

Testifying Before the Legislature on Drafting in Michigan's Administrative Rules

By Joseph Kimble

Last September 11, I testified before the Michigan legislature's Joint Committee on Administrative Rules. The subject was (surprise) plain English. The committee wanted my thoughts on how to improve the drafting quality in rules—so that they might be clearer and thus better understood by the public.

My appearance was on fairly short notice, and I was facing another deadline at the same time, so I didn't have a lot of time to get ready. I prepared oral remarks and submitted (and showed on the hearing-room screen) a five-page handout. Below are both—which I offer in the spirit of advancing the cause of better regulatory (and legislative!) drafting. Because I worked from notes in my remarks, what you see below is not word for word, but it captures the gist.

My testimony

Thank you for this opportunity, Mr. Chairman. We only firmed up my appearance yesterday, so I've had to scramble a bit to prepare. I'm happy to submit these remarks more formally later.

I've been asked about a "standard" for plain English. There is none—although the

three main international plain-language organizations¹ are right now working on an international ISO standard. I've sent [a legislative aide] a copy of the draft proposal.

What we have now are some generally accepted guidelines—dozens of them. Again, I've sent [the aide] a copy of my list of guidelines from one of my books.² Another great source is the *Federal Plain Language Guidelines*, available online.³

Start with this general definition, which the three international organizations have agreed on (I've modified it slightly): "A communication is in plain language if its wording, structure, and design are so clear that the intended audience can easily find the information they need, understand it, and use it."⁴ Plain language is reader-centered. It's not just about what the writer wants to say; it's about what the readers need—in this case, to understand the laws and rules and regulations that govern their lives from cradle to grave.

And to accomplish this, as I said, we have guidelines. They are flexible and varied, and they need to be applied by people with training, expertise, and skill. One of my all-time favorite quotes is from Jacques Barzun: "Simple English is no one's mother tongue. It has to be worked for."⁵

So let me illustrate just a few of the guidelines, using a small piece of one of the regulations before you today. [See handout, page 1.] This regulation applies to barbers: that's the audience. I realize that my notes are a bit messy, but I have listed at the top some serious formatting deficiencies with all rules—in fact, all legislation—as reflected in this barbers' regulation.

- (1) There is not enough white space. Extra line space should appear after every separate section. So in our barbers' example, we need line space after section (1), after section (2), and so on.
- (2) We need more headings. Headings are critical navigational tools for readers. I regard their absence as the worst failing in Michigan's statutes and regulations—certainly the worst as far as formatting goes. Every new section and subsection should have a heading. And by the way, this is not for the reader's benefit alone; writing good, informative headings forces the writer to consider whether the organization works or could be improved.
- (3) We should be using hanging indents. For instance, in the example,

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 36 years. To contribute an article, contact Prof. Kimble at WMU-Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, Google "Plain Language column index."

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the second line in (1)(g) should not come back any farther than the first word in the first line.

(4) Although this regulation does not have definitions, for those that do—especially if you have lots of them—you might think about putting them at the end. Nobody plows through a long list of definitions before getting to the substance. People check the definitions as needed, and they can as easily check the end as the beginning.

(5) All statutes and regulations need more tables (especially “if-then” tables), charts, diagrams, and other visual aids to clarity.⁶

(6) You would work a sea change if you started addressing the reader as *you* in regulations. “More than any other single technique, using *you* pulls users into your document and makes it relevant to them.”⁷

On the bottom half of page 1 in my handout, I made additional notes on this barbers’ regulation. And then I rewrote section (2) on my page 2. When you look at proposed section (2), you see that it boils down to three requirements: keeping surfaces clean; using screens; and keeping waste containers closed, clean, and emptied. This cries out for a list, which I used in the rewrite on page 2 of my handout.

Now, let me add one other element into the mix.

In an ideal world, there would be a Board of Review (or some such) that would spot-check statutes and regulations, suggest improvements, do research, occasionally test regulations on actual users (in the spirit of learning what works), and generally push for change. I’m not sure exactly

how this would be carried out. Obviously, you couldn’t review everything, but even some plain-language review, at some level, by some dedicated experts, could help to spur change. Plain language should be part of the agenda.

To undertake all or even some of this requires big change, a commitment, and resources—obviously. But in the end, the commitment will repay itself many times over, in tangible and intangible ways.

What kinds of tangible ways? In my book *Writing for Dollars, Writing to Please*, I summarized 50 case studies, many of them involving before-and-after versions of public documents.⁸ And some of the cost savings are remarkable, because of the kinds of things that I’ve listed on page 3 of my handout. Most of the studies are from administrative agencies: they revised a form or letter, and phone calls dropped by 70 percent or the response rate improved from 15 percent to 85 percent. Since agencies are often or typically administering regulations, why shouldn’t the regulations be clear to begin with?

And then you have the intangible benefits from plain language—the benefits to companies and administrators and citizens who have to comply with regulations. Shouldn’t barbers be able to understand—without travail—what they’re supposed to do? Anyway, I’ve listed different kinds of benefits to readers on my page 4. The evidence on this is compelling.

Page 5 of the handout shows the last page from *Writing for Dollars*. As I said there, plain language makes for readers who are more motivated, more confident, more trusting, and more satisfied. And so it is that plain language could even help to restore faith in public institutions.

Let me end with this offer. WMU–Cooley Law School has created the Kimble Center

for Legal Drafting. We are willing, as a demonstration project, to develop a possible template for administrative regulations and apply it to a short regulation so that you can see the difference. I think it would be striking.

This all comes down to serving the public. Michigan could be a leader. I’d love to see it happen. ■



Joseph Kimble taught legal writing for 30 years at WMU–Cooley Law School. His third and latest book is Seeing Through Legalese: More Essays on Plain Language. He is senior editor of The Scribes Journal of

Legal Writing, editor of the “Redlines” column in Judicature, a past president of the international organization Clarity, and a drafting consultant on all federal court rules. He led the work of redrafting the Federal Rules of Civil Procedure and Federal Rules of Evidence. Follow him on Twitter @ProfJoeKimble.

ENDNOTES

1. Clarity, The Center for Plain Language, and the Plain Language Association International.
2. See *Writing for Dollars, Writing to Please* (Durham: Carolina Academic Press, 2012), pp 5–10.
3. Plain Language Action and Information Network <<https://www.plainlanguage.gov/guidelines/>> [<https://perma.cc/W4V6-FLLU>] (accessed January 21, 2020).
4. *What is plain language?* Plain Language Association International <<https://plainlanguagenetwork.org/>> (accessed January 16, 2020).
5. *Teacher in America* (Boston: Little Brown & Co, 1945), p 48.
6. *Federal Plain Language Guidelines* at 69–81.
7. *Id.* at 30.
8. *Writing for Dollars*, pp 103–67.

(Continued on the following page)

The handout

- MORE WHITE SPACE
- MORE HEADINGS EVERY NEW PART
- HANGING INDENTS
- DEFINITIONS AT END
- MORE TABLES (esp. "if-then" TABLES), CHARTS, DIAGRAMS, EXAMPLES
- PERSONAL PRONOUNS ("AS A LICENSEE, you must...")

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

BARBERS – GENERAL RULES

Filed with the secretary of state on

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of licensing and regulatory affairs by section sections 308-205, 1110, and 1112 of the occupational code, 1980 PA 299, MCL 339.308 339.205, 339.1110, and 330.1112;; and on the board of barbers by section 308 of the occupational code, 1980 PA 299, MCL 339.308; and by Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, 2008-4, and 2011-4, MCL 338.3501, 445.2001, MCL 445.2011, 445.2025, and MCL 445.2030-)

R 339.6031, R 339.6033, R 339.6037, R 339.6041, and R 339.6047 of the Michigan Administrative Code are amended as follows:

PART 3. SANITATION

R 339.6031 Premises.

Rule 31. (1) All premises used by a licensee shall must be maintained in a clean, safe, and sanitary condition. The premises shall must be free from all of the following:

- (a) Dust.
- (b) Mold.
- (c) Mildew.
- (d) Insects.
- (e) Rodents.
- (f) Vermin.
- (g) Other sources of contamination or potential causes of health or safety hazards or nuisances.

(2) Floors, walls, ceilings, fixtures, and furnishings, and work surfaces shall must be kept clean. Open windows and doors shall must be screened to prevent the entry of insects. Waste containers shall must be kept closed with a lid or hinged-door and emptied when full and at least once every 24 hours. Waste containers must be cleaned and disinfected at least once every 24 hours unless lined with a plastic bag that is disposed of each time the waste container is emptied cleaned and disinfected at least once every 24 hours and shall be large enough to contain 1 day's accumulation of waste.

(Move (1) flush left)

(indent)

(line space)

MAINTAINING THE PREMISES - IN GENERAL

(USE MORE EM-DASHES)

They (bullets for (a)-(g)?)

(SEE PAGE 2)

(1) All PREMISES. . . : (a) Dust.

(2) Keeping the Surface Areas and Waste Containers Clean; Using Screens.

You must:

(A) keep floors, walls, ceilings, fixtures, furnishings, and work surfaces clean;

(B) have screens on open doors and windows to keep insects out; and

(C) for each waste container:

- keep it closed with a lid or hinged door;
- empty it when full and at least once every 24 hours; and
- clean and disinfect it at least once every 24 hours unless it is lined with a plastic bag that you always throw away when full.

2

What kinds of tangible benefits?

- Fewer phone calls to the organization.
- Less time needed by consumers and staff to deal with an item.
- Fewer errors all around.
- A better response rate to letters and inquiries.
- An increased rate of timely payments.
- Less need for follow-up.
- Decreased printing and mailing costs.
- More informed decisions of all kinds by consumers.

3

(Continued on the following page)

How do readers respond?

- They strongly prefer plain language in public and legal documents.
- They understand it better than bureaucratic and legalistic style.
- They find it faster and easier to use.
- They are more likely to comply with it.
- They are more likely to read it in the first place.

FROM WRITING FOR DOLLARS, WRITING TO PLEASE

THE EXTRAORDINARY BENEFITS

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Coda: A final reminder about the studies in this “Writing to Please” category. They show not only that readers perform significantly better on documents written in plain language but also that readers like them far better than what they’re used to seeing — and enduring. This second benefit can only make for readers who are more motivated (dramatically illustrated in summaries 35 and 45), more confident, more trusting, and more satisfied. So it is that plain language could even help to restore faith in public institutions.

Go forth and spread the word.