

## Plain English in Laws and Rules

By George Hathaway

The second substantive area of law that we reviewed was laws and rules. Laws are the statutes (called public acts) passed by the Legislature. Rules (called regulations in the federal code) are written by an administrative agency under authority of a statute, and have the force of law. The main examples of laws, rules, and related items are outlined in Figure 1.

### Acts

Most acts are written by the highly professional Legal Division of the Legislative Service Bureau. The Legal Division is composed of 22 lawyers who follow a drafting manual that recommends plain English principles. Of course, some potential acts are amended on the floor or in committee, or are affected in other ways; so the



Legal Division does not always have the final word.

We considered the 309 acts (284 amendatory acts and 25 new acts) passed by the Michigan Legislature in 1992. We then reviewed one of the 25 new acts in detail—the highly publicized Public Act No. 270, Criminal Assistance to Suicide. We found none of the worst elements of legalese—obsolete formalisms, archaic words, and

redundant phrases (doublets and triplets). We then considered three important elements of sentence construction—average length, active voice, and strong verbs as opposed to weak verbs with abstract nouns.

Not counting the sentences with tabulations (vertical lists), Act 270 contains an average of about 25 words a sentence, which is not bad. It uses the active voice twice as much as the passive voice. And it generally uses strong verbs such as “finds” and “may nominate” and “shall consider,” instead of “makes the finding that” and “may offer in nomination” and “shall give consideration to.” We might quibble with the style of the act in a few places, and we do not like the format in West’s Michigan Legislative Service because it does not fully indent the tabulations. But we believe that Act 270 reflects the clear and modern style of legislative drafting.

### Joint Resolutions

Joint Resolutions are resolutions passed by the Michigan Legislature that propose amendments to the state constitution. We did not review any Joint Resolutions because none were passed by the Michigan Legislature in 1992.

### Honorary Resolutions

We did review Honorary Resolutions. Honorary Resolutions are quite different from Joint Resolutions because Honorary Resolutions do not have the force of law. Honorary Resolutions can be House Resolutions, Senate Resolutions, House Concurrent Resolutions (which arise in the House and are concurred in by the Senate), and Senate Concurrent Resolutions (which arise in the Senate and are concurred in by the House). These four types of Honorary Resolutions are not published, but are listed in Gongwer’s Michigan Report. These resolutions are requested by senators and representatives to honor their constituents.

Resolutions still include the archaic “Whereas” and the obsolete formalism

“Now, therefore, be it resolved.”<sup>1</sup> Explanations given for this are that (1) constituents are usually impressed with, and prefer, the flowery language; and (2) resolutions should not be considered “legal writing” because they are ceremonial and do not have the force of law, and because they are not written by lawyers but are requested by legislators. However, the goal is to improve the public opinion of lawyers by eliminating legalese. And these high-profile examples of legalese give everyone the impression that all legal writing is still written in legalese. Therefore, it doesn’t matter whether resolutions are ceremonial and have no force of law, or who writes them, or whether they are “legal writing.” Honorary resolutions give well-written statutes a bad name.

To solve this problem, writers should convert to a modern, clear, plain English format. This should also be done with Honorary Resolutions passed by County Boards of Commissioners, City Councils, and Township Boards of Trustees. We will bet that not one recipient will ever complain.

### Rules

Administrative rules are edited by the Legal Editing and Law Publications Division of the Legislative Service Bureau, composed of three lawyers who follow a style manual that recommends plain English. The administrative rules are filed with the Secretary of State and published in the Michigan Register. We reviewed one of the 1992 rules in detail—the Department of Treasury’s Michigan Education Trust, Rules 390.1801 to 390.1820. We

*“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—Main Examples of Laws, Rules and Related Items

	Legislative	Executive	Judicial
State	<p><b>Statutes (Acts)</b> passed by Michigan Legislature (Senate and House of Representatives); published in chronological order in West's Michigan Legislative Service, and in Callaghan's Current Legislation; published annually in Legislative Service Bureau's Public and Local Acts of the Legislature of the State of Michigan; and compiled and published in substantive order in Legislative Service Bureau's Michigan Compiled Laws (available on a continuously updated basis on computer), West's MCLA, and Callaghan's MSA (although the West and Callaghan publications are not official).</p> <p><b>Joint Resolutions</b> passed by Michigan Senate and House of Representatives are proposed amendments to the state or federal constitution. Joint resolutions are entirely different from honorary resolutions.</p> <p><b>Honorary Resolutions</b> are designated as House Resolutions, Senate Resolutions, House Concurrent Resolutions, and Senate Concurrent Resolutions. Honorary Resolutions honor people and events, and do not have the force of law. They are published in the House and Senate Journals and listed in Gongwer's Michigan Report.</p>	<p><b>Rules</b> written by Michigan administrative agencies and filed with Secretary of State; published monthly in chronological order in Legislative Service Bureau's Michigan Register; and compiled and published annually in substantive order in Legislative Service Bureau's Michigan Administrative Code supplement.</p> <p><b>Executive Orders</b> written by Governor and published in Michigan Register and West's Michigan Legislative Service.</p> <p><b>Opinions of Attorney General</b> written by Attorney General's Office and published monthly in Michigan Register.</p>	<p><b>Standard Jury Instructions—Civil (SJI)</b> written by Michigan Supreme Court Committee on Standard Jury Instructions; published in <i>Michigan Bar Journal</i>; and compiled and published in ICLE's Michigan Standard Jury Instructions—Civil, Second Edition.</p> <p><b>Criminal Jury Instructions (CJI)</b> written by State Bar of Michigan Special Committee on Standard Criminal Jury Instructions; published in <i>Michigan Bar Journal</i>; and compiled and published in ICLE's Michigan Criminal Jury Instructions, Second Edition.</p>
County	Ordinances passed by County Boards of Commissioners.		
City or Twp	Ordinances passed by City Councils or Township Boards of Trustees.		

found that this rule was written in a clear style. However, because of time limitations, we decided to defer a detailed analysis of more of the rules until next year.

**Executive Orders**

We reviewed the 25 executive orders written in 1992 and published in West's Michigan Legislative Service. These or-

ders have the force of law. The format for executive orders has not changed for many administrations. The orders still contain much unnecessary legalese, such

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as "Whereas," "hereby," "pursuant to," and "in the year of our Lord one thousand nine hundred and ninety three."

### Opinions of the Attorney General

These opinions are written by the Attorney General's Office. We reviewed the 33 opinions of the Attorney General (Nos. 6708 to 6740) written in 1992 and published in the Michigan Register. We then reviewed one of these opinions in detail—Opinion No. 6719, Separation of smokers and non-smokers in privately owned apartment complexes. Like the acts, the opinions (1) tend to avoid legalese, and (2) are written with a reasonably short average-sentence length, with predominant use of active voice and strong verbs. We will discuss these opinions more next year.

### Jury Instructions

Another kind of rule-related material is jury instructions. There are two kinds of jury instructions—civil and criminal. Michigan Standard Jury Instructions—Civil are written by a committee appointed by the Michigan Supreme Court. Michigan Criminal Jury Instructions are written by a committee appointed by the State Bar of Michigan.

We could not review the entire body of civil jury instructions. However, our impression—based on the new instructions that appear in the *Michigan Bar Journal*—is that they are generally written in a clear style. Some could be improved:

*SJ12d 90.18 The [name of condemning authority] has the right and duty to acquire and take the entire property whenever the acquisition of the part actually needed would destroy the practical value or utility of the remainder of the property.*

That is:

*The [name of condemning authority] must take the entire property if taking just the part that's actually needed would destroy the practical value of the rest.*

And we note with dismay this boilerplate:

*The Committee hereby gives notice that it is considering adoption of the following new and amended standard jury instructions.*

But on the whole, the civil jury instructions deserve credit for avoiding the worst

elements of legalese. We hope to review them more fully next year.

The Committee on Standard Criminal Jury Instructions, chaired by the Honorable William J. Caprathe, deserves special credit for its three-year project to revise the entire set of criminal instructions into plain English. The credit must be shared with the Institute of Continuing Legal Education, which served as the primary drafter.

At the same time as the Michigan instructions were being revised, another committee was writing plain English instructions for the Sixth Circuit. The Committee on Pattern Criminal Jury Instructions of the Sixth Circuit District Judges Association was chaired by the Honorable Julian Abele Cook, Jr. The instructions, published by West in 1991, were written "to state the law in an understandable way." Finally.

In general, both sets of instructions follow the lead of instructions written by the Federal Judicial Center (and published by West, 1988 edition). The appendix to the federal instructions contains an excellent set of guidelines for improving juror understanding. Among the guidelines:

- Avoid using words that are uncommon in everyday speech and writing (such as "corroborate" or "credibility" or "inference").
- Avoid using words to convey their less common meanings (such as "court" to refer to the judge).
- Avoid using legal terms.
- Avoid sentences with multiple subordinate clauses, and particularly avoid placing multiple subordinate clauses before or within the main clause.
- Avoid instructing the jury about things they don't need to know.

Compare these two sets of criminal instructions with, say, the Devitt and Blackmar instructions, and you will see a world of difference. The new instructions, while certainly not perfect, are a long step toward making the law clear to those who must use it.

### County Ordinances

We did not review ordinances passed by county boards of commissioners because these ordinances are not printed or published. They are simply kept with the meeting notes. Therefore, very few people ever see them.

### City or Township Ordinances

We reviewed most of the 38 separately printed ordinances passed by the Detroit

City Council in 1992. Many of the ordinances are well-written. But they still contain high-profile legalese phrases and words such as "it is hereby ordained," "herewith be and the same are hereby repealed," "is hereby given immediate effect," "whereas," "heretofore," and "thereof." These few archaic words and phrases stick out and overshadow the well-written parts of the ordinances.

### Clarity Awards

We give Clarity Awards to the following: the Legal Division of the Legislative Service Bureau for statutes written in 1992; the Special Committee on Standard Criminal Jury Instructions and the Institute of Continuing Legal Education for their revision of the Michigan criminal jury instructions; and the Committee on Pattern Criminal Jury Instructions for the Sixth Circuit for its new criminal jury instructions.

### Legalese List

We add the following to our list: "Whereas" and "Now therefore."

### Conclusion

Michigan statutes, administrative rules, and jury instructions may have contained legalese in the past, but now they do not. However, executive orders and honorary resolutions still contain legalese. As long as the public continues to see executive orders and honorary resolutions that contain legalese, the public will probably continue to believe that laws, rules, and jury instructions contain legalese. The year 1993 is supposedly a year for change. Now is the time to improve the public image of lawyers and lawmakers by eliminating the words "Whereas" and "Now therefore" from all executive orders and honorary resolutions. ■

### Footnote

1. If you replace the archaic word "Whereas" with the common word "Since," or eliminate it altogether, then you can eliminate the words "Now, therefore, be it resolved."

In the March column, we gave a Clarity Award for revised volume 2 of Callaghan's Michigan Civil Practice Forms. We should have mentioned that Callaghan's is now published by Lawyers Cooperative Publishing. Also, we should have said that the complaints and motions in volume 2 begin with "Plaintiff states" and end with "Therefore" (not, heaven forbid, "Wherefore").

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