper?

Christie: Lawyers were given fair warning. They had at least six months to use up their stock of legal-size paper. But so many attorneys were already using letter size that the rule didn't catch many by surprise.

Today, we simply don't accept any documents on legal-size paper. If lawyers try to file legal-size documents with us, we just ask them if they'd rather have us cut off the top or the bottom. Some think we're kidding, but we're not. The rule has been too good to us to make exceptions.

Harrington: How has the policy been received?

Christie: Very well. Our only problem is with removals from state courts. Even though some attorneys copy those pleadings on letter-size paper for us, we still have to accept the state court files on legal-size paper, and that presents a real problem for us.

Harrington: Why are legal-size documents such a problem?

Christie: They require the larger files which don't fit well on our shelving. We redesigned our records area when the rule was adopted and gained twenty percent additional filing space by shifting to letter-size open shelving.

In addition to the storage problem, the mixture of sizes causes a loss of efficiency when documents are microfiched, something which the court is just beginning but which we believe is the answer to security and maintenance problems posed by the thousands of legal documents we accept each year.

Harrington: How many documents are filed annually in the Eastern District?

Christie: The number of documents filed differs with each case. But each year, we have about 7,000 civil cases and 2,000 criminal cases filed. We've estimated that about 3 million pieces of paper are filed yearly with the court. That gives you an idea of how busy this district is.

To understand the inconvenience of legal-size paper, it is important to consider that we are required to keep records at the courthouse for five years. That means we have roughly 45,000 case files here at the court at any given time, and one of our continuing problems is finding the space to store all the paper. We have already transferred two years of civil and criminal files to the basement, but we are still pressed for convenient storage facilities.

Harrington: Besides saving space, are there other advantages to letter-size paper?

Christie: We save money by buying files in the smaller size. Then when we ship them after five years to the Federal Record Center in Chicago, we receive additional savings if the files are letter size because we can fit more paper in the shipping boxes.

"Plain Language" is a regular feature of the ***Michigan Bar Journal,*** *edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a Plain Language article? Contact Prof. Kimble at Cooley Law School, P.O. Box 13038, Lansing, MI 48901.*

Besides the money saved, a standard size is more orderly. State removals stick out on our shelves and naturally receive a bit more battering than the letter-size files.

Harrington: What about exhibits?

Christie: We do except exhibits from our court rule, but more and more often we see attorneys reducing them to the smaller size if that is feasible.

Harrington: Has the letter-size requirement had other effects on the records system?

Christie: Besides the savings in space, we're saving time and money when we have to copy pleadings. That is a big part of a record clerk's job, and copying is much quicker when he or she is dealing with a standard paper size and the automatic paper feeder can be used.

Harrington: What about costs? Can you put a dollar figure on the amount saved?

Christie: There hasn't been a cost analysis by the federal court system and, in retrospect, there should have been. I'm sure that the savings in time, space, and material have been substantial, but we don't have any figures to back up my hunch.

Harrington: What about critics of the rule?

Christie: Some say that you can write more on legal-size paper, but the truth is that most legal secretaries use huge margins. I took an old file at random to find out how much difference those few inches made. I found that a 155-page, legal-size file could be transferred to a letter-size file of 159 pages. That's only 2 percent thicker. But you've reduced the length by 21 percent. The overall effect is that you have reduced the total volume of space required to store this file by about 20 percent.

Harrington: If there is a change by state courts, would you expect it to be costly for attorneys?

Christie: No. Many don't understand that letter size can be phased in. Old supplies can be used up before letter size is required, and any costs in going to a standard size don't have to be borne all at once.

Judy Christie holds legal and letter-size files.

Harrington: What about those who prefer the tradition of legal-size paper?

Christie: I don't have a reasoned response for traditionalists, but I've never heard of a court order invalidated because it was on letter-size paper. We probably faced the same outcry when the courts changed from quill pens to typewriters, but the court system survived.

Harrington: Would anything convince those who prefer the long size?

Christie: I welcome anyone who wants to see how orderly our files are. Standardization has been more efficient because we don't have to handle several different paper sizes and we have saved storage space. The documents also have a better appearance, although I believe that this may be attributable to the briefcase style of file we adopted when the letter size was mandated.

Harrington: How do you feel about proposed state legislation that would require letter-size paper?

Christie: I think it makes sense, and I hope there will be no opposition. Judging from our experience, letter-size paper is much more efficient and the rule doesn't create a hardship on attorneys. If such a rule is adopted, I'm sure that even the critics will have to admit that letter-size paper is best. Let's face it, lack of a uniform paper size creates a filing nightmare.

IN STATE COURTS

By Sanna Dürk McAra

In the February and September 1988 issues, this column outlined the recent changes in Michigan concerning size and style of orders by the Supreme Court and Court of Appeals. What about the other states? Last year the Plain English Committee conducted a survey of state courts. And the results?

The 8½ by 14-inch paper—almost a trademark of the legal profession—could soon become obsolete. The standard 8½ by 11 paper used by most

of society is sweeping the courts. Use of letter-size paper seems to be readily justifiable just for reasons of uniformity, efficiency, and hence economy. But the survey seems to show that hand-in-hand with the change to short paper comes a move to clarity and simplicity. We cannot prove any causal effect; nor does use of letter-size paper depend on simplification. Nevertheless, orders are becoming briefer, and the "wheretofores" and "hereinunders" are disappearing.

Procedure of Survey

We contacted the clerk's office of the highest court in all 50 states. In addition to the question about paper size, we asked for sample orders. We wanted to know about actual practice rather than legislation or court rules. Not surprisingly, the issue is timely all across the country. The clerk in Louisiana had conducted a similar survey concentrating on court rules.

The response was positive. No one refused to answer our questions, and 35 states sent sample orders (one office charged us a dollar).

Results

Forty states are using letter-size paper for their standard orders: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, (Michigan), Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Seven states and the District of Columbia are using legal size: Alabama, D.C., Florida, Indiana, Louisiana, Mississippi, Nevada, and Washington.

Three states are using both:

Kansas: A recent change in the court rules permits either size; they expect a move to standard size only in the future.

Oklahoma: Court rules require standard size for pleadings; some judges still use legal size for orders and opinions.

Tennessee: Both sizes are used, but still mostly legal size.

Besides the trend toward letter size is a trend toward individually computer-generated orders. Only 10 of the 35 samples received were pre-printed orders.

As I mentioned, there seems to also be a trend toward simplicity and brevity and away from legalese. However, the samples still show a wide range of usage. New York, for example, uses short paper, but old habits die hard:

> *"A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had, it is ORDERED, that said motion be and hereby is granted."*

Compare that with Iowa's:

> *"After consideration by this court, the motion to dismiss is denied."*

On this spectrum Michigan certainly falls toward the brief and plain:

> *"The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented."*

So despite the trend, a number of these orders violate well-accepted rules of plain English. David Mellinkoff, author of *Legal Writing: Sense and Nonsense,* would probably describe the order from New York as "lawsick." Mellinkoff calls for a break with the tradition of bad legal writing and suggests as a starting point this 15-item cut list: old formalisms, worthless Old and Middle English words, antique and current coupled synonyms, redundant modifiers, inflation, repetition, circular platitudes, hornbook law, citations for hornbook law, boilerplate introductions, worthless definitions, worthless labels, a choke of quotations, and footnotes loaded with text.

Given the narrow scope of standard orders, I chose three of Mellinkoff's categories and analyzed the sample orders.

Coupled synonyms seem to have almost disappeared, with only an occasional "be and the same is," "ordered and adjudged," and "reverse and annul."

Redundant modifiers also seem to be losing favor with the exception of "above entitled" or "above captioned" and "foregoing."

The third category is Old and Middle English words. In his Appendix A, Mellinkoff lists 53 examples from "aforesaid" to "witnesseth" that he believes can be dropped from the legal vocabulary without any loss of precision, and with a gain in clarity. Although a number of orders are without any of these archaic terms, "hereby" made it onto eleven orders; "herein," "hereunto," "heretofore," and "said" (adjective) appeared twice; and all the following appeared once: "hereto," "whereof," "whereas," "thereon," "thereupon," "foregoing," "whereof," "to wit," "therein," "thereof." It is ironic that even better orders suffered from the use of these Old and Middle English terms, because deleting them is the easiest step to take and they should be the first to go.

Judy Christie graduated from Oakland University with a master's degree in public administration. She is the administrative manager of the United States District Court for the Eastern District of Michigan. She has worked in the federal court system for eight years.

Steve Harrington graduated from Thomas M. Cooley Law School and is a news reporter for the Michigan Lawyers Weekly. He has published articles on copyright law and legal writing.

Sanna Dürk McAra graduated from the University of Michigan with a master's degree in linguistics. She is a student at Thomas M. Cooley Law School. She surveyed state courts as an intern for the Plain English Committee.