

## 1992-1993 Agenda for the Plain English Committee

By the Plain English Committee

### I. Goal

The goal of the Plain English Committee is to eliminate legalese from all legal writing in Michigan by the year 2000.

### II. Reason for Goal

All legal writing can and should be written in plain English, because plain English simply means clear writing. However, most legal writing still contains legalese. Legalese decreases the clarity of legal writing and decreases the public's opinion of lawyers. In Figure 1 we have set out some basic elements of legalese—elements that are fairly specific and that we can use to measure what progress Michigan lawyers are making in eliminating the worst kinds of legalese.

Eliminating legalese will not completely eliminate bad legal writing and will not completely eliminate the low public opinion of lawyers. But eliminating legalese will significantly increase the clarity of legal writing and will significantly improve the public's opinion of lawyers. As State Bar President George Googasian said in the

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

Figure 1  
Basic Elements of Legalese

- A. Sentences
  1. Length—long average sentence length
  2. Passive voice—passive voice used more than active voice
  3. Weak verbs—central action in abstract nouns instead of strong verbs
- B. Words
  1. Obsolete formalisms—"Now comes," etc.
  2. Archaic words—"hereby," etc.
  3. Redundant phrases—"any and all" instead of "any," etc.

Note: Precise legal "terms of art" such as "easement" and "res judicata" are not considered legalese. Therefore, eliminating legalese will not remove any precision from legal writing.

President's Page in the October 1992 *Michigan Bar Journal*, "[c]hanges are necessary and we in the profession have to be catalysts for that change. . . . Ours is a much maligned profession. Like most of you, I feel an increasing urgency to change the public's perception of lawyers. While much of the criticism is not deserved, much of it is right on target."

### III. Authority for Goal

The legal authority for eliminating legalese is every legal writing textbook ever written. However, the Committee is basing its goal primarily on the legal authority of the following four publi-

cations by David Mellinkoff, Professor of Law Emeritus, UCLA School of Law:

1. *The Language of the Law* (Little, Brown and Co., 1963): "To be of any use, the language of the law (as any other language) must not only express but convey thought. With communication the object, the principle of simplicity would dictate that the language used by lawyers agree with the common speech, unless there are reasons for a difference." (This principle was also adopted at the 1992 Conference of The Legal Writing Institute. See the October-December 1992 Plain Language Columns.)

2. *Legal Writing: Sense and Nonsense* (West Publishing Co., 1982): "With a charity born of ignorance, most people believe that there must be a reason why lawyers write like they were trying to reach spirits long departed. . . . Ordinary people buy the reason the lawyers have sold them. Law has to be written in this peculiar way in order to be precise. Fortunately, that statement is not true."

3. *The Myth of Precision and the Law Dictionary* (UCLA Law Review, 1983): "As a dictionary of language, the *Dictionary of American Legal Usage* would have to face squarely what current law dictionaries ignore, the basic question of the role of any dictionary of language. Is it to be descriptive? Is it to be prescriptive? Must it be one or the other? And for whom? In the resolution of that problem of role, the *Dictionary of American Legal Usage* could make its greatest contribution: it would reject the myth of precision."

4. Mellinkoff's *Dictionary of American Legal Usage* (West Publishing Co., 1992): "This is a dictionary of the language of the law as used in America

today. Most of this dictionary is written in ordinary English. . . . It follows the dictate of simplicity "that the language used by lawyers [should] agree with the common speech, unless there are reasons for a difference." . . . [T]he dictionary carries forward the demonstration that only in comforting myth is legal usage peculiar so that it may be precise. Some technical terms, here preserved and explained, are precise. More often, the swarming imprecisions of the law give only an illusion of precision, usually curable by careful English."

#### IV. Method (Practical Approach) to Reach Goal

A. Divide all legal writing into the following eight substantive areas:

1. Lawsuits
2. Real Estate
3. Insurance
4. Consumer Finance
5. Retail Sales and other Contracts
6. Investments
7. Wills and Trusts
8. Laws and Rules

B. Select and publicize examples of plain English (clear writing) in each substantive area. Consider these examples as nominations for Clarity Awards to be given to named individuals or groups. (Example: In 1992 the first Clarity Award was given to the State Court Administrative Office of the Michigan Supreme Court for developing and promoting over 400 plain English court forms.) Do not limit the number of Clarity Awards, but give as many Clarity Awards in each of the eight substantive areas of legal writing as are appropriate.

C. Also select and publicize, in each substantive area, specific examples of

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legalese that many lawyers and legal secretaries continue to use. Develop and publicize a "Legalese List" of these specific examples. Periodically sample legal writing in Michigan for use of the legalese on the Legalese List to see if the legalese is really being eliminated. (Example: The SCAO court forms do not contain the obsolete formalism "Now comes." However, in January 1991 a sample survey of 20 randomly selected complaints filed in the largest trial court in Michigan, Wayne County Circuit Court, found that 15 of the 20 complaints still began with the obsolete formalism "Now comes.")

D. Legal writing classes in law schools concentrate on memorandums and briefs, which are types of lawsuit papers. However, the classes often do not cover the other major types of lawsuit papers—pleadings, motions, orders, and opinions. Nor do the classes normally cover the other seven substantive areas of legal writing. Therefore, legal writing classes are necessary but not sufficient to eliminate legalese from all legal writing. Legal writing classes must be complemented by continuing legal education seminars on legal writing for practicing lawyers. Furthermore, the practical approach of divide, select, publicize, sample, and eliminate (divide and eliminate) must be used to see if the classes and seminars are having any effect. This is the only way to eliminate legalese in all substantive areas of the law.

#### V. Agenda for 1992-93

A. Assign a committee member to each of the eight substantive areas of the law to select specific examples of plain English that are being used in actual practice in Michigan, and to also select specific examples of legalese used by many lawyers and legal secretaries in Michigan.

B. Give Clarity Awards to as many examples of clear writing as are appropriate, and publicize these writings through the Communications Committee of the State Bar. This will en-

courage other lawyers to write in plain English and will improve public opinion of lawyers.

C. Develop a "Legalese List" of the examples of legalese, and take objective samples of legal writing in Michigan to see if the examples of legalese are really being eliminated.

If the samples indicate that the legalese is being eliminated, publicize this through the Communications Committee. If the samples indicate that certain examples of legalese are not being eliminated, report this to the State Bar, determine why the examples of legalese in question are not being eliminated, and develop additional methods to eliminate the examples.

D. Use the Plain Language Column of the *Michigan Bar Journal* to describe the agenda, to publicize the examples of plain English in each substantive area of the law, and to report on the objective sampling of legalese.

E. Continue to encourage lawyers in other states to establish Plain Language Committees, to give Clarity Awards, and to objectively sample for legalese in the eight substantive areas of legal writing.

We helped form Plain Language Committees in Texas in 1990 and Missouri in 1992. By 1993 we hope to persuade lawyers in New York, California, Florida, Pennsylvania, Illinois, or Ohio to start a Plain Language Committee. ■

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