

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).¹ 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 . . .*

Figure 1

Subcategories	Specific Types	Who Writes What
Legislative	state statutes state honorary resolutions county, township, and city ordinances and resolutions	<ul style="list-style-type: none"> 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 Legislative Service</i>) Legislative Service Bureau's Legislative Research Division (in 1993 wrote about 500 honorary resolutions that were published in daily House and Senate Journals) Detroit City Council (in 1993 passed 50 ordinances that were published in weekly <i>Journal of City Council</i>)
Executive	Governor's executive orders administrative rules Opinions of Attorney General	<ul style="list-style-type: none"> Executive Office's Legal Division (in 1993 wrote 25 executive orders that were published about every two months in West's <i>Michigan Legislative Service</i>) 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 <i>Michigan Register</i> and in the <i>Annual Administrative Code Supplement</i>) Attorney General Office's Opinion and Public Inquiry Unit (in 1993 wrote 33 opinions that were published in the monthly <i>Michigan Register</i>)
Judicial	case opinions jury instructions	<ul style="list-style-type: none"> Michigan Supreme Court (in 1993 wrote about 75 opinions that were published in <i>Michigan Reports</i>) Michigan Court of Appeals (in 1993 wrote an estimated 500 opinions that were published in <i>Michigan Appeals Reports</i>) Supreme Court Committee on Standard Civil Jury Instructions (in 1993 wrote 58 instructions that were published in the monthly <i>Michigan Bar Journal</i>) State Bar Committee on Standard Criminal Jury Instructions (in 1993 wrote 14 instructions that were published in the monthly <i>Michigan Bar Journal</i>)

"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.

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.

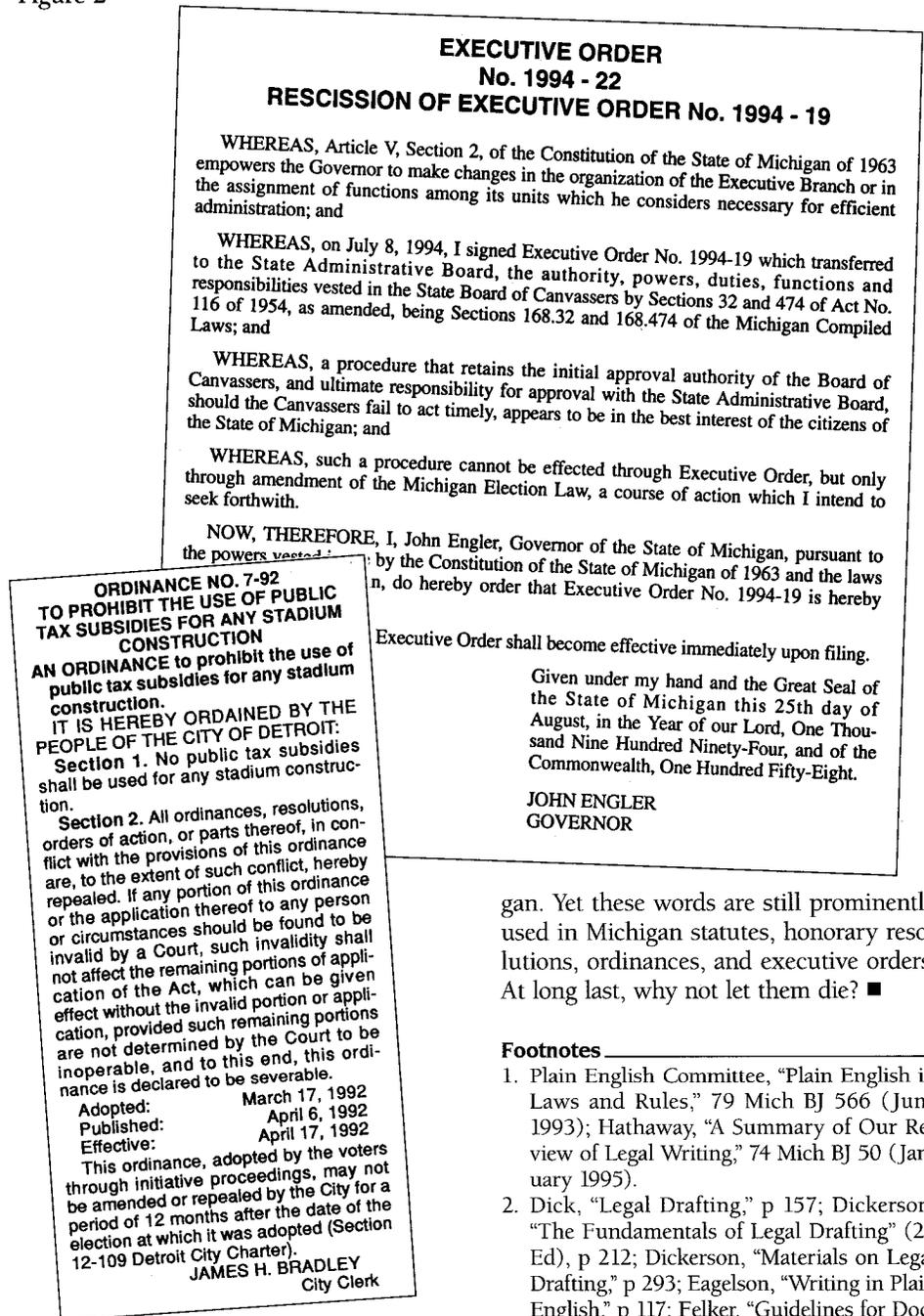
County, Township, and City Resolutions

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 yeay-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



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-

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; Egelson, "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.