

Another Federal Judge Takes On Legalese

By Hon. Donald W. Molloy

This is the third column we have published by a federal judge exhorting lawyers to simplify. (The others appeared in January 2013 and May 2014.) After meeting Judge Molloy, I received a letter from him about requests for a writ of habeas corpus that assistant United States attorneys had been asking him to issue some years ago. He had “mentioned several times that maybe a writ in plain language would be more beneficial to the person to whom the writ was issued, and it would certainly make more sense to anyone reading the record.” His letter continued: “My effort was of no avail until I entered the enclosed order.” Judge Molloy has kindly allowed us to print the old writ, his order, and the revised writ. I might tweak the new writ as indicated, but you can compare the two. —JK

Writ Requested for Some Time by Assistant U.S. Attorneys

YOU ARE HEREBY COMMANDED, to have the body of James D. Stoker by you restrained of his liberty, as it is said, by whatsoever names detained, together with the day and cause of his being taken and detained,

“Plain Language” is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. To contribute an article, contact Prof. Kimble at Western Michigan University Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For an index of past columns, visit <http://www.michbar.org/generalinfo/plainenglish/>.

before the Honorable Leif B. Erickson, United States Magistrate Judge of the United States District Court for the State and District of Montana, at the court room of said Court, in the City of Missoula at 1:30 p.m., on the day of Tuesday, February 13, 20___, then and there to do, submit to and receive whatsoever the said Judge shall then and there determine in that behalf; and have you then and there this writ. Upon conclusion of all such proceedings as may be held, James D. Stoker shall be returned to the care and custody of Missoula County Jail, Montana.

Judge Molloy’s Order

On the eighteenth day of January, anno Domini 20___, petitioned learned counsel of the United States of America for an Order, a Decree, as it is said, commanding the Clerk of Court to issue a writ of habeas corpus ad prosequendum to be served upon the proper apparitor, and said learned counsel having pleaded the writ in antient and obtuse terms resonant of the Freeman of Magna Carta and Lesser Justus Township,

HASTENS NOW THE COURT to determine in that behalf whether it be true that, nearly eleven and one quarter score of years supervening between that noble Declaration ‘gainst the Georges of the erstwhile reign and those Georges of the present, not only common law but also common parlance of the scepter’d isle be resuscitated, resurrected, revived, and restored in each veritable propria persona of said learned counsel for the United States, sith moveth they in each and every cause in selfsame form, discernibility of said form notwithstanding.

WHEREFORE, premises aforesaid, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that learned counsel for the United

States shall either promulgate and perpetuate said parlance in each and every cause in toto, civil and criminal, so that all may come to know it as their own, or cease, desist, and refrain from the use, dissemination, reservation, distribution, storage, or other promulgation or perpetuation of aforesaid pleaded writ, so that this may be, as it were, its darrein presentment.

IT IS FURTHER ORDERED that counsel for the United States shall submit a revised writ, in plain English, to the Clerk of Court.

WHEREUNTO I set my hand this ___ day of January ____.

Revised Writ (with possible edits)

YOU ARE HEREBY [*hereby* needed?] COMMANDED to bring James D. Stoker, who is ~~presently~~ in your custody, before the Honorable Leif B. Erickson, Magistrate Judge of the United States District Court for the District of Montana, at courtroom 200B in the Russell Smith Courthouse, Missoula, Montana, at 1:30 p.m. on February 13, 20___, for ~~such the purposes as that~~ the court ~~may determine; and upon conclusion of.~~ After the proceedings, James D. Stoker must be returned to the custody of Missoula County, Montana. ■

Donald W. Molloy was appointed by President Clinton and sworn in as U.S. district judge in 1996. He became chief judge for the District of Montana in 2001 and completed a seven-year term. Chief Justice Roberts recently appointed him as chair of the Judicial Conference Advisory Committee on Criminal Rules. He received a master of law, judicial studies at Duke University School of Law and an honorary doctor of laws degree from the University College Cork, Ireland.