

Clarity Awards for Spring 2000

By George Hathaway

We give Clarity Awards to legal documents that are written in plain English, without legalese. We do this to support 1) the Plain English Committee's goal of promoting the use of clear writing by legal professionals, 2) State Bar Goal VII—Public Understanding of and Respect for the Justice System and Profession, and 3) State Bar Goal VIII—Openness of the Profession.

Figure 2 lists our Clarity Award categories for 20 specific types of legal documents.

We give our first Clarity Awards for the new century to documents written by the Michigan Townships Association, Legislative Services Bureau, Department of Attorney General, Comerica Bank, and several private practitioners.

"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

Figure 1—Clarity Awards for Spring 2000

Laws	
• Resolution on Land Use, by Michigan Townships Association	McAvoy
• 1999 PA 94, Michigan Merit Award Scholarship Act	Mattis
• R 408.41006a, Employer Responsibilities	Munschy
• Attorney General Opinion 7016, Appropriation of county funds to private organization for senior citizen services	Granholm, Truesdale
Lawsuit Papers	
• Lawsuit Forms in <i>Michigan Civil Procedure</i>	Lang, Bieke-Neilson, Young, Holsinger
• Answer and Affirmative Defenses in <i>Oley v Monroe County Library System</i>	Laidlaw, Lucas
• Judgment of Divorce	Katz
Contracts	
• Credit Card Agreement of Comerica Bank	Fancy
• Insurance Clauses in <i>How to Draft and Interpret Insurance Policies</i>	Wollner

Laws

Resolutions

• Resolution on Land Use, adopted by the Michigan Townships Association on January 21, 2000, was written by Pat McAvoy, Director of Legislative Affairs. The clear style of this resolution should be a model for all future resolutions in this century. See Figure 3.



Pat McAvoy

Most of the recently written Michigan statutes, administrative rules, and Opinions of the Attorney General are now in plain English. Therefore, each time we give our Clarity Awards, we try to select a recent statute, administrative rule, and Opinion of the Attorney General that illustrates this clear style.

Statutes

• 1999 PA 94, Michigan Merit Award Scholarship Act, by Dale Mattis, is an excellent example of the clear style in which most Michigan statutes are written.

Figure 2—Clarity Award Categories

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

Figure 3—Resolution on Land Use

As a non-renewable natural resource, land and its use are of paramount concern to local government in order to ensure it is protected and preserved for future generations.

Through comprehensive planning and zoning, local government assesses and enacts reasonable growth policies that balance the land use needs of their constituents.

However, these efforts are often restricted or prevented by state and federal regulators, who seek to usurp local authority for the perceived benefit of the greater good, and by the judicial system, whose decisions often result in permitting unplanned development.

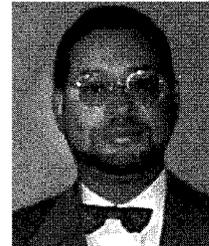
Therefore, the Michigan Townships Association opposes all efforts that attempt to undermine local authority, which can best guarantee that the community's growth is in accordance with sound land use planning.



Kathleen Lang



Hon. Susan Bieke-Neilson



Hon. Robert Young, Jr.



Kay Holsinger



Dale Mattis



Connie Munsch

Lawsuit Papers

Most lawsuit papers in Michigan still contain unnecessary legalese. The problem used to be that the formbooks were written in legalese. But more and more formbooks are now being published that contain lawsuit forms written in plain English. The latest is *Michigan Civil Procedure*, published by the Michigan Institute of Continuing Legal Education, and edited by Kathleen Lang, Hon. Susan Bieke-Neilson, the Hon-

orable Robert Young, Jr., and Kay Holsinger. This book is excellent. The explanations of civil procedure are clear, and the book contains many forms for complaints, motions, orders, and other lawsuit papers that are written clearly and concisely, without legalese. See Figure 4.

Rules

• Likewise, R 408.41006a, Employer Responsibilities for Lifting and Digging Equipment, by Connie Munsch, Chief, Safety Standards Division, Bureau of Safety and Regulation, is an excellent example of the clear style in which most Michigan administrative rules are written.

Opinions of the Attorney General

• Finally, Attorney General Opinion No. 7016, Appropriation of county funds to private organization for senior citizen services, by Attorney General Jennifer Granholm and Assistant Attorney General Treva Truesdale, is an excellent example of the clear style in which Opinions of the Attorney General are written.



Jennifer Granholm



Treva Truesdale

Figure 4—Example from Form 7.8, Order Setting Aside Default, Michigan Civil Procedure

At a session of court held in the courthouse in _____, Michigan, on _____

Present: Honorable _____

_____ Court Judge

Plaintiff has filed an application for entry of a default judgment. Defendant has filed a motion to set aside the default and an affidavit of meritorious defense, and the court has considered the matter.

IT IS ORDERED that Defendant's motion to set aside the default is granted.



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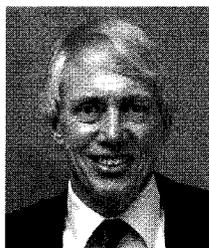
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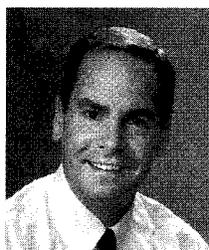
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Answer

• Answer and Affirmative Defenses in *Oley v Monroe County Library System*, by Bruce Laidlaw and Frederick Lucas. It is hard to find answers that are examples of plain English. This is a good one.



Bruce Laidlaw



Peter Katz



Patricia Fancy

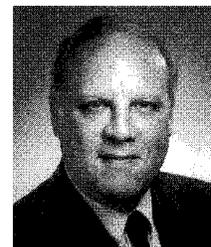
Contracts

Consumer-Finance Contracts

• Credit Card Agreement of Comerica Bank, by Patricia Fancy, First Vice President, Legal Department. This agreement proves once again that consumer-finance documents can be voluntarily written in clear language (plain English), and that legalese is not required by complexity, case precedent, statute, or precision.

Insurance Contracts

• *How to Draft and Interpret Insurance Policies*, by Kenneth S. Wollner. We normally give Clarity Awards only to primary documents, such as contracts that have been written in the actual practice of law, rather than secondary writings, such as

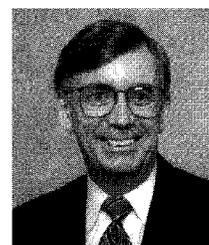


Kenneth S. Wollner

books on how to write contracts. However, we make one of our exceptions in giving an award to this excellent book. In his chapter on style, Mr. Wollner writes: "There is a strong doctrinal basis for plain language in the construction of insurance policies." He backs this up with many clearly written examples.

Additional 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—but 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 you think could be written even more clearly, don't just criticize the document—write a document that is even better and send it to us for a future Clarity Award. ■



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.

Figure 5—Example of a Plain English Endorsement

Extended Notice of Cancellation, Material Change, or Non-Renewal Endorsement

Section A. Cancellation of the Common Policy Conditions is deleted and replaced by the following:

A. Cancellation, Material Change, or Non-Renewal.

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advanced written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 90 days before the effective date of cancellation if we cancel for any other reason.
3. If we decide to make a material change during the term of the policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the material policy change not less than 90 days before the effective date of such change.
4. If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the non-renewal not less than 90 days before the expiration date. If we do not give such notice of our intent not to renew prior to the expiration, the policy period will be extended for 90 days from the date of notice and existing policy terms, conditions, and rates, where not prohibited by law, will remain in effect for that period.
5. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
6. Notice of material change or non-renewal will state the effective date of change or non-renewal.
7. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
8. If this policy is canceled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be *pro rata*. If the first Named Insured cancels, the refund will be less than *pro rata* and will not be less than the minimum premium stated in the Declarations. The cancellation will be effective even if we have not made or offered a refund.

Figure 6—Additional Examples

1. 1999 PA 94

Sec. 8.(1) A Michigan merit award scholarship shall be used only to pay for eligible costs. The board shall determine the manner and form of application for payment of a Michigan merit award scholarship by a student eligible under section 7 and the procedure for payment to the student or to the approved postsecondary educational institution on the student's behalf. As determined by the board, upon the request of a student or parent or legal guardian of a minor student, the board may pay a Michigan merit award scholarship in 2 consecutive annual installments rather than 1 lump sum.

2. Administrative Rule R 408.41006a

(5) The original safety factor of the equipment shall not be reduced if modifications or changes are made to the equipment. Modifications or changes shall be certified by a qualified registered engineer. The capacity, operation, and maintenance instruction plates, tags, or decals shall be changed accordingly to reflect any modifications or changes.

3. Opinion of Attorney General No. 7016

The answer to your first question concludes that restoration of a privately owned building to be used for activities and services for older persons is a legislatively recognized *valid public purpose* for which public funds may be expended under the activities or services for older persons act. The expenditure of legislatively authorized senior citizen millage funds for such a *valid public purpose* is authorized under

the Act. Indeed, section 3 of the Act authorizes the expenditure of any "funds under the control of the governing body," in furtherance of county programs for older persons. Restoration of a building can constitute an identifiable action directed toward the provision of services to older persons.

4. Answer and Affirmative Defenses

Defendant, Monroe County Library, states the following affirmative defenses to the complaint:

1. The complaint in the above captioned cause [or "this case"] fails to state a claim upon which relief can be granted.
2. The claims of plaintiff against defendant, Monroe County Library, are barred by the doctrine of governmental immunity. MCL 691.1401 *et seq.*, MSA 3.996 (101) *et seq.*
3. Some or all of the damages claimed by plaintiff are not recoverable under applicable law.

5. Judgment of Divorce

Assets and Liabilities. Plaintiff is awarded all assets in his name or possession, and Defendant is awarded all assets in her name or possession. Plaintiff shall assume and shall be solely responsible for all liabilities that he has incurred, and Defendant shall assume and shall be solely responsible for all liabilities that she has incurred. Each party indemnifies the other regarding liabilities assumed by that party.



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