

Plain English in Lawsuit Papers in 1998

By George H. Hathaway

The lawsuit papers that we focus on are complaints, answers, motions, orders, affidavits (sworn statements), and proofs of service.¹ Most of these documents are written by members of the groups shown in Figure 1.

We have written many previous articles about these specific documents.² All of these documents can and should be written in clear language without legalese.³ The question is, why aren't they?

Goals of State Bar

In 1996 the Representative Assembly of the State Bar of Michigan adopted 10 basic goals. Basic Goal VII is "Public understanding of and respect for the justice system and profession." Goal VIII is "Openness of the profession." Lawyers, legal assistants, and legal secretaries can support these goals by writing lawsuit papers in clear language without legalese.

Plain English Forms

For more than 10 years, the Michigan Supreme Court, the State Bar of Michigan, and the Plain English Committee have prepared plain-English forms for lawsuit papers and have encouraged Michigan lawyers and judges to voluntarily use these forms to eliminate legalese from lawsuit papers. Some of these forms are discussed in Figure 2.

"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.

Figure 1. Groups that Write Most Lawsuit Papers

Type of Lawsuit Paper	Written by Members of
<ul style="list-style-type: none"> • Complaints • Answers • Motions • Orders • Sworn Statements • Proofs of Service 	Michigan Trial Lawyers Association (Kathleen Bogas, President) Michigan Defense Trial Counsel (Barbara Erard, President) Litigation Section of State Bar (Wally Haley, Chair) Michigan Judges Association (Hon. William Caprathe, President) Legal Assistants Section of State Bar (Rose Bareham, Chair) Michigan Association of Legal Support Professionals (Shirley Ueber, President)

Figure 2. Plain English Forms for Lawsuit Papers

1985	State Bar sent every lawyer in Michigan a copy of the book <i>Plain and Accurate Style in Lawsuit Papers</i> (reprinted from 2 <i>Cooley Law Review</i> 243 (1984)), by Irwin Alterman, the first chair of the Plain English Committee. The American Law Institute then published this book under the title <i>Plain and Accurate Style in Court Papers</i> .
1987	Michigan Supreme Court's Michigan Judicial Institute offered Judicial Writing Seminars (1995 Clarity Award).
1988	Michigan Supreme Court and Court of Appeals adopted a plain-English format for their opinions and orders.
1989	State Court Administrative Office published Approved Court Forms (1991 Clarity Award).
1990	Michigan Supreme Court adopted MCR 1.109, which requires 8½ by 11-inch paper for papers filed in Michigan courts after January 1, 1991.
1992	Lawyers Co-op published plain-English lawsuit forms in revised volume 2 of <i>Michigan Civil Practice Forms</i> (1993 Clarity Award).
1993	Proof of Service stamp prepared and used by Bruce Laidlaw (1994 Clarity Award).
1995	Macomb Circuit Court prepared a plain-English Request for Hearing on a Motion form (1996 Clarity Award).
1996	ICLE published <i>Michigan Causes of Action Formbook</i> (1996 Clarity Award).
1996	Judges Schnelz and Steeh wrote Guilty Plea Form, and Opinion and Order (1997 Clarity Awards).
1997	1997 PA 130, MCL 55.112(a) (plain-English notary forms) sponsored by Rep. Ciaramitaro and recommended by the Board of Commissioners of the State Bar, included forms for plain-English sworn statements (1998 Clarity Award).

Individual forms that apply to complaints, answers, motions, orders, sworn statements, and proofs of service are set out in Figure 3.

Examples of clarity versus legalese are shown in Figure 4 for different types of lawsuit papers.

Sample Surveys

In spite of all this, our 1993 and 1995 sample surveys of complaints, answers, and affidavits showed that legalese was still heavily used in lawsuit papers.⁴ Here are the top 10 reasons that lawyers and legal

Figure 3. Plain English Forms for Specific Types of Lawsuit Papers

Type of Lawsuit Paper	Alterman	SCAO Approved Court Forms	Lawyer's Co-op Michigan Civil Practice Forms	ICLE Michigan Causes of Action Formbook	Michigan Statutes
Complaint	P 264-278	MC 35, DC 102a, b, c	Sec 43.02	Form 3.1 and many others	
Answer	P 278-286	DC 03			
Motion	P 286-291	MC 36, 303	Sec 124.02	Form 67.1	
Order	P 291-297	MC 10, 37, 39, 304, 305, 307, 309, 316	Sec 135.02	Forms 67.3, 67.4, 67.5	
Sworn Statement	P 289-290	MC 07, 12, 416, DC 84		Form 67.2	1997 PA 130, MCL 55.112(a)
Proof of Service	P 290-291	MC 302			

secretaries give for not eliminating legalese from their lawsuit papers:

- No. 10 — My clients expect to see it that way.
- No. 9 — My clients won't think I'm a real lawyer.
- No. 8 — I want my clients to feel that they have gotten their money's worth.
- No. 7 — It would take away our mystique.
- No. 6 — I don't know if the judge would accept it.
- No. 5 — The formbooks are in legalese.
- No. 4 — I don't have the time to reprogram my computer.
- No. 3 — Our firm has a standard format that we follow.
- No. 2 — The lawyer that I work for wants me to do it that way.
- No. 1 — I suppose it's just inertia.

Public Understanding and Respect

The general public sees this as another case of lawyers saying one thing... but doing the opposite. The State Bar publishes goals such as public understanding of and respect for the profession... but the lawyers who write the goals refuse to follow the plain-English formbooks to support the goals. All the goals and formbooks in the world won't matter unless the members of the State Bar actually support the goals by following the forms in the actual practice of law. Unless the lawsuit papers that are actually filed in federal, circuit, and district courts are in clear writing without legalese, the general public will not understand and

will not respect a system that they feel is not open.

Requests for Clarity Awards

We look for examples for Clarity Awards. We are not asking for an example from a group. The responsibility for answering that request usually gets delegated so much that it never gets done. Instead, we are asking the leaders of the groups shown in Figure 1 to submit an example of a clearly written lawsuit paper that they have filed in a Michigan court. Each year we would like to give a Clarity Award to:

- a complaint filed by the president of the Michigan Trial Lawyers Association,
- an answer filed by the president of the Michigan Defense Trial Counsel,
- a motion filed by the chair of the Litigation Section of the State Bar,
- an order signed by the president of the Michigan Judges Association,
- a sworn statement filed by the chair of the Legal Assistants Section of the State Bar, and
- a proof of service filed by the president of the Michigan Association of Legal Support Professionals.

If the leaders of the State Bar support the goals by writing and filing clearly written lawsuit papers, then there is a good chance that the members in their groups will support the goals by writing and filing clearly written lawsuit papers.

Just Ask It

We asked the following people the following questions. 1. Do you support the efforts of the State Bar and Michigan Su-

preme Court to eliminate legalese from lawsuit papers? 2. Will you ask the members of your organization to write clearly written lawsuit papers? 3. Will you send us—for a clarity award—an example of a complaint, answer, motion, order, sworn statement, or proof of service that you (or your Legal Service Office) have filed in a Michigan court? Here are the replies:

President of Michigan Trial Lawyers Association (Kathleen Bogas)

MTLA supports the efforts of the State Bar and the Michigan Supreme Court to eliminate legalese from lawsuit papers. When we give our clients copies of the pleadings that are filed, we are frequently asked what is meant by certain words and phrases. There is no reason that a non-lawyer citizen cannot understand the language used by their attorney in presenting their case. MTLA will encourage its members to use plain English in their legal filings. In reality, it is much easier to use plain English instead of legalese when preparing court documents.

President of Michigan Defense Trial Counsel (Barbara Erard)

The Michigan Defense Trial Counsel supports the State Bar's efforts to free the English language from the habitual constraints of legalese. Quite a lot of muddy thinking can be hidden behind time-worn, formal phrasing. It should be the general rule among members of the profession that if the words are not understandable to the average literate person, they will be neither persuasive nor informative to a client or to a court. The MDTC welcomes efforts to inspire lawyers to say what they mean

as to appeal to the barrister's self-interest and public image by demonstrating to the judicial system and public the years of toil and tribute to a system of higher education, whereby the scrivener may employ an increased use of a list of words indigenous to our noble profession. Such employment of our private lexicon enhances our ability to advance fairness and equality through the system of jurisprudence. I do not comprehend or perceive anything that is problematic with our time honored approach. Dost thou? [Yes, we dost. Lansing, we have a problem.]

**President of Michigan Judges Association
(Hon. William Caprathe)**

It is important that orders of the court be written so that they can be understood not only by lawyers, but by the people affected by them. However, normally the orders that judges sign are prepared by lawyers, MCR 2.602, and often submitted on forms that have been created by a forms committee. I encourage lawyers and forms committees to look more carefully at the words used in orders and attempt to substitute plain language for legalese.

Another important point of communication for judges is their instructions to juries. In Michigan, both the criminal and civil standard instructions have been written with plain language as a goal. Of course, they need to be continuously updated and refined. Each revision should attempt to be as simple and clear as possible without losing the substantive message.

Lastly, I believe that it is important for judges to write their opinions in plain language. We should ask ourselves: "If our opinion would be published in the newspaper, would the average person be able to understand it?"

**Chair of Legal Assistants Section of
State Bar of Michigan (Rose Bareham)**

I support the effort to eliminate legalese from lawsuit papers. Clients are taking a more active interest in the documents that are being filed for them. I am often asked what is meant by certain words or phrases. Putting documents and pleadings in plain English would only help the client understand what is being done for them. I am enclosing a Plain English Sworn Statement. [Potential 1999 Clarity Award for Sworn Statement filed in Oakland County Probate Court.]

**President of Michigan Association
of Legal Support Professionals
(Shirley Ueber)**

One of the goals of Michigan Association of Legal Support Professionals (MALSP) is to assist attorneys in providing quality legal services to the public, and promoting of plain language in legal documents certainly seems to enhance that goal. While we have not taken a formal position on the use of plain language in the practice of law, we have encouraged this trend by sponsoring seminars and publishing articles in our national and state publications.

**President of Michigan Association of
Municipal Attorneys (Eric Williams)**

I support the overall effort to eliminate legalese from lawsuit papers. However, words and phrases deleted with great enthusiasm occasionally return because frequently selected substitutes fail to carry the desired connotation. Sometimes precise writing requires specific terms or words. Nevertheless, I can think of no reason to write: "Further deponent saith not." [And that is what we are saying—eliminate words such as "Now Comes," "Wherefore," and "hereby" that everyone agrees have no meaning.]

**Director of Berrien County Legal
Services Bureau, Inc. (Mary Ellen Drolet)**

As I cruised through my word-processing directory to find my best examples, I realized just how many of the rules I have broken—even though I believe that I do better than many. At least I do try to write orders that my clients will be able to understand and follow. I am enclosing one that still needs work but is an honest attempt. I admit to having several that are a lot worse! Thanks for the opportunity to contribute. If nothing else, it made me look at my own failings. P.S. One big obstacle is the boilerplate required by the FOC in all support orders—turning the simplest order in a custody or divorce case into a seven-page document filled with incomprehensible and indistinguishable gibberish... and I blame the Legislature for that. [Potential 1999 Clarity Award for May 97 Order after Hearing on Motion to Modify Joint Custody.]

**Director of Legal Aid Bureau
of Southwestern Michigan, Inc.
(Ward McDonough)**

My general comment is that I support your efforts to bring clarity to the litiga-

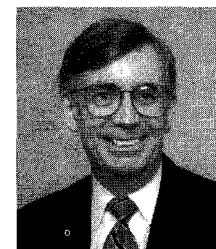
tion process. Some people don't even know where the courts are, what they—the courts—do, whether they can go into courts, and where to sit when they get inside. Additionally, a vast majority of persons seeking legal remedies only need "legal information" or "referrals." Knowledge and information are power, and we must continue to make this information and knowledge both clear and available to members of the community. I don't remember whether I had previously sent you a copy of a standard divorce pleading that we use in several of the counties in our service region in southwestern Michigan, but I am enclosing another copy. The judges have generally supported these pleadings—even though on first impression, they were skeptical. Good luck in your continued efforts. [Potential 1999 Clarity Award for Complaint for Divorce, and Petition for Interim Order Regarding Custody.]

**Director of Legal Aid of
Central Michigan (Donald Reisig—
Director of Litigation and former
President of State Bar of Michigan)**

The efforts of the State Bar and the Michigan Supreme Court to eliminate "legalese" is most dramatically felt by those who cannot afford legal services. It is difficult enough to fight through the maze of court procedures when one is unrepresented or underrepresented; but to add to that burden the additional challenge of understanding antiquated legal expression only compounds the challenges facing the indigent. Plain English in lawsuit papers helps the indigent in ensuring true access to justice. [Potential 1999 Clarity Awards for Complaint for Divorce, Judgment of Divorce, Complaint for Custody, and Judgment for Custody.]

**Director of Lakeshore Legal Aid
(Candace Crowley)**

Lakeshore Legal Aid heartily supports the efforts of the State Bar and Michigan



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.

Supreme Court to eliminate legalese from lawsuit papers. Because of this, we recently joined efforts with the Macomb County Bar Association *Pro Bono* Committee to present a continuing-legal-education seminar on Plain English. We work to achieve clarity in all of our communications, and we look forward to the profession's continued progress in this area.

Director of Oakland Livingston Legal Aid
(Paula Zimmer)

I am one of those people the public points to who speaks out of both sides of

her mouth. So much of our work is heavy volume and routinized that our pleadings (and other court documents) are set in stone. Mark me down for excuses 1, 3, 4; the other excuses do not apply. When I got your missive, I was going to throw it away because I am confident that we would not qualify for a Clarity Award. Instead, I decided to write you a note and commit to making changes. Our summer intern will be assigned the task of changing our forms on the computer. Maybe this will also be the time to get staff to aban-

don the practice of using "said" in place of "the." I appreciate your work. Today you can put a checkmark on my name.

Director of Wayne County Neighborhood Legal Services (Linda Bernard)

The use of plain language in the practice of law defines, in many respects, our roles as attorneys. In our role as counselor, how can we counsel, advise, and communicate if there stands between us and our clients a wall of Latin phrases and sixteenth-century English? How can we convince a jury of our clients' rights if the jury requires a professional translator? How can we correspond with our clients, plead our case, advocate our position, or simply answer a question when no one really understands us, except for other lawyers themselves, trained in the formal mystic tongue of our profession? While it is tempting to wear our law degrees on our sleeves, to mystify the workings of the judicial system, and to cling to legalese like fraternity brothers to a secret handshake, this is a disservice to the very people we serve. Thus, it is the responsibility and the duty of the most senior and respected members of our profession to set the example for all members of the bar—to do away with the arcane, the archaic, the prosaic, the convoluted, and the Latin. It is good practice and good lawyering. ■

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 Metropolitan
Bar Association
21st Floor, Buhl Bldg.
Detroit

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

(NA meeting also
held concurrently)
Wednesday 12:00 PM
First Presbyterian Church
Conference Room—
Lower Level
321 W. South St.
Kalamazoo

***Wednesday 6:30 PM**
Kirk In The Hills
Presbyterian Church
1340 W. Long Lake Rd.
(1/2 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

*(NEW MEETING)

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**

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

Footnotes

1. Some people use the term *pleadings*. But *pleadings* refers only to complaints and answers (and associated counter-claims, cross-claims, and replies). Motions, orders, and sworn statements are not pleadings.
2. *Plain English Subcommittee on Lawsuits*, 76 Mich B J 988 (September 1997); *Promoting Plain English in Laws, Lawsuits, and Contracts*, 75 Mich B J 937 (September 1996); *Affidavits*, 74 Mich B J 1199 (November 1995); *Legalese List for Lawsuits*, 74 Mich B J 324 (March 1995); *Summary of Laws, Rules, and Lawsuit Papers (Part Two)*, 72 Mich B J 1066 (October 1993); *Plain English in Notary Forms and Notices*, The Official Record (of Michigan Association of Legal Secretaries), Summer 1993; *Plain English in Lawsuit Papers*, 72 Mich B J 340 (March 1993); *Plain English Acknowledgment Forms*, 70 Mich B J 338 (March 1991); *The Plain English Movement in the Law*, 64 Mich B J 1236 (November 1985).
3. *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).
4. *Legalese List for Lawsuits*, n 1 above.