

# Clarity Awards for Fall 1999

By George H. Hathaway

We give Clarity Awards to legal documents that are written in plain English, without legalese. We do this to support the following three goals: our committee's goal of promoting the use of clear writing by legal professionals; State Bar Goal VII—Public Understanding of and Respect for the Justice System and Profession; and State Bar Goal VIII—Openness of the Profession.

We give our fall 1999 awards to documents written by the Attorney General of Michigan, Comerica Bank, the Federal National Mortgage Association/Federal Home Loan Mortgage Corporation, the Michigan Institute of Continuing Legal Education, and others. The winning documents are discussed below and excerpted at the end of this article. We will put the full versions of some of them on the committee's website.

Figure 2 on the following page lists our Clarity Award categories for 20 specific types of legal documents.

## Laws

### Rules

We start with a notably well-written opinion of the attorney general.

- Attorney General Opinion No. 7007, Application of Whistle-Blower's Protection Act to State Police Troopers and Sergeants, by Attorney General Jennifer Granholm

"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. For information about the Plain English Committee, see our website—[www.michbar.org/committees/penglish/pengcom.html](http://www.michbar.org/committees/penglish/pengcom.html)

and Assistant Attorney General Susan Przekop-Shaw.



Jennifer Granholm



Susan Przekop-Shaw

The process for creating these opinions is described by Theodore Hughes, Assistant Attorney General for Law:

*The Attorney General's duties include issuing opinions on questions of law submitted to her*

*by the Legislature, or by the Governor, auditor general, treasurer, or any other state officer. MCL 14.32; MSA 3.185. Once the Attorney General accepts a question for the opinions process, a draft opinion is prepared by an assistant attorney general. The draft opinion is then reviewed and approved by the Attorney General's Opinion Review Board, which consists of seven senior assistant attorneys general. Thereafter, the draft opinion is reviewed and approved by William Richards, the Deputy Attorney General, and then presented to the Attorney General for her review, approval, and issuance.*

*Formal opinions of the Attorney General are published in the Biennial Report of the Attorney General. Formal opinions issued since January 1, 1998, can be found on the Attorney General's website at [www.ag.state.mi.us](http://www.ag.state.mi.us) An article more fully explaining the Attorney*

Figure 1—Clarity Awards for Fall 1999

Laws	
• Attorney General Opinion 7007, Application of Whistle-Blower's Protection Act to State Police Troopers and Sergeants	Granholm and Przekop-Shaw
• R 330.11011, Substandard Quality of Care	Isaacs
Lawsuit Papers	
• Motion for Summary Disposition in <i>McCann v State of Michigan</i>	Shamraj
• Proof of Service in <i>House v Michigan Department of Corrections</i>	Swanson
• Proof of Service in <i>Michigan State Police Troopers Assoc v State of Mich</i>	Martens
• Proof of Service in <i>Lang v Detroit Edison</i>	Thun
Contracts	
• Direct Simple-Interest Installment-Loan Contract of Comerica Bank	Fancy
Real Estate	
• Warranty Deeds in <i>Michigan Estate Planning Handbook</i>	Zack
• Multistate Fixed-Rate Note Form 3200 of FNMA/FHLMC	Smith, Samuel, and Newell
Estate Planning	
• Durable Power of Attorney for Finance	Geller
• Revocable Living Trust and other Estate-Planning Forms in <i>Michigan Estate Planning Handbook</i>	Systema, Cohen, Martin, Irish, Bernick, Cooney, Dufendach, Kayes, Mielock, Underwood, Von Handorf, and Zack

Figure 2—Clarity Award Categories

Laws	Lawsuits	Contracts	Real Estate	Estate Planning
<ul style="list-style-type: none"> <li>• Resolutions</li> <li>• Statutes</li> <li>• Rules</li> </ul>	<ul style="list-style-type: none"> <li>• Complaints, Answers, Motions, and Orders</li> <li>• Sworn Statements and Proofs of Service</li> <li>• Opinions (Judgments) and Settlement Agreements</li> </ul>	<ul style="list-style-type: none"> <li>• Consumer-Finance Contracts</li> <li>• Construction Contracts</li> <li>• Sales-of-Goods Contracts</li> <li>• Sales-of-Services Contracts</li> <li>• Employment Contracts</li> <li>• Investment Contracts</li> <li>• Insurance Contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Sales Contracts and Land Contracts</li> <li>• Deeds and Easements</li> <li>• Leases</li> <li>• Notes and Mortgages</li> </ul>	<ul style="list-style-type: none"> <li>• Durable Powers of Attorney</li> <li>• Wills</li> <li>• Trusts</li> </ul>

*General's opinion process will be published in a future issue of the Michigan Bar Journal.*

Most state administrative rules in Michigan are clearly written. Therefore, each time we give our Clarity Awards, we select a recent administrative rule that qualifies. This time we give a Clarity Award to the following administrative rule:

- R 330.11011, Substandard Quality of Care of Health Legislation and Policy Development of the Department of Community Health, by Carol Isaacs.

**Lawsuit Papers**

**Motions**

In addition to writing opinions, the Attorney General's Office also writes lawsuit papers. Michael McDaniel is the Assistant Attorney General for Litigation Coordination. The following lawsuit paper is an excellent example of clear, concise writing, with short paragraphs and blessedly free of legalese.

- Motion for Summary Disposition in *McCann v State of Michigan*, by Assistant Attorney General Marie Shamraj.



Marie Shamraj

**Proof of Service**

In 1989, the State Court Administrative Office developed a Proof of Mailing form, MC 302. This form is written in clear language and does not contain the legalese that is found in the traditional affidavit-type proofs of service. The form uses the word "mailing" defined in MCR 2.107(C)

(3), a verification permitted under MCR 2.107(D), and the verification language "I declare that the above statements are true to the best of my information, knowledge, and belief" prescribed by MCR 2.114(B) (2)(b). Although the form has been published for 10 years, many lawyers and legal secretaries do not use the language of the form; or if they do, they use it improperly. Therefore, to promote its use, we give Clarity Awards to the following legal secretaries who have used the form language properly:

- Proof of Service in *House v Michigan Department of Corrections*, by Susan Swanson
- Proof of Service in *Michigan State Police Troopers Association v State of Michigan*, by Sherie Martens
- Proof of Service in *Lang v Detroit Edison*, by Judith Thun

According to Mathew Rick, assistant attorney general in the state affairs division:

*"In addition to placing greater emphasis on plain English in her formal opinions, Attor-*

*ney General Granholm is making sure that plain English is used in court forms used by assistant attorneys general. The proof-of-mailing form is one court form used daily by the secretaries and the attorneys in the department. Previously, the department typically used a proof-of-mailing form that resembled that in Figure 3 (below).*

*"Now, the department has added Michigan SCAO Approved Form number 302 to its department-wide computer. The form was recently used by Susan R. Swanson of the Public Employment and Elections division. The proof-of-mailing form used by Ms. Swanson reads like the one in Figure 4 (see next page).*

*"The plain English in the new form is readily discernible. The older form included the phrases 'being first duly sworn,' 'deposes and says,' and 'plainly addressed.' The new form simply indicates the date the notice was sent, how it was sent, and to whom it was sent. The sworn statement does not use terms such as 'aforementioned' or 'solemnly.'*

*"The new proof-of-mailing form is available to all of the secretaries and all the attorneys*

Figure 3—Traditional Proof of Service

STATE OF MICHIGAN )  
 ) ss  
 COUNTY OF INGHAM )

The undersigned, being first duly sworn, deposes and says that on February 4, 1999, she served a copy of Defendant-Appellee's Motion to Enlarge Time and Defendant-Appellee's Response to Plaintiff-Appellant's Motion to Add Causes of Action of Americans With Disabilities Act Title II and the Michigan Handicappers' Civil Rights Act to Conform to the Evidence Under FR Civ P 15 upon the parties in this case by enclosing same in an envelope with first-class postage fully prepaid, and depositing it in the United States mail in Lansing, Michigan, plainly addressed as follows:

Robert Hugh Mikesell  
 5892 Christie Avenue, SE  
 Kentwood, MI 49508

Subscribed and sworn to before me  
 this 4th day of February, 1999.

Cynthia A. Aven, Notary Public  
 Ingham County, Michigan  
 My commission expires: 4/26/2000

Figure 4—Plain English Proof of Service

On the date below I sent by first class mail a copy of	
RE-NOTICE OF HEARING	
to: Greg M. Liepshutz Attorney at Law 100 Galleria Officentre 27700 Northwestern Hwy., Ste. 411 Southfield, MI 48034	
I declare that the statements above are true to the best of information, knowledge, and belief.	
Date: June 29, 1999	_____ Signature Susan R. Swanson

in the Department of Attorney General. The form was added to the 'court forms' folder in the department's file server. The folder also includes other court-approved forms. Each secretary and attorney may maintain a copy of the proof-of-mailing form by 'making an alias' of the 'court forms' folder and placing the alias folder on their computer desktops. The new proof-of-mailing form is then available to everyone in the department through the simple click of a mouse."

## Contracts

### Consumer-Finance Contracts

A car-loan agreement is a typical example of a consumer-finance contract. The following car-loan agreement was written by Comerica Bank, the largest Michigan-owned bank in Michigan. This agreement proves once again that consumer-finance documents can be voluntarily written in clear language (plain English) without legalese, and that legalese is not required by complexity, case precedent, statute, or precision.

- Direct Simple-Interest Installment-Loan Contract of Comerica Bank, by Patricia Fancy, First Vice President, Legal Department

According to Ms. Fancy:

"Comerica believes that all documents, especially consumer agreements, must be easily understood by readers from diverse cultural and educational backgrounds. Creating easily read documents is tough. Lawyers rely on legalese because it's familiar and has withstood challenges. Translating legalese into plain English requires hard thinking. 'What is this really saying? Which short words can replace long ones? How can these sentences be shortened?' Upon completing a document, I 'test drive' it by having family and friends read it and tell me what it says."



Patricia Fancy

## Real-Estate

### Deeds

The example warranty deeds (Forms 28.17, .18, and .19) by Everett Zack in the recently published ICLE *Michigan Estate Planning Handbook* are excellent examples of plain English deeds. The format is great. Every word is meaningful; there are no unnecessary words or signs of legalese. Furthermore, the acknowledgment combines the traditional notary signature block with the essential words required for an acknowledgment. This acknowledgment format will probably become—or should become—the most widely followed format for all clearly written acknowledgments in Michigan.



Everett Zack

### Mortgage Notes

Standard forms of mortgages and mortgage notes are written on a national basis

by the Federal National Mortgage Association (FNMA), also referred to as FannieMae, and the Federal Home Loan Mortgage Corporation (FHLMC), also referred to as FreddieMac. Real-estate-financing documents are one of the most difficult types of legal documents to write in plain English. But FNMA/FHLMC has been continuously improving the clarity of these documents for the last 20 years. Their note forms are especially well-written. (See [www.fanniemae.com/singlefamily/doing\\_business/mortgagedocs](http://www.fanniemae.com/singlefamily/doing_business/mortgagedocs) and [www.freddiemac.com/uniform](http://www.freddiemac.com/uniform)). Therefore, we give a Clarity Award to the following standard form of mortgage note:

- Multistate Fixed-Rate Note Form 3200 of FNMA/FHLMC (Wendy Samuel, Associate General Counsel of FNMA; Dan Smith, VP and Deputy General Counsel of FNMA; and Jim Newell, Associate General Counsel of FHLMC).

## Estate-Planning

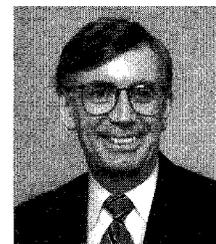
### Durable Power of Attorney

Bradley Geller, legal counsel of Washtenaw County Probate Court, has been a leader in developing plain English estate-planning documents in Michigan. We have given him several Clarity Awards in previous years. This year we give another Clarity Award for the following document:

- Durable Power of Attorney for Finances, by Bradley Geller of Washtenaw County Probate Court.

### Trusts

The Michigan Institute of Continuing Legal Education has done it again. In 1997, we gave a Clarity Award for the lawsuit forms in ICLE's *Michigan Causes of Action Formbook*. This year we give a Clarity Award for the estate-planning clauses and forms in ICLE's newly published *Michigan Estate Planning Handbook*. This entire handbook is excellent. It follows its own advice:

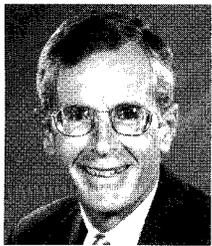


George Hathaway is a senior real estate attorney at the Detroit Edison Company and chair of the Plain English Committee of the State Bar of Michigan.

"Clients should be able to read and understand the documents that are prepared to implement the estate plan. Avoid legalese and Latin as much as possible. Use plain English, short sentences, short paragraphs, and correct grammar and punctuation."

The forms in this handbook include a durable power of attorney for finances, a durable power of attorney for health care, living will, will clauses, trust clauses, a will, and a revocable living trust. The handbook includes so many different types of clauses and forms that we plan to write a future Plain Language column about the handbook. But for now, we are especially interested in the trust. We have given previous Clarity Awards for the other types of estate-planning documents, but we have never found a trust we thought was clearly written. Therefore, we give a Clarity Award not only for the entire handbook, but also for the following trust form:

- Revocable Living Trust in the Michigan Institute of Continuing Legal Education's *Michigan Estate Planning Handbook* edited by Fredric Sytsma and Elaine Cohen, with contributions from John Harvey Martin, Michael Irish, Diane Bernick, George Cooney, Carl Dufendach, Karen Kayes, Douglas Mielock, Lauren Underwood, Joan Von Handorf, and Everett Zack.



Fredric Sytsma



Elaine Cohen

## Examples from Clarity-Award Documents

We recognize and promote change and progress with our Clarity Awards. We don't claim that they are perfectly written legal documents—if there is such a thing. Nevertheless, they are plainer than traditional documents of their kind, and less pitted with legalese. We recommend that you write your documents as clearly as these examples. And if you notice something that you think could be written even clearer, don't just criticize the document; write a document that is even better and send it to us for a future Clarity Award. ■

### 1. Opinion of Attorney General

It is my opinion, therefore, that the Whistle-Blowers' Protection Act does not apply to troopers and sergeants employed by the Michigan Department of State Police. Despite this lack of coverage under the Act, state classified civil service employees who disclose violations remain protected. Rules adopted by the Michigan Department of Civil Service prohibit an appointing authority from engaging in reprisals against such employees for reporting a violation or suspected violation of state law, federal law, or state or local administrative rules. See, Civil Service Rule 2.23.

### 2. Administrative Rule R 330.11011

(1) If a nursing facility is cited for SQC, then, together with other remedies, the state Medicaid agency shall apply the following additional remedies:

(a) Request the state survey agency to notify the attending physicians of residents identified during the survey process as having been affected by the SQC or by the deficient findings . . . .

### 3. Motion for Summary Disposition

Defendants Michigan Department of Corrections, Hamilton, and Witter move for Summary Disposition under MCR 2.116 (C)(10), stating as follows:

1. Count II alleges sexual harassment in violation of the Elliott-Larsen Civil Rights Act (ELCRA). Summary Disposition is required because Plaintiffs will not be able to prove a *prima facie* case of sexual harassment in violation of the ELCRA.

### 4. Proof of Service

On the date below I sent by first-class mail a copy of RE-NOTICE OF HEARING to Greg M. Liepshutz, Attorney at Law, 100 Galleria Officentre, 27700 Northwestern Hwy., Ste. 411, Southfield, MI 48034. I declare that the statements above are true to the best of information, knowledge, and belief.

Date: June 29, 1999 Signature  
Susan R. Swanson

### 5. Proof of Service

On the date below I sent by first-class mail an Unfair Labor Practice Charge to Captain Marie Waalkes, Human Resources Department, Michigan State Police, 714 S. Harrison Road, East Lansing, Michigan, 48823. I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: April 30, 1999 Signature  
Name: Sherie Martens

### 6. Proof of Service

On the date below, I sent by first-class mail a copy of Notice of Submission of Order

to John L. Gormley, Cox & Associates, P.L.C., 203 West Grand River, P.O. Box 239, Webberville, MI 48892. I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: May 11, 1999 Signature:  
Name: Judith Thun

### 7. Car-Loan Agreement

Type of Loan This is a simple interest loan. The simple interest rate is \_\_\_ %. This loan may include a loan processing fee. Please refer to the Annual Percentage Rate for the cost of your credit expressed as a yearly rate.

### 8. Warranty Deed

Mark D. Wareing and Rebecca L. Wareing, husband and wife, of 127 S. Cochran Avenue, Charlotte, MI 48813, convey and warrant to Mark D. Wareing and Rebecca L. Wareing, trustees of the Mark D. Wareing Trust No. 1, of 127 S. Cochran Avenue, Charlotte, MI 48813, the property in the city of Charlotte, Eaton County, Michigan, which is described as follows:

### 9. Mortgage Note

1. Borrower's Promise to Pay In return for a loan that I have received, I promise to pay U.S. \$\_\_\_\_\_ (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is \_\_\_\_\_. I will make all payments under this Note in the form of cash, check or money order. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

### 10. Durable Power of Attorney for Finance

My agent shall exercise powers in my best interests and for my welfare, as a fiduciary. My agent shall have [has] the following powers:

1. Banking—To receive funds, deposit funds in any financial institution, and make withdrawals by check or otherwise to pay for goods, services, and any other personal and business expenses for my benefit. To effect [carry out ?] her or his powers, my agent has power to sign a power of attorney drafted by the institution, and shall have access to my safe deposit box.

### 11. Revocable Living Trust

Purpose. This trust is established to provide management of assets during Settlor's lifetime and to act as the means of distributing Settlor's assets after Settlor has died. Trustee agrees to hold, administer, and distribute the assets it receives in accordance with this Agreement.