

The Seventh Annual (1998) Clarity Awards

By George H. Hathaway

Whereas, on or about the night prior to Christmas, there did occur at a certain improved piece of real property (hereinafter "the House") a general lack of stirring by all creatures therein, including, but not limited to a mouse.

A variety of foot apparel, e.g. stocking, socks, etc., had been affixed by and around the chimney in said House in the hope and/or belief that St. Nick a/k/a St. Nicholas a/k/a Santa Claus (hereinafter "Claus")

would arrive at some time thereafter.

The minor residents, i.e. the children, of the aforementioned House, were located

in their individual beds and were engaged in nocturnal hallucinations, i.e. dreams, wherein visions of confectionary treats, including, but not limited to, candies, nuts and/or sugar plums, did dance, cavort and otherwise appear in said dreams.¹

Plain English exposes the absurdity of legalese. Once you've read plain English, you can easily see the absurdity of legalese. So the best way to eliminate legalese is to publicize legal documents that have been written in plain English.

Goals

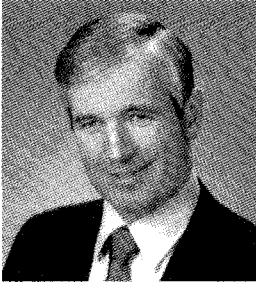



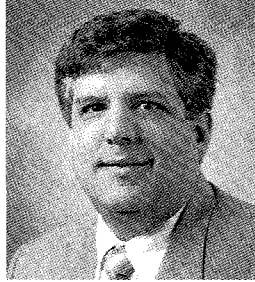


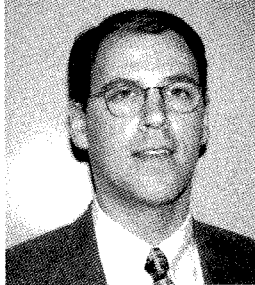

The goal of the Plain English Committee is to promote the use of clear writing by

legal professionals. This furthers the following goals and priorities of the State Bar:

- Goal VII—Public Understanding of and Respect for the Justice System and Profession
- Goal VIII—Openness of the Profession

"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—Winners of Seventh Annual (1998) Clarity Awards

<p>statute</p>  <p>Geshel</p>	<p>rule</p>  <p>Isaacs</p>	<p>rule</p>  <p>Rairigh</p>	<p>rule</p>  <p>Byers</p>	<p>Notary Statute</p>  <p>Ciaramitaro</p>
<p>Standard Federal</p>  <p>Trahan</p>	<p>Tecumseh Proxy</p>  <p>Shafer</p>	<p>Detroit Diesel Proxy</p>  <p>Knoll</p>	<p>Chrysler</p>  <p>Gluckman</p>	<p>Durable Power Living Will</p> <p>Photo not available upon publication.</p> <p>Geller</p>

Top Row (L to R)—Joseph Geshel, Carol Isaacs, Ivy Rairigh, Doris Byers, and Representative Nick Ciaramitaro. Bottom Row—David Trahan, Kent Shafer, Jay Knoll and Ken Gluckman.

Figure 2—Clarity Award Categories (for 20 Specific Types of Legal Documents)

Laws	Lawsuits	Contracts	Real Estate	Estate Planning
<ul style="list-style-type: none"> • Resolutions • Statutes • Rules 	<ul style="list-style-type: none"> • Complaints, Answers • Motions and Orders • Sworn Statements 	<ul style="list-style-type: none"> • Consumer Finance Contracts • Construction Contracts • Sales-of-Goods Contracts • Sales-of-Services Contracts • Employment Contracts • Investment Contracts • Insurance Contracts 	<ul style="list-style-type: none"> • Sales Contracts • Deeds • Leases • Notes and Mortgages 	<ul style="list-style-type: none"> • Durable Powers of Attorney • Wills • Trusts

• Key Priority of Long-Range Plan— Image of the Profession

If we promote legal documents that are clearly written (in plain English, without legalese), we will gain public understanding and respect, create openness, and greatly improve the image of the profession.

The Search for Clarity Awards

We promote clear writing in legal documents by searching for good examples throughout the year. We then give Clarity Awards to these good examples on Law Day, May 1, of each year.² See Figure 1 for photos of this year's winners.

We search for Clarity Awards in the categories shown in Figure 2.

Our search for the Seventh Annual (1998) Clarity Awards is discussed below.

The Search for Plain-English Laws

Resolutions

(None found this year, but we have a plan to find them for next year.)³

Statutes

1997 PA 55, Electric Patrol Vehicle Act, written by Joseph Geshel of the Legal Division of the Legislative Service Bureau, is a good example of a clearly written law. It supports the position that state statutes, city ordinances, and township ordinances can and should be written without legalese.

Rules

Three Michigan administrative rules also show that rules can be written in a clear style without legalese: R 330.2702, Certification Process for County Community Mental Health Services Programs, written by Carol Isaacs; R 400.3127, Good Cause for Failing to Identify Third-Party Resources in Family Independence Program, written by Ivy Rairigh; and R 474.55, Appeal to Panel for State Rail Line Divestiture, written by Doris Byers.

The Search for Plain-English Lawsuit Papers

Complaints and Answers

(None found this year but we have a plan to find them next year.)⁴

Motions and Orders

(Same as above.)

Sworn Statements

1997 PA 130, MCL 55.112(a); MSA ____ (Plain English Notary Forms), sponsored by Representative Ciaramitaro, was signed by Governor Engler on November 5, 1997, for immediate effect. This bill was endorsed by the Board of Commissioners of the State Bar. The statute gives examples of plain-English forms that can be voluntarily used for sworn statements and acknowledgments. It also provides support for eliminating the term "affidavit" and replacing it with "sworn statement."

A sworn statement filed in the U.S. District Court for the Eastern District of Michigan in *Chrysler v Global* was written by David Daly using the plain-English format. Preparing and using documents such as this will help to eliminate the archaic term "affidavit" and the many unnecessary words in traditional affidavits.

The Search for Plain-English Contracts

Consumer-Finance Contracts

Representative Ciaramitaro has tried for more than 15 years to pass a bill that would require plain English in consumer-finance contracts and other types of consumer contracts. However, the Michigan Bankers Association has always opposed the bill. The Association argues that plain English should be voluntary, not mandatory. Yet after 15 years, the only car-loan agreement that we can find that is written in user-friendly

plain English is the one by Standard Federal. (The NBD Bank car-loan agreement is in reasonably plain language, but its format needs to be improved.) All the other car-loan agreements that we reviewed from other banks are still written in legalese. Therefore, one of our priorities for this year is to find an Arthur Levitt type of leader in Michigan's banking industry.

The banking industry needs a leader who will break the 15-year stalemate and persuade the banking industry in Michigan to write all its consumer contracts in plain English without legalese. Meanwhile, for now, we give an award to the Standard Federal Automobile Loan Disclosure, written by David Trahan. This document proves that retail installment agreements can be written in reasonably plain English without legalese. According to Mr. Trahan:

Clear, concise writing has long been the standard of Standard Federal's legal staff and management team. This is true whether attorneys are drafting legal documents, business communications, or advertising text. I was most influenced by a business communications professor at Wayne State, Mary Irwin. She stressed a concise writing style, and I applied her teachings to my practice of law. The unqualified support of concise writing by Standard Federal's Senior Management has created an environment where such communications have become a natural practice. This support has continued after Standard Federal's acquisition by ABN AMRO North America, Inc.

Construction Contracts

(None found this year. Another one of our priorities for this year is to find a leader in Michigan's home-construction industry who is an advocate of plain English.)

Sales-of-Goods Contracts

The New Car Warranty booklets of Chrysler Corporation are excellent examples of clear writing. They are written by Allan M. Huss of Chrysler, Bryan Garner (a writing consultant), and the Warranty

Administration group of Chrysler (Sharon Whitlatch, Robert Johannes, Wayne Hoszynski, and Peter Tomase.)

Sales-of-Services Contracts

We give awards to a Sales Representative Agreement written by David Daly; and to a Retention Agreement (for outside counsel representation), written by Kenneth Gluckman, who heads the Training Committee for Chrysler's legal department, and Luann Van Der Wiele. According to Mr. Gluckman (who also wrote our October 1986 Plain Language column—*Plain English in Amateur Sporting Activity "Waivers"*):

Chrysler has been working to continuously improve written customer communications. We decided a few years ago to extend this effort to our legal documents, and began a program of teaching plain-English writing skills to the lawyers in the Office of the General Counsel. We arranged for legal-writing expert Bryan Garner to hold two seminars for Chrysler attorneys. We also arranged for Professor Diana Pratt of Wayne State University Law School to work individually with each Department on a specific plain-English writing project. These documents show that this program has been successful.

Employment Contracts

We give an award to an Executive Separation Agreement form, written by Thomas Gunton, Julie Kozlowski, Holly Leese, and Carol Lieber of the Corporate Affairs Section of Chrysler.

Investment Contracts

Arthur Levitt, Jr., chair of the U.S. Securities and Exchange Commission, has asked the investment community to write its documents in plain English. The two most well-known type of investment documents are proxy statements and prospectuses. Under the Securities Exchange Act of 1934, all companies must send Proxy Statements to their shareholders each year for voting at the company's annual meeting of shareholders. Under the Securities Act of 1933, a company must issue a Prospectus whenever the company tries to sell new stock or bonds.

We give awards for the well-written proxy statements of Tecumseh Products (written by Kent Shafer of Miller, Canfield, Paddock and Stone) and of Detroit Diesel (written by Jay Knoll, Senior Staff Counsel). According to Mr. Shafer:

Companies speak directly to their shareholders only a few times each year, so Tecumseh tries to make the best use of those

opportunities. Its management decided that shareholders might find the style of writing promoted by the SEC's and State Bar's plain English initiatives a refreshing change, and we tried it in last year's proxy statement. Switching to plain English required extra time and work, but we think the result was worth the effort.

According to Mr. Knoll:

We are pleased that the Committee is recognizing our proxy statement for this award. At Detroit Diesel, we pride ourselves on our commitment to our customers, and the plain English proxy statement was a natural extension to address a particular group of customers, our stockholders. I was pleasantly surprised that several stockholders commented on the change and appreciated our efforts. I would encourage others to use plain English in their proxy statements, and I expect they will find the effort as rewarding as I have.

We also give an award to Dollar Thrifty Initial Public Offering Prospectus, written by Paul Eichbauer, Thomas Gunton, and Richard Houtman of the Corporate Affairs Section of Chrysler, assisted by Edmund Price and Paul Wilson of Debevoise & Plimpton. The SEC's plain-English program for proxy statements is a success. Almost all the Michigan companies that we have talked with are now writing their 1998 proxy statements in plain English. And Chrysler's Dollar Thrifty prospectus proves that the SEC's plain-English program for prospectuses is also succeeding.

Insurance Contracts

We are not giving an award to any specific insurance contract because most insurance contracts in Michigan are now written in clear, user-friendly plain English without legalese. This is because the insurance industry has voluntarily written its policies in plain English. Furthermore, plain English in insurance policies in Michigan is required by a statute that was sponsored by Representative Ciaramitaro (1990 PA 305, MCL 500.2236; MSA 24.12236, effective January 1, 1992). New or revised insurance policies in Michigan must be approved by the Commercial Market Standards Division of the Michigan Insurance Bureau (Second Deputy Commissioner, Kurt Galinger).

The Search for Plain-English Real-Estate Documents

(None found this year.)

The Search for Plain-English Estate-Planning Documents

Durable Power of Attorney

We give an award to a Durable Power of Attorney for Health Care, written by Bradley Geller, Counsel for Washtenaw County Probate Court.

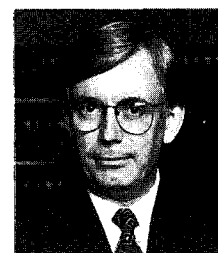
Wills

We also give an award to a Living Will written by Mr. Geller. Both the Durable Power of Attorney for Health Care and the Living Will are included in Mr. Geller's excellent booklet—*Advance Directives: Planning for Medical Care in the Event of Loss of Decision-Making Ability*. According to Mr. Geller:

Real credit for this award goes to former State Representative Perry Bullard. Legal rights mean little if individuals lack a meaningful opportunity to exercise them. Mr. Bullard recognized early the importance of providing fill-in-the-blanks documents to constituents. To be useful, these documents have to be in plain English. Bullard was one of the first legislators in the nation to develop a publication on advance directives. More than 2 million copies of his Michigan Statutory Will pamphlet have been distributed by the legislature.

Examples from Clarity Award Documents

In the past it has been customary to show plain English passages alongside the legalese that it has replaced. This was necessary to show that plain English could do just as good a substantive job as legalese. But the time has passed when legalese needs to be shown. Plain English is used so much now that its validity no longer requires confirmation. Many legal documents are now being written originally in plain English—not necessarily as revisions from legalese. The whole attempt of our Clarity Awards is to present the plain English, not to justify clear language by showing that it is just as good as legalese. Therefore, we



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.

Figure 3—Examples of Plain English

1. 1997 PA 55 (Electric Patrol Vehicle Act)

"Electric patrol vehicle" means an electrically powered motor vehicle designed to carry not more than 4 persons, at a speed not more than 25 miles per hour, having not less than 4 wheels, and having an unloaded weight of not more than 1,300 pounds.

2. R 330.2702

The department may deem the community mental health services program to be in compliance with certification standards, in whole or in part, after reviewing the submitted documents.

3. R 400.3127

The FIA shall determine if [whether] good cause exists within 45 calendar days of a client's claim, unless an extension is granted to the client or is otherwise necessary to obtain evidence.

4. R 474.55

The panel shall review the information provided by the administrator, conduct any further inquiry or review deemed appropriate by the panel, and decide the issue.

5. 1997 PA 130 (Plain English Notary Forms)

An acknowledgment for an individual acting in his or her own behalf may be substantially in the following form: Acknowledged before me in _____ County, Michigan, on _____ 1998 by Mary Doe.

Notary's Stamp _____
Notary's Signature _____

6. Sworn statement filed in Chrysler v Global

Signed and sworn to before me in New York County, New York on 10/29, 1997.

Notary's Stamp _____
Notary's Signature _____

7. Standard Federal Automobile Loan Disclosure

In addition to the security interest you are giving us in the above [omit "above?"] automobile, you also grant us a security interest in all funds on deposit with us in your name or for your benefit, including funds held in checking accounts, saving accounts or certificates of deposit.

8. Chrysler New-Car Warranty Books

The warranties contained in this booklet are the only express warranties that Chrysler makes for your vehicle. These warranties give you specific legal rights. You may also have other rights that vary from state to state. For example, you may have some implied warranties, depending on the state where your vehicle is registered.

9. Sales Representative Agreement

This Agreement embodies the parties' entire agreement and supersedes and cancels [need both?] any prior agreement, express or implied, written or oral, with respect to its subject matter.

10. Retention Agreement

Michigan law governs this Agreement. This Agreement must be interpreted in accordance with Michigan law without regard to its conflict-of-laws rules. Venue for any action brought to enforce or interpret this Agreement must be in Oakland County, Michigan.

11. Executive Separation Agreement

This agreement will be binding upon your heirs and assigns and the successors and assigns of the Company.

12. Tecumseh Proxy Statement

If a nominee becomes unable to serve (which we do not expect to happen), your proxy will be voted for a substitute determined [to be ?] in the best judgment of the proxy holders.

13. Detroit Diesel Proxy Statement

The proxy card is fairly simple to complete, with specific instruction right on the card. By completing and submitting it, you will direct the designated persons (known as "proxies") to vote your shares at the Annual Meeting in accordance with your instructions.

14. Dollar Thrifty Initial Public Offering Prospectus

This is an initial public offering of shares of common stock of Dollar Thrifty Automotive Group, Inc. Chrysler Corporation, which currently owns all of the common stock, is offering 20,000,000 shares and the Company is offering 2,500,000 shares.

15. Durable Power of Attorney for Health Care

It is my intent [that] no one involved in my care shall be liable for honoring my wishes as expressed in this designation or for following the directions of my patient advocate.

16. Living Will

If I become terminally ill or permanently unconscious as determined by my doctor and at least one other doctor, and if I am unable to participate in decisions regarding my medical care, I intend this declaration to be honored as the expression of my legal right to authorize or refuse medical treatment.

show the examples of plain English in Figure 3, without any absurd "Night before Christmas" versions of legalese.

Conclusion

Our efforts are beginning to pay off. They are beginning to snowball. But we still need to get to critical mass to significantly promote the 1) public understanding, 2) openness, and 3) image of the profession. These goals can be furthered by eliminating legalese. The best way to do this is to continue to concentrate on the specific who, what, where, why, and when.

- Who controls the style in which each type of document is written? (name names)
- What documents are written? (name titles of specific documents)
- Where are these documents published or filed? (name the publications or courts)
- Why aren't these documents written in plain English? (just ask it)
- When will these documents be written in plain English? (ask for dates) ■

Footnotes

1. From *The Night Before Christmas, Legally Speaking*, by the Grinch, circulated on the Internet.
2. See *The 1997 Clarity Awards*, 76 Mich B J 448 (May 1997) and other annual Clarity Award columns.
3. Last year we gave a Clarity Award to Representative Karen Willard for 1995 House Resolution 302. But no one has followed her lead this year. For future awards we are following proposed House Resolution 120 on Resolutions, which Representative Willard is sponsoring. This resolution was in Representative Galiardi's House Oversight Committee on August 7, 1997, but has not yet been acted on. In addition to the state Legislature, next year we will also try to find a plain-English resolution that has been passed by one of the 270 cities in the Michigan Municipal League. We will coordinate our search with Bill Steude (an executive of both the Michigan Municipal League and the Michigan Association of Municipal Attorneys) and Gil Hill (President of the Detroit City Council). We will also try to find a plain-English resolution that has been passed by one of the 1,200 townships in the Michigan Township Association (Jack LaRose, Executive Director).
4. We will coordinate our search for plain-English lawsuit papers with the Litigation Section of the State Bar (Wally Haley, chair) and the Michigan Judges Association (Judge William Caprathe, president). We also hope to involve the Michigan Trial Lawyers Association and the Michigan Defense Trial Counsel.