

Michigan Judges Practice Plain English

By George Hathaway

The most effective way to promote plain English in legal writing is to practice plain English in legal writing. And Michigan judges are leading the way in practicing plain English in legal writing. An example is a guilty-plea form recently developed and used by Judge Gene Schnelz of Oakland County Circuit Court, and by Court Administrator/Magistrate Margaret Garvin Blanchard of the 45B District Court in Oak Park. See Figure 1. Another example is an opinion and order recently written by Judge George Steeh of Macomb County Circuit Court. See Figure 2. Both documents are examples of clear writing without legalese. And we give Clarity Awards to both documents.

According to Ms. Blanchard:

Any good writer always keeps the reader in mind. Defendants read guilty-plea forms. Judge Schnelz and I wrote this form hoping that all defendants who read or hear it will understand it.

According to Keith Beasley, Court Administrator of Macomb County Circuit Court:

Judge Steeh's opinion is notable not only because it avoids legalese. It also distills a complex analysis of a preliminary-injunction request into just over ten pages, double-spaced. The case is not a garden-variety civil dispute, but raises important questions as to the authority of a local municipality over land

"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.

owned by the Metro Parks Authority. The nature of the dispute before the Court is related in the first sentence. The second paragraph succinctly advises the reader of the positions of the parties. After the facts are stated, a preliminary issue is addressed and the standard of review is explained. Then each argument of the moving party is addressed in turn. The analysis is logical and clear. We advocate similarly clear legal writing in all judicial opinions.

If we sample the first two paragraphs, an intermediate paragraph, and the end of the opinion and use our criteria of legalese and legalese compounded that we defined in our November 1996 column,¹ we find the following: The opinion contains no legalese—formalisms such as *Now Comes*, archaic words such as *hereby*, redundancies such as *any and all*, or Latin word such as *per curiam*. For legalese compounded, we find an average of 15 words a sentence, strong active-voice verbs such as *argues*, *contends*, *presented*, and *involves*, no wordy phrases such as *prior to*, and no unnecessarily long words such as *utilize*. We might change some things, but we are not asking for perfection. When you finish reading this opinion, you realize that the possibility of eliminating legalese from all legal writing in Michigan by the year 2000 has just increased a giant step.

Practice

We have previously given a 1992 Clarity Award (our first) to the Michigan Supreme Court's State Court Administrative Office for developing plain-English court forms,² and a 1996 Clarity Award to Judge S. J. Elden for starting the court-forms project.³ We have also published columns about Supreme Court and Court of Appeals orders and letter-size paper requirements.⁴

Promotion

All of these examples of actual practice strongly support the plain-English principles that Michigan judges have promoted

in the past.⁵ For example, in 1987 Michigan judges responded to a questionnaire about legal writing by overwhelmingly recommending legal documents written in plain English.⁶ (Note that this survey was also taken of judges in Louisiana⁷ and Texas,⁸ with similar results.) Also, in 1987 the Michigan Judges Association (Judge Hilda Gage, president) recommended our committee's videotape on plain English for lawyers entitled "Everything you always wanted to know about plain English . . . but were afraid to ask." And in 1993 the Michigan Judges Association (Judge Richard Ryan Lamb, president) recommended eliminating *Now Comes*, *Wherefore*, and *hereby* from legal documents.

Nevertheless, you could read these recommendations and surveys and think—"it's easy for judges to say that they like clear language, because they are not going to say that they like unclear language." For example, in September 1996 we published an excellent article by Judge Lynn Hughes of Texas, who recommended that lawyers write simplified motions.⁹ The article was so good that a civil-procedure professor from the University of Washington Law School wrote to us and wanted to use the article for her civil-procedure classes. Now, some lawyers might want to see a motion that Judge Hughes wrote when he was a lawyer to make sure it's not "Do what I say now, rather than what I used to do when I was one of you." Other lawyers might want to see current orders and opinions written by Judge Hughes. In fact, Judge Hughes writes very clear orders and opinions. And that's what counts—because it's the holdings (orders and opinions that judges write) not the dicta (the way judges suggest lawyers write) that influence practicing lawyers the most.

Judicial Writing

This is why judicial writing is so important—setting a good example to promote plain English in legal writing. And this is

Figure 1

STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT

THE PEOPLE OF THE STATE OF MICHIGAN
vs.

CASE NO.:

ORIGINAL CHARGE:

DEFENDANT OFFERS PLEA OF GUILTY TO THE CHARGE(S)

OF:

DATE:

PEOPLE'S EXHIBIT NO. 1*

[DEFENDANT SHALL BE PLACED UNDER OATH]

- 1. What is your name?
2. How old are you?
3. [Can you read, write, and understand the English language? Can you hear and understand me?
4. Do you understand that you are pleading guilty to (name of offense[s])
5. Do you know that the most time you can get is years in jail/prison; (if applicable) and the shortest time you must do is years?
6. Pursuant to People vs. Cobbs, have there been any statements about your sentence?
7. Is there a plea bargain?
7a. [(If yes) Has the whole plea bargain been stated on the record?]
8. Do you understand you have a right to have your own lawyer represent you from start to finish, including trial, sentence, and an application for appeal, and the Judge will appoint a lawyer for you if you cannot afford a lawyer of your choice?
9. Do you understand that you have a right to a trial by jury, or by a Judge without a jury, if the prosecutor and the Judge agree?
10. Do you understand that throughout the trial, you are presumed innocent until the prosecutor proves your guilt beyond a reasonable doubt?
11. Do you understand that you have a right to have all the witnesses against you appear at trial, to have your lawyer ask the witnesses questions, and to have a Judge order any witnesses you might have to appear at the trial?
12. Do you understand that you don't have to testify at trial and nobody can say anything about your not testifying or hold it against you? On the other hand, you have the right to testify at the trial if you want to testify?
13. Do you understand that if the Judge accepts your guilty plea, you will not have a trial of any kind, and you will be giving up all these rights I have told you about, and you will be giving up any claim that the plea was a result of promises and threats that were not disclosed to the court, and it was not your choice to plead guilty?
14. Do you understand that any appeal from the conviction and sentence following the guilty plea will be by application for leave to appeal and not by right?
15. Do you understand that a plea of guilty means you have a conviction?
16. Do you understand that if you are on probation or parole, this plea could affect your probation or parole status?
17. Has anyone threatened you to get you to plead guilty?
18. Is it your own choice to plead guilty?
19. Where did this offense(s) occur?
(CITY, TOWNSHIP, VILLAGE)

State in your words what you did:

I am telling the Court that my lawyer has read and explained all of the questions on this paper, and that my answers are true.

DEFENDANT'S SIGNATURE

DEFENDANT'S ATTORNEY

- 20. Do both the prosecutor and defense attorney agree the court has complied with MCR 6.302(B)-(D)?
21. Is either the prosecutor or the defense attorney aware of any promises, threats, or inducements other than those already disclosed on the record?

why we publish documents that Judges Schnelz, Steeh, and Elden have written. Furthermore, we want to keep on concentrating on documents that judges write. We are especially interested in the orders that judges write. Therefore, if you are aware of a well-written order that a judge has written (in clear language and without high profile legalese such as *it is hereby ordered, adjudged and decreed*), send it to us as a nomination for a Clarity Award. ■

George Hathaway is a senior real estate attorney at the Detroit Edison Company and chair of the Plain English Committee of the State Bar of Michigan.

Footnotes

1. Hathaway, *The Clarity Awards (After Five Years)*, 75 Mich B J 1198 (November 1996).
2. Plain English Committee, *The Clarity Award*, 71 Mich B J 430 (May 1992).
3. Plain English Committee, *Clarity Awards for 1996*, 75 Mich B J 421 (May 1996).
4. Davis, *New Form for Certification of Supreme Court Orders*, 67 Mich B J 167 (February 1988); Haggerty, *Supreme Court and Court of Appeals Move to Simplify*, 67 Mich B J 880 (September 1988).
5. Hathaway, *Michigan Judges Promote Plain English*, ABA Benchmark, Summer 1991, p 3.
6. Harrington, *Survey: Plain English Wins Every Which Way*, 66 Mich B J 1024 (October 1987).
7. Kimble, *Strike Three for Legalese*, 69 Mich B J 418 (May 1990).
8. Garner, *Judges on Effective Writing*, 73 Mich B J 326 (March 1994).
9. Hughes, *A Standard Motion Revised*, 75 Mich B J 826 (August 1996).

Figure 2

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

TOWNSHIP OF WASHINGTON, a
Michigan municipal corporation,
Plaintiff and Counter-Defendant,

vs.
HURON-CLINTON METROPOLITAN AUTHORITY,
Defendant and Counter-Plaintiff.

File No. 96-4547-NZ

OPINION AND ORDER

This action is before the Court on plaintiff's Motion for a Preliminary Injunction.

Plaintiff, Washington Township ("Township"), argues that defendant, Huron-Clinton Metropolitan Authority ("HCMA"), must follow the Township's zoning ordinances, and that failure to do so is a nuisance per se and results in a preliminary injunction. Among other arguments, HCMA contends that it is exempt from following the ordinances, so a preliminary injunction should not be granted . . . [Note: We might summarize the holding here.]

The Court must next consider the danger that the Township will suffer irreparable injury if the injunction is not issued. The building of the road does not injure the Township; it is the use of the road that the Township wishes to prohibit. HCMA, by continuing to build the road, assumes the risk that the Court will prohibit the park from using the road. The denial of a preliminary injunction places the Township in no worse a position than it now occupies . . .

For the reasons stated above, the Township has not met its burden of proving the four elements necessary for the Court to issue a preliminary injunction. Therefore, as long as HCMA is willing to accept the risk that the Court may ultimately prohibit or restrict the use of the road, then it may continue to build it.

For the foregoing reasons, the plaintiff's motion for preliminary injunction is DENIED.

IT IS SO ORDERED.

GEORGE C. STEEH

GEORGE C. STEEH
CIRCUIT COURT JUDGE

DATED: AUG 01 1996

CIVIL RIGHTS
Solution

S	H	E	L	L	E	Y		N	A	A	C	P
C	A	D	E	T	T	E		H	O	G	A	N
R	R	T		M	Y		D	T		A	R	E
E	L		C	A	M	P	U	S		L	E	U
W	A	C	O		R	O	A	N		A	F	E
S	N		V	O	T	E		A	F	E	R	O
		S	E	G	R	E	G	A	T	E		
B	G	L	R			M	Y	T	H		D	G
U	R		T	C	L	P		A	R	E	A	
R	O	M		L	I	T	T	E	N		P	R
T	V	S		A	B		I	H		C	O	N
O	E	C	U	S		D	E	F	E	N	S	E
N	Y	P	D	S		K	R	A	E	M	E	R

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