

Summary of Laws, Rules, and Lawsuit Papers (1992-1993) (Part One)

By the Plain English Committee

In January we began our analysis of legal writing by somewhat arbitrarily dividing all legal writing into eight substantive groups and analyzing each group. We've now combined these eight groups into four main groups: 1) laws, rules, and lawsuit papers, 2) consumer finance, retail sales, and other contracts, 3) real estate and insurance papers, and 4) investments, wills, and trusts.

In March we analyzed lawsuit papers, in June we analyzed laws and rules, and in July we announced our Clarity Awards in these two categories. We now continue our analysis of laws, rules, and lawsuit papers by summarizing the quality of the legal writing that we found in the entire group.

We assigned grades, hoping to create some interest and some incentive. Of course, the grades are based mainly on the absence of legalese. And even though the absence of legalese doesn't always mean clarity, nor clarity always mean quality, that's a good way to place your bets. See

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Figure 1—Summary of Laws, Rules, and Lawsuit Papers.

1. Statutes

First, we focused on newly written Michigan statutes found in the Legislative Service Bureau's annual public and local Acts of Michigan. We looked only at newly written statutes, not newly amended statutes. Second, we found that the statutes were written by one group of 14 lawyers in the Legal Division of the Legislative Service Bureau (Director, Susan Andreini). We found that, in general, the statutes were clearly written, and we gave a Clarity Award to the Legal Division of the Legislative Service Bureau.

2. Resolutions

First, we looked at the honorary resolutions that are published in the House and Senate journals. Second, we found that these resolutions are written by one person, who is not a lawyer, in the Legislative Research Division of the Legislative Service Bureau. We found that honorary resolutions still contain the very worst elements of legalese that legal-writing instructors and legal-writing textbooks have criticized for many many years.

The solution is to get the person who now writes the honorary resolutions to eliminate the legalese. How do we do that? How do we convince writers that legalese adds no dignity, no poetry, no value—and only impresses those who don't know any better? Perhaps by convincing them that legalese only lowers the public opinion of lawyers.

3. Rules

Michigan rules are found in the annual Michigan Administrative Code Supplement. We didn't have time to analyze the rules the first time around, but we have now. We surveyed the administra-

tive rules published in the Michigan Register between May 1992 and April 1993. There were 32 rules from nine departments. For purposes of analysis, we considered one rule from each of the departments and evaluated them by using the following criteria: Sentence length, the use of the active rather than passive voice, the use or absence of nominalizations, the use or absence of archaic words, and the use or absence of unnecessary words.

In almost every instance the drafters used short direct sentences, making the rules easy for readers to understand. A number of sentences, however, were in the passive voice. Although the passive voice is useful when the object of the sentence is the primary focus and the subject is irrelevant, inadvertent use of the passive voice makes sentences more difficult to understand. This is particularly true when the sentence is written in the truncated passive voice, that is, when the subject of the sentence is omitted. For example, the truncated passive "shall be reported" does not explain to the reader who shall report.

The drafters chose appropriate vocabulary for the rules. But the rules would be even easier for readers to understand if they did not contain unnecessary formulaic words. For example, each rule begins with a section listing the statutory authority for the rule and including the formula "... , being Sec. xxx of the Michigan Compiled Laws," when "... , Michigan Compiled Laws, Sec. xxx" conveys the same information. The words "pursuant to," "thereof," "thereon," "thereto," "thereunder,"

"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. Summary of Laws, Rules, and Lawsuit Papers

Categories	Specific Documents		Quality of Specific Documents		
1. Statutes	Michigan statutes, published annually in Legislative Service Bureau's Public and Local Acts of Michigan		A	1993 Clarity Award given to the group that writes the statutes—Legal Division of Legislative Service Bureau (Director, Susan Andreini)	
2. Resolutions	Michigan honorary resolutions, published in House and Senate Journals		C-		
3. Rules	Michigan rules, published annually in Legislative Service Bureau's Michigan Administrative Code Supplement		B	1993 Clarity Award given to Committee on Standard Criminal Jury Instructions (Chair, Judge William J. Caprathe) and Institute of Continuing Legal Education (Director of Publications, Lynn Chard)	
4. Executive Orders	Michigan Executive Orders, published monthly in Michigan Register		D		
5. Opinions of Attorney General	Opinions of Attorney General, published monthly in Michigan Register		B-		
6. Jury Instructions	Civil Jury Instructions, published in ICLE's Michigan Standard Jury Instructions—Civil, Second Edition		B		
	Criminal Jury Instructions, published in ICLE's Michigan Criminal Jury Instructions, Second Edition		A		
	Sixth Circuit Criminal Jury Instructions, published by West		A		
7. Complaints, Answers, Motions, Orders, and Affidavits	Reference Sources	Quality of Ref. Sources	Sample Survey	Quality of Sample Survey	
	• MTLA's Manual of Complaints	C-	Complaints for "Now comes" and "Wherefore"; orders for "hereby"; and affidavits for "SS"	C-	
	• ICLE's Gilmore on Michigan Civil Procedure Before Trial	A-			
	• SCAO's approved forms	A		1992 Clarity Award given to State Court Administrative Office (Director, Marilyn Hall)	
	• West's Michigan Court Rules Practice	B-			
	• Lawyers Co-op's Michigan Civil Practice Forms	A		1993 Clarity Award given to Lisa Fox and Laurel Lester of Lawyers Co-op for 1992 revised volume 2 of Michigan Civil Practice Forms	
8. Briefs and Memorandums	Law school legal-writing classes		A		
9. Judicial Opinions	Michigan Judicial Institute		A	1993 Clarity Award given to Michigan Judicial Institute (Executive Director, Dennis Catlin) for judicial writing seminars	

are also unnecessary. In most cases, the use of multiple nouns, for example, "physician or laboratory," is necessary. But when the words convey the same meaning, for example, "reporting and notification," the duplication is unnecessary.

4. Executive Orders

Executive Orders are written by the Legal Division of the Governor's Office. We found that the Governor's Executive Orders contain much legalese and that the format for these orders has not changed for many administrations. However, there is a possibility that the present administration might change this. If they do then they certainly deserve to be nominated for a Clarity Award.

5. Opinions of the Attorney General

Opinions are found in the Michigan Register. We didn't have time to analyze the opinions the first time around, but we have now. We reviewed six of the 38 opinions for 1992. Although we previously stated that the opinions are written in a clear style, we must now revise this evaluation somewhat and recommend omitting unnecessary words and phrases.

The opinion we previously reviewed was a straightforward issue with a short resolution. In contrast, five of the six opinions reviewed this month concerned more complex issues. Not surprisingly, when the issue has more variables, the opinion becomes more verbose. In the more complex opinions more editing is needed. The sentence length grew from 24 to 42 words, with an overall average of 34 words a sentence.

In addition, the more complex opinions continue to use redundant phrases and less familiar words: "Utilize" (use); "and and all" (all); "in order to" (to); "in lieu of" (instead of); "expenses attended thereto" (related expenses); "pursuant to" (under).

On a positive note, the opinions follow a consistent outline of presenting the question, analyzing the statute, and then reaching a conclusion. We would like to suggest, however, that the statement of the conclusion often calls for a list, rather than embedded phrases and clauses:

It is my opinion, therefore, that a retail seller, pursuant to a retail charge agreement

under the Retail Installment Sales Act, may charge a retail buyer a delinquency charge in addition to the maximum time price differential allowed by law, provided that the delinquency charge is imposed for actual unanticipated delinquency, is reasonably related to the expense of the inconvenience incurred, so as not to constitute a penalty, and is fully disclosed to the parties.

Better:

In my opinion, under a retail charge agreement, a retail seller may charge a delinquency fee, in addition to the maximum time price differential allowed by law, if it is (1) for actual unanticipated delinquency; (2) reasonably related to the cost of the inconvenience; (3) not a penalty; and (4) fully disclosed to the parties.

Unlike judicial opinions, the Attorney General opinions contain no factual recitation or precedential analysis. Therefore, they are obvious candidates for clarity. This goal would be achieved by omitting unnecessary words and phrases: "Reasonably necessary implication" (implied); "render

advice upon" (advise); "make recommendations as to which" (recommend); "process by which signatures may be obtained" (getting signatures); "for the provision of" (providing).

An excellent example of the clutter commonly appearing in governmental writing appears in *On Writing Well*, by William Zinsser. A blackout order was sent to Franklin D. Roosevelt for his approval:

Such preparations shall be made as will completely obscure all federal buildings and non-federal buildings occupied by the federal government during an air raid for any period of time from visibility by reason of internal or external illumination.

"Tell them," Roosevelt said, "that in buildings where they have to keep the work going, put something across the windows."

The clutter of unnecessary words is not mandatory in governmental writing. We will review the opinions again next year. We hope the opinions will be edited to remove unnecessary clutter so we can give a Clarity Award. ■

MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM (MAACS) ORIENTATION TRAINING

The orientation training program for the statewide appellate assigned counsel roster will be presented:

On: Tuesday and Wednesday, November 2-3, 1993
Registration will begin at 8:30 a.m. each day. Sessions will begin promptly at 9:00 a.m. and run to approximately 5:00 p.m.

At: Holiday Inn South Convention Center
6820 S. Cedar, Lansing, MI 48911
(Exit 104 from I-96, then South on Cedar St.)

Attorneys who wish to receive felony appellate assignments, but qualify only at Level I must complete training. Level I includes attorneys who have not conducted in the last three years separate appeals of at least nine felony convictions, at least two of which arose from trials, including one jury trial, in Michigan or federal courts.

The orientation program has been substantially revised and updated. Attendees who complete it will receive a complete set of current MAACS reference manuals and substantial handout materials free of charge. There is a \$20 registration fee to help defray refreshment and meeting room costs.

Attendance will be limited to attorneys who have roster applications on file with MAACS and who have preregistered for the program. For further information, or to obtain roster applications and registration forms, contact:

MAACS
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