

Executive Orders

By George Hathaway, Perry Bullard,
and Karen Willard

Last month we reviewed legislative resolutions and discussed comments that we obtained in a survey of readers' impressions of the way resolutions are written.

This month we will review readers' impressions of Governor's Executive Orders. These orders are written by the Governor's legal counsel. They are directions that the Governor makes to specific agencies within the administration. The format for executive orders has not changed in the last 100

years. It has always contained much legalese. (See Figure 1.) We are told that it is this way on purpose, because Michigan governors have never been confident that their orders carried as much weight as statutes, administrative rules, or case opinions. Supposedly, if the orders are filled with impressive-looking legalese, then the orders will seem more important and will have a better chance of being followed. But this is what critics of legal writing have always charged—that lawyers write legalese on purpose to make their writing look more complicated and impressive.

To see how readers feel about the way executive orders are written, we first determined:

- What does the writer of the executive order want to achieve? To get the agency to follow the order.

- Who are the readers? Primarily, the agencies that are affected by the order. But the orders are also published in the monthly *Michigan Register*, where they can be read by the general public.

- How will readers use the executive order? To follow or to learn about the order.

We then asked ten members of the general public:

- Can you understand the following executive order?

- What is your impression of the way the executive order is written?

- Which of the two executive orders do you prefer (the one with legalese in Figure 1, or the one without legalese in Figure 2) and why?

Seven of the ten said they could understand the order, but only after they had read it several times. Eight of the ten said the order was written in an unsatisfactory way. All ten preferred the version without legalese. Some of the comments were:

- The legalese version is very hard to follow.

- The version without legalese is much easier to read and understand in less time.

- I don't really understand either order. I prefer the order without legalese only because after reading it I know I don't understand the reasoning behind the change ("best interest . . . citizens of Michigan" is too vague) nor the functions of the Board of Canvassers, which makes the order a mystery to me . . . With the legalese version,

Lawyers and Judges AA/NA Groups MEETING DATES

Monday 12:00 PM
St. Joseph Hospital East
Bailey Room A
Parkview and North Streets
Mt. Clemens

Monday 12:30 PM
Detroit Bar Association
Conference Room
23rd Floor, Penobscot Building
Detroit

Monday 7:00 PM
Prince of Peace Lutheran Church
19100 Ford Road
Ford Road (Altar Road) just west
of Southfield Freeway
Dearborn

Monday 7:00 PM
Rehmann Health Center
147 South Saginaw
Chesaning

Wednesday 6:00 PM
Kirk In The Hills
Presbyterian Church
1340 West Long Lake Road
½ mile west of Telegraph
Bloomfield Hills

Wednesday 6:00 PM
Unitarian Church
2474 South Ballenger Road
Lower Level, Room 2C
1 block south of Miller Road
Flint

Thursday 8:00 PM
Central Methodist Church,
2nd Floor
Corner of Capitol and
Ottawa Streets
Lansing

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"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.

I mistakenly thought I did not follow it because of the legalese.

Conclusion

Governor's Executive Orders contain some of the worst legalese written in Michigan. The format for these orders has not

changed, regardless of whether the person holding the office was Democrat, Republican, liberal, or conservative. It's time to change the format of these orders. The orders should use the same clear, direct, plain English format (but without the *hereby*) used by Presidential Executive Orders (Figure 3). ■

All three co-authors are members of the Plain English Committee of the State Bar of Michigan. George Hathaway is a Senior Real Estate Attorney at the Detroit Edison Company. Perry Bullard is a former Michigan state representative and state senator. Karen Willard is a member of the Michigan House of Representatives (82nd district).

Figure 1

EXECUTIVE ORDER
No. 1994-22
RESCISSION OF EXECUTIVE ORDER No. 1994-19

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, on July 8, 1994, I signed Executive Order No. 1994-19 which transferred to the State Administrative Board, the authority, powers, duties, functions and responsibilities vested in the State Board of Canvassers by Sections 32 and 474 of Act No. 116 of 1954, as amended, being Sections 168.32 and 168.474 of the Michigan Compiled Laws; and

WHEREAS, a procedure that retains the initial approval authority of the Board of Canvassers, and ultimate responsibility for approval with the State Administrative Board, should the Canvassers fail to act timely, appears to be in the best interest of the citizens of the State of Michigan; and

WHEREAS, such a procedure cannot be effected through Executive Order, but only through amendment of the Michigan Election Law, a course of action which I intend to seek forthwith.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order that Executive Order No. 1994-19 is hereby rescinded.

The provisions of this Executive Order shall become effective immediately upon filing.

[SEAL]

Given under my hand and the Great Seal of the State of Michigan this 25th day of August, in the Year of our Lord, One Thousand Nine Hundred Ninety-Four, and of the Commonwealth, One Hundred Fifty-Eight.

BY THE GOVERNOR: JOHN ENGLER
RICHARD H. AUSTIN GOVERNOR
SECRETARY OF STATE

Figure 2

EXECUTIVE ORDER
No. 1994-22
RESCISSION OF EXECUTIVE ORDER No. 1994-19

Article V, Section 2, of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration.

On July 8, 1994, I signed Executive Order No. 1994-19 which transferred to the State Administrative Board, the authority, powers, duties, functions and responsibilities vested in the State Board of Canvassers by Sections 32 and 474 of Act No. 116 of 1954, as amended, Sections 168.32 and 168.474 of the Michigan Compiled Laws.

A procedure that retains the initial approval authority of the Board of Canvassers, and ultimate responsibility for approval with the State Administrative Board, should the Canvassers fail to act timely, appears to be in the best interest of the citizens of Michigan.

Such a procedure cannot be effected through Executive Order, but only through amendment of the Michigan Election Law, a course of action which I intend to seek immediately.

Therefore, I, John Engler, Governor of Michigan, under the powers vested in me by the Michigan Constitution of 1963 and Michigan law, order that Executive Order No. 1994-19 is rescinded.

This Executive Order will be effective immediately.

Date: _____, 1994 _____
John Engler, Governor

Figure 3

Executive Order 12952 of February 24, 1995
Amendment to Executive Order No. 12950

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to amend Executive Order No. 12950, it is hereby ordered that the list of Labor Organizations attached to and made a part of such order is amended to include the following:

International Brotherhood of Firemen & Oilers

William Clinton

THE WHITE HOUSE,
February 24, 1995.