

A Plain English Lawyer's Oath

By George H. Hathaway

New lawyers take the Lawyer's Oath in their admission ceremonies to the State Bar of Michigan. Some judges who administer this oath believe that it is written in archaic language and does not convey the ideas that it should. Therefore, at the suggestion of Judge Chad Schmucker of Jackson County Circuit Court, the Plain English Committee recently helped to rewrite the oath in plain English.¹

Substance and Style

Every writing has two characteristics—substance (what you say) and style (how you say it). The substance of the Lawyer's Oath is fine. The problem is the style—the words (and the arrangement of the words) that are used to express the substance. The Lawyer's Oath is written in the style of legalese, or rather what we have termed legalese-compounded—long sentences, unnecessary words, and unfamiliar words.²

Plain English v Legalese

See Figure 1 for a comparison of the original version and the plain English version. Three of the elements of plain English are: 1) use reasonably short sentences; 2) eliminate unnecessary words; and 3) use familiar words. The original oath 1) contains 241 words in 9 sentences, for 27 words a sentence; 2) contains many unnecessary words such as *under the law of the land* and

for the purpose of maintaining the causes confided to me such means only as are consistent; and 3) unfamiliar words such as artifice, preserve inviolate, and lucre. The plain

English version 1) contains 168 words in 11 sentences for 15 words a sentence; 2) eliminates unnecessary words; and 3) contains familiar words such as *protect* and *money*.

Figure 1—Comparison of Original and Plain English Versions of Lawyer's Oath

Original Version	Plain English Version
From p 89 of April 97 Michigan Bar Journal	
I do solemnly swear or affirm:	For the privilege of joining the State Bar of Michigan, I promise:
(1) I will support the Constitution of the United States and the Constitution of the State of Michigan;	(1) I will support the Constitutions of the United States and the State of Michigan;
(2) I will maintain the respect due to courts of justice and judicial officers;	(2) I will promote respect for courts and court officers;
(3) I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;	(3) I will pursue a claim only if it is just, and will offer a defense only if it may be honestly argued under law;
(4) I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;	(4a) I will pursue my client's claims with truth and honor; (4b, 7b) I will never mislead a judge or jury, and will never delay a case for money or malice;
(5) I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with my client's business except with my client's knowledge and approval;	(5) I will protect my client's secrets, and will accept compensation for my client's business only with my client's approval;
(6) I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;	(6a) I will practice law civilly and avoid offensive conduct; (6b) I will never attack the honor or reputation of a party or witness unless the justice of the case demands it;
(7) I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any cause for lucre or malice;	(7a) I will not, for personal reasons, reject the cause of the defenseless or oppressed;
(8) I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed on members of the bar as conditions for the privilege to practice law in this state.	(8) I will personally and professionally comply with the high standards of conduct imposed on members of the bar.

"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.

Authority to Revise

Since the oath is part of the Supreme Court Rules Concerning the State Bar (Rule 15 Section 3—Procedure for Admission: Oath of Office), the Supreme Court probably has to approve any changes. But before the Court makes any decisions, it probably will ask for comments or recommendations from the State Bar.

Effect of Lawyer's Oath

The oath is part of the admissions ceremony to the bar. But it is a procedural requirement, not a substantive requirement like graduation from law school or passing the bar exam. If someone lip-synched the oath or said "I promise" instead of "I do solemnly swear or affirm," they would still become a member of the bar. Consequently, the effect of the oath is psychological rather than substantive.

Reasons for Plain English Version

In 1996 the Representative Assembly of the State Bar of Michigan adopted 10 basic goals. Goal VII is public understanding of and respect for the justice system and profession. Goal VIII is openness of the profession. Lawyers and judges can support these goals by writing legal documents in plain English. And since law students are taught plain English in law school, the best way to begin their practice of law is with a plain English oath. A plain English oath can also be promoted in the media by Walter Sorg, Assistant Executive Director—Media Relations of the State Bar.

Present Proposal

The oath was on the agenda for the April 25, 1998 meeting of the Representative Assembly in Lansing. The plain English version might be presented as an optional rather than mandatory version, so the judge giving the oath would have the option of using either the original version or the plain English version. Here is what some members of the State Bar say about the proposed plain English oath:

Hon. Chad Schmucker
(Jackson County Circuit Court)

The revised oath is clear, succinct, and understandable, which enhances the meaning of the oath. Ask ten people if they know

what "lucre" is—the most common response from lawyers and lay persons is that it's a form of euchre.

Some lawyers like the sound of legalese, and there are perhaps a few who would prefer that the entire oath be in Latin, but I would suggest that if the oath is going to serve any purpose at all it should be easily understood by both lawyers and lay people.

Hon. George C. Steeh
(Macomb County Circuit Court)

Old habits die hard, especially in our use of arcane legalese. The revised oath clearly expresses our expectations for new lawyers. Family members and friends attending admission ceremonies will easily understand the promises made. The oath is an important introduction to the practice of law. As such, it should embrace the value of clear and concise communication.

Hon. Avern Cohn
(United States District Judge
for the Eastern District of Michigan)

The plain English version of the Lawyer's Oath is a welcome change. The text of the oath as it now stands is too flowery to make an impact on a reader who is not a lawyer. As revised, the oath tells non-lawyers concisely and directly what is expected of lawyers—and what they can expect from those they choose to represent them in legal matters. It enhances the view of the profession from the outside.

Keith Beasley (Court Administrator,
Macomb County Circuit Court)

I support adoption of the plain English oath. The revised oath is clear, concise, readily understandable, and easy to recite. I have been present at many swearing-in ceremonies for new attorneys. At the most recent ceremony in November, I listened to the oath while keeping the proposed changes in mind. I believe the proposed oath will be much better. The current oath is awkward. The participants had difficulty with some of the words. The most difficult part of changing the oath is getting over our prejudice that an oath is not solemn and formal without "legalese."

Joe Kimble (Legal-Writing Teacher
at Thomas Cooley Law School)

Some might regard the current oath as quaint—and right for a ceremonial occasion. But I suspect that many or most new lawyers find it unclear in places and rather

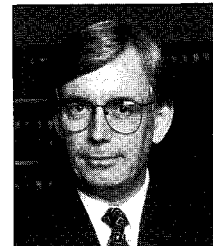
odd—the verbal equivalent of wearing spats or a coat with tails. Why start lawyers off like this? The plain English version is solemn, dignified, and equally right for a ceremonial occasion.

Diana Pratt (Legal-Writing Teacher
at Wayne State Law School)

For something that will be presented orally, the cadence, the alliteration, the sound are critical to the meaning and the occasion. Famous speeches are remembered for their oral expression as well as their meaning. The original version of the Lawyer's Oath has none of the oral qualities that make it memorable, and its meaning is obstructed by the legalese. I support the plain English version.

Michael D. Wade

Thank you for permitting me to comment on the proposed plain English version



George Hathaway is a senior real estate attorney at the Detroit Edison Company and chair of the Plain English Committee of the State Bar of Michigan.

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State Bar of Michigan Representative Assembly

September 18, 1997

Summary of Proceedings

Revised

The following is a revised summary of proceedings of the State Bar Representative Assembly session held Thursday, September 18, 1997 at the COBO Exhibition and Conference Center, Detroit, Michigan.

1. Call to Order by Chairperson Paul R. Sowerby.
2. Clerk Kurt T. Schnelz declared a quorum (50) was present.
3. Upon a motion made and seconded, the proposed calendar was adopted.
4. The Summary of Proceedings of the April 26, 1997 meeting was approved.
5. Upon a motion made and seconded, the Assembly agreed to amend the calendar to consider MRPC 6.3 at the September 18, 1997 session.
6. Upon a motion made and seconded, the following were appointed to fill vacancies in the respective Judicial Circuits as interim members: Robert H. Witkop, 13th Circuit; Cheryl Gore Follette, 13th Circuit; Raymond J. O'Dea, 32nd Circuit; Arvid B. Perrin, 34th Circuit; Leroy C. Gough, 44th Circuit; and John Bishop, 54th Circuit.
7. Hon. Conrad L. Mallett, Jr., Chief Justice of the Michigan Supreme Court addressed the Assembly.
8. Chairperson Sowerby addressed the Assembly.
9. Edmund M. Brady, Jr., President-Elect of the State Bar of Michigan addressed the Assembly.
10. Upon a motion made and seconded, the Assembly approved the recommendation of the Committee on Civil Procedure to ask the Michigan Supreme Court to amend Rule 3.101 regarding Garnishment after Judgement.
11. Upon a motion made and seconded, the Assembly approved the recommendation of the Standing Committee on Civil Procedure to ask the Michigan Supreme Court to amend Rule 2.317 regarding Discovery Masters.
12. Upon a motion made and seconded, the Assembly approved the recommendation of the Standing Committee on Civil Procedure to ask the Michigan Supreme Court to amend Rule 2.402(B) regarding attendance at pretrial.
13. Upon a motion made and seconded, the Assembly adopted the Model Family Medical Leave Policy recommended by the Labor and Employment Section.
14. Upon a motion made and seconded, the Assembly approved the recommendation of the Standing Committee on Civil Procedure to ask the Michigan Supreme Court to amend Rule 2.625(G) regarding taxation of costs.
15. Upon a motion made and seconded, the Assembly approved the recommendation of the Attorney Grievance Commission to ask the Michigan Supreme Court to amend Rule 1.8 regarding prohibiting sex with clients.
16. Upon a motion made and seconded, the Assembly approved the recommendation of the Standing Committee on Professional Ethics and the Committee on Delivery of Legal Services to ask the Michigan Supreme Court to amend Rule 6.3 regarding legal services organizations and lawyer referral services.
17. Upon a motion made and seconded the Assembly defeated a proposal by the Assigned Counsel Standards Committee to establish guidelines for training assigned criminal counsel.
18. President Victoria A. Roberts and Executive Director D. Larkin Chenault responded to questions from members of the Assembly concerning operations and activities of the State Bar of Michigan.
19. Kimberly M. Cahill, Marsha K. Nettles were nominated for the position of the Clerk of the Assembly. Upon a motion made and seconded, the nominations were closed. Kimberly M. Cahill was elected Clerk of the Representative Assembly by written ballot.
20. Outgoing Representative Assembly members were presented with a plaque.
21. Scott S. Brinkmeyer was sworn in as Chairperson of the Assembly, outgoing Chairperson Paul R. Sowerby was presented a memento of his term in office.
22. Adjournment.

Kurt E. Schnelz, Clerk

Revised to include item 7.

of the Lawyer's Oath. The plain English version should become the mandatory oath, rather than merely an alternative, since the new version substantively changes the oath and for the better. For instance, "abstaining from all offensive personality" is not the same as "practic(ing) law civilly." Changing from the negative to the positive is not merely a linguistic change, but an attitudinal change. Civility is not merely the absence of offensive personality, but a positive attribute in the relationship between and among attorneys, judges, witnesses, litigants, etc.

Another example illustrates my point. The plain English version of paragraph 3 is much more important than the convoluted negativity of the original version. Pursuing just claims is not the same as refraining from pursuing unjust claims, though the practical effect is the same. But the attitude is different. The representation of just claims constitutes the lawyer's highest calling. Refraining from pursuing the unjust claim is legally correct. The positive pursuit of the just cause is morally correct.

I commend the committee which formulated the new Lawyer's Oath. They have accomplished a singular milestone by stating succinctly the obligation undertaken by lawyers in this state. Mr. Sorg can promote the bar with a happy countenance, rather than trying to explain the legalese of the old version. And thanks to Mr. Hathaway for his service in pointing out the difference between the two versions. We can hope that the Supreme Court will require the new version. ■

Footnotes

1. This plain English version was prepared by Judge Chad Schmucker of Jackson County Circuit Court, Judge William Caprathe of Bay County Circuit Court (current president of the Michigan Judges Association), and the following Plain English Committee members—Judge George Steeh, Jr. of Macomb County Circuit Court (recently nominated for appointment as a federal judge), Judge S. J. Elden (retired District Court Judge from Ann Arbor), Keith Beasley (Court Administrator of Macomb County Circuit Court), Joe Kimble (legal-writing teacher at Cooley Law School), Diana Pratt (legal-writing teacher at Wayne State Law School), and George Hathaway.
2. See our definitions of legalese and legalese compounded in *The Clarity Awards (After Five Years)*, 75 Mich B J 1198 (November 1996).