

Legal Documents and Clarity Awards

By George H. Hathaway

To eliminate legalese, we focus on the specific legal documents that lawyers write. Figure 1 lists the specific documents that we analyze, the Clarity Awards that we have given, and the subcommittee members for each type of document.

Our current activities for these documents are as follows:

In the Category of Laws¹

Resolutions

Resolutions are written by the 148 representatives and senators of the Michigan Legislature (21 of whom are lawyers), the Clerk of the House, and the Clerk of the Senate. These 150 people have the most control over the style of Michigan legislative resolutions. Our subcommittee members (Representatives Nick Ciaramitaro and Karen Willard, and Clerk of the House, Mary Kay Scullion) are trying to eliminate the legalese from resolutions by writing their own resolutions without legalese. Furthermore, Representative Willard has written and offered the following proposed resolution (now pending in Representative Gagliardi's House Oversight Committee as House Resolution 120 and House Concurrent Resolution 49):

A resolution to call for the House of Representatives and the Senate to draft resolutions in plain English....

While not every issue or action can be simplified to the same level, there are several steps the Legislature can take to remove barriers to communications. One area where antiquated language can be removed is how resolutions are drafted. Removing meaningless expressions can be an important symbol of sensitivity to the need to make our actions and documents as clear as possible.

The use of archaic words and phrases, including "whereas" and "now, therefore, be it," adds nothing to explaining actions the Legislature takes in considering and adopting resolutions. Instead, they only make the documents more cumbersome....

Note: If we can eliminate legalese from resolutions written by the Michigan Legislature, we can then try to eliminate legalese from resolutions written by cities in the Michigan Municipal League (and members of the Michigan Association of Municipal Attorneys) and by townships in the Michigan Township Association.

Statutes

Statutes are written by the members of the Michigan Legislature and 22 lawyers in the Legal Division of the Legislative Service Bureau. These 170 people have the most control over the style of Michigan statutes. Our subcommittee member (Carol Cousineau, Director of the Legal Division of the Legislative Service Bureau) continues to promote the clear style of recent statutes by nominating the clearest ones each year for Clarity Awards. Furthermore, we are interested in finding clearly written city ordinances and township ordinances.

Rules

Rules are written by the 19 departments of state government. The rules are reviewed by a regulatory affairs officer in the Governor's Office of Regulatory Reform. (One officer is assigned to each department.) The rules are then edited by one lawyer in the Legal Editing Division of the Legislative Service Bureau. These 20 peo-

ple have the most control over the style of Michigan rules. Our subcommittee (legal writing teachers Kimble and Pratt, and Roger Peters, the Director of the Legal Editing Division of the Legislative Service Bureau) is coordinating a continuous review of administrative rules, performed by a State Bar committee intern who works part-time for the Plain English Committee. This year's intern is Matt Roberts from Cooley Law School. Sample elements of this review are (1) select a current monthly *Michigan Register*, (2) analyze the clarity of writing in the rules that are published in the *Register*, and recommend well-written rules for Clarity Awards, (3) identify the major differences between the well-written and less well-written rules, (4) see if there is any significant difference in the words per sentence and percentage of sentences with passive-voice verbs between the well-written and the less well-written rules.

Executive Orders

Governor's executive orders are written by the Governor and the Governor's legal counsel. Our subcommittee member (Mike Zimmer, Director of the Governor's Office of Regulatory Reform) is trying to change the archaic style in which executive orders have traditionally been written.

In the Category of Lawsuits²

Complaints, Answers, Motions, and Orders

These documents are written by many of the 30,000 lawyers in Michigan, many of whom are also members of either the Michigan Trial Lawyers Association or the Michigan Association of Defense Trial Counsel. But these groups are still too big for accountability. Therefore, we are concentrating on smaller subgroups of litigating attorneys. Two of our subcommittee members (William Bertrand and Keith Beasley) have written request letters to the 50 practitioners who contributed to the

"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.

Michigan Causes of Action Formbook. They have asked for examples of complaints, answers, motions, and orders that have been filed in Michigan courts. We will then review these documents for possible Clarity Awards. We have also made the same request to members of many of the largest law firms in Michigan. Another possible source is the 15 Legal Aid and Legal Services groups that are promoted by the Michigan State Bar Foundation.³ It simply makes

sense that the complaints, answers, motions, and orders that these groups write to help the poor should be written without legalese and in clear language that the poor can understand.

Sworn Statements

In 1993, we wrote a proposed statutory amendment for voluntary use of plain English notary forms. In September 1995, Representative Ciaramitaro intro-

duced this bill in the House, and it is now pending as H.B. 4025 (Plain English Notary Forms). In April 1997, the State Bar Board of Commissioners voted to actively support this bill.

Lawyer's Oath

Last year Judge Chad Schmucker of Jackson County Circuit Court suggested that our committee rewrite the lawyer's oath in clear language. This oath is from

Figure 1. Legal Documents and Clarity Awards

Category	Specific Type of Documents	Clarity Awards	Subcommittee
Laws	1. Resolutions	(97) 1996 H.R. 302	Ciaramitaro Willard Scullion
	2. Statutes	(92) 1992 Michigan statutes (97) 1996 P.A. 193, Do Not Resuscitate Act (97) 1996 P.A. 199, Aquaculture Development Act (97) 1996 P.A. 263, Juvenile Boot Camp Act	Cousineau
	3. Rules	(97) R 205.1283, Conduct of Tax Tribunal Hearings (97) R 339.3211, Athletics Referees (97) R 460.3409, Protection of Utility Owned Property (97) U.S. Bureau of Land Management rule for leasing of solid minerals (97) U.S. Minerals Management Service rule on liability for royalty on leases (97) Proposed Federal Rules of Appellate Procedure	Peters Kimble Pratt
	4. Executive Orders		Zimmer
Lawsuits	5. Complaints, Answers, Motions, Orders, Sworn Statements	(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 (93) Michigan Criminal Jury Instructions (93) Sixth Circuit Pattern Criminal Jury Instructions (96) Michigan Standard Civil Jury Instructions (93) Seminars and materials on opinion-writing for trial judges (97) Opinion and order in <i>Wash Twp v Huron-Clinton Metro Auth</i>	Beasley Bertrand Blake Elden Frost Nash Steeh
Contracts	6. Consumer-Finance Contracts	(95) NBD Bank credit card and disclosure statement	Steinkraus
	7. Construction Contracts		Burnstein
	8. Sales-of-Goods Contracts	(96) Ford Motor Credit motor-vehicle lease	
	9. Sales-of-Services Contracts	(97) Chrysler consulting contract	Daly
	10. Employment Contracts	(95) Forms in <i>Michigan Closely Held Corporations</i>	
	11. Investment Contracts	(97) Bell Atlantic-NYNEX proxy statement/prospectus (97) Ford proxy statement	Rintamacki
	12. Insurance Contracts	(94) Michigan statute requiring plain English in insurance contracts (94) Michigan Blue Cross-Blue Shield health-insurance certificates and riders	Varnier
Real Estate	13. Listing and Sales Contracts	(97) Ann Arbor Area Board of Realtors Sales Contract	
	14. Deeds and Easements	(94) Deeds and easements	Rohe Zachary
	15. Leases		
	16. Land Contracts		Keller
	17. Notes and Mortgages	(94) Mortgage Foreclosure by Advertisement	
	18. Liens (Construction and Tax)		
Estate Planning	19. (for property) Durable Powers of Attorney, Wills, and Trusts	(95) Durable Power of Attorney and Will Forms of Comerica Bank (95) Michigan Statutory Will	
	20. (for medical) Durable Powers of Attorney, Living Wills	(95) Durable Power of Attorney for Health-Care Decision-Making (patient-advocate form) (95) <i>Changes and Choices</i>	

the Michigan Supreme Court rules for admission to the bar. We have now completed a revised draft with a special subcommittee consisting of Judges Caprathe, Elden, Schmucker and Steeh, and legal-writing teachers Kimble and Pratt. And we have sent this draft to the Michigan Judges Association for their consideration.

In the Category of Contracts⁴

Consumer Finance Contracts

In 1979, 1981, 1983, 1987, 1989, 1991, and 1997 Representative Ciaramitaro introduced bills in the Michigan house to require the use of plain language in consumer contracts. His current bill, House Bill 4028 (Plain Language), is now being discussed in work-group meetings of the house.

In addition, our subcommittee member Paul Steinkraus is getting a copy of a car-loan agreement from each of the 10 largest financial-service companies in Michigan (First Chicago NBD Bank, Comerica, Michigan National Bank, First of America, Old Kent, Standard Federal, First Federal of Michigan, Franklin Bank, Huntington Banks, and Republic Bancorp). We will then review each of these agreements for possible Clarity Awards.

Construction Contracts

Our subcommittee member Marty Burnstein is getting a copy of a home-construction contract from each of the 10 largest home builders in Michigan. We will then review each of these contracts for possible Clarity Awards.

Sales of Services Contracts

Our subcommittee member David Daly has made a list of the following general types of sales-of-services contracts:

Figure 2. Types of Sales-of-Services Contracts

A. Professional Services	B. Product-Related Services
1. Accounting	1. Expatriate
2. Advertising	2. Logistics
3. Auditing	3. Manufacturing Support
4. Brokerage	4. Research
5. Consulting	5. Roadside Assistance
6. Credit Rating	6. Satellite Communications
7. Credit Reporting	7. Software Development
8. Engineering	8. Telephone
9. Legal	
10. Manufacturer's Representative	
11. Public Relations/Endorsements	
12. Sales Representative	

Figure 3. House Closing Documents

Real Estate Closing		Financial Closing
	Title Insurance Company Title Insurance Commitment Title Insurance Policy Owner's Affidavit	
Broker Listing Contract Agency Disclosure	Seller _____ Buyer Seller's Disclosure Statement Lead Base Paint Seller's Disclosure Form Sales Contract Bill of Sale Deed Closing Statement	Bank Uniform Residential Loan Application Request for Copy of Tax Form Federal Truth in Lending Statement Initial Escrow Account Statement Promissory Note Mortgage Settlement Statement
	Real Estate Transfer Affidavit Homestead Exemption Register of Deeds	

He is now getting a specific example of each type on contract. We will then review these specific examples for possible Clarity Awards.

Investment Contracts

In 1997, we gave a Clarity Award to Arthur Levitt, Jr., chair of the U.S. Securities and Exchange Commission, for encouraging companies to write SEC documents in plain English. The SEC has formed a plain-English pilot program, headed by Ann Wallace, to work with companies who volunteer to write their proxy statements and prospectuses in plain English. At present, General Motors, Ford, and Detroit Diesel are participating in this voluntary program. Our committee has written letters to the corporate secretaries of other large companies in Michigan to encourage them to participate in the program. We will now try to see how many of the 20 largest companies in Michigan participate in the SEC's voluntary program.

Insurance Contracts

In 1990, the Michigan Legislature passed an amendment that requires plain English in insurance contracts (1990 P.A. 305, MCL 500.2236; MSA 24.12236). This law, sponsored by Representative Ciaramitaro, applies to all insurance policies that are either newly written or revised after January 1, 1992. This plain-English requirement is enforced by the Commercial Market Standards Division of the Michigan Insurance Bureau.

In the Category of Real Estate⁵

This fall we began a project to obtain the clearest written document that we could find in Michigan for each of the many specific documents that are involved in a typical residential house closing. To do this, we have separated closing documents into five groups, shown in Figure 3.

In the Category of Estate Planning⁶

The five basic types of estate-planning documents are shown in Figure 4. In 1995 we found clearly written examples for three of these types and gave Clarity Awards to the documents listed in Figure 4.

We are now looking for a clearly written example of a living will (for medical care) and a trust (for property transfer).

Conclusion

Legal-writing teachers and consultants began the plain-English movement in the law in the 1970s, and have promoted the

Figure 4. Types of Estate Planning Documents

Document	For Property Transfer	For Medical (Health) Care
Durable Power of Attorney	(95) Durable Power of Attorney Form of Comerica Bank	(95) Durable Power of Attorney for Health Care Decision Making (patient advocate form)
Will	(95) Will Form of Comerica Bank (95) Michigan Statutory Will	
Trust		

movement for the last 20 years. But certain legislators, civil servants, practicing attorneys, and legal secretaries have the most control over the style of legal documents. Therefore, if the teachers and consultants want the movement to succeed, they must persuade these legislators, civil servants, practicing lawyers, and legal secretaries to join the movement.

There are five basic categories of legal documents—laws, lawsuit papers, contracts, real-estate documents, and estate-planning documents. And a different group of people has the most control over the style of documents in each of these categories:

(a) about 200 people in the Michigan Legislature, the departments of state government, and the Legislative Service Bureau have the most control over the style of laws,

(b) about 2,500 lawyers in the Michigan Trial Lawyers Association and Michigan Defense Trial Counsel have the most control over the style of lawsuit papers,

(c) about 200 people have the most control over the style of contracts,

(d) about 3,000 lawyers in the Real Property Law Section of the State Bar of Michigan have the most control over the style of real-estate documents,

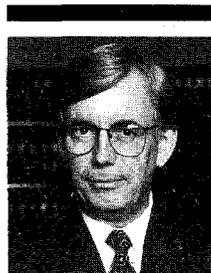
(e) about 3,000 lawyers in the Probate and Estate Planning Section of the State Bar of Michigan have the most control over the style of estate-planning documents.

These are the people who control the success of the plain-English movement in Michigan.

Basic Goal VII of the Mission Statement of the State Bar is **Public Understanding of and Respect for the Justice System and Profession**. And a key priority for the 1997-98 Long-Range Plan of the State Bar is **Image of the Profession**. What better way to promote both the goals than to eliminate legalese and write all legal documents in plain English? ■

Footnotes

1. *Plain English Subcommittee on Laws*, 76 Mich BJ 716 (July 1997).
2. *Plain English Subcommittee on Lawsuits*, 76 Mich BJ 988 (September 1997).
3. Berrien County Legal Services Bureau, Inc., Legal Aid Bureau of Southwestern Michigan, Inc., Legal Aid of Central Michigan, Legal Aid and Defender Association of Detroit, Legal Aid of Western Michigan, Lakeshore Legal Services, Inc., Legal Services of Eastern Michigan, Legal Services of Northern Michigan, Inc., Legal Services Organization of Southcentral Michigan, Legal Services of Southeastern Michigan, Inc., Oakland Livingston Legal Aid, Wayne County Neighborhood Legal Services, Michigan Indian Legal Services, Inc., Michigan Migrant Legal Assistance Project, Inc., and Michigan Legal Services.
4. *Plain English Subcommittee on Contracts*, 76 Mich BJ 1100 (October 1997).
5. *Plain English Subcommittee on Real Estate*, 76 Mich BJ 1216 (November 1997).
6. *Plain English Subcommittee on Estate Planning*, 76 Mich BJ 1338 (December 1997).



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