

Review of Michigan Causes of Action Formbook

By George Hathaway

The Michigan Institute of Continuing Legal Education has recently published *Michigan Causes of Action Formbook*, edited by Deborah Gordon, Steven Goren, Kay Holsinger, Mark Hopper, Judy Keenan, Karen Mendelson, and Edward Pappas, with contributions from nearly 50 Michigan practitioners. Every lawyer, legal assistant, legal secretary, and law student in Michigan should have this formbook, or at least have quick access to it.

The book begins with a general discussion of pleadings and then categorizes complaints into six sections with many examples. The book contains more than 70 sample complaints, a sample motion for an injunction, and a sample injunction order, all written without legalese such as *Now Comes*, *Wherefore*, and *hereby*. The forms are also on a computer disk that comes with the formbook. Everything about this formbook—from content to style—is excellent.

Content

The book is actually a user-friendly textbook on Michigan tort pleadings, illustrated with many examples of complaints.

"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.

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The discussion in the first chapter, Pleadings, includes an excellent list of affirmative defenses. Then follow chapters on Torts, Business Torts, Contract and Business Disputes, Employment Claims, Real Property Disputes, and Special Actions. Each chapter discusses the particular tort and contains a list of pertinent statutes, a checklist of elements to include in the complaint, and expected affirmative defenses.

Style

The book is generally written in plain English, and it encourages lawyers to write their complaints in plain English. See Figure 1. The complaint forms in the book begin with *Plaintiff states* (instead of *Now Comes*) and end with *Plaintiff requests* (instead of *Wherefore*). See Figure 2—Complaint for Retaliatory Discharge. The motion

FIGURE 1

4. Language; Plain English

§ 1.19 The Michigan Court Rules merely require that pleadings be legibly typed or printed in the English language. MCR 2.113(B). To be effective, however, pleadings must be well written, clear, and intelligible.

For many years, lawyers have buried their thoughts in verbose legalese and obsolete, archaic formalisms. Consumer groups and the public have cried out for understandable documents written in plain English, a movement strongly supported by the Michigan State Bar. A regular feature in the *Michigan Bar Journal*, "Plain Language," instructs attorneys on getting rid of the gobbledygook in favor of straightforward, simple, and direct writing.

The plain language movement seeks to improve communication in the legal profession and make the law more accessible to the public. Attorneys can achieve these goals by using shorter sentences and simpler words and constructing sentences in the active voice. Introductions, conclusions, and headings also guide readers.

Elements of good writing include using topic sentences; making transitions between subjects; and keeping the subject near the verb, the verb near the object, and modifying words near what they modify. These guidelines pertain to legal, as well as nonlegal, writing.

You should avoid formalisms such as "now comes" and "wherefore." Archaic terms such as "hereby" and "SS" in notary blocks only detract from a pleading. Redundancies, such as "any and all" instead of just "any," as well as unnecessary words and wordy phrases, such as "prior to" or "with regard to," distract the reader's attention from the message and impede succinct, effective communication.

Strunk & White's *The Elements of Style* (3d ed 1979) presents timeless advice on good, clear writing. In the legal arena, it is easy to fall into the trap of cumbersome legal formalism. Irwin Alterman's *Plain and Accurate Style in Lawsuit Papers*, 2 *Cooley L Rev* 243 (1984), is particularly helpful since it was written with specific reference to the Michigan Court Rules. The article, originally published in the *Cooley Law Review*, was distributed over a decade ago by the Michigan State Bar and the Michigan State Bar Foundation to all members of the bar. Although it is not an official Michigan style manual, it is a must-read for all attorneys practicing in Michigan.

It is an attorney's responsibility to his or her clients, other practitioners, the courts, and the general public to simplify, clarify, and write in plain English.

FIGURE 2

Form 56.1

Complaint for Retaliatory Discharge in Violation of Public Policy

[Caption/Statement regarding other action. See form 1.1.]

COMPLAINT

Plaintiff states:

1. Plaintiff is a resident of _____ County, Michigan, and was formerly employed by Defendant at Defendant's place of business.
2. Defendant is a _____ corporation and conducts business in _____ County, Michigan.
3. The events giving rise to this cause of action occurred in _____ County, Michigan.
4. The amount in controversy exceeds \$10,000, exclusive of costs, interest, and attorney fees.
5. Defendant, through its agents, servants, or employees, violated the public policy of the State of Michigan, specifically, MCLA _____, MSA _____.
6. Plaintiff refused to violate these policies and reported the actions of certain agents, servants, and/or employees of Defendant to Defendant's upper management levels.
7. Defendant discharged Plaintiff in whole or in part for refusing or failing to violate the public policy of the State of Michigan, specifically MCLA _____, MSA _____, and for reporting the actions of the agents, servants, and/or employees of Defendant to Defendant's upper management levels.
8. As a direct and proximate result of Plaintiff's refusal to breach the public policy of the State of Michigan and reporting the breach to Defendant's upper management and as a result of Defendant's retaliatory discharge of Plaintiff, Plaintiff has been placed in financial distress; has suffered loss of wages and benefits, loss of earning capacity, and loss of ability to work; and will suffer these losses in the future.
9. As a direct and proximate result of Defendant's violations as stated above, Plaintiff has suffered depression, emotional and physical distress, mental and physical anguish, humiliation, loss of reputation and embarrassment, and the physical manifestations of these problems, and will suffer these problems in the future.

PLAINTIFF REQUESTS that this court enter judgment against Defendant in whatever sum to which [he/she] is deemed entitled, together with costs, interest, and attorney fees.

[Firm Name]

by: /s/ _____

[Typed name (P _____)]

Attorney for Plaintiff

[Address, telephone]

Dated: _____

[Optional jury demand. See form 1.3.]

form is similarly written. See Figure 3—Motion for a Temporary Restraining Order, Show Cause Order, and Preliminary Injunction. And the order is written without *hereby* and *ordered, adjudged, and decreed*. See Figure 4—Preliminary Injunction Order.

Naturally, we might change a few things here and there. But we would rather recognize improvement than ask for perfection. And these forms are a huge improvement

over most of the turgid pleadings that stuff our court files.

Clarity Award

We give our first Clarity Award of the year to this formbook. But it is not enough to write a form and encourage lawyers to use the form. That's just *talk*. We want lawyers to *walk the talk* by actually filing complaints, motions, and orders that follow the

style recommended by the forms. Furthermore, we realize it's not just the lawyer, but rather the lawyer-legal secretary combination that produces the papers that are actually filed in court. Therefore, we are now looking for lawyer-legal secretary combinations that file Clarity Award complaints, motions, and orders that follow the style recommended in the formbook. If you know of any, or if you write them, send them to us. ■

FIGURE 3

Form 67.1

Motion for a Temporary Restraining Order, Show Cause Order, and Preliminary Injunction

[Caption]

MOTION FOR A TEMPORARY RESTRAINING ORDER,
SHOW CAUSE ORDER, AND PRELIMINARY INJUNCTION

Plaintiff requests that this court issue a temporary restraining order and an order to show cause why a preliminary injunction should not be issued pursuant to MCR 3.310 for the following reasons and those outlined in the attached brief in support:

1. On _____, 19____, Plaintiff filed a verified complaint with the court.
2. As stated in Plaintiff's verified complaint and the attached affidavit of _____, Defendant has converted and will continue to convert Plaintiff's property and trade secret information.
3. Furthermore, Defendant has violated the express provisions of a confidentiality agreement.
4. Finally, Defendant has also breached his noncompetition agreement and/or nonsolicitation agreement with Plaintiff.

[Add the following if applicable:]

5. Defendant has consented to the issuance of an injunction in his confidentiality, noncompetition, or nonsolicitation agreement.
[Insert language.]
6. For the reasons stated in Plaintiff's verified complaint and affidavit, unless Defendant is enjoined from converting Plaintiff's property to his own use and from soliciting Plaintiff's customers, Plaintiff will be irreparably harmed by (a) disclosure of trade secrets and other confidential information that is solely the property of Plaintiff and (b) loss of client confidence, loss of goodwill, and loss of business reputation.
7. Plaintiff has no adequate remedy at law.
8. Any delay in the issuance of a temporary restraining order until the hearing on a preliminary injunction will result in the following immediate and irreparable harm: [specify].
9. [If an ex parte temporary restraining order is sought, Plaintiff must state the facts supported by an affidavit that demonstrate that immediate and irreparable injury will result from the delay required to give notice or from the risk that notice will precipitate adverse action by Defendant. Certification of efforts to give notice or the reasons that notice should not be given must be stated here.]

PLAINTIFF REQUESTS that this court order the following:

1. Defendant is immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, including any officer, agent, employee, and/or representative of [his/her] present employer, until further order of this court, from doing any of the following:

Special Actions

- a. engaging in the business of _____ within the geographical area of _____
- b. soliciting any business from any customer of Plaintiff whom Defendant served or whose name became known to Defendant while in the employ of Plaintiff
- c. using or disclosing confidential information of Plaintiff, including [specify]
2. Defendant must immediately return all of Plaintiff's records and any copies of such records.
3. Plaintiff is granted leave to commence discovery immediately.
4. This order shall remain in full force and effect until this court specifically orders otherwise.
5. Defendant shall show cause before this court on _____, 19____, at ____ [A.M./P.M.], or as soon thereafter as counsel may be heard, why a preliminary injunction should not be ordered according to the terms and conditions set forth above.

[Firm Name]

by: /s/ _____

[Typed name (P _____)]

Attorney for Plaintiff

[Address, telephone]

Dated: _____

FIGURE 4
Form 67.5
Preliminary Injunction Order
[Caption]

PRELIMINARY INJUNCTION ORDER

At a session of court held in the courthouse in _____, Michigan, on _____, 19____.

Present: Honorable _____
 _____ Court Judge

The court has reviewed Plaintiff's verified complaint, motion for preliminary injunction, and other pleadings submitted by Plaintiff and Defendant; has held a hearing on this issue; and has determined the following:

1. Plaintiff has a likelihood of success on the merits of its claims.
2. Plaintiff will suffer irreparable harm and loss if Defendant is permitted to (a) convert Plaintiff's confidential information to Defendant's own use and benefit or that of Defendant's current employer and (b) solicit Plaintiff's clients and customers and/or violate a noncompetition agreement.
3. Plaintiff has no adequate remedy at law.
4. Plaintiff will suffer greater injury from the denial of preliminary injunctive relief than Defendant will suffer from the granting of such relief. The granting of this preliminary injunction will further the public interest.

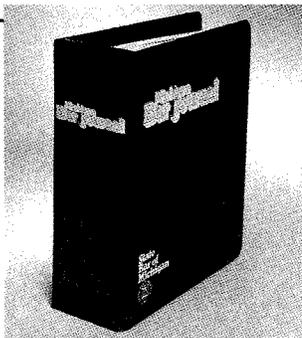
IT IS ORDERED:

1. A preliminary injunction order is issued, and security in the amount of \$_____ must be posted no later than _____, 19____.
2. Defendant is enjoined and restrained, whether alone or in concert with others, including any officer, agent, representative, and/or employee of Defendant, until further order of this court, from (a) using or disclosing Plaintiff's confidential information, including *[list specific information if appropriate]*; (b) soliciting Plaintiff's clients and customers; and (c) engaging in the business of _____ within a ____-mile radius of Plaintiff.
3. Defendant shall return to Plaintiff all records of Plaintiff and all copies of these records.
4. This order shall remain in full force and effect until this court specifically orders otherwise.

/s/

 Hon. *[Typed name]*
 Circuit Court Judge

Prepared by:
 /s/ _____
[Typed name (P _____)]
 Attorney for Plaintiff
[Address, telephone]



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