

Plain English Subcommittee on Estate Planning

By George H. Hathaway

The goal of the Subcommittee on Estate Planning is to promote plain English in estate-planning documents written in the practice of law.¹ To do this, the subcommittee finds and gives Clarity Awards to clearly written durable powers of attorney, wills, and trusts. See Figure 1 for a list of Clarity Awards that we have previously given, and a Want List for future awards.

We want to bridge the gap between the educational materials on plain English at Wayne State and Cooley Law Schools and the durable powers of attorney, wills, and

trusts that are written in the practice of law. We think we can do it with the following approach.

Michigan Activities

Estate-planning documents are private documents. They are not public documents like laws, lawsuit papers, and many types of contracts and real-estate documents. Furthermore, there is often a long time delay from when estate-planning documents are written to when they are used. Therefore, there is no practical way that we can sample the clarity of actual durable powers of attorney, wills, and trusts. But we can sample the next best thing—estate-planning forms and formbooks. They are written by estate-planning lawyers and contain general forms for the various types of estate-planning documents. For example, the Estate Planning Forms Book of Comerica Bank contains forms for durable powers of attorney, simple wills, pourover wills, self-trustee trust, bank-trustee trust, joint trust, irrevocable life-insurance trust, and trust dispositive alternatives. Practitioners start with the forms and (a) fill in the blanks

with specific names, dates, and dollars and (b) make changes to the form language whenever needed.

We want to make a list of the 10 most widely used estate-planning forms and formbooks in Michigan. Then we want to publicize and promote the forms that are written in plain English. In 1995 we gave a Clarity Award to Comerica Bank for its plain-English durable power of attorney form (Figure 2) and will form (Figure 3). These forms prove that estate-planning forms can be written in plain English. If all forms and formbooks are written in plain English, then there is a good possibility that more and more estate-planning documents that are written in the practice of law will be in plain English.

Other States and Countries

Much of the activity in the plain-English movement in the last 20 years has been in educational material written by plain-English advocates. This activity is important, but we are interested in the practical result of this educational material—legal documents written in the practice of law.

Figure 1. Clarity Awards and Want List for Estate Planning

Estate Planning	Clarity Awards		Want List
	Type of Document	(Year) and Document	
1. (for property distribution) Durable power of attorney, wills, and trusts	(95) Durable power of attorney and will forms of Comerica Bank (95) Michigan Statutory Will	Love, Dindoffer Bullard, Systma	We want to find Clarity Award documents written according to Mellinkoff, <i>Legal Writing: Sense and Nonsense</i> , and Wydick, <i>Plain English for Lawyers</i> , from the following: 1. First Chicago NBD Bank estate planning forms book 2. Comerica Bank Estate Planning Forms Book 3. Michigan National Bank Will and Trust Forms Book 4. Old Kent Bank 5. Franklin Bank 6. Huntington Bank 7. First of America Bank 8. Republic Bancorp 9. Standard Federal 10. First Federal of Michigan 11. National Network of Estate Planning Attorneys forms manual
2. (for health care) Durable power of attorney, and living will	(95) Durable power of attorney for health-care decision-making (patient-advocate form) (95) <i>Changes and Choices</i>	Benner, Cook Geller	

Figure 2. General Durable Power of Attorney
(An Excerpt)

I, _____, of _____, _____ County, Michigan, make this General Durable Power of Attorney ("Power"), and appoint _____, of _____, Michigan, as my attorney-in-fact ("Agent") with the following powers to be exercised in my name and for my benefit:

1. **General Grant of Power**
To do anything that I have a right or duty to do, now or in the future.
2. **Real and Personal Property**
To maintain, transfer, encumber, and manage any of my real property and personal property interest.
3. **Motor Vehicles**
To transfer the title of any of my motor vehicles.
4. **Business**
To collect money and manage my real and personal property, to transact business for me, to conduct any business in which I may be engaged, and to carry out or amend any agreement to which I may be a party.
5. **Borrow**
To borrow money and sign promissory notes that are either unsecured or secured by any of my real or personal property.
6. **Debts and Expenses**
To pay bills and other debts and all reasonable expenses for the management of my property and the support of myself and my dependents, including reasonable compensation for the services of my Agent and agents my Agent may employ in the management of any of my affairs.
7. **Banking**
To carry on all my ordinary banking business by depositing funds (by check or other negotiable paper) and withdrawing funds (by check or withdrawal slip) in and from any bank, savings and loan, or other financial institution.
8. **Safe Deposit Box**
To access, or to withdraw or change the contents of, any safe deposit box of which I am tenant or co-tenant.

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PlainDPA—11/30/94

Figure 3. Will of
(name)

(An Excerpt)

I, (name) of (city), _____ County, Michigan, declare this my Will, and revoke all previous Wills and codicils (amendments to Wills), if any.

Article 1 Family In this Will, "my family" means my spouse, whose name is _____, and my children, whose names are _____. The words "child," "children," and "issue" include any legally adopted person, and the person's natural or adopted descendants.

Article 2 Debts I direct my Personal Representative to pay all my legally enforceable debts, the expenses of my last illness and funeral, including the cost of a suitable monument at my grave, and all my unpaid charitable pledges even if the pledges are not enforceable obligations of my estate. My Personal Representative may pay from my estate in Michigan all or part of the cost of the administration of my estate outside Michigan.

Article 3 Taxes
A. I direct my Personal Representative to pay the following taxes out of [my estate] as soon as practicable after my death:

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PlainWill—11/30/94

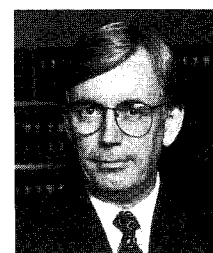
Therefore, in our previous articles about our other four subcommittees, we identified sample populations with which we could compare the clarity of legal documents. We identified the two largest states and English speaking provinces in the U.S., Australia, and Canada. Now we want to identify organized groups of plain-English advocates in these states and provinces who write and promote plain-English documents in the practice of law.

There are no organized groups of plain-English advocates in New York, California, or Ontario, but there are organized groups in British Columbia, New South Wales, and Victoria. In Vancouver, British Columbia, there is a group of legal-writing consultants called The Precedents Group Consultants, which publishes *Rapport*, a newsletter about plain language, edited by Cheryl Stephens. In Sydney, New South Wales, there are the law firms of Mallesons Stephen Jaques (Edward Kerr and Robert Eagleson), and Phillips Fox (Christopher Balmford) that actively promote plain English.² And in Melbourne, Victoria, there are also offices of Mallesons Stephen Jaques and Phillips Fox. We will ask these groups to send us the clearest written durable power of attorney form, will form, and trust form that they can find in their state or province. We can then compare the clarity of forms available in Michigan with the clarity of forms available in these states and provinces.

Responsibility

The success of the plain-English movement depends on two types of responsibilities—the responsibility for preparing educational material on plain English, and the responsibility for writing legal documents in plain English.

Legal-writing teachers are responsible for preparing educational material on plain English such as textbooks and articles. It's their job, and they do it well. This material includes general guidelines for preparing



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Lawyers and Judges Alcoholics Anonymous and Narcotics Anonymous MEETING DIRECTORY

The following list of meetings reflects the latest information about lawyers and judges AA and NA meetings. Those meetings marked with "*" are meetings that have been designated for lawyers, judges and law students only. All other meetings are attended primarily by lawyers, judges and law students, but also are attended by others seeking recovery. In addition, we have listed "Suggested Meetings" which others in recovery have recommended as being good meetings for those in the legal profession.

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

Monday 12:15 PM
St. Philip's Center
112 Capital Ave. N.E.
Battle Creek

Monday 12:30 PM
Detroit Bar Association
Conference Room
14th Floor, Buhl Bldg.
Detroit

Monday 6:30 PM
Freeland United Methodist Church
205 E. Washington
(Across from post office)
Freeland

***Monday 7:00 PM**
Prince of Peace Lutheran Church
19100 Ford Rd.
(Just west of Southfield Freeway)
Dearborn
(NA meeting also held concurrently)

Narcotics Anonymous Meetings

Monday 7:00 PM
Prince of Peace Lutheran Church
19100 Ford Rd.
(Just west of Southfield Freeway)
Dearborn
(AA meeting also held concurrently)

For other AA or NA meetings,
see listings in your local
phone book or call:

**Lawyers and Judges
Assistance Program
1-800-996-5522**

Wednesday 12:00 PM
First Presbyterian Church
Conference Room—
Lower Level
321 W. South St.
Kalamazoo

***Wednesday 6:00 PM**
Kirk In The Hills
Presbyterian Church
1340 W. Long Lake Rd.
(½ mile west of Telegraph)
Bloomfield Hills

Wednesday 6:00 PM
Unitarian Church
2474 S. Ballenger Rd.
Lower Level, Room 2C
(1 block south of Miller Rd.)
Flint

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

Suggested Meetings

Wednesday 12:00 PM
Cooley Law School
Blair Room (1st Floor)
217 S. Capitol
Lansing

Wednesday 6:30 PM
Alano Club
601 Michigan Ave.
Gladstone

**Thursday 8:00 PM
(also Sunday 8:00 PM)**
Manresa Stag
1390 Quarton Rd.
Bloomfield Hills

Friday 8:00 PM
Rochester Presbyterian Church
1385 S. Adams
(South of Avon Rd.)
Rochester

clearly written documents, and critiques of poorly written legal documents. As mentioned earlier, in the last 20 years of the plain-English movement, most of the activity in the movement has consisted of preparing educational material. This material is now readily available for practicing lawyers to use in writing legal documents in plain English without legalese.

Practicing lawyers are responsible for preparing clearly written legal documents. But it's a responsibility that many practicing lawyers refuse to accept. That is why we formed the Plain English Committee—to encourage practicing lawyers to accept the responsibility to write legal documents in plain English.

In our Clarity Award search in estate-planning documents, we are looking for practicing lawyers who are carrying out their responsibilities by preparing clearly written forms for durable powers of attorney, wills, and trusts. ■

Footnotes

1. *Plain English in Wills and Trusts*, 73 Mich B J 1086 (October 1994); *Estate Planning Documents Clients Can Understand*, 67 Mich B J 54 (January 1988); *Use of Plain English in Drafting Wills and Trusts*, 63 Mich B J 612 (July 1984).
2. Eagleson, *What Lawyers Need to Know About Plain Language*, 73 Mich B J 44 (January 1994); Kerr, *Using Plain Language in Law Firms*, 73 Mich B J 48 (January 1994); Duckworth and Balmford, *Convincing Business That Clarity Pays*, 73 Mich B J 1314 (December 1994).

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