

Removing “Bureaucratese” from Government Agency Documents and Orders

By Kim Breitmeyer

We must return to a Plain Language column in the *Michigan Bar Journal* written by Western Michigan University Cooley Law School Professor Joseph Kimble in 1999 to explore the use of legalese or “bureaucratese” vs. plain language in government-issued orders.¹ In the column, Kimble critiqued and revised the orders on the Articles of Impeachment issued by the U.S. Congress against former President Bill Clinton. Predictably, the orders were riddled with arcane legal jargon and overly formal language. More than 30 years ago, the *Bar Journal* published a Plain Language column by Solomon Bienenfeld entitled “Plain English in Administrative Law”² that still rings true today in the age of paperless offices, e-mail, social media, electronic reading devices, smartphones, and increasing reliance on electronic document filing systems.

In November 2014, the Michigan Supreme Court rescinded the Michigan Uniform System of Citation and encouraged the use of the Michigan Appellate Opinion Manual³ to determine the Court’s citation, quotation, and style standards. The new citation format is shorter and simpler and does not require parallel statutory citations. Chapter 3 of the manual addresses grammar, spelling, formatting, and terminology. It encourages the use of serial (Oxford) commas and advises legal writers to avoid the use of unnecessary “jargon,” particularly when reciting the facts of a case. Page 145 of the manual notes that “it may be tempting to adopt the verbiage of the documents from which the facts originated as faithfully and extensively as possible. Laudable motives notwithstanding, the temptation should be resisted and the facts rephrased in a manner that is succinct and consonant with the tone of judicial opinion.” Appendix 1 contains a listing of frequently suggested corrections.

Also in November 2014, the Michigan Supreme Court adopted an e-filing system for the Supreme Court and Court of Appeals.⁴ Some of the busiest Michigan circuit and district courts have already developed similar filing and document storage systems with the Michigan Supreme Court’s permission.⁵ Administrative agencies such as the Michigan Public Service Commission⁶ and the Michigan Tax Tribunal⁷ are increasingly converting to e-filing and case management systems as well. Arguably, with the increased use of electronic reading devices and electronic document filing systems, eliminating unnecessary and arcane language and getting to the point quickly are even more critical.

Despite historical efforts to improve the clarity, efficiency, and simplicity of legal prose, remnants of legalese remain in documents regularly sent to nonlawyers that directly affect their pocketbooks and livelihoods. As one legal author observed, legal writing is often “wordy, unclear, pompous, and dull.”⁸ Another noted that legal textbooks are “the largest body of poorly written literature ever created by the human race.”⁹ The main goal of plain language is to clearly and accurately convey the message to the intended reader.

As Bienenfeld wrote in his 1984 column, an agency “derive[s] benefit from clear communication because this leads to compliance

which, in turn, reduces reliance on litigation.” However, in their zeal to complete assigned tasks in the least amount of time, lawyers (me included) often default to templates created long ago that contain legalese and are unnecessarily verbose. Lawyers and government employees do not thoroughly edit and revise their work to cut unnecessary words, details, and formal or overly pretentious words in favor of familiar words. They do not use short sentences or check for understanding by having someone else read the document. It takes more time to do this than to quickly draft a document without considering word placement, word selection, clichés, undefined acronyms, lengthy or complex sentences, unnecessary details, or use of passive voice.

Plain-language critics argue that arcane legalese is more formal, more precise, more artful, or more eloquent. However, as Kimble pointed out in his 2006 book, *Lifting the Fog of Legalese*, taken to its extreme, formality “often degenerates into pomposity.”¹⁰ Legalese is frequently confusing at its best and ambiguous at its worst.

Examples of the remnants of legalese and bureaucratese are easily found in settlement agreements, consent orders, and other orders issued by state agencies. A final decision issued by the Department of Insurance and Financial Services relates

In their zeal to complete assigned tasks in the least amount of time, lawyers (me included) often default to templates created long ago that contain legalese and are unnecessarily verbose.

Examples of the remnants of legalese and bureaucratese are easily found in settlement agreements, consent orders, and other orders issued by state agencies.

the following “findings of fact and conclusions of law”:

1. Pursuant to Executive Order 2013-1, all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation (Commissioner) have been transferred to the Director of the Department of Insurance and Financial Services (Director).
2. At all relevant times, Respondent was a licensed nonresident insurance producer with qualifications in life, accident and health.
3. On or about October 22, 2012, Respondent’s Kansas nonresident insurance producer license was revoked pursuant to KSA 40-4909(a)(8) because Respondent used a fraudulent, coercive, or dishonest practice in submitting applications for insurance without approval of consumers and falsely represented medical history on those applications....

Plain-language version:

1. Executive Order 2013-1 transferred the Office of Financial and Insurance Regulation Commissioner’s (Commissioner) responsibilities to the Department of Insurance and Financial Services Director (Director).
2. At all relevant times, M.K. was licensed in Michigan as a nonresident insurance producer with qualifications in life, accident, and health.
3. In October 2012, the State of Kansas revoked M.K.’s nonresident insurance producer license under KSA 40-4909(a) (8) because of his dishonesty in submitting applications for insurance.

In the plain-language version of the first paragraph, I omitted redundant adjectives

and the phrase *pursuant to* without changing the sentence’s meaning. In the second paragraph, I substituted the respondent’s name (reflected as initials here) to read more naturally, and clarified that he was licensed in Michigan. In the third paragraph, I omitted the phrase *on or about* in preference of a more general reference to the date and eliminated the use of passive voice. I also shortened the description of why the individual’s license was revoked.

Part III of the final decision, entitled “Order,” states only the following:

Based upon the Respondent’s conduct and the applicable law cited above, it is ordered that:

1. Respondent shall cease and desist from violating the Code.

The order portion is not riddled with legalese, but the author could replace *shall* with *must*, and substitute the respondent’s name for *Respondent*.

A penalty hearing order issued by the Michigan Liquor Control Commission states the following, in part:

Under MCL 436.1903(1), the Commission is required to impose a suspension or revocation of the 2012 SDD and SDM licenses with permission for motor vehicle fuel pumps under MCL 436.1541(1), Sunday Sales Permit (A.M.), Sunday Sales Permit (P.M.), and One (1) Direct Connection Permit held by [the L.L.C.] (licensee) at the above-noted address, as the licensee was found liable for three (3) violations of MCL 436.1801(2) on different occasions within a 24-month period. Those violations occurred on March 5, 2011, June 7, 2011 and February 8, 2012....

After reviewing the record of the three (3) violations within a consecutive 24-month

period which necessitated the penalty hearing, and hearing arguments from Attorney P., Mr. B. and Ms. S., the Commission finds that the licensee demonstrated a course of action has been taken to assist in preventing further sales to minors; however, the Commission must issue a penalty of suspension or revocation in this matter under MCL 436.1903(1). The Commission finds that a ten (10) day suspension is warranted for the reasons stated on the record....

THEREFORE, IT IS ORDERED that:

A. The 2012 SDD and SDM licenses with permission for motor vehicle fuel pumps under MCL 436.1541(1), Sunday Sales Permit (A.M.), Sunday Sales Permit (P.M.), and One (1) Direct Connection Permit held by [the L.L.C.] are SUSPENDED for ten (10) consecutive days to be served on March 19, 2013, March 20, 2013, March 21, 2013, March 22, 2013, March 23, 2013, March 24, 2013, March 25, 2013, March 26, 2013, March 27, 2013, and March 28, 2013.

B. The suspension is to run consecutively and not concurrently with any other suspension ordered by the Michigan Liquor Control Commission for this licensee.

The order’s author did a lot of things right, including abbreviating statutory citations to the MCL numbers and using *under* instead of *pursuant to* preceding the citations. The author did not use unnecessary terminology like *hereby* or *wherefore*. The first paragraph could be revised to read as follows:

Under MCL 436.1903(1), the Commission must suspend or revoke the L.L.C.’s 2012 Specially Designated Distributor (SDD) and Specially Designated Merchant (SDM) licenses with permission for motor vehicle fuel pumps granted under MCL 436.1541(1), its Sunday Sales Permits (A.M. & P.M.), and its one Direct Connection Permit, because the L.L.C. is liable for selling alcohol to minors, contrary to MCL 436.1801(2), on March 5, 2011, June 7, 2011, and February 8, 2012.

Attorney P., Mr. B., and Ms. S. participated on the L.L.C.’s behalf at the penalty hearing. The Commission finds that, although the L.L.C. since took

action to prevent future sales of alcohol to minors, MCL 436.1903(1) requires the Commission to suspend or revoke the L.L.C.'s licenses. For the reasons stated on the record, a suspension for ten consecutive days beginning on March 19, 2013, is warranted.

THEREFORE, IT IS ORDERED that:

A. The above licenses are SUSPENDED for ten consecutive days, from March 19, 2013, to March 28, 2013.

B. The suspension will not run concurrently with any other suspension imposed by the Commission against the L.L.C.

I defined the abbreviated license types in paragraph one, grouped subjects and verbs together, shortened the list of suspension dates, and swapped *licensee* with the name of the L.L.C. I also eliminated extraneous words and repetitive details. I will let you decide which version you prefer.

An order issued by the Michigan Public Service Commission accepting the surrender of a license to provide basic local phone service states as follows:

ORDER

On August 14, 2002, L.L.C. filed an application, pursuant to the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, for a license to provide basic local exchange service in all exchanges served by Inc. #1 and Inc. #2. On November 7, 2002, the Commission granted the application. On December 1, 2014, L.L.C. informed the Commission of its intent to surrender the license. L.L.C. states that it has no customers and has ceased operations in Michigan.

THEREFORE, IT IS ORDERED that:

A. The license of L.L.C. to provide basic local exchange service in the state of Michigan is rescinded.

B. L.L.C. shall surrender to the North American Numbering Plan Administrator any numbers that have been assigned to it.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within

30 days of the issuance of this order, under MCL 484.2203(12).

The plain-language version:

On August 14, 2002, L.L.C. filed an application for a license to provide basic local exchange service in all exchanges served by Inc. #1 and Inc. #2, under the Michigan Telecommunications Act, MCL 484.2101 *et seq.* On December 1, 2014, L.L.C. asked to surrender its license, because it stopped operating in Michigan.

THEREFORE, IT IS ORDERED that:

A. The above license is rescinded.

B. L.L.C. must immediately surrender any remaining numbers assigned to it to the North American Numbering Plan Administrator.

The Commission reserves its jurisdiction in this matter.

A party may appeal this order in the Michigan Court of Appeals within 30 days after this Order is issued, under MCL 484.2203(12).

The relevant case history in the first version was concise. I merely eliminated the use of passive voice, removed a few redundancies, and chose simpler words, favoring *stopped over ceased* and *must over shall*.

I urge all public-sector lawyers to accept the challenge of proofreading standard form orders with an eye toward communicating with the audience of laypersons trying to comply with the orders' requirements. Will laypersons appreciate not having to wade through a sea of redundant and meaningless language? Will they be more likely to immediately comply with an order if it is clear what has to be done? Yes, they will. ■

Kim Breitmeyer is a member of the SBM Libraries, Legal Research, and Legal Publications Committee. She is past chair of the SBM Administrative & Regulatory Law Section and served as co-editor of the Administrative Law Journal from 2007 to 2011. She is the Regulatory Compliance Division director of the Corporations, Securities & Commercial Licensing Bureau within the Michigan Department of Licensing and Regulatory Affairs.

ENDNOTES

1. Kimble, *How to Write an Impeachment Order*, 78 Mich B J 1304 (1999), available at <http://www.michbar.org/generalinfo/plainenglish/PDFs/99_nov.pdf>. All websites cited in this article were accessed May 22, 2015.
2. Bienenfeld, *Plain English in Administrative Law*, 63 Mich B J 856 (1984), available at <http://www.michbar.org/generalinfo/plainenglish/PDFs/84_sept.pdf>. Solomon Bienenfeld was a Wayne State University law professor from 1951 to 1966 and a Michigan first assistant attorney general from 1966 to 1979. He also published several editions of a textbook entitled *Michigan Administrative Law*. At the time he wrote the column, he was special counsel to Detroit Edison.
3. See Administrative Order No. 2014-22. The Michigan Appellate Opinion Manual is available at <<http://courts.mi.gov/Courts/MichiganSupremeCourt/Documents/MiAppOpManual.pdf>>.
4. Administrative Order No. 2014-23.
5. Oakland and Wayne counties require that some types of documents be filed electronically. See Oakland County, Michigan, *Sixth Judicial Circuit Court* <<https://www.wiznet.com/oaklandmi/login.jsp>>; Third Judicial Circuit of Michigan <<https://www.3rdcc.org/eFiling.aspx>>. On January 23, 2013, Macomb County began participating in an Electronic Document Filing Pilot Project through December 31, 2015, consistent with Michigan Supreme Court Revised Administrative Order No. 2010-6. See Macomb County Circuit Court, *eFiling* <<http://circuitcourt.macombgov.org/circuitcourt-efiling>>. Ottawa, Grand Traverse, Leelanau, and Antrim counties also adopted e-filing services based on similar pilot projects, consistent with Michigan Supreme Court Administrative Order No. 2002-37 and Amendment of Administrative Order No. 2010-4 to Expand E-filing in the 13th Circuit Court (Grand Traverse, Antrim, and Leelanau counties). See 13th Circuit Court, *E-filing* <<http://www.13thcircuitcourt.org/Page5858.aspx>>; Ottawa County Clerk <<https://www.miottawa.org/Departments/Clerk/efiling.htm>>.
6. "The Michigan Public Service Commission's Electronic Docket Filings System (E-Dockets) provides for the electronic submission of filed documents and online access of documents submitted in cases before the Commission." Michigan Public Service Commission Department of Licensing and Regulatory Affairs <<http://efile.mpsc.state.mi.us/efile/>>.
7. Michigan Department of Licensing and Regulatory Affairs Press Release, *Tax Tribunal Improves Efficiency and Transparency through New E-Filing, Case Management and Docket Search Systems* (February 13, 2014) <http://www.michigan.gov/lara/0,4601,7-154-10573_11472-321948--00.html>.
8. Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* (Durham: Carolina Academic Press, 2006), p 55.
9. *Lifting the Fog*, p 56 (quoting Lindsey, *The Legal Writing Malady: Causes and Cures*, NY LJ 204 (1990)).
10. *Lifting the Fog*, p 132.