

To Be Understood

Plain English in Judicial Administration: Michigan's Standardized Court Forms

By Gregory L. Ulrich

In November 1983, the MBJ published an entire theme issue on Plain English in the Law. To continue with the Plain English topic, the MBJ will be publishing a monthly article on Plain English. The articles will be coordinated by the Plain English Committee of the State Bar and will be written by various sections, committees, groups and individuals interested in Plain English in the Law. The following article is the first of this series. — Ed.

Attorneys have traditionally depended on legal form books or carefully developed form files to see them through daily law practice. Real estate forms, contracts, agreements, UCC filings, pleadings, and a myriad of others comprise the practitioner's arsenal of paperwork; yet the development of court forms in Michigan was frequently inconsistent. Some were good, but many exhibited shortcomings of legal imprecision or poor design.

Shortly after formation of the then newly created district courts in 1969, a committee of district judges met to assist the Michigan Supreme Court in developing a series of pleadings. The new lower trial court especially needed to make its procedures more accessible to the public, and forms seemed to be a proper course. Judge Frederick G. Mather, President of the District Judges Association asked his colleagues in 1971 to develop appropriate forms as provided by DCR 4002.5.

However, additional forms continued to come into use because of local district court practices, self-initiative of some legal form printers or practitioners' personal preferences. By 1977, the proliferation of "official" forms had grown to more than 82 in number.

New Forms

Early in 1977 the District Judges Rules and Forms Committee, along

with members of the Michigan District Court Administrators Association and representatives of the State Court Administrator, began the current forms development program by establishing standard design criteria. The number of forms grew far beyond the original plans of the committee, despite their best efforts to consolidate as many as possible, simply because of the complexity of today's court procedures.

Within two years other trial courts joined the effort, so that today a convenient series of probate, juvenile and district court forms are in use. In addition to Friend of the Court forms released in July, 1983, a series of circuit court forms is scheduled for release in the spring of 1984.

Michigan court form drafters had the advantage of knowing about the mistakes and successes of court systems in Alabama, California, Colorado, and Florida, as well as the expertise of the National Center for State Courts.

Simple by Design

Most standard court forms are a compromise among the competing needs of courts, litigants and counsel. Some are purely for internal court use, to aid in more efficient record-keeping. Design criteria established in 1979 were intended to provide uniformity in court forms, but more important, to permit greater standardization in practice throughout the state court system. Localized procedures without the benefit of local court rule status, or practices imbedded in archaic clerical origins, would give way to clearly written language, simplified procedure and record-keeping ease.

Make lawyers write plainly? Make a legal form easily readable? District Judge S. J. Elden of Ann Arbor saw no problem in drafting legal forms so that a layperson can understand them. As Chairperson of the District Court Forms Committee he was convinced of the

benefits of plain, non-technical English as the primary substantive design criteria. Except as necessary to conform with exact statutory language, all standard court forms are drafted in simple, precise language.

The **Small Claims AFFIDAVIT AND CLAIM** [DCS 84-1, 1979] represents one of the first attempts by the District Court Forms Committee to create an intelligible letter-size form for public use. The original form DCS 84-1, developed in 1972, contained five verbose narrative paragraphs, with the same typestyle throughout the form, and a crowded layout which was difficult to read and complete.

The **AFFIDAVIT AND CLAIM** now reads in simple-to-understand English. Non-sexist terms such as "he/she," "Defendant," or "Plaintiff" replace gender-specific words. Narrative paragraphs have been replaced with check-box completion sections or single-line responses.

From the earliest conferences in 1977, use of non-technical English was stressed. Because of the growing consumer plain English approach to legal writing, the drafters sought to create public and practitioner oriented forms which were self-explanatory whenever possible. If a procedure was not self-explanatory, a separate list of instructions was provided.

Additional instructions were prepared for such involved procedures as appeals, criminal form packages, or forms commonly used by lay persons such as the small claims forms. The small claims **AFFIDAVIT AND CLAIM** includes a separate instruction sheet containing definitions and a paragraph-by-paragraph explanation of the information sought.

○ Revision of the General Court Rules of 1963 has been on the horizon since 1978 when the Webster Committee published a proposal for consoli-

dated court rules. As a result, each form was freshly developed without being married to earlier versions. Procedure-related forms were consolidated and simplified, flexibility was built-in to follow a majority of the changes in the newly proposed Michigan Court Rules of 1984 and statutory revisions were incorporated.

One troublesome procedural area, for example, was entry of district court default judgments, which required three forms to accomplish what the single new DEFAULT form [DCZ07, 1979] does today. Now court clerks can properly enter a default according to DCR 520 (1963) and ensure that a timely JUDGMENT [DCY10, 1979] can be filed.

The probate court forms series was developed in response to the 1979 Probate Court amendments (and in particular to the provision in 1978 PA 543, Sec. 855, that only forms approved by the State Court Administrator could be used).

One particular concern of the Probate Forms Committee was to create forms to handle the then new independent probate and small estate procedures, as well as to ensure an accurate record for the court file. Clarity of language runs throughout these forms.

Landlord-tenant court rule changes, claims and delivery, abandoned vehicles, and uniform traffic citations were all approached from the user's viewpoint. Decriminalization of traffic offenses required a new approach to handle the procedural rights of defendants in civil infraction actions. For example, the UNIFORM TRAFFIC CITATION contains explanations of each plea: "responsible," "not responsible" and "admission of responsibility with explanation." The NOTICE TO QUIT landlord tenant form [DCH100a, 1979] has a section labeled "How to get legal help," which includes the State Bar lawyer referral telephone number.

Technicalities

Easy recognition of Michigan court forms is aided by the technical design specifications governing spacing, captions, placement of common information fields, signature lines, zoning and a host of printer's devices to make forms more readable.

Again, the small claims AFFIDAVIT AND CLAIM contains visual

aids to assist its users. A "Notice of Hearing" is zoned at the top right of the body of the form. The standard header developed for Michigan court forms appears at the top, with space for a court name, case number and form title. The form title also appears at the bottom, for easy reference in a file folder.

Items 1 and 2 of the AFFIDAVIT AND CLAIM call for the names and addresses of the parties. All information is easily entered by typewriter, since tab stops are shown at the top margin, along with copy distribution and State Court Administrator approval. Items 1 and 2 of the AFFIDAVIT AND CLAIM call for the names and addresses of the parties, while items 4 through 9 require either checking a box or filling in a blank.

Bold-face print and spacing is used to set off important segments, such as shown in item 13 and the "Notice of Hearing."

As records and forms coordinator for the State Court Administrator, Betty Count, a certified records manager with a legal background, has maintained technical consistency among all court forms since 1977. Her contact with court administrators, clerks, judges and the Bar allows the forms committees to consider all comments from users. Final camera-ready layouts are prepared by graphics consultant William Frysinger of Lansing before approval by each committee.

A recent change in form DCY 241, BAIL BOND, resulted from a continuing dialogue among judges and administrators about lack of clarity in describing a third-party bail depositor's rights and responsibilities. Another comment from an attorney resulted in a revision of return of service language.

Small Size—Big Controversy

Still a controversial move was the decision by the forms committees to adopt a letter-size paper standard. Although the 1981 recommendation of the State Bar Representative Assembly that letter-size pleadings be required by court rule and phased in over a three-year period was not adopted by the Michigan Supreme Court, all standard court forms developed by the trial court committees will continue to be letter-size. Any size paper is currently acceptable under GCR 1963, 113.1.

A *National Law Journal* article

[April 6, 1981] reported that the growing movement to eliminate legal size paper was gaining support among business and legal communities, in recognition of the cost savings associated with filing, photocopying and microfilming became more widely recognized.

At the beginning of 1984 the National Center for State Courts reported that more than 33 states and the Federal courts had adopted a letter-size paper standard, either wholly or in part. The uniformity intended by development of standardized court forms would not have been achieved without the adoption of letter-size paper. Increasing cost savings, and record keeping simplification, should improve the delivery of court services.

New Approaches

Since duplication of approved forms is permitted without State Court Administrator approval, as long as content is not modified, some users have incorporated the forms into word-processing systems. Variation of a form requires removal of the approval line at the top margin, so that the form is easily recognized as non-standard. The advantage to using exact forms is the assistance they provide to court personnel in recognizing the form, and in facilitating filing or data entry.

The future may bring technology-related enhancements to make use and court record-keeping easier and less costly. Recent developments such as bar coding, to allow optical scanning of basic form information, optical reading of entire forms into computer systems, or direct input of pleadings into a court database may appear soon. Wayne County's prosecutor plans to submit briefs to the Court of Appeals by direct data line, eliminating paper altogether. Consideration is being given to putting forms on computer floppy disks readable by widely used microcomputer systems.

Placing forms on a floppy disk is more feasible today than when court forms were first released in 1978, since the advent of faster printers such as ink-jet, matrix-dot, or laser. Alignment of variable information to be filled-in is simple because the entire form is "printed" from scratch. The slowness of typing in the blanks on a pre-printed form as well as the need for tractor-feed paper, is eliminated.



TAB STOPS *OFFICIAL APPROVAL* *STANDARD HEADER* *COPY DISTRIBUTION*

Approved By The Michigan State Court Administrator

ORIGINAL - COURT 2ND COPY - RETURN
1ST COPY - DEFENDANT 3RD COPY - PLAINTIFF

STATE OF MICHIGAN **AFFIDAVIT AND CLAIM** CASE NO. _____
____ DISTRICT COURT Civil Division - Small Claims

DATA ELEMENT GRID *BOXED ZONING*

Court Address _____ Court Telephone No. _____

1. Plaintiff name _____

Address _____ Zip _____

2. Defendant name _____

Address _____ Zip _____

NEUTRAL GENDER *PLAIN ENGLISH*

NOTICE OF HEARING
FOR COURT USE ONLY
3. Plaintiff and Defendant must be in court _____

On _____ Day _____ Date _____ at _____ Time _____ m

At: The court address above _____

Process Server _____ \$ Fee Paid _____

CHECK BOXES

The undersigned being duly sworn says that.

4. He/She has knowledge or belief as to all facts stated on this form and is (check one):
 the plaintiff a partner full time employee of the plaintiff

5. Plaintiff is (check one):
 an individual a partnership a corporation doing business as _____

Name of Business _____ Address _____

6. Defendant is (check one):
 an individual a business

Name of Business _____ Address _____

7. Date(s) claim arose _____ 8. Amount of money claimed \$ _____

9. Reasons for claim: _____

10. **PLAINTIFF ACKNOWLEDGES THAT:** The claim is limited to \$600.00 by law, and Plaintiff gives up the rights (a) to recover more than \$600 (b) to an attorney (c) to a jury trial and (d) to an appeal of the court's decision.

11. I believe that the defendant is not in the military service, is not mentally incompetent and is 18 years or older.

12. _____
Plaintiff/Agent Signature
Subscribed and Sworn to before me on _____ Date _____ County _____ Michigan.

My commission expires: _____ Date _____ Signature: _____ Deputy Court Clerk/Notary Public

13. **Plaintiff and Defendant Take Notice:**
The above claim will be heard by a judge of the District Court at the time and place noted above (Item 3). Parties **MUST BRING** to this hearing all witnesses, books, papers and other physical evidence needed to prove or disprove this claim.
Notice to Defendant: If you wish to deny the above claim or arrange terms of payment you should appear at the time and place stated (Item 3) and make your request. Your failure to appear at the time and place stated may result in a judgment against you for the amount of the claim, together with costs of this action. Unless you request removal of this case from Small Claims Division to the general civil docket of the District Court, you give up the right (a) to an attorney, (b) to a jury trial, and (c) to an appeal of the court's decision. If the dispute is settled before or at the hearing, you may have to pay plaintiff's costs.

Date _____ Clerk _____ Deputy Court Clerk Initials _____

AFFIDAVIT AND CLAIM Form No. DCS 84-1 Revised 1/79

REVISION DATE *FORM CODE* *FORM NAME*

CAPTIONS *NUMBERED PARAGRAPHS/ ITEMS* *BOLD TYPE FACE* *SHORT RESPONSES NEEDED* *PLAIN ENGLISH ACTIVE VERBS*

Use of standardized pleadings, as opposed to forms, has also been suggested as a means of ensuring consistent, informative pleading. Some may argue that court forms already do this, but the idea is more akin to the California standard pleadings for particular actions: divorce, tort, contract, etc.

A more acceptable move in Michigan might be the use of a cover sheet with basic jurisdictional statements, parties, addresses, dates and fact statements. The district court **SUMMONS AND COMPLAINT** form [DCZ01, 1982] is used by some practitioners in that fashion, and a separate sheet is attached with specific allegations or statements.

Full Circle

Plain English was considered a necessary ingredient of standard court forms in 1977, due in large part to the consumer movement. The evolution of court forms in Michigan through the diligent work of court administrators, judges and lawyers has yielded a significant contribution to judicial administration. Efficiency, uniformity, cost effectiveness and records management are the immediate goals these committees have worked toward, but their overriding concern will always be to speak plainly to those who use the justice system. ■



Gregory L. Ulrich is a 1977 graduate of the University of Detroit School of Law. He is a member of the ABA Economics of Law Section, the ABA Judicial Administration Division and the State Bar of Michigan Economics of Law Section. He also serves as Secretary-Treasurer of the State Bar Young Lawyers Section.

Attorney General Opinions

Frank J. Kelley, Attorney General

No. 6201 January 30, 1984 Constitutional law Statutes

A bill passed by the Legislature, given immediate effect by that body and signed by the Governor, becomes law when it is filed with the Secretary of State.

No. 6202 February 1, 1984 Cities, Home Rule Zoning and Planning

A city with a population of 1,000,000 or more persons is without authority to grant approval by local zoning ordinance for the establishment of a state licensed residential facility for six or less persons within a radius of 3,000 feet of an existing state licensed facility.

No. 6203 February 3, 1984 Schools and School Districts

The board of education of a school district may require payment of a refundable deposit from a student or parent prior to issuance of textbooks to the student, provided that the student or parent is financially able to provide the deposit.

A board of education is not required by the Legislature to pay interest upon textbook deposit funds held when refunding the deposit.

A board of education may not retain a textbook deposit and require the student or parent to provide other funds or withhold report cards until other funds are provided to pay for textbooks damaged beyond ordinary wear and tear.

A board of education must refund textbook deposits made by high school students by the end of each school year unless the students and their parents leave the textbook deposit with the school district from year to year.

No. 6204 February 8, 1984 Taxation

Personal property owned by a fertilizer company and leased to and actively used by a farmer in agricultural operations is exempt from *ad valorem* general property taxation.

No. 6206 February 10, 1984 Conflict of Interest Mental Health

A member of a community mental health board is not precluded from serving upon the board during the period of time that the spouse of the member is employed by a facility or program funded and directly controlled by the board.

A member of a community mental health board may vote upon proposals that directly or indirectly affect the functions of

the facility or program funded and directly controlled by the board, which facility or program employs the spouse of the board member in question.

No. 6207 March 6, 1984 House of Representatives Legislature

A member of the House of Representatives may, on and after April 1, 1984, communicate with persons residing within the House district as constituted by 1983 PA 256, § 2, in which the member resides.

No. 6211 March 21, 1984 Conflict of Interest Constitutional Law Public Officers & Employees

A member of the Board of Regents of the University of Michigan, of the Board of Trustees of Michigan State University, or of the Board of Governors of Wayne State University, is not precluded by either Const 1963 or statute from engaging in a business or practicing a profession during the period of service on the respective board.

A member of such a governing board may be pecuniarily interested in a contract entered into by a business organization with the state or its agencies other than the university upon whose governing board the member serves, or with a political subdivision of the state, without violating Const 1963, art 4, § 10 or 1968 PA 318.

A member of such a governing board with a minimum ownership interest in, or as an officer or director of a business organization as specified in 1968 PA 318, § 4, may not have an interest in a contract, entered into or amended during service of the member, between the business organization and the university upon whose governing board the member serves; however, a member of such a governing board may have an interest in a contract between a business organization and the university upon whose governing body the member serves if the contract is awarded to the lowest qualified bidder upon receipt of sealed bids pursuant to a published notice therefor as set forth in 1968 PA 318, § 4(d), regardless of the extent of the interest of the member in the contract.

A member of the governing board of the University of Michigan, of Michigan State University, or of Wayne State University is not subject to the provisions of the state ethics act, 1973 PA 196.

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