

Plain English Subcommittee on Lawsuits

By George H. Hathaway

The goal of our Subcommittee on Lawsuits is to promote plain English in legal documents (lawsuit papers) written as part of a lawsuit. To do this, the subcommittee finds and gives Clarity Awards to clearly written complaints, answers, motions, orders, sworn statements, jury instructions, and judicial opinions. See Figure 1 for a list of Clarity Awards that we

"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.

have previously given and a want list for future awards.

Lawsuit papers are written by trial lawyers and judges, and sometimes by legal assistants. Therefore, many people influence the style and clarity of lawsuit papers in Michigan.¹ To eliminate legalese in lawsuit papers, we must do three things. First, identify the people who influence lawsuit papers. Second, find the people who have the interest, ability, and courage to eliminate legalese and write in plain English. And third, join forces with them to work in an organized way from within the system to eliminate legalese.

Members of Subcommittee on Lawsuits

Subcommittee members are listed in Figure 2.

With this subcommittee we hope to bridge the gap between the educational ma-

terials on plain English at Wayne State and Thomas Cooley Law Schools and lawsuit papers written in the actual practice of law by the thousands of litigators and judges in Michigan. We think we can do it.

Michigan Activities

One of the subcommittee's activities is to sample complaints, answers, motions, orders, and sworn statements in specific courts. We have done this several times before,² and we will do it again.

Another activity is to promote plain-English affidavits (sworn statements). Since 1985 we have advocated the use of plain-English notary forms, and the use of the word *sworn statement* instead of *affidavit*.³ There is no statutory or case-law reason why notary forms must contain legalese. Lawyers, legal assistants, and legal secretaries can write plain-English notary forms now. Nevertheless, to promote the idea,

Figure 1. Clarity Awards and Want List for Lawsuits

Lawsuits	Clarity Awards		Want List
Type of Document	(Year) and Document	Written By	We want to find Clarity Award documents written according to Alterman, <i>Plain and Accurate Style in Lawsuit Papers</i> and ICLE's <i>Michigan Causes of Action Formbook</i> :
1a. complaints b. answers c. motions d. orders	(92) SCAO approved court forms (93) lawsuit forms in rev. vol. 2 of <i>Michigan Civil Practice Forms</i> (94) Proof-of-service stamp (96) for starting SCAO approved court forms project (97) <i>Michigan Causes of Action Formbook</i> (97) Guilty Plea Form	SCAO (Director, Marilyn Hall) Fox and Lester of Lawyers Coop. Publishing Bruce Laidlaw Judge Elden ICLE (various authors) Judge Schnelz, M. Garvin-Blanchard	<ul style="list-style-type: none"> complaints, answers, motions, and orders written by trial lawyers and legal assistants
2. sworn statements			<ul style="list-style-type: none"> sworn statements written by trial lawyers and legal assistants
3. briefs			
4. jury instructions	(93) Michigan Criminal Jury Instructions (93) Sixth Circuit Pattern Criminal Jury Inst. (96) Michigan Standard Civil Jury Inst.	Comm. on Std. Crim. Jury Instr. Comm. on Pattern Crim. Jury Instr. Comm. on Std. Civil Jury Instr.	
5. judicial opinions	(93) seminars and materials on opinion-writing for trial judges (97) opinion and order	Michigan Judicial Institute (Director, Dennis Catlin) Judge Steeh	

Figure 2. Members of Subcommittee on Lawsuits

Judge S. J. Elden	Retired District Court Judge
Judge George Steeh	Macomb County Circuit Court
Keith Beasley	Court Administrator, Macomb County Circuit Court
William Bertrand	Pharmacia & Upjohn Company
LuAnn Frost	Michigan Attorney General's Office
Patricia Blake	U.S. Attorney's Office for Eastern District of Michigan
Wanda Nash	General Practitioner

in 1993 we wrote a proposed statutory amendment for voluntary use of plain-English notary forms. And Representative Ciaramitaro is sponsoring this bill. He first introduced the bill into the house in September 1995. It is now pending as H.B. 4025 (Plain-English Notary Forms). At its meeting on April 25, 1997, the State Bar Board of Commissioners voted to actively support this bill.

We especially want to identify and give Clarity Awards to clearly written complaints, answers, motions, orders, and sworn statements that have been filed in a Michigan court by legal teams (lawyer, assistant, secretary) from the following:

- The more than 50 practitioners who contributed to the Michigan Institute of Continuing Legal Education's *Michigan Causes of Action Formbook*. (We gave a 1997 Clarity Award to the formbook for the clarity of the many sample complaints, a sample motion, and a sample order contained in the book.)

- The Michigan lawyers who teach the annual trial-advocacy seminar in Ann Arbor.

- The litigators in the 20 largest law firms in Michigan.

- The Michigan lawyers who are often in the headlines because they represent high-profile criminal, divorce, or condemnation clients.

- Lawsuit papers that are direct or indirect results of the LawProse, Inc. legal-writing seminars given by Bryan Garner, an author and consultant from Dallas, Texas, to many Michigan lawyers each year.

- Lawsuit papers that are filed in highly publicized criminal or civil trials.

In the end, though, we would be happy to receive Clarity Award nominations for any clearly written lawsuit paper that has been filed in Michigan.

Canada and Australia

In our article on laws (July 1997), we said we wanted to compare the clarity of legal documents written in Michigan with the clarity of legal documents written in other states and in Australia and Canada. And we compared the population of the two largest states and English-speaking provinces in the three countries. We now extend that comparison by including the largest metropolitan area in each state or province. See Figure 3.

Figure 3. Comparison of Population (in Millions) of the Largest Metropolitan Area in Each of the Largest States and Provinces

California	30
LA (15)	
New York	18
NYC (20)	
New South Wales	6
Sydney (4)	
Victoria	5
Melbourne (3)	
Ontario	11
Toronto (4)	
British Columbia	4
Vancouver (2)	

Sample Courts

We will try to identify the largest trial court in the largest metropolitan area in each of our six sample states and provinces. We will then try to review samples of lawsuit papers that have been filed in each of these courts, to see how the clarity of Michigan documents compares to the clarity of documents filed in these courts.

Conclusion

We have developed a plan to bridge the gap between educational materials and actual lawsuit papers filed in courts. Now comes the hard part—carrying it out. ■

Footnotes

1. The bad news is that you must persuade thousands of people to eliminate legalese. The good news is that you have thousands of chances to find just one example of a well-written complaint, answer, motion, order, or sworn statement for a Clarity Award.
2. *Legalese List for Lawsuits*, 74 Mich B J 324 (March 1995); *Summary of Laws, Rules, and Lawsuit Papers (Part Two)*, 72 Mich B J 1066 (October 1993); *Plain English in Lawsuit Papers*, 72 Mich B J 340 (March 1993).
3. *The Plain English Movement in the Law*, 64 Mich B J 1236 (November 1985); *Plain English Acknowledgment Forms*, 70 Mich B J 338 (March 1991); *Plain English in Notary Forms and Notices*, The Official Record (of Michigan Association of Legal Secretaries), Summer 1993; *Affidavits*, 74 Mich B J 1199 (November 1995).



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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-DB, Akron, OH

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