

Plain Language in Lawsuit Papers

By George H. Hathaway

We focus on the following main types of lawsuit papers: complaints, answers, motions, orders, sworn statements, proofs of service, opinions and judgments, and settlement agreements. We follow a four-step approach to eliminating legalese in these documents.

First, we identify the people who write the documents:

Second, we find people in these groups who have the interest, ability, and courage to write these documents in plain English. We ask them to join us to work in an organized way from within the system to eliminate legalese from these documents. Many of the members of our Subcommittee on Lawsuits are former Clarity Award winners.

Third, our subcommittee finds clear examples of lawsuit papers, gives them Clarity Awards, and promotes them as good examples to follow. But, few documents in the real world are perfect. Therefore, we start with our Clarity Award documents, edit them lightly for style, and present our examples (below) that we recommend to lawyers, legal assistants, and legal-support professionals:

"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. For information about the Plain English Committee, see our web site—www.michbar.org/committees/penglish/pengcom.html

Table 1—Types of Lawsuit Papers and the Groups That Write Them

4a Complaints 4b Answers	Michigan Trial Lawyers Association Michigan Defense Trial Counsel and Association of Defense Trial Counsel Litigation Section of State Bar
5a Sworn Statements 5b Proofs of Service	Legal Assistants Section of State Bar Michigan Association of Legal Support Professionals
6a Opinions and Judgments 6b Settlement Agreements	Michigan Judges Association

Table 2—Subcommittee on Lawsuit Papers

Keith Beasley	Administrator of Macomb County Circuit Court
John Mayer	Administrator of the U.S. District Court for the Eastern District of Michigan
Hon. Chad Schmucker	Chief Judge of Jackson County Circuit Court
Hon. George Steeh	U.S. District Court for the Eastern District of Michigan
Greg Ulrich	Cummings McClorey
Stan Wise	Wise & Wise

Example Complaint (based on Form 56.1 in *Michigan Causes of Action Formbook*)

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 lawsuit occurred in _____ County, Michigan.

4. The amount in controversy exceeds \$25,000, not counting costs, interest, and attorney fees.

5. Defendant, through its agents, servants, or employees, violated the public

policy of the State of Michigan, specifically MCL _____; MSA _____.

6. Plaintiff refused to violate the public policy and reported the actions of defendant's agents, servants, or employees to Defendant's upper-management levels.

7. Defendant discharged Plaintiff in whole or in part for refusing or failing to violate this public policy, and for reporting the actions of the defendant's agents, servants, or employees.

8. As a direct and proximate 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 further direct and proximate result of Defendant's retaliatory discharge,

Plaintiff has suffered depression, humiliation, loss of reputation, and the physical manifestations of these problems, and will suffer these problems in the future.

Plaintiff asks this court to enter judgment against Defendant in whatever sum [he/she] is entitled to, together with costs, interest, and attorney fees.

Example Answer (based on Answer to Complaint in *Cirenece v Willauer*)

Shelby Township and Shelby Township Water Department's Answer to Complaint

The Defendants, Shelby Township and Shelby Township Water Department, for their answer to the complaint, state as follows:

1. Defendants lack knowledge or information sufficient to form a belief as to [about ?] the truth of the allegations in paragraph 1.

2. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.

3. Defendants admit the allegations in paragraph 3.

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

9. Defendants admit the allegations in paragraph 9.

10. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10.

11. Defendants admit that Plaintiffs' real property is subject to a wetlands easement, but deny that the easement is described as set forth in Plaintiffs' complaint. Plaintiffs' description sets forth only a triangular part of the overall easement.

12. Defendants admit that a wetlands easement prohibits Plaintiffs from making certain improvements on their real prop-

erty, but deny that the particular section of the easement described in paragraph 11 of Plaintiffs' complaint prohibits all improvements to the real property.

Therefore, Defendants Shelby Township and the Shelby Township Water Department ask this Court to grant the relief that is equitable and just under all the circumstances.

Example Motion (based on Form 67.1 in Michigan Causes of Action Formbook)

Motion For a Temporary Restraining Order, Show-Cause Order, and Preliminary Injunction

Plaintiff asks this court to issue a temporary restraining order and an order to show cause why a preliminary injunction should not be issued under MCR 3.310.

1. On _____, 19____, Plaintiff filed a verified complaint with the court.

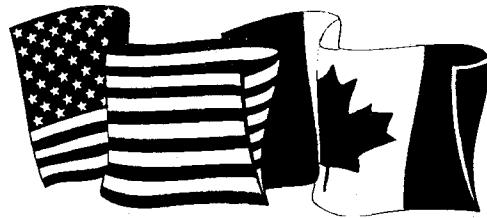
2. As stated in the verified complaint and the attached affidavit of _____, Defendant has converted and will continue to convert Plaintiff's property and trade-secret information.

3. Furthermore, Defendant has violated the express provisions of a confidentiality agreement.

4. Finally, Defendant has also breached his noncompetition agreement or nonsolicitation agreement with Plaintiff.

5. For the reasons stated in Plaintiff's verified complaint and affidavit, unless Defendant is enjoined from converting Plaintiff's property and from soliciting Plaintiff's customers, Plaintiff will be irreparably harmed by (a) the disclosure of trade secrets and other confidential information and (b) the loss of client confidence, loss of goodwill, and loss of business reputation.

6. Plaintiff has no adequate remedy at law.



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7. Any delay in issuing a temporary restraining order until the hearing on a preliminary injunction will result in the following immediate and irreparable harm: [specify].

Therefore, Plaintiff asks this court to 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, or representative of [his/her] present employer, from engaging in the business of _____ within the geographical area of _____.

2. Defendant must immediately return all of Plaintiff's records and any copies of those records.

3. Plaintiff is granted leave to begin discovery immediately.

4. This order remains in effect until this court specifically orders otherwise.

5. Defendant must 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 stated above.

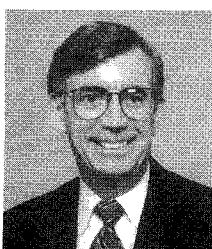
Example Order (based on Form 67.5 in Michigan Causes of Action Formbook)

Preliminary Injunction Order

At a session of court held in the courthouse in _____, Michigan, on _____, 19_____, before the Honorable _____

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.



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.

2. Plaintiff will suffer irreparable harm and loss if Defendant is permitted (a) to convert Plaintiff's confidential information to Defendant's own use or the use of Defendant's current employer, and (b) to solicit Plaintiff's clients and customers 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 relief. Granting this preliminary injunction will further the public interest.

It Is Ordered:

1. A preliminary injunction order is issued, and Plaintiff must post security of \$_____ no later than _____, 19_____.

2. Until further order of this court, Defendant is enjoined and restrained, whether alone or in concert with others, including any officer, agent, representative, or employee of Defendant, from (a) using or disclosing Plaintiff's confidential information, including [list specific information if appropriate]; (b) soliciting Plaintiff's clients or customers; and (c) engaging in the business of _____ within a _____-mile radius of Plaintiff.

3. Defendant must return to Plaintiff all Plaintiff's records and all copies of those records.

4. This order remains in 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]

Example Sworn Statement (based on MCLA 55.112a(2))

Sworn Statement of Mary Smith

1. I am a Business Planner at the Western Service Center of ABC Utility Company.

2. My job duties include planning and designing electric lines in Allen Township.

3. ABC Utility Company owns and operates an overhead electric line (consisting of two poles and associated wires) on Plaintiff's land.

4. ABC Utility Company installed this electric line in 1969 and has operated and maintained the electric line in the same place, and in plain sight, continuously for the last 28 years under the assumption that ABC Utility Company has a right to operate and maintain the line on the land.

5. Both poles have metal tags on them with the date "1969," which indicates the year that the poles were installed.

Mary B. Smith

Signed and sworn to before me in Wayne County, Michigan on January 29, 1999.

Notary's Stamp: _____

Notary's Signature: _____

(Notary's name, county, and date commission expires)

Example Proof of Service of a Motion (based on SCAO Form MC 302— Proof of Mailing)

Note: For proof of service of a summons or a subpoena, you must use the form on the back of the document. The following proof of service applies only for a motion.

Proof of Service

On the date below, I sent by first-class mail a copy of Request for Hearing, Notice of Hearing, Motion for Summary Disposition, Brief in Support of Motion for Summary Disposition, and Sworn Statement in Support of Motion for Summary Disposition to James Johnson, 2189 South Street, Kalamazoo, Michigan, 49327.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: _____

Signature: _____

Name: _____

Example Stamp for Proof of Service of a Motion

Proof of Service

I sent by first-class mail a copy of this document to the attorneys of record in this case on _____

I declare that the statements above are true to the best of my information, knowledge, and belief.