

Plain Language in Laws

By George H. Hathaway

Laws consist of resolutions, statutes, and rules. 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. And we ask them to join us to work in an organized way from within the system to eliminate legalese. Many of the members of our subcommittees are former Clarity Award winners.

Third, our subcommittees find clear examples of laws and give them Clarity Awards. We give our awards to documents that are significantly clearer than usual documents of that kind.

And fourth, we promote our Clarity Award documents as good examples to follow. See our examples at the end of this article. Some of our examples are Clarity Award documents. Other examples are based on Clarity Award documents that we have edited somewhat. We don't claim perfection—only progress.

Clear Writing

We use guidelines for clear writing that have been prepared by the two legal-writing teachers on our Plain English Commit-

"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 Laws and the People Who Write Them

Types of Documents	Written by and published in
1a. State Resolutions	By: 110 representatives (11 lawyers), 38 senators (5 lawyers), and Clerks of House and Senate. In: daily House and Senate Journals. www.michiganlegislature.org (under Journals).
1b. City Resolutions	By: city councils and city attorneys who are members of the Michigan Municipal League (representing 270 cities, with offices in Ann Arbor). In: <i>City of Detroit: Journal of the City Council</i>
1c. Township Resolutions	By: township boards of trustees and township attorneys who are members of the Michigan Townships Association (representing 1,242 townships, with offices in Lansing). In: not published.
2a. State Statutes	By: Legal Division (Carol Cousineau, Director) of Legislative Service Bureau (22 lawyers). In: <i>West's Michigan Legislative Service</i> (every 2 months); <i>Public and Local Acts of Michigan</i> (yearly). www.michiganlegislature.org .
2b. City Ordinances	By: same as city resolutions. In: City Codes (compilation of ordinances by subject).
2c. Township Ordinances	By: same as township resolutions. In: separately printed; most common example is a zoning ordinance.
3. State Administrative Rules	By: 16 departments of state government (each with 1 Regulatory Affairs Officer) and Legal Editing Division (Roger Peters, Director) of Legislative Service Bureau (1 lawyer). In: <i>Michigan Register</i> (monthly); <i>Michigan Administrative Code Supplement</i> (yearly). www.migov.state.mi.us/rules/orr .

tee—Joe Kimble and Diana Pratt: Kimble's 36 elements of plain English [Plain English: A Charter for Clear Writing (Part Two), 71 *Mich B J* 1190 (November 1992)] and Pratt's *Legal Writing: A Systematic Approach* (3rd edition). But this is a lot to bring to bear on a law. Therefore, for practical reasons, we have summarized what we believe are the worst elements of bad legal writing. We call them "basic elements of unclear writing," which we separate into "legalese" and "legalese compounded." See Figures 1 and 2.

Below are our example resolutions, statute, and rule.

Examples:

Example State Resolution— 1995 H.R. 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 behind their homes and families and all they hold dear to serve on foreign shores or to be prepared to defend our own land.

Table 2—Subcommittee on Resolutions

Nick Ciaramitaro	Former member of the Michigan House of Representatives. In December 1979, he introduced two bills into the state legislature. One bill required plain English in insurance contracts, and the other bill required plain English in consumer contracts. In 1990, he succeeded in passing the bill that requires plain English in insurance contracts (1990 PA 305, MCL 500.2236; MSA 24.12236; effective January 1, 1992).
Pat McAvoy	Director of Legislative Affairs of the Michigan Townships Association.
Karen McDonald-Lopez	Chief Legal Officer of City of Flint.
Mary Kay Scullion	Former Clerk of the Michigan House of Representatives.
Bill Steude	Of Counsel to the Michigan Municipal League.
Karen Willard	Former member of the Michigan House of Representatives and former legal-writing instructor at University of Detroit-Mercy Law School. Succeeded in publishing a resolution in the House Journal that did not begin with the unnecessary legalese <i>Whereas</i> .

Table 3—Subcommittee on Statutes and Ordinances

Carol Cousineau	Director of Legal Division of Legislative Service Bureau (the head of the group of lawyers who help the legislators write Michigan statutes).
Pat McAvoy	Director of Legislative Affairs of the Michigan Townships Association.
Karen McDonald-Lopez	Chief Legal Officer of City of Flint.
Bill Steude	Of Counsel to the Michigan Municipal League.

Table 4—Subcommittee on Rules

Roger Peters	Director of Legal Editing Division of Legislative Service Bureau (the head of the group of lawyers who edit the rules that are written by the 16 agencies of state government).
Mike Zimmer	Director of the Office of Regulatory Reform of the Governor's Office

They unselfishly put everything on the line in our behalf, often sacrificing their health in the process. Others, more fortunate, returned to civilian life unimpaired, but are now facing the prospects of failing health due to aging. Clearly, these men and women deserve the highest quality health care available.

In the five-county area comprising Macomb, St. Clair, Sanilac, Lapeer, and Huron Counties, there are approximately 115,000 resident veterans. These citizens must travel distances of up to 120 miles to seek medical treatment to which they are entitled under the Code of Federal Regulations.

The veterans who live in this five-county area in Michigan's Thumb have established

the Five County Veterans Committee and charged the committee with the task of urging the federal government to become more responsive to the needs of local veterans. The committee supports the establishment of an outpatient clinic, operated by the Department of Veterans Affairs, in Yale, Michigan. This location would greatly enhance health care options for local veterans and would also provide for economic growth within the community.

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.

**Example City Resolution—
based on a City of Flint Resolution
Resolution Approving the Fair-Housing
Study and Action Plan entitled
“Analysis of Impediments to
Fair Housing in Genesee County,
including the City of Flint”**

BY THE MAYOR:

The U.S. Department of Housing and Urban Development requires all Community Development grantees, as part of the consolidated plan, to certify and document that they will affirmatively further fair housing.

In response to a need to analyze fair-housing practices in the City of Flint and Genesee County, efforts were combined to complete a study called “Analysis of Impediments to Fair Housing in Genesee County, including Flint.”

The City of Flint wishes to approve this study and action plan, which is available for review in its entirety through the City of Flint’s Human Services Department. An executive summary of the study and action plan is attached to this resolution.

IT IS RESOLVED that the City of Flint and the Flint City Council approve the fair-housing study and action plan entitled “Analysis of Impediments to Fair Housing in Genesee County, including the City of Flint.”

Approved as to Form:

**Karen McDonald Lopez
Chief Legal Officer**

**Example State Statute—
based on 1996 P.A. 193**

Sec 3 (1) Subject to Section 5, an individual who is 18 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 or older may execute a do-not-resuscitate order on behalf of that individual.

(2) An order executed under this section must be on a form described in section 4.

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Figure 1—Basic Elements of Unclear Writing

Legalese	Legalese Compounded
1. Formalisms such as <i>Whereas</i>	1. Long average sentence length
2. Archaic words such as <i>hereby</i>	2. Weak passive-voice verbs—see Figure 2
3. Redundancies such as <i>any and all</i> instead of <i>any</i>	3. Wordy phrases such as <i>prior to</i> instead of <i>before</i>

Figure 2—Combinations of Active/Passive Voice and Strong/Weak Verbs

	Active Voice	Passive Voice
Strong Verb	judges <u>decide</u> cases	cases <u>are decided by</u> judges
Weak Verb with <i>nominalization</i> (noun made from verb)	judges <u>make</u> <i>decisions</i> on cases	<i>decisions</i> on cases <u>are made</u> by judges

The order must 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 is acting as directed by the declarant.
 - (b) The declarant's attending physician.
 - (c) Two witnesses 18 or older, at least 1 of whom is not the declarant's spouse, parent, child, grandchild, sibling, or presumptive heir.
- (3) The names of the declarant, the attending physician, and each witness must be printed or typed below the corresponding signatures. A witness may sign an order only if the declarant appears to be of sound mind and under no duress, fraud, or undue influence.

(4) At any time after an order is signed and witnessed, the declarant or an individual designated by the declarant may apply an identification bracelet to the declarant's wrist.

(5) A declarant who executes an order under this section must maintain possession of the order and must have it accessible within his or her place of residence or in another setting outside a hospital, a nursing home, or a mental-health facility owned or operated by the Department of Community Health.

**Example State Administrative Rule—
based on R 474.55**

R474.55 Appeal to panel.

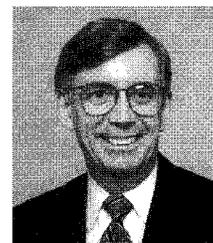
Rule 5. (1) To contest the committee's decision not to prequalify a prospective

bidder, the prospective bidder must submit a written appeal to the administrator. The appeal must be received within 10 days after the prospective bidder has been notified of the committee's decision. The appeal must state why the prospective bidder disputes the decision and must supply any supporting documents needed to substantiate the prospective bidder's claims.

(2) The administrator must assemble and submit all relevant information to a panel. The information must include the committee's decision and the material and information submitted by the prospective bidder.

(3) The panel must review the information, conduct any further inquiry or review that the panel considers appropriate, and decide the issue. The panel may invite the prospective bidder to meet with the panel to provide further explanation.

(4) The deputy director must notify the prospective bidder and other appropriate persons, in writing, of its decision as soon as reasonably possible after the appeal is received and the information necessary to decide the appeal is assembled. ■



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.