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

Laws

Resolutions
- Resolution on Land Use, by Michigan Townships Association McAvoy

- 1999 PA 94, Michigan Merit Award Scholarship Act Mattis

- R 408.41006a, Employer Responsibilities Munsch

- Attorney General Opinion 7016, Appropriation of county funds to private organization for senior citizen services Granholm, Truesdale

Lawsuit Papers
- Lawsuit Forms in Michigan Civil Procedure Lang, Bieke-Neilson, Young, Holsinger

- Answer and Affirmative Defenses in Oley v Monroe County Library System Laidlaw, Lucas

- Judgment of Divorce Katz

Contracts
- Credit Card Agreement of Comerica Bank Fancy

- Insurance Clauses in How to Draft and Interpret Insurance Policies Wollner

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
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.

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 Honorable 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.
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.

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.

Judgment
- Judgment of Divorce form used by Peter Katz. We have given previous awards to divorce-judgment forms that are used in Michigan. Here is another good example.

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 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.
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.