Legalese List for Laws

By the Plain English Committee

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

Now we offer our legalese list of words to eliminate and documents to improve.

Michigan Statutes

We reviewed newly written statutes in 1993 and found that they generally re-

flect the clear and modern style of legislative drafting. Therefore, we gave a Clarity Award to the Legal Division of the Legislative Service Bureau. But one of the continuing blemishes is the wordy phrase pursuant to, which still appears in newly written statutes. An example is 1994 PA 39, MCL 35.1092(d)(iii):

"Veteran" means any of the following:...
(iii) A member of a reserve branch of the armed forces at the time he or she was ordered to active duty pursuant to section 672(a)....

And this, even though every legal writing textbook recommends that this wordy phrase be replaced with *under*² Many fed-

eral statutes, incidentally, use *under* instead of *pursuant to*. Example—39 USC 3629:

The functions and activities of this chapter shall be considered to be inherently Governmental functions. The drafting of strategic plans, performance plans, and program performance reports under this section shall be performed only by employees of the Postal Service.

Michigan Honorary Resolutions

There are two types of legislative resolutions—joint and honorary. Joint resolutions are proposed amendments to the state constitution. An example is 1993 House Joint Resolution G, which proposed changes to school financing in Michigan. Joint resolutions are written by the Legislative Service Bureau's Legal Division and are published about every two months in West's Michigan Legislative Service pamphlets. Honorary resolutions (also referred to as nonbusiness, commemorative, congratulatory, sympathy, ceremonial, house resolutions, senate resolutions, house concurrent resolutions, or senate concurrent resolutions) are written by the Legislative Service Bureau's Legislative Research Division and published in the daily House and Senate Journals. These resolutions still begin with the archaic word Whereas. An example is 1992 House Resolution 884:

A resolution of tribute honoring....
Whereas, It is a pleasure to join with...
Whereas, The problems of auto theft...;
now, therefore, be it
Resolved by the House of Representatives,
That tribute be hereby accorded....

"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

Subcategories	Specific Types	Who Writes What
Legislative	state statutes	• Legislative Service Bureau's Legal Division (in 1993 wrote 25 new statutes and 284 amendments that were published about every two months in West's <i>Michigan</i>
	state honorary resolutions	Legislative Service) • Legislative Service Bureau's Legislative Research Division (in 1993 wrote about 500 honorary resolutions that were published in daily House and Senate Journals)
	county, township, and city ordinances and resolutions	Detroit City Council (in 1993 passed 50 ordinances that were published in weekly <i>Journal of City Council</i>)
Executive	Governor's executive orders	Executive Office's Legal Division (in 1993 wrote 25 executive orders that were published about every two months in West's Michigan Legislative Service)
	administrative rules	Legislative Service Bureau's Legal Editing and Law Publications Division (in 1993 edited about 900 rules which had been written by 10 different departments and published the rules in the monthly Michigan Register and
	Opinions of Attorney General	in the Annual Administrative Code Supplement) • Attorney General Office's Opinion and Public Inquiry Unit (in 1993 wrote 33 opinions that were published in the monthly Michigan Register)
Judicial	case opinions	 Michigan Supreme Court (in 1993 wrote about 75 opinions that were published in Michigan Reports) Michigan Court of Appeals (in 1993 wrote an estimated 500 opinions that were published in Michigan Appeals Reports)
	jury instructions	Supreme Court Committee on Standard Civil Jury Instructions (in 1993 wrote 58 instructions that were published in the monthly Michigan Bar Journal) State Bar Committee on Standard Criminal Jury Instructions (in 1993 wrote 14 instructions that were published in the monthly Michigan Bar Journal)

Again, every legal writing textbook recommends that whereas be eliminated.3 And as David Mellinkoff points out in his entry "whereas" in Mellinkoff's Dictionary of American Legal Usage, p 685:

Worst of all, as lawyers stubbornly cling to whereas, it has become an unneeded pejorative for the profession. [Those lawyers and their whereases.]

County, Township, and City Ordinances

Most county boards of commissioners, township boards of trustees, and city councils do not pass many ordinances. They usually average fewer than one ordinance a year. Furthermore, even if they do pass an ordinance, it is not published in a regular journal. The exception is the Detroit City Council, which passes many ordinances a year that are published in the Journal of the City Council. These ordinances contain no obsolete formalisms. They do, however, contain the archaic word hereby. An example is City of Detroit Ordinance 7-92, shown in Figure 2. And notice the passive voice: "It is hereby ordained by the people of the City of Detroit," instead of "The people of the City of Detroit ordain." The first sentence of Section 2 again contains the unnecessary word hereby. And the second sentence contains 73 words, with multiple conditions and qualifiers.

County, Township, and City Resolutions

Most county boards of commissioners, township boards of trustees, and city councils pass many resolutions each year. However, like ordinances, they are not published in any regular publication. The exception again is the Detroit City Council, which passes many testimonial resolutions each year that are published in the Journal of the City Council. These resolutions contain the word whereas. They are also passed by a yea-nay vote instead of a yes-no vote.

Governor's Executive Orders

These orders are written by the Executive Office's Legal Division and are published in the monthly Michigan Register. They contain whereas, pursuant to, and hereby. Furthermore, they are dated "Given under my hand and the Great Seal of the Figure 2

EXECUTIVE ORDER No. 1994 - 22 RESCISSION OF EXECUTIVE ORDER No. 1994 - 19

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient

WHEREAS, on July 8, 1994, I signed Executive Order No. 1994-19 which transferred to the State Administrative Board, the authority, powers, duties, functions and responsibilities vested in the State Board of Canvassers by Sections 32 and 474 of Act No. 116 of 1954, as amended, being Sections 168.32 and 168.474 of the Michigan Compiled

WHEREAS, a procedure that retains the initial approval authority of the Board of Canvassers, and ultimate responsibility for approval with the State Administrative Board, should the Canvassers fail to act timely, appears to be in the best interest of the citizens of

WHEREAS, such a procedure cannot be effected through Executive Order, but only through amendment of the Michigan Election Law, a course of action which I intend to

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested by the Constitution of the State of Michigan of 1963 and the laws n, do hereby order that Executive Order No. 1994-19 is hereby

ORDINANCE NO. 7-92
TO PROHIBIT THE USE OF PUBLIC
TAX SUBSIDIES FOR ANY STADIUM
CONSTRUCTION

AN ORDINANCE to prohibit the use of public tax subsidies for any stadium construction.

F IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT: Section 1. No public tax subsidies shall be used for any stadium construc-

Section 2. All ordinances, resolutions, orders of action, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed. If any portion of this ordinance or the application thereof to any person or circumstances should be found to be invalid by a Court, such invalidity shall not affect the remaining portions of appli-cation of the Act, which can be given effect without the invalid portion or application, provided such remaining portions are not determined by the Court to be inoperable, and to this end, this ordinance is declared to be severable. March 17, 1992

Adopted: April 6, 1992 April 17, 1992

This ordinance, adopted by the voters through initiative proceedings, may not be amended or repealed by the City for a period of 12 months after the date of the planting of which is use adopted (Section election at which it was adopted (Section 12-109 Detroit City Charter). JAMES H. BRADLEY

City Clerk

State of Michigan this 25th day of August, in the Year of our Lord, One Thousand Nine Hundred Ninety-Four, and of the Commonwealth, One Hundred Fifty-Eight," instead of simply "August 25, 1994." See Executive Order 1994-22 in Figure 2.

Legalese List

The archaic words whereas and hereby and the wordy phrase pursuant to are three of the worst examples of legalese in Michi-

Executive Order shall become effective immediately upon filing.

Given under my hand and the Great Seal of the State of Michigan this 25th day of August, in the Year of our Lord, One Thousand Nine Hundred Ninety-Four, and of the Commonwealth, One Hundred Fifty-Eight.

JOHN ENGLER **GOVERNOR**

gan. Yet these words are still prominently used in Michigan statutes, honorary resolutions, ordinances, and executive orders. At long last, why not let them die? ■

Footnotes

- 1. Plain English Committee, "Plain English in Laws and Rules," 79 Mich BJ 566 (June 1993); Hathaway, "A Summary of Our Review of Legal Writing," 74 Mich BJ 50 (January 1995)
- 2. Dick, "Legal Drafting," p 157; Dickerson, "The Fundamentals of Legal Drafting" (2d Ed), p 212; Dickerson, "Materials on Legal Drafting," p 293; Eagelson, "Writing in Plain English," p 117; Felker, "Guidelines for Document Designers," p 59; Felsenfeld, "Writing Contracts in Plain English," p 143; Flesch, "The ABC's of Style," p 234; Garner, "The Elements of Legal Style," p 184; Mellinkoff, "The Language of the Law," p 19.
- 3. Dick, "Legal Drafting," p 145; Felsenfeld, "Writing Contracts in Plain English," p 151; Flesch, "The ABC's of Style", p 294; Garner, "The Elements of Legal Style," p 144; Mellinkoff, "The Language of the Law," p 321, and "Legal Writing: Sense and Nonsense," p 187; Weihofen, "Legal Writing Style" (2d ed), p 40; Wydick, "Plain English for Lawyers" (3d ed), p 53.