

Examples of Clarity v. Legalese in Laws

By George H. Hathaway

Laws consist of resolutions, statutes, rules, and executive orders. At the state level these documents are published in the sources shown in Figure 1.

We have written many previous articles about these specific documents.¹ All of these documents can and should be written in reasonably clear language without legalese,² because legalese is not required by precision, complexity, case precedent, or statute.³ We have proved this by finding clearly written examples of resolutions, statutes, rules, and executive orders, and by giving Clarity Awards to many of these documents.⁴

"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.

Therefore, it is *not* a question of *can* these documents be written in clear language without legalese, or *should* these documents be written in clear language without legalese. The question is *why* aren't all of these documents written in clear language without legalese?

To support this idea, we offer the examples that follow. We do not claim that the "Clarity" examples are perfect; we would change some things in each of them. But compare them to the "Legalese" examples.

RESOLUTIONS

Clarity

No. 77]
1995 JOURNAL OF THE HOUSE 2495
Rep. Willard moved to substitute (H-1) the resolution as follows:

Substitute for House Resolution No. 302.

A resolution urging the United States Congress, the President of the United States, and the United States Department of Veterans Affairs to establish a satellite veterans hospital facility in Yale, Michigan.

Veterans have sacrificed greatly to ensure the liberties we so often take for

granted here in America. These men and women left their homes and families and all they held dear behind them to serve on foreign shores or to be prepared to defend our own land . . .

It is resolved by the House of Representatives that we urge the United States President, the United States Congress, and the Department of Veterans Affairs to establish a satellite veterans hospital facility in Yale, Michigan.

It is further resolved that a copy of this resolution be transmitted to the President of the United States, the Secretary of Veterans Affairs, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

The motion prevailed and the substitute (H-1) was adopted, a majority of the members serving voting therefor.

The resolution was adopted.

Legalese

House Resolution No. 312.

A resolution to oppose the reallocation of federal funds by the Michigan Transportation Commission from local governments to state projects.

Figure 1—Published Resolutions, Statutes, Rules, and Executive Orders

Title of Document	Published in	Average number of documents published each year	Written by
1. Michigan House and Senate Resolutions	House and Senate Journals (daily)	600 House Resolutions 600 Senate Resolutions 600 House Concurrent Resolutions 600 Senate Concurrent Resolutions	110 representatives (17 lawyers) 38 senators (4 lawyers) Clerk of the House Clerk of the Senate
2. Michigan Statutes	West's Michigan Legislative Service (every two months) Public and Local Acts of Michigan (yearly)	20 new acts 300 amended acts	Legal Division of Legislative Service Bureau (22 lawyers)
3. Michigan Rules	Michigan Register (monthly) Michigan Administrative Code Supplement (yearly)	2000 R numbers	19 departments of state government (each with 1 Regulatory Affairs Officer) Legal Editing Division of Legislative Service Bureau (1 lawyer)
4. Governor's Executive Orders	Michigan Register (monthly)	20 orders	Governor's Legal Counsel in Governor's Office

Whereas, The Michigan Transportation Commission has voted to reallocate federal funds from local to state projects. . . .

Whereas, The decision to contradict its own State Transportation Improvement Plan represents a major blow to local transportation throughout this state. . . .

Whereas, The commission's action, which likely voids an earlier agreement of a 75/25 state/local split of federal money, breaks faith with communities that have taken all of the appropriate actions to address their road projects. . . . now, therefore, be it

Resolved by the House of Representatives, That we strongly oppose the recent reallocation of federal transportation funds from local to state projects in contradiction of previously approved plans; and be it further

Resolved, That copies of this resolution be transmitted to the State Transportation Commission.

The resolution was referred to the Committee on Transportation.

STATUTES

Clarity

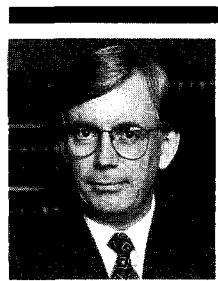
M.C.L.A. § 333.1053

Sec. 3. (1) Subject to Section 5, an individual who is 18 years of age or older and of sound mind may execute a do-not-resuscitate order on his or her own behalf. A patient advocate of an individual who is 18 years of age or older may execute a do-not-resuscitate order on behalf of that individual.

(2) An order executed under this section shall be on a form described in section 4. The order shall be dated and executed voluntarily and signed by each of the following persons:

(a) The declarant or another person who, at the time of the signing, is in the presence of the declarant and acting pursuant to the directions of the declarant.

(b) The declarant's attending physician.



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(c) Two witnesses 18 years of age or older, at least 1 of whom is not the declarant's spouse, parent, child, grandchild, sibling, or presumptive heir. . . .

Legalese

ORDINANCE NO. 11-94
CHAPTER 61

TO PERMIT ADULT USES ON A PERMITTED WITH APPROVAL BASIS IN THE M3 ZONING DISTRICT

AN ORDINANCE to amend Chapter 61 of the 1984 Detroit City Code by amending Section 103.0300 and adding Sections 103.0301, 103.0335, 103.0352, 103.0370, and 103.0380 of Ord. 390-G, the Official Zoning Ordinance, to permit "adult uses" on a permitted with approval basis in the M3 zoning district by correcting the inadvertent omission of same from Ord. No. 15-93.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

Section 1. Chapter 61 of the 1984 Detroit City Code be amended by amending

Section 103.0300 and adding Sections 103.0301, 103.0335, 103.0352, 103.0370, and 103.0380 of Ord. 390-G, the Official Zoning Ordinance, as follows:

103.0300 Permitted With Approval Uses.

The following uses and uses accessory thereto shall be permitted by the Buildings and Safety Engineering Department, or Board of Zoning Appeals, on appeal, and subject to compliance with the provisions and standards as set forth in Article VI, Section 65.0000 and to any other conditions hereinafter listed. For heliports and industrial uses, the Buildings and Safety Engineering Department may approve the use only after report and recommendation has been received from the Industrial Review Committee. . . .

Section 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 4. This ordinance is declared necessary for the preservation of the public peace, health, safety and welfare of the people of the City of Detroit and is hereby given immediate effect.



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RULES

Clarity

R 460.3409 Protection of utility-owned equipment on customer's premises.

Rule 409. (1) The customer shall use reasonable diligence to protect utility-owned equipment on the customer's premises and to prevent tampering or interference with the equipment. The utility may shut off service in accordance with applicable rules of the commission if the metering or wiring on the customer's premises has been tampered with or altered in any manner that allows unmetered or improperly metered energy to be used or to cause an unsafe condition.

(2) If a utility shuts off service for unauthorized use of service, then both of the following provisions shall apply:

(a) The utility may bill the customer for the unmetered energy used and any damages that have been caused to utility-owned equipment.

(b) The utility is not required to restore service until the customer does all of the following....

Legalese

from Proposed Administrative Rule R 336.1201 from March 1996 *Michigan Register*

(4) If a person decides not to install, construct, reconstruct, relocate, alter, or modify the process or process equipment as authorized by a permit to install, the person, or the authorized agent pursuant to R 336.1204, shall notify the department, in writing, and upon receipt of the notification by the department, the permit to

install shall become void. If the installation, reconstruction, relocation, or alteration of the equipment, for which a permit has been issued, has not commenced within, or has been interrupted for, 18 months, then the permit to install shall become void unless otherwise authorized by the department as a condition of the permit to install. "Commenced," for purposes of this subrule, means undertaking a continuous program of on-site fabrication, installation, erection, or modification, or having entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time.

EXECUTIVE ORDERS

Clarity

Executive Order 13015 of August 22, 1996

White House Commission on Aviation Safety and Security

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, it is hereby ordered as [why not "I order"?] follows:

Section 1. Establishment. There is established the White House Commission on Aviation Safety and Security (the "Commission")....

Section 4. General. (a) I have determined that the Commission shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2). Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, shall be performed by the Secretary of Transportation in accordance with the guidelines and procedures established by the Administrator of General Services, except that of reporting to the Congress.

(b) The Commission shall exist for a period of [omit "a period of"] 6 months from the date of this order, unless extended by the President.

Legalese

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, 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.

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.

Footnotes

1. *Plain English Subcommittee on Laws*, 76 Mich B J 716 (July 1997); *Promoting Plain English in Laws, Lawsuits, and Contracts*, 75 Mich B J 937 (September 1996); *Executive Orders*, 74 Mich B J 938 (September 1995); *Resolutions*, 74 Mich B J 695 (July 1995); *Legalese List for Laws*, 74 Mich B J 194 (February 1995); *Summary of Laws, Rules, and Lawsuit Papers (Part One)*, 72 Mich B J 932 (September 1993); *Plain English in Laws and Rules*, 72 Mich B J 566 (June 1993).
2. *A Summary of Our Review of Legal Writing*, 74 Mich B J 50 (January 1995); *Plain English: A Charter for Clear Writing (Part Two)*, 71 Mich B J 1190, 1192 (November 1992).
3. *Results of the Search for Legalese "Required by Statute," and Conclusion of the Three Searches*, 71 Mich B J 556 (June 1992); *The Search for Legalese "Required by Statute,"* 69 Mich B J 1286 (December 1990); *The Search for Legalese "Required by Case Precedent,"* 69 Mich B J 560 (June 1990); *Results of the "Too Complex for Plain English" Search*, 68 Mich B J 1194 (December 1989); *The Search for the Sentence "Too Complex for Plain English,"* 68 Mich B J 522 (June 1989); *Legalese and the Myth of Case Precedent*, 64 Mich B J 1136 (October 1985).
4. *The 1997 Clarity Awards*, 76 Mich B J 448 (May 1997).

1997-1998 Organizations Directory Correction

The following correction should be made to the Organizations Directory published in the December 1997 *Bar Journal*:

Representative Assembly—page 4
32nd CIRCUIT—Gogebic and
Ontonagon Counties
O'Dea, Raymond J., Ironwood