

Legalese List for Lawsuits

By the Plain English Committee

The Plain English Committee has previously reviewed the category of lawsuits. We summarized the documents in the category and gave Clarity Awards for well-written documents.¹ The documents that we reviewed are shown in Figure 1.

Analysis of Documents

In addition to giving Clarity Awards, we identified high-profile elements of legalese in specific documents:

Complaints and Answers

Each year lawyers file more than 100,000 new civil lawsuits in Michigan's district and circuit courts. In each of these lawsuits, a plaintiff's complaint and a defendant's answer typically begins with "Now Comes the plaintiff (or defendant) . . ." and ends with "Wherefore, plaintiff (or defendant) requests that the court . . ." Yet, many groups, organizations, and associations have asked lawyers to stop using *Now Comes* and *Wherefore*. Legal-writing classes in law schools teach lawyers to eliminate formalisms like *Now Comes* and archaic words like *Wherefore*. Furthermore, in 1985 the State Bar of Michigan sent each lawyer in Michigan a copy of Irwin Alterman's book *Plain and Accurate Style in Lawsuit Papers*, which encourages lawyers to eliminate *Now Comes* and *Wherefore*. Finally, for more than ten years the Michigan Supreme Court's

"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.

Figure 1

Specific Documents	Who Writes What
Complaints and Answers	litigation attorneys, whose largest groups are the Michigan Trial Lawyers Association for plaintiff attorneys, and the Michigan Defense Trial Counsel for defense attorneys
Motions and Orders	
Briefs	
Affidavits	legal secretaries, whose largest group is the Michigan Association of Legal Support Professionals

State Court Administrative Office has produced court forms without formalisms and archaic words. The SCAO complaint and answer forms do not use *Now Comes* and *Wherefore*.

Motions and Orders

Each year lawyers file an estimated total of about 500,000 motions in civil cases in Michigan's district and circuit courts. A corresponding number of orders are then written by lawyers or judges and issued by these courts. These orders typically begin "It is hereby ordered . . ."—even though legal-writing classes, Alterman's book, and SCAO encourage lawyers to eliminate the archaic word *hereby*.

Briefs

Most of the briefs written in Michigan are either supporting briefs for motions in district or circuit courts, or appellate briefs for cases in the Court of Appeals or Supreme Court. Although briefs are only one of our 50 examples of legal documents, most law schools have a legal-writing class that concentrates on briefs. Therefore, briefs should not contain the elements that we have defined as legalese (formalisms, archaic words, redundancies, and Latin words) and legalese compounded (long sentences, weak passive verbs with nominalizations, wordy phrases, and long words). District courts, circuit courts, and the Court of Appeals are the most appropriate places to determine the quality of briefs and to develop a legal-

ese list of the worst elements found in briefs in Michigan. In the future we hope to find clerks in those courts to do just that.

Affidavits

Legal secretaries prepare affidavits. Because there is no standard format for affidavits, legal secretaries use dozens of different formats. Some affidavits contain the symbol SS, and some affidavits do not. Some affidavits contain the phrase *further deponent saith not*, and some do not. Neither the symbol nor the phrase is necessary to make an affidavit legally valid. The symbol and the phrase are two of the worst examples of legalese in Michigan.

Sample Surveys

In January 1993, we took a short sample survey of the use of *Now Comes* and *Wherefore* in complaints, *hereby* in orders, and SS in affidavits. We found that these words are in heavy use, and we published this survey in our March 1993 column.

As a next step we contacted several groups to support our campaign. We asked the groups:

- Do you believe that eliminating *Now Comes*, *Wherefore*, *hereby*, and SS will help to improve legal writing and the public opinion of lawyers?
- If you do, would you be willing to ask the members of your organization to eliminate these four words from the complaints, answers, motions, orders, and affidavits that they write?

Figure 2—Results of Sample Surveys of Filed Lawsuit Papers²

	36th District Court (for City of Detroit)		Wayne County Circuit Court (includes Detroit, and is the largest trial court in Michigan)		Federal District Court E.D. Mich. (at Detroit)	
	Jan 93	Jan 95	Jan 93	Jan 95	Jan 93	Jan 95
Complaints with <i>Now Comes</i>	9 of 10	7 of 10	8 of 10	6 of 10	7 of 10	6 of 10
Complaints with <i>Wherefore</i>	9 of 10	7 of 10	10 of 10	10 of 10	10 of 10	10 of 10
Orders with <i>Hereby</i>	8 of 10	3 of 10	8 of 10	10 of 10	3 of 10	5 of 10
Affidavits with <i>SS</i>	7 of 10	0 of 10	9 of 10	8 of 10	9 of 10	10 of 10

The Michigan Judges Association replied:

The Michigan Judges Association answers question number 1 in your memo—yes. The MJA approved your effort to eliminate the four words referred to in your memo. The answer to question number 2 is yes and the answer of the membership was yes, they would work toward eliminating the use of these words.

The Michigan Defense Trial Counsel replied:

You may indicate that the MDTC endorses your Committee's effort to eliminate the legalese referred to in your letter.

And a recent January 1995 sample survey of complaints, orders, and affidavits indicates some progress from the January 1993 sample survey. See Figure 2.

Inertia is the reason that lawyers give for continuing to use this stuff. *Inertia* is the reason that lawyers give for not following the lead of legal-writing classes, the Michigan Supreme Court, the Michigan Judges Association, and the Michigan Defense Trial Counsel. But *inertia* is simply another way of saying that they don't want to eliminate these words. If we could get

lawyers to start here, we might even set them free for all the rest of plain language.

Legalese List

Our legalese list for lawsuits begins with *Now Comes* and *Wherefore* from complaints and answers, and continues with *hereby* from orders. The Michigan Trial Lawyers Association and the Michigan Defense Trial Counsel are the groups that have the most control over eliminating these words. Our list ends with *SS* and *further deponent saith*

not from affidavits. The Michigan Association of Legal Support Professionals is the group that has the most control over this.

In summary, *Now Comes*, *Wherefore*, *hereby*, *SS*, and *further deponent saith* not could be largely eliminated from lawsuit papers in Michigan if these three associations push forward in asking their members to let these words die. ■

Footnotes

1. Hathaway, *Plain English in Lawsuit Papers*, 72 Mich B J 340 (March 1993). We have fussed a little with this category. Until recently, we folded it into a category called laws and lawsuits. But we have now decided to treat laws and lawsuits as separate categories.
2. We thank the following people for participating in both the 1993 survey and the 1995 survey: Gloria Lyons, Deputy Court Administrator of the Civil Division of the 36th District Court; Ron Maurer, Chief Deputy Circuit Court Clerk of Wayne County Circuit Court; and Judith Christie, Administrative Manager of the U.S. District Court for the Eastern District of Michigan.



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Question of the Month: In a January 1995 meeting of the Representative Assembly of the State Bar of Michigan, the Chairperson of the Representative Assembly, Nkrumah Johnson-Wynn, eliminated the archaic Yea/Nay voting designations and asked the representatives to vote Yes/No. Why doesn't the U.S. Congress follow Johnson-Wynn's example and change its archaic voting designations from Yea/Nay to Yes/No?