Plain Language

# Affidavits

By George Hathaway, Nick Ciaramitaro, Perry Bullard, and Karen Willard

In September, we reviewed executive orders and discussed comments that we obtained in a survey of readers' impressions of the way executive orders are written.

This month we will review readers' impressions of affidavits. Affidavits are among the worst written legal documents of all time. They have a terrible title, and they are full of legalese.

An affidavit is a sworn statement taken by a notary. Affidavit is the third-person singular, perfect tense of the Latin verb affidare and means "he or she has sworn an oath." But it makes more sense to title the document "sworn statement" instead of "affidavit."1 An affidavit ends with a notary's "jurat," which is usually written "Subscribed and sworn to before me on this \_\_\_\_ \_\_ day of , 1995." Jurat is the third-person singular, present tense of the Latin verb *jurare* and means "he or she swears." Again, it makes more sense to call this clause a "sworn to" clause and to write it "Signed \_\_\_\_, 1<u>9</u>95." and sworn to before me on \_\_\_\_

To see how readers feel about the way affidavits are written, we first determined:

• What does the writer of an affidavit want to achieve? To get statements from a witness that can be introduced as evidence in court.

• Who are the readers? The witness and the court.

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901. • How will the readers use the affidavit? To admit the evidence in court or to learn about the statements.

We then asked ten members of the general public:

• Can you understand the following affidavit? (Figure 1.) • What is your impression of the way the affidavit is written?

• Which style do you prefer, Figure 1 or Figure 2?

Six said they could understand the affidavit; four said they could not. Seven thought the affidavit was written in an



| Affidavit of Jane Doe  |               |  |
|--|---------------|--|
| State of Michigan )  |               |  |
| ) SS<br>County of Wayne)   |               |  |
| Jane Doe, being first duly sworn, deposes a  | and says:     |  |
| <ol> <li>I am the Employment Director of X Comp</li> <li>John Smith was hired by X Company on Ju</li> <li>Mr Smith resigned from X Company on Secondary Se</li></ol> | une 16, 1983. |  |
| Further deponent saith not.  | Jane Doe      |  |
| Subscribed and sworn to before me<br>this 16th day of December, 1994   | Jane Doe      |  |
| Jalery Olde  |               |  |
| U<br>Valery Olden, Notary Public<br>Wayne County, State of Michigan<br>My commission expires: March 3, 1996  |               |  |

Figure 2

## Sworn Statement of Jane Doe

1. I am the Employment Director of X Company.

2. John Smith was hired by X Company on June 16, 1983.

3. Mr Smith resigned from X Company on September 9, 1991.

VALEY & OLDER

Jane Doe

Signed and sworn to before me in Wayne County, Michigan on December 16, 1994.

| y <b>. Në</b><br>, 1996 | Notary's Signature_ | Valery | Ollen |
|-------------------------|---------------------|--------|-------|
|                         |                     | U      |       |

Notary's Stamp.

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OAKLAND COMMUNITY COLLEGE LEGAL ASSISTANT **PROGRAM** PROUDLY **ANNOUNCES ITS 1995 PROGRAM GRADUATES** David Aeh Rabab Binno Patrick Carpenter Lynn Demers Judy Harp Wendi Hogg **Elizabeth** James Lorraine Johncox Theresa Johnson Michelle Kaznecki Bridgett Knight Amy Meyer Judith Neuwirth Keri Ratkus Paul Springer Lori Strong Paula Vukonich Lisa Zanetti The Oakland Community College Legal Assistant Program is a for-credit program leading to either an associate degree or certificate. It is housed at the Orchard Ridge Campus in Farmington Hills. For further information, please call the Legal Assistant Program office, (810) 471-6339.

A bill to amend chapter 14 of the Revised Statutes of 1846, entitled "Of county officers," as amended, being sections 55.107 to 55.117 of the Michigan Compiled Laws, by adding section 112a.

### THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Chapter 14 of the Revised Statutes of 1846, as amended, being sections 55.107 to 55. 117 of the Michigan Compiled Laws, is amended by adding section 112a to read as follows:

#### SECTION 112A

(1) Notaries Public may use any notary form set forth in this section. The notary forms set forth in this section shall be known as plain English notary forms and may be referred to by that name. Any notary form set forth in this section shall be considered sufficient to accomplish its stated purpose under any law of this state. This section shall not be considered to preclude the use of other notary forms.

(2) An affidavit or sworn statement may be substantially in the following form:

#### SWORN STATEMENT OF MARY DOE

I, Mary Doe, (explanation of who Mary Doe is, followed by statements of fact made by Mary Doe.)

|   | (Signature of Mary Doe)  |
|---|--|
|   | County, Michigan, on, 1994.  |
| Notary's  | Notary's<br>Signature  |
| Stamp   | Signature  |
|   |  |
| in the following form:  | ual acting in his or her own behalf may be substantial   |
|   | County, Michigan, on, 1994 by Mary Doe.  |
| Notary's  | Notary's Signature   |
| Stamp   | Signature  |
|   |  |
|   | ership may be substantially in the following form:   |
| Acknowledged before me in   | County, Michigan, on, 1994 by Mary Do  |
| Partner of X Partnership, a Michigan Co-Part  | • •  |
| Notary's  | Notary's   |
| Stamp   | Signature  |
|   |  |
|   | Partnership may be substantially in the following form:  |
| Acknowledged before me in   | County, Michigan, on, 1994 by Mary Do  |
|   | Limited Partnership, for the Limited Partnership.  |
| Notary's  | Notary's<br>Signature  |
| Notary's Name, County, and Date Commission Ex   | Signature  |
|   |  |
| (6) An acknowledgement for a Corporat   | tion may be substantially in the following form:   |
|   |  |
| Acknowledged before me in   | _ County, Michigan, on, 1994 by Mary Do  |
| Acknowledged before me in<br>President of X Company, a Michigan Corpora   | _ County, Michigan, on, 1994 by Mary Do<br>ation, for the Corporation.   |
| Acknowledged before me in<br>President of X Company, a Michigan Corpora   | County, Michigan, on, 1994 by Mary Do ation, for the Corporation.  |
| Acknowledged before me in<br>President of X Company, a Michigan Corpora   | County, Michigan, on, 1994 by Mary Do ation, for the Corporation.  |
| Acknowledged before me in<br>President of X Company, a Michigan Corpora<br>Notary's<br>Stamp<br>(Notary's Name, County, and Date Commission Exp   | _ County, Michigan, on, 1994 by Mary Do<br>ation, for the Corporation.<br>Notary's<br>Signature<br>pires)  |
| Acknowledged before me in<br>President of X Company, a Michigan Corpora<br>Notary's<br>Stamp<br>(Notary's Name, County, and Date Commission Exp<br>(7) An acknowledgement for a Limited   | _ County, Michigan, on, 1994 by Mary Do<br>ation, for the Corporation.<br>Notary's<br>Signature<br>pires)  |
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unsatisfactory way. Nine preferred Figure 2. One thought neither Figure was clear. Individual comments were:

• I can understand both, but Figure 2 is easier to read, is more understandable, is more clear, is more concise, and gives the same information as Figure 1.

• Figure 1 is antiquated gobbledygook; Figure 2 is clear and straightforward.

• Figure 1 is intimidating and confusing, and requires additional time for the average layperson to read and understand due to legalese.

• I prefer Figure 2, but I would like a plain English form of the statement "Jane Doe, being first duly sworn, deposes, and says" added. This seems to make the statement more official.

### Conclusion

Affidavits contain some of the worst legalese written in Michigan. These affidavits should be called "sworn statements" and should use a clear, direct, plain English format. Lawyers, legal assistants, and legal secretaries can prepare sworn statements as in Figure 2 right now. These plain English sworn statements are just as valid as legalese-filled affidavits. Nevertheless, to promote the use of plain English sworn statements, we have written a proposed amendment to the Notaries Act. See Figure 3. This amendment does not abolish old forms or prescribe mandatory new forms. It simply provides statutory authority for the voluntary use of plain English swornstatement forms. It also provides statutory authority for voluntary use of plain English acknowledgement forms that we discussed in a previous column.2 Representative Nick Ciaramitaro introduced this Bill into the Michigan House of Representatives in September 1995.

George Hathaway is a senior real estate attorney at the Detroit Edison Company. Perry Bullard is a former Michigan state representative. Nick Ciaramitaro and Karen Willard are members of the Michigan House of Representatives.

#### Footnotes

- 1. This is exactly what is done in the Michigan Construction Lien Act. Section 110 of the Act (MCL 570.1110; MSA 26.316(110)) prescribes a form for an affidavit called a "sworn statement."
- 2. Hathaway, Plain English Acknowledgement Forms, 70 Mich B J 338 (1991).

We Counsel The Business Attorney



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- Utilizing forensic psychological techniques to promote maximal chaos, confusion & demoralization to opposing parties during trial
- Clinical neuropsychological evaluations & examinations, records review, reports, oral opinions, rehabilitation & trial strategies
- Former plaintiff's personal injury co-counsel for Melvin M. Belli, Sr.
- Former defense counsel for more than a dozen insurance companies & syndicates, including Lloyds of London
- Expert witness for neuropsychology/ psychology malpractice, plaintiff or defense
- Depositions, trial testimony, arbitrations

Roy W. Matthews III, Ph.D., J.D., ABPDC Admitted to Michigan State Bar, 1981 Licensed as Psychologist by Michigan Board, 1989 Ph.D. in Clinical Neuropsychology Fellowship & Residency in Neuropsychology

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