



Washington State Pattern Forms Committee

GOAL: To Create Consistent Documents And Forms Using Standardized Language And Formatting For Ease Of Use And Maintenance

STYLE SHEET, PLAIN LANGUAGE, AND GENDER-NEUTRAL DRAFTING TOOLS

Last Updated September 22, 2020

1.

STYLE RULES FOR MANDATORY FORMS

[Format and Style Rules for Mandatory Forms Developed Pursuant to RCW 26.18.220 \(as of May 2016\)](#)

➤ **Form and Pleading Standards for Family Law**

The following standards apply to written forms, to printed forms, and to the electronic reproduction of forms and pleadings required by RCW 26.09.006, RCW 26.10.015 and RCW 26.26.065.

1. **Required Format Standards**

The format standards in this section are required for all forms, pleadings, motions, and other papers filed with the court pursuant to GR 14. The rule applies to all proceedings in all courts of the state of Washington unless otherwise specifically indicated by court rule.

❖ **Paper Size**

Paper size is 8-1/2" x 11".

❖ **Writing or Printing**

Forms and pleadings must be legibly written or printed on one side of each page only.

❖ **Font**

- **Font:** Forms and pleadings must be printed in standard text fonts. Use a Sans Serif font, such as Arial.
- **Font size:** Use the following fonts sizes for the:
 - caption: 11 or 12 point font, as explained in **3**, below;
 - form title repeated immediately below the caption: 15 - 16 point font, as explained in **4**, below;
 - section headings: bold, 12 point font;

	<ul style="list-style-type: none">○ section text: 11 or 12 point font;○ footers: 9 point font. Other point sizes may be used for footers so long as the footers are legible when faxed, photocopied or scanned. <ul style="list-style-type: none">▪ <i>Text enhancement:</i> Bold, underlined, and italicized type are acceptable where appropriate.
<p>Format and Style Rules for Mandatory Forms Developed Pursuant to RCW 13.34.035 (as of June 2010)</p>	<p>I. Use of Pleadings and Forms not Developed by the Administrative Office of the Courts</p> <p>Pleadings and forms, other than those developed by the Administrative Office of the Courts, may be submitted to the court provided:</p> <ul style="list-style-type: none">(A) The pleading or form is authorized under civil rules or statute (e.g., interrogatories and subpoenas, declarations of parties, etc.);(B) A pleading or form for a similar purpose or hearing is not included in the mandatory forms developed by the Administrative Office of the Courts; and(C) The pleading or form complies with the format standards and rules set forth below and the caption of the form or pleading contains the notation "No Mandatory Form Developed." <p>II. Form and Pleading Standards</p> <p>The following standards apply to written forms, to printed forms and to the electronic reproduction of forms and pleadings required by RCW 13.34.035.</p> <p>(A) Required Format Standards</p> <p>The format standards in this section are required for all forms, pleadings, motions and other papers filed with the court pursuant to GR 14. The rule applies to all proceedings in all courts of the state of Washington unless otherwise specifically indicated by court rule.</p> <ul style="list-style-type: none">(1) Paper Size <p>Paper size is 8-1/2" x 11".</p> <ul style="list-style-type: none">(2) Writing or Printing

	<p>Forms and pleadings shall be legibly written or printed on one side of each page only. Forms and pleadings shall be printed in standard text fonts. For captions and paragraph headings, use a Sans Serif font, such as Arial, in bold, 10, 11, or 12 point font. For the text, use a Sans Serif font, such as Arial, in 10, 11, or 12 point font. Other point sizes may be used for captions and footers so long as the captions and footers are legible when faxed, photocopied or scanned. Bold, underlined and italicized type is acceptable where appropriate.</p>
2.	Court Rules Related to Format Requirements
<u>GR 14</u>	<p>(a) Format Requirements. All pleadings, motions, and other papers filed with the court shall be legibly written or printed. The use of letter-size paper (8-1/2 by 11 inches) is mandatory. The writing or printing shall appear on only one side of the page. The top margin of the first page shall be a minimum of three inches, the bottom margin shall be a minimum of one inch and the side margins shall be a minimum of one inch. All subsequent pages shall have a minimum of one inch margins. Papers filed shall not include any colored pages, highlighting or other colored markings. This rule applies to attachments unless the nature of the attachment makes compliance impractical.</p>
3.	The Redbook, A Manual On Legal Style (examples <i>only</i> attached)
4.	Use of NACM Plain Language Guide Pursuant to 2019 COSCA/CCJ adoption of Resolution 5
5.	Committee Formatting Decisions with Global Form Implications (not complete)
May 19, 2020 Meeting	<p>1) Multiple form sets: Remove all RCW references for intimate partner definition. 2) For plain language purposes, footnotes are discouraged. 3) Possibly decided earlier, but not yet memorialized: Add “Need an Interpreter” section when amending orders.</p>
	<p>1) Publication to website will include a copy in WORD and .pdf based on a comment related to the subscription required for access to WORD software.</p>

6.	Memorialization of Subcommittee Decisions (not complete)
Protection Order Subcommittee	Next Hearing Date will be put at the front of form based on comment submitted.
7.	Plain Language and Gender Neutral Drafting Resources
August 2020	Transcend - Comparative Readability Study of Plain Language Court Forms, Transcend Training Video, A Video on the singular use of “They”.
April 2020	Family Law Subcommittee – Draft Template.
Spring 2020	<i>Gender-Silent Legislative Drafting in a Non-Binary World</i> , 16 CAP. U.L. REV. 103 (Spring, 2020). From the article: <i>To account for non-binary genders, we propose an all-inclusive legislative drafting style that we call “gender-silent legislative drafting,” and we discuss its definitional, drafting, policy, and political implications.</i>
	Use of the “they” as a nonbinary pronoun: Articles: https://www.merriam-webster.com/words-at-play/singular-nonbinary-they ; https://style.mla.org/using-singular-they/ ; https://owl.purdue.edu/owl/general_writing/grammar/pronouns/gendered_pronouns_and_singular_they.html ; https://meledits.com/ap-chicago-manual-style-approve-singular/ ; https://www.latimes.com/local/readers-rep/la-rr-lgbtq-guidelines-updated-20170417-story.html
8.	Access to Justice Technology Principles

The Redbook

A Manual on Legal Style

FOURTH EDITION

"Excellent sections on grammar and punctuation, both filled with legal examples to help the reader understand the rules."

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§
Punctuation
Capitalization
Italics & Boldface
Document Design
Numbers & Symbols
Spelling
Quotations
Citations
Footnotes
Grammar
Legalese
Word Usage
Editing & Proofreading
Legal Documents
Sample Documents
Scholarly Writing

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Bryan A.
Garner

The Redbook

A
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on
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FOURTH EDITION

By Bryan A. Garner

EDITOR IN CHIEF
BLACK'S LAW DICTIONARY

The acknowledged authority for legal writers.

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with

Jeff Newman
Tiger Jackson

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 - (c) Writing without reading the case thoroughly 391
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Fonts

4.3 Choose a readable font appropriate for the document.

- (a) *Definitions.* Fonts, traditionally called *typefaces* in printing, fall into three general categories: serif, sans serif (pronounced /**sanz sehr-if**/), and decorative. The letters of a serif font, such as the one used here, feature “feet” and other finishing strokes that make the type more readable. Researchers into readability find that the serifs subtly add to letters’ distinctive shapes and also connect letters to give words recognizable looks. That’s why almost every book and magazine publisher uses a serif font in body text. The letters of sans-serif type, such as that used in this book for examples and bold headings, have no such finishing strokes (*sans serif* simply means “without serifs”). Sans-serif type is considered more legible than serif type in single lines of type and in very short passages. It is appropriate in some headings and such callout graphics as pull quotes. It is also traditional in small sizes for classified ads and tabular matter such as stock prices and sports scores. For body text, however, serif fonts have traditionally been considered the better choice, especially for longer documents. Decorative fonts such as scripts, Old English, and fanciful faces serve a purpose in ads, posters, and the like, but they have no place in office documents. Keep it simple.

Exx. (serif):	Times New Roman	Garamond
Exx. (sans serif):	Arial	Gill Sans
Exx. (decorative):	MONTREY	Comic Sans

- (b) *Variations.* Typewriters once limited options for office documents: a legal writer could emphasize words only by underlining or capitalizing. Computers allow writers to change font size on the fly and choose the *italic*, **bold**, or **bold italic** version of most fonts. But you must use these tools with care, choosing an appropriate type style and using a variation only when it serves a good purpose. In general, use italics in text for special uses and boldface in headings to make them stand out from the text.

“In the old days, you didn’t have to spend much time designing your documents because all you had to work with was the Courier typeface. Paragraph indentations and margin widths were your only formatting concerns. But now that word-processing packages are becoming more like desktop-publishing software, expectations are higher.”

—Catherine Kenny

- (c) *Courier*. The typewriter-style font Courier is *monospaced*, so that every letter takes the same amount of horizontal space, whether it's a lowercase *i* or a capital *W*. The visual effect is cruder than that of a proportionally spaced font—which explains why no publisher today would print a book with it. A proportionally spaced font such as Garamond or Palatino or Century Schoolbook is easier to read because the words form more recognizable units. These fonts allow more words to fit comfortably on a line, and therefore on a page, than Courier does (compare the type samples below). The only reason to use Courier today is that the judge to whom your document is addressed prefers the old typewriter style, as some do.

Ex.: This is set in 12-point Garamond.

Ex.: This is set in 12-point Palatino.

Ex.: This is set in 12-point Century Schoolbook.

Ex.: This is set in 12-point Courier.

4.4 Never use more than two fonts in a document.

- (a) *Mixing styles*. A serif font is the better choice for body text because it enhances readability. For body text, stick to a single font throughout the document, using its italic variation appropriately but sparingly. For headings, a bold sans-serif font can provide more contrast with the body text and help make headings stand out.

Ex.: (both heading and body text in Times New Roman, a serif font):

STANDARD OF REVIEW

All the issues raised by this appeal are matters of law, to be reviewed de novo.

Ex.: (heading in Arial, a sans-serif font, and body text in Times New Roman, a serif font):

STANDARD OF REVIEW

All the issues raised by this appeal are matters of law, to be reviewed de novo.

- (b) *Ransom-note effect*. Having too many different fonts on a page produces a piecemeal, cut-and-paste appearance that becomes distracting. In the example below, the heading is in Arial Bold, the body text in Times New Roman, and the quotation in Garamond Italic.

Not This: **History of the Boundary Line**

The boundary of the property in issue was established more than 250 years ago. By royal decree in 1740, King George II of England declared:

That the Dividing Line shall pass up thro the Mouth of Piscataqua Harbour and up the Middle of the River . . . And that the Dividing Line shall part the Isles of Shoals and run thro the Middle of the Harbour between the Islands to the Sea on the Southerly Side . . .

Even though the United States achieved independence a few decades later, the courts have continued to recognize royal land grants in the chain of title.

But This: **History of the Boundary Line**

The boundary of the property in issue was established more than 250 years ago. By royal decree in 1740, King George II of England declared:

That the Dividing Line shall pass up thro the Mouth of Piscataqua Harbour and up the Middle of the River . . . And that the Dividing Line shall part the Isles of Shoals and run thro the Middle of the Harbour between the Islands to the Sea on the Southerly Side . . .

Even though the United States achieved independence a few decades later, the courts have continued to recognize royal land grants in the chain of title.

4.5 Use an appropriate type size.

- (a) *Readability.* Although many readers say that they prefer 12-point type, it is somewhat small for full-width lines of type on an 8½-by-11-inch page with margins of one inch or so. If you have a choice, use 13- or 14-point type instead. The national standard for federal appellate briefs is 14-point type (*see* Fed. R. App. P. 32(a)(5)). For headings, 14-point type is acceptable, but anything larger seems loud and aggressive. On the other hand, anything smaller than 10-point type looks like the proverbial “fine print,” designed *not* to be read—unless you’re working in a double-column format.

Ex.: **This Heading Shouts!** (16 point)

Ex.: **This heading is about right.** (14 point)

Ex.: **This is the standard text size.** (13 point)

Ex.: This type size is too small for full-width pages. (9 point)

Ex.: This fine print says, “Please don’t read me.” (7 point)

“For large areas of text, it is usually better to use a serif type (that is, a type with tiny strokes or projections at the end of most of the letters). The serifs guide the eye horizontally and put light and shade on the page because the letters have thick and thin strokes. Serif types tend to look authoritative, classical, and official . . . The sans-serif types (types without serifs) tend to be more useful as headings and in forms, catalogues, and flyers.”

—*Martin Cutts*

- (b) *Size.* Fonts vary in apparent size, even if they're the same point size (see examples below). The difference is the *x-height* (referring to the lowercase *x*)—that is, the size of the middle zone of the letters. With two similar fonts, the one with the larger *x-height* is generally easier to read at small sizes, while the one with the smaller lowercase letters generally fits more characters on a line. Fonts also vary in how condensed the letters are. If you need to fit more text into a document, and if court rules permit, try changing the font.

Ex.: This is set in 13-point Garamond.

Ex.: This is set in 13-point Times New Roman.

Ex.: This is set in 13-point Palatino.

- (c) *Headings.* The best practice is the easy one: adhere to one type size throughout the document. Main headings may be set in a slightly larger point size than text, but never larger than 14 point. Subheadings should be the same size as the text; if they are bold and in a contrasting font, they may even be slightly smaller. See 4.21.
- (d) *Page numbers.* For most legal documents, page numbers should appear either centered about half an inch from the bottom of the page or flush right about half an inch from the top of the page. Set them in roman type, in the same font and size as the body text. Generally, no page number should appear on the first page unless the document has a table of contents or begins with Roman-numeral pages.

White Space

4.6 Use white space purposefully.

- (a) *Definition and purpose.* White space is all the area on a page where no words appear. It includes not only the page margins but also the extra space around headings, block quotations, bulleted items, and other typographical devices that distinguish some things from the body text. (For this purpose it doesn't include the blank lines of double-spacing.) Meaningful white space enhances a document's appearance and readability.
- (b) *Focal point.* White space directs the reader's eyes and gives them logical resting places. It works well in conjunction with appropriate headings to show readers the different sections of your document and how they fit together.

“If you see errors in form, look for errors in content.”

—Konstantin Fedin

- (c) *Contrast.* The empty space between text elements (headings, paragraphs, lists, and the like) separates the elements and makes them easier for the reader to distinguish. A little extra spacing between groups of text elements helps readers distinguish the different parts of the whole document and enhances its organization.
- (d) *Comprehension.* Just as a long sentence or a long paragraph is difficult to read, so too is a long block of text. By using white space and subheadings to break up copy into smaller chunks, you can help your readers absorb the information better.

4.7 Leave a little more room in your margins than you're required to.

- (a) *Readability.* When a court rule sets a margin width (e.g., one inch on all sides), the specified width is usually a minimum and not an absolute width. Greater margins enhance readability by creating more white space and preventing lines from becoming too long. Unless a rule disallows it, use 1.1-inch margins for 14-point type, or 1.3-inch margins for 13-point type.
- (b) *Convenience.* Larger margins allow space for readers to make notes alongside the text. Some readers will appreciate the extra space. Also, photocopying tends to enlarge the text slightly—and therefore to shrink the margin. So the larger margins are especially important in a document to be photocopied.
- (c) *Extra space at bottom.* When margins are equal on all four sides, the text may appear to slide down the page. Making the bottom margin a little bigger than the side margins avoids this effect.
- (d) *Inside gutters.* If the document will be bound, add an extra half-inch to the appropriate margin. If the document is printed on one side of the paper only, add the extra space to the left side of each page. If the document is printed double-sided, add the extra space to the inside margin.

4.8 Use initial indents of a quarter of an inch or so; use the tab key or automatic paragraph formatting to keep them consistent.

- (a) *Purpose.* Indents add white space and give shape and definition to a paragraph (see 4.14). They also make lists, long quotations, and other elements stand out better.
- (b) *Width of indents.* An odd custom in legal writing is the use of an extremely wide paragraph indent, sometimes starting the first line nearly halfway across the page. Don't follow this weird practice. The wide indents serve no function and are unattractive. Indent the first line of paragraphs no more than half an inch, the default on word processors.

- (c) *Block quotations.* Block quotations must have a left-margin indent. Unless they appear in a narrow column of type, they should also have a right-margin indent.
- (d) *Uniformity.* Use the tab key, the indent function, or automatic paragraph formatting to keep indents uniform (see 4.15). With most fonts, the spacebar produces variable-width spaces, which can lead to alignment problems.

4.9 Use hanging indents on contracts, statutes, and other documents with numbered and lettered subparts.

- (a) *Definition.* The paragraph style called *hanging indents* uses a full-spaced first line and left indents on all other lines. In a bulleted or numbered list, the beginning of the text on the first line will align with the left margin of the other lines. For an example of hanging indents, see 4.9(c).
- (b) *Purpose of hanging indents.* Progressive indents on the left side neatly display the interrelationship of parts and subparts.
- (c) *Length of indents.* To make this convention work, create small indents equivalent to only a space or two. This way, the progressive indents won't move so far to the right that too few characters will fit on a line.

- Ex.: (B) Under the Equal Credit Opportunity Act, a creditor's notification of adverse action must include:
- (1) a statement of the action taken;
 - (2) notice of the provisions of the ECOA;
 - (3) the name and address of the federal agency that regulates compliance; and
 - (4) either:
 - (a) a statement explaining why the action was taken; or
 - (b) notification of the applicant's right to receive such a statement.

- (d) *Examples.* For examples of the orderly appearance created by hanging indents in transactional documents, see § 27.

"I'm not here to tell you that typography is at the core of a lawyer's work. It's not. But typography can optimize that work. All writing necessarily involves typography. And good writing is part of good lawyering. So good typography is, too. If you ignore typography, you are ignoring an opportunity to improve both your writing and your advocacy."

—Matthew Butterick

A Sample Redesign: The *Before* Version (page 1)

Nondisclosure and Confidentiality Agreement

This Nondisclosure and Confidentiality Agreement (the "Agreement"), effective as of _____, 20____, is between Johnsonius Enterprises, Inc. (the "Company"), a California corporation, and _____, whose address is _____ (the "Recipient").

It is intended to protect confidential information in the Company's possession from being disclosed by the Recipient.

Background

The Company and the Recipient are considering entering into a business relationship for their mutual benefit. In consideration of the possibility of this relationship, the Company will disclose certain proprietary information about its business so that the two parties may assess whether such a relationship would be to their mutual benefit. To induce the Company to disclose sufficient information, the Recipient undertakes the nondisclosure duties outlined below.

Terms and Conditions

1. Limitations

- 1.1 Unprotected Information. The Recipient has no obligation to protect information that:
 - (A) was known or available to the Recipient before this Agreement without breach of a duty of confidentiality by the Recipient or a third party;
 - (B) is or becomes available to the public, other than by breach of this Agreement; or
 - (C) becomes known to the Recipient by a third party without restrictions as to disclosure.

A Sample Redesign: The *After* Version (page 1)

Nondisclosure and Confidentiality Agreement

This Nondisclosure and Confidentiality Agreement (this “Agreement”), effective as of _____, 20__, is between Johnsonius Enterprises, Inc. (the “Company”), a California corporation, and _____, whose address is _____ (the “Recipient”). It is intended to protect confidential information in the Company’s possession from being disclosed by the Recipient.

Background

The Company and the Recipient are considering entering into a business relationship for their mutual benefit. In consideration of the possibility of this relationship, the Company will disclose certain proprietary information about its business so that the two parties may assess whether such a relationship would be to their mutual benefit. To induce the Company to disclose sufficient information, the Recipient undertakes the nondisclosure duties outlined below.

Terms and Conditions

1. Duty Not to Disclose Confidential Information

- 1.1 **Recipient’s Duty.** The Recipient must use its best efforts in taking precautions to safeguard the Confidential Information, including all precautions that the Company may, in its sole discretion, request. The Recipient may use Confidential Information only for the purposes contemplated by this Agreement. Before the Recipient discloses Confidential Information to any employee, the employee must first sign a nondisclosure agreement identical to the one in Schedule A.

Note that in the original, this critical provision appeared in § 3.3: the improved formatting entailed improving the organization.

A Sample Redesign: The *Before* Version (page 2)

1.2 Disclosure Required by Law. The Recipient may disclose Confidential Information to the extent required by law. But the Recipient must give the Company prompt written notice of the required disclosure and make a reasonable effort to avoid disclosure by seeking a protective order.

2. Nature of Relationship. The Recipient has no obligation to disclose any Confidential Information. This Agreement grants no rights of ownership, licenses, or any other intellectual-property rights. This Agreement does not create any agency, partnership, joint venture, or other business relationship.

3. Duty Not to Disclose Confidential Information

3.1 The Meaning of "Confidential Information." As used in this Agreement, "Confidential Information" means all proprietary information related to the Company, including:

- (A) trade secrets and other intellectual property;
- (B) financial information and pricing;
- (C) technical information, including research, development, procedures, algorithms, data, designs, and know-how;
- (D) business information, including operations, planning, marketing interests, and products;
- (E) information collected or developed by the Company regarding its customers; and
- (F) the terms of any agreement between the Company and the Recipient and the discussions, negotiations, and proposals related to that agreement.

3.2 Standard of Care. The Recipient must protect the Confidential Information from both unauthorized use and unauthorized disclosure by exercising the same degree of care that the Recipient uses with respect to information of its own of a similar nature, except that the Recipient must at least use reasonable care.

A Sample Redesign: The *After* Version (page 2)

- 1.2 The Meaning of “Confidential Information.”** As used in this Agreement, “Confidential Information” means all proprietary information related to the Company, including:
- (A) trade secrets and other intellectual property;
 - (B) financial information and pricing;
 - (C) technical information, including research, development, procedures, algorithms, data, designs, and know-how;
 - (D) business information, including operations, planning, marketing interests, and products;
 - (E) information collected or developed by the Company regarding its customers; and
 - (F) the terms of any agreement between the Company and the Recipient and the discussions, negotiations, and proposals related to that agreement.
- 1.3 Standard of Care.** The Recipient must protect the Confidential Information from both unauthorized use and unauthorized disclosure by exercising the same degree of care that the Recipient uses with respect to information of its own of a similar nature, except that the Recipient must at least use reasonable care.
- 1.4 Protection Period.** The Recipient must protect the Confidential Information for two years from the last date that the Recipient received Confidential Information.
- 2. Representatives.** The parties’ representatives for disclosing or receiving information are:
- Company: Jeffrey A. Gurlich
- Recipient: _____

A Sample Redesign: The *Before* Version (page 3)

- 3.3 Recipient's Duty. The Recipient must use its best efforts in taking precautions to safeguard the Confidential Information, including all precautions that the Company may, in its sole discretion, request. The Recipient may use Confidential Information only for the purposes contemplated by this Agreement. Before the Recipient discloses Confidential Information to any employee, the employee must first sign a nondisclosure agreement identical to the one in Schedule A.
- 3.4 Protection Period. The Recipient must protect the Confidential Information for two years from the last date that the Recipient received Confidential Information.
4. Representatives. The parties' representatives for disclosing or receiving information are:
- Company: Jeffrey A. Gurlich
Recipient: _____
5. Publicity. The Recipient must not, without the Company's prior written consent, make any news release, public announcement, denial, or confirmation of this Agreement or its subject matter.
6. Right to Enjoin Disclosure. The Recipient's unauthorized disclosure or use of Confidential Information may result in irreparable harm. The Company may therefore seek a temporary restraining order and other injunctive relief to protect its Confidential Information. The Recipient will not raise the defense of an adequate remedy at law. This provision does not alter any other remedies available to either party.

A Sample Redesign: The *After* Version (page 3)

3. Limitations

3.1 Unprotected Information. The Recipient has no obligation to protect information that:

- (A) was known or available to the Recipient before this Agreement without breach of a duty of confidentiality by the Recipient or a third party;
- (B) is or becomes available to the public, other than by breach of this Agreement; or
- (C) becomes known to the Recipient by a third party without restrictions on disclosure.

3.2 Disclosure Required by Law. The Recipient may disclose Confidential Information to the extent required by law. But the Recipient must give the Company prompt written notice of the required disclosure and make a reasonable effort to avoid disclosure by seeking a protective order.

- 4. Nature of Relationship.** The Recipient has no obligation to disclose any Confidential Information. This Agreement grants no rights of ownership, licenses, or any other intellectual-property rights. This Agreement does not create any agency, partnership, joint venture, or other business relationship.
- 5. Publicity.** The Recipient must not, without the Company's prior written consent, make any news release, public announcement, denial, or confirmation of this Agreement or its subject matter.
- 6. Right to Enjoin Disclosure.** The Recipient's unauthorized disclosure or use of Confidential Information may result in irreparable harm. The Company may therefore seek a temporary restraining order and other injunctive relief to protect its Confidential Information. The Recipient will not raise the defense of an adequate remedy at law. This provision does not alter any other remedies available to either party.

§ 12

Stuffy Words and Legalese

12.1 Just because you know what *malum prohibitum* means or what a *habendum clause* does is no reason to use such language at the dinner table. A lawyer should keep in mind that the purpose of communication is to communicate, and this can't be done if the reader or listener doesn't understand the words used.

Some lawyers also tend to use words in peculiar ways, using *same* as a pronoun <plaintiff accepted the deed and signed *same*> and *said* as an adjective <driver struck *said* pedestrian>. Some pepper contracts and resolutions with *whereases* and *wherefores*. Harsher critics suggest that the impenetrable language serves the same purpose that mumbo-jumbo always has: to keep the public in the dark and protect a trade monopoly. Less severe critics chalk it up to professional inertia.

Fortunately, the trend today is toward plain language and away from the stuffiness and jargon-laced prose that characterized so much legal writing in the past. It's a welcome trend, and one that writing coaches universally encourage.

12.2 Use the simplest, most straightforward words that you can.

- (a) *Plain English*. Language lovers often go through predictable phases of growth: first learning exotic new words and later avoiding them in favor of plain and clear terms. Using simple words and phrases instead of stuffy ones results in a more natural style.
- (b) *Simple substitutes*. Choose simple words over fancy ones. Below is a necessarily limited list of dressed-up words and their simpler alternatives.

Instead of this:

abutting
accede to
accordingly
acquainted with
acquire
additional
adjacent to
administer (medicate)
administer
advantageous
advert to
advise
afford
all or part

Try this:

next to
allow; grant
so
know
get
more; extra; added; other
next to
give
run; operate; manage; handle
useful; helpful
refer to; note
tell [unless you're giving advice]
allow
any; some or all

Instead of this:

alter
ameliorate
apparent
appellation
append
approximately
ascertain
assist; assistance
attain
attempt
attributable to
augment; augmentation
authored
automobile
cognizant
commence
comment
conceal
concept
concerning
condign
conflagration
conjecture
consequently
constitute
consummate
contiguous to
contumacious
converse
couched
demonstrate
desideratum
deteriorate
determine
dichotomy
directive
disadvantage
discontinue
divers
domesticate
dwell
dynamic
educator
elapse
elect to
elucidate

Try this:

change
improve
plain
name
add; attach; enclose
about
find out; make sure
help
reach; get; win; make
try; seek
because of
increase
wrote
car
aware
start; begin
say
hide
idea; plan
on; about; for
fitting; deserving
fire
guess
so; thus
make up; form; be
utmost; best; top
next to
contemptuous
talk
phrased
show
wish; aim; goal
get worse; run down
decide
split
order
drawback
stop
various; several
tame
live
forceful
teacher
pass; go by
choose to
explain

Instead of this:

emphasize
 endeavor
 enthused
 envisage
 equanimity
 erroneous
 erstwhile
 eschew
 essayed
 eventuality
 eventually
 evidencing
 evince
 examination
 exceedingly
 excessively
 exclusively
 expenditure
 experiment
 extended
 extinguish
 facilitate
 favorable
 following
 fore
 forward
 frequently
 fundamental
 furthermore
 gainsay
 gratuitous
 impact
 implement
 inaugurate
 inception
 incongruous
 inconsiderable
 indebtedness

Try this:

stress; point out; highlight
 try
 enthusiastic; excited
 foresee; see; predict; look for
 poise
 wrong; incorrect; mistaken
 former; formerly; once; one-time
 avoid
 tried; did
 event; possibility
 in the end
 showing
 show
 exam; test; check; checkup
 highly
 too; unduly
 only
 cost; expense; payment
 test
 long
 put out
 help; ease; make easier
 good
 after
 beginning; front
 send
 often
 basic; main
 further
 deny
 needless; free
 affect; influence
 carry out; set up
 begin; start
 start; beginning
 unfitting; incoherent
 slight; small; little
 debt

“Simple prose is clear prose. And simple prose, if smooth and rhythmical, is readable prose. Let your ideas alone do the impressing. If they look banal to you, there’s only one remedy: upgrade them. Don’t try to camouflage their weakness with razzle-dazzle rhetoric. You’ll razzle-dazzle yourself right into a bog of bull.”

—*John R. Trimble*

Instead of this:

indicate
 indication
 indisposed to
 individual
 inform
 infringe on
 inimical
 initial
 injudicious
 instant [adj.]
 intimate [vb.]
 intransigence
 inundate
 inure (get used to)
 inure (of a benefit)
 kindly
 lengthy
 locality
 modify; modification
 multitudinous
 narrate
 necessitous
 nevertheless
 notwithstanding
 numerous
 obligate
 occupation
 occur
 odor
 oftentimes; ofttimes
 opportune
 *orientate
 originate
 outcome
 overall
 overly
 paradigm
 partially
 participate
 possibility
 practically
 precede
 predecease
 presently
 proceeded to (call)
 procure

Try this:

say; mention; write; hint; suggest
 sign
 reluctant to
 person
 tell
 infringe
 adverse; hostile
 first; early
 unwise
 this
 hint
 stubbornness
 flood
 adjust; accustom
 mature; vest
 please
 long
 place; town; city; village; county
 change
 many
 tell
 needy
 even so; still; but
 despite
 many
 bind
 job; work; business
 happen
 smell
 often
 convenient; handy; proper
 orient
 start; come from
 result
 whole; entire; total
 unduly; too
 model
 partly
 take part; go along; be one of
 chance
 almost; nearly
 go before; come before
 die before
 now; soon; in a moment
 called
 get

Instead of this:

prosecute (a business)
 purchase
 regarding
 relocate
 render
 request
 requisite
 reside
 residence
 respecting
 schism
 segment
 significance
 simultaneously
 subsequent
 subsequently
 substantial
 substantially
 supposition
 surmise
 susceptible of (a meaning)
 susceptible to (a threat)
 thrice
 transmit
 ultimately
 unto
 utilize
 vend
 wherewithal

Try this:

do; carry on; conduct (business)
 buy
 about
 move
 make; leave
 ask
 needed; required
 live
 house; apartment; address
 for
 split
 part
 meaning; point
 at the same time
 later
 later; after that; afterward; then
 large
 largely; much
 belief; thought; idea
 guess
 open to; capable of
 prone to; vulnerable to
 three times
 send
 in the end
 to
 use
 sell
 means; money; ability

- (c) *Paring down phrases.* By trimming your sentences you will make your prose tighter, more forceful, and more persuasive (see 14.3(e)). Wordy phrases are the biggest source of surplusage and can make your prose less clear, even confusing. For those reasons, these phrases are the first things to look for when you trim your drafts. Below are some common phrases used in legal writing and their simpler substitutions.

Instead of this:

acquire knowledge
 adequate number of
 a large amount of
 a large number of
 along the lines of
 am in receipt of
 append a signature to
 as a consequence of
 as a matter of fact

Try this:

learn
 enough
 a lot of; much
 many
 like; such as
 have
 sign
 because of
 in fact

Instead of this:

as a means of —ing
 a small amount of
 a small number of
 as previously stated
 as regards
 at all times
 at no time
 at that point in time
 at the place where
 at the present time
 at the time that
 at the time when
 at this juncture
 at this point in time
 because of the fact that
 be determinative of
 by means of
 by necessity
 by reason of
 by virtue of the fact that
 cause injury to
 commensurate with
 despite the fact that
 due to the fact that
 during such time as
 during the course of
 enclosed please find
 excessive amount of
 excessive number of
 for the purpose of —ing
 for the reason that
 for this reason
 have knowledge of
 in a — manner
 in accordance with
 in addition to
 inadequate amount of
 inadequate number of
 in an effort to
 inasmuch as
 in back of
 in conjunction with
 in connection with
 in excess of
 in favor of
 in furtherance of
 in lieu of

Try this:

to —
 some; a little
 a few
 again
 about
 always
 never
 then
 where
 now; today
 when; once
 when
 now
 now
 because; since
 determine
 by
 necessarily
 because of
 because
 injure
 equal to; appropriate for
 although
 because
 while
 while
 enclosed is/are; I enclose; here is/are
 too much
 too many
 to —
 because; since
 so; thus
 know
 —ly (with many adjectives)
 under; according to
 besides; plus
 too little
 too few
 to
 because; since
 behind
 with; along with
 regarding; about; for
 more than
 for
 furthering; to advance
 instead of

Instead of this:

in light of the fact that
 in order that
 in order to
 in proximity to
 in reference to
 in regard to
 in respect to
 in spite of the fact that
 in the amount of
 in the course of
 in the event of
 in the event that
 in the final analysis
 in the instant case
 in the nature of
 in the near future
 in the neighborhood of
 in the vicinity of
 is able to
 is applicable
 is authorized to
 is binding on
 is required to
 is unable to
 it is certain that
 it is probable that
 it would appear that
 make a decision
 make an inquiry
 make an observation
 make reference to
 notwithstanding the fact that
 notwithstanding the foregoing
 on a daily basis
 on behalf of
 on the ground that
 on the part of
 period of time
 pertaining to
 previous to
 prior to
 pursuant to
 reach a resolution
 subsequent to
 sufficient amount of
 sufficient number of
 take into consideration

Try this:

because; since
 so
 to
 near
 about
 about
 respecting
 although; though
 for
 while; during
 if
 if
 finally
 here; now
 like
 soon
 around
 near; around
 can
 applies
 may
 binds
 must
 cannot
 certainly; surely
 probably
 apparently
 decide
 ask
 comment; observe; watch
 refer to
 although
 yet; but; nevertheless
 daily
 for
 because; since
 by
 period; time
 on; about
 before
 before
 under
 resolve
 after
 enough
 enough
 consider

Instead of this:

the majority of
to the detriment of
undertake an effort
under the provisions of
until such time as
with reference to
with regard to
with respect to
with the exception of

Try this:

most
harming; prejudicing
try
under
until
about
about; regarding
about; regarding
except for

- (d) *Avoiding legalese.* Some legal writers cling to legalisms as if they were life preservers. The result is usually a confused client, and perhaps even an irritated judge as well. Good legal writers favor words that their intended readers—especially clients—will understand. Below is a list of legalisms and their plain-English translations.

Instead of this:

ab initio
aforementioned
aforesaid
albeit
anent
antecedent to
anterior to
apprise
arguendo
aver
bestow
bona fide; bona fides
case at bar
case sub judice
cestui que trust
child en ventre sa mere
de son tort
et al.; et alii
ex contractu
ex delicto
execution (will, contract)
ex hypothesi
feral
fora
foregoing
forthwith
gravamen
henceforth; henceforward
herein
heretofore; hitherto

Try this:

from the start
this; that; named earlier
this; that; named earlier
although; though
about; concerning
before
before
tell; inform
for the sake of argument
state
give
good faith
here; this case
here; this case
beneficiary (of a trust)
fetus; unborn child
by (his or her) own wrongdoing
and others
in contract (law); contractual
in tort (law)
signing
hypothetically
wild
forums
above; previous
immediately; now; at once
crux; gist; burden
from now on
here
up to now; until now; till now

writing, use it. It isn't reasonable to purge your vocabulary of every good word that might conceivably be misperceived. But if the word will predictably engender resentment, avoid it.

- (m) *Suitability*. Some labels are acceptable for a thing but not a person. For example, one can say that a rug is Oriental (a rug of particular style and manufacture) or mention an Asiatic bear (a species of bear), but Asian-American people consider it offensive to say that a person is Oriental or Asiatic instead of Asian.
- (n) *Capitalization*. Labels for race, ethnicity, and religion are capitalized in some circumstances.
- Labels drawn from geographic origins are always capitalized and hyphenated <African-American> <Asian-American> <Mexican-American> <Swedish-American>.
 - Labels naming an ethnic origin are usually capitalized <Berber> <Celtic> <Hispanic> <Inuit> <Tutsi>.
 - Labels based on color <black> <white> <brown> are rarely capitalized unless placed at the beginning of a sentence or included in a title <National Black Law Students Association>.
 - Labels naming a religious faith and its members are always capitalized <Buddhism> <Buddhist>. When used as an adjective, a religious name is capitalized if it retains its religious basis <Protestant work ethic> <Shinto temple>. Several words, such as *catholic*, *protestant*, and *methodist*, are similar or identical to religious names but have nonreligious meanings; these are never capitalized unless they are part of a title or at the beginning of a sentence.
- (o) *Gender-neutral language*. Masculine pronouns (e.g., *he*, *him*) should be avoided unless you're writing only about men. Below are eight techniques for gender-inclusive writing.
- Use a plural noun as the antecedent instead of a singular noun. This allows you to use plural pronouns.
 - Not this: *A lawyer* must affirm that *he* has truthfully advised *his* client.
 - But this: *Lawyers* must affirm that *they* have truthfully advised *their* clients.
 - Rework or replace a phrase or clause to eliminate the need for a personal pronoun altogether.
 - Not this: If *a man or woman* dies without a will, *his or her* property will be disposed of under the laws of intestate succession.
 - But this: If *a person* dies without a will, *the decedent's* property will be disposed of under the laws of intestate succession.

- Rewrite the sentence.
 - Not this: Either the angry father or the mother will have to change *her* attitude before the custody hearing starts.
 - But this: The father and the mother are both angry; at least *one of them* must calm down before the custody hearing starts.
- Use an article instead of a pronoun.
 - Not this: An accused person must actively waive *his* right to speak to *his* lawyer.
 - But this: An accused person must actively waive *the* right to speak to *a* lawyer.
- Rephrase the sentence using an indefinite pronoun, preferably without a personal pronoun.
 - Not this: An indigent defendant without an attorney can ask the court to appoint one for *him*.
 - But this: An indigent defendant *who* needs an attorney can ask the court to appoint one.
- Repeat the noun, but only if you can keep repetition to a minimum.
 - Not this: If a creditor has in *his* possession some property belonging to the debtor, *he* may be entitled to retain possession until *she* repays the debt.
 - But this: If a creditor has possession of some property belonging to the debtor, *the creditor* may be entitled to retain possession until *the debtor* repays the debt. (If you have to repeat the noun more than twice, it may be better to recast the sentence.)
- If it's appropriate, use the imperative mood to eliminate the need for explicit pronouns.
 - Not this: Before the trial of a case, a lawyer shall not communicate with anyone *he* knows to be a member of the venire.
 - But this: Before the trial of a case, do not communicate with anyone you know to be a member of the venire.
- Use the phrase *he or she* instead. This is a last-resort option because the phrase usually sounds stilted. Used in excess, it becomes obnoxious. Never use it twice in the same sentence.
 - Not this: Each plaintiff must file *his* suit separately, or else *he* will not be allowed to complain about the disparate treatment *he* has suffered.
 - But this: If a plaintiff does not file an individual suit, the court will not hear *his or her* claim of disparate treatment.
- If you're comfortable doing so, if no imprecision results, and if you're willing to risk a raised eyebrow from some readers, use *they* as a gender-neutral singular (see 11.10(o)).
 - Ex.: If a petitioner raises a due-process argument for the first time in a high court, they deprive the lower courts of the opportunity to address the question in the first instance.

- (p) *Titles.* When possible, avoid using titles that have increasingly archaic feminine suffixes (such as *-ess*, *-ette*, or *-ix*) or that use *man* as a suffix or prefix. Many words have ready substitutes.

Instead of this:	Try this:
administratrix	administrator
anchorman	anchor
aviatrix	aviator
businessman	businessperson; executive; entrepreneur
cameraman	camera operator; photographer
chairman	chair
congressman	representative; senator; member
craftsman	craftworker; crafter; artisan
draftsman	drafter
executrix	executor
fireman	firefighter
foreman	supervisor; manager
foreman of the jury	presiding juror
housewife	homemaker
layman	nonlawyer; layperson
maid	housekeeper
mailman	mail carrier; letter carrier
mankind	humanity; humankind
manpower	workforce; staff; human resources
newsman	reporter
ombudsman	ombuds
policeman	police officer
postman	mail carrier; postal worker
prosecutrix	prosecutor
repairman	repairer; servicer; technician
salesman	sales clerk; salesperson
spokesman	representative
testatrix	testator
tribesman	tribe member
venireman	veniremember
watchman	guard; security officer
workman	worker

- (q) *Gender-specific language.* When writing about something that concerns a matter related to only one gender (e.g., women's rights; men's health) or referring to an institution that is inherently single-sex (e.g., a convent or sorority), use sex-specific language. In these circumstances, trying to write in gender-neutral language is likely to produce peculiar or even absurd prose (e.g., "If a prospective member of a sorority experiences hazing, he or she may sue for personal injuries.").
- (r) *Age references.* Consider how specific an adjective of age is—or is not—before using it. It's better to specify age without qualification (e.g., *Mr. Ali is 72 years old*), by using modifiers sparingly and cautiously (e.g., *an*

older teenager), or by substituting a different adjective (e.g., *an inexperienced bank teller*). Describing someone as *young* isn't necessarily complimentary: depending on the context, it may describe an infant or a 30-year-old, or it may connote immaturity or vigor. Consider: *The young lawyer prepared the appellate brief*. If this sentence appeared in a negative passage, perhaps about how an appeal was mishandled, *young* may take on the sense of *inexperienced* or *incompetent*, and may subtly shift blame onto the brief-writer's shoulders. Consider also: *The young judge adjourned the court and answered the defense attorney's question the next morning*. The phrasing implies that the judge's youth (leading to indecision born of inexperience) might be the reason for the delay in answering the question. Likewise, something *old* may be either useless or venerable. And the adjective is imprecise because it broadly refers to something from the past, either the recent past <do you still have that old newspaper, the one dated yesterday?> or the distant past <that old book belonged to Henry VIII>. Applied to people, *old* suggests at least a degree of physical infirmity and age-related restrictions, especially weakness and senility. Because the connotations of *old* may be inaccurate, many people prefer the less restrictive label *senior citizen* to *old person*. The phrase *senior citizen* isn't of recent coinage (it's been around since 1938). It's not a euphemism for *old* because its denotation isn't restricted to age but encompasses political and social contexts as well. The term is usually applied to a person who has attained or is close to attaining retirement age, but has not necessarily retired.

- (s) *Sexual orientation*. When writing about a person's sexual orientation, avoid using adjectives that connote choice (e.g., *avowed*). And avoid using adjectives that imply a disclosure against the person's will or an element of shame, unease, or guilt (e.g., *acknowledged*, *admitted*, and *confessed*).
- (t) *Religious references*. Unless the subject or issue is one that plainly intertwines law and religion (e.g., freedom of religion), a legal writer who uses religious imagery, quotations, parables, and analogies will always sound biased to a reader whose spiritual background is dissimilar. And a reader who is unfamiliar with the sources of the writer's religious allusions will miss the writer's point. Or a reader might perceive an attempt to evoke unwarranted sympathy, or to sanctify a person or thing, or to unfairly legitimize an argument with theology rather than law.

"It is clear that the writer exists for the sake of the reader, not the reader for the sake of the writer."

—Thomas DeQuincey

**CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS**

Resolution 5

**In Support of Implementation of Clear Communications and Streamlined
Procedures in the Courts**

WHEREAS, for more than fifty years the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) have worked to promote access to justice for all individuals; and

WHEREAS, legal language and court processes are complex and historically designed by and for legal professionals; and

WHEREAS, suggestions to improve the clarity of court communications and to streamline court procedures have been offered by various groups and scholars including the National Association for Court Management, which has published the *Plain Language Guide*; and

WHEREAS, the judiciary has an obligation to be accessible to, and communicate clearly with, all who use the courts; and

WHEREAS, court users include diverse groups of individuals with different cultural and educational backgrounds and linguistic capabilities, including people with limited literacy, with limited English proficiency, and with learning, cognitive, physical, and other disabilities; and

WHEREAS, courts at all levels must communicate court procedures and legal requirements clearly and effectively to all individuals so that they may be full participants in the justice system; and

WHEREAS, courts should provide appropriate training for court staff in order to accomplish these goals and to assist the public in effectively navigating the justice system; and

WHEREAS, where court procedures and legal requirements are streamlined justice can be more accessible to all and accomplished in a more cost-effective manner;

NOW, THEREFORE, BE IT RESOLVED that Conference of Chief Justices and Conference of State Court Administrators urge courts, when drafting policies, procedures, and protocols, as well as associated documents, forms, and other information, (1) to write in a manner that is clear, concise, and easily comprehensible to all court

users; (2) to make them publicly available online and in physical locations where they are readily accessible to court users; and (3) where possible, to make them uniform statewide within the court system; and

BE IT FURTHER RESOLVED that Conference of Chief Justices and Conference of State Court Administrators urge courts to explore other ways, in addition to plain language, to help court users navigate the justice system, including: visual prompts (design features, infographics, symbols and signage); online services (web content, social media, explanatory videos, audio content, live chat platforms); and other public information tools (kiosks, public service campaigns, applications for mobile electronic devices and other technologies); and

BE IT FURTHER RESOLVED that Conference of Chief Justices and Conference of State Court Administrators urge courts to consider, where appropriate and practicable, streamlining court procedures and legal requirements; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices and Conference of State Court Administrators urge the National Center for State Courts and other national organizations to provide assistance to states working toward these goals.

Adopted as proposed by the CCJ/COSCA Access and Fairness Committee at the 2019 Annual Meeting on July 31, 2019



**National Association
for Court Management**
Strengthening Court Professionals



Plain Language Guide

*How to Incorporate Plain Language into
Court Forms, Websites, and Other Materials*

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Cover: *Sumi-e* is an ancient Japanese art form of communicating with clarity and simplicity using only black ink, brush, and paper. The goal is to not just depict the appearance of a subject but to convey its essence and spirit.

Updated: January 7, 2019

How to Incorporate Plain Language into Court Forms, Websites, and Other Materials

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1 Introduction

History of Plain Language

It used to be the case that when we did not understand the meaning of a word, we referred to a dictionary for its definition. Today, we “Google” it.

Plain, clear to the mind; evident, manifest, or obvious; to make one’s meaning plain.

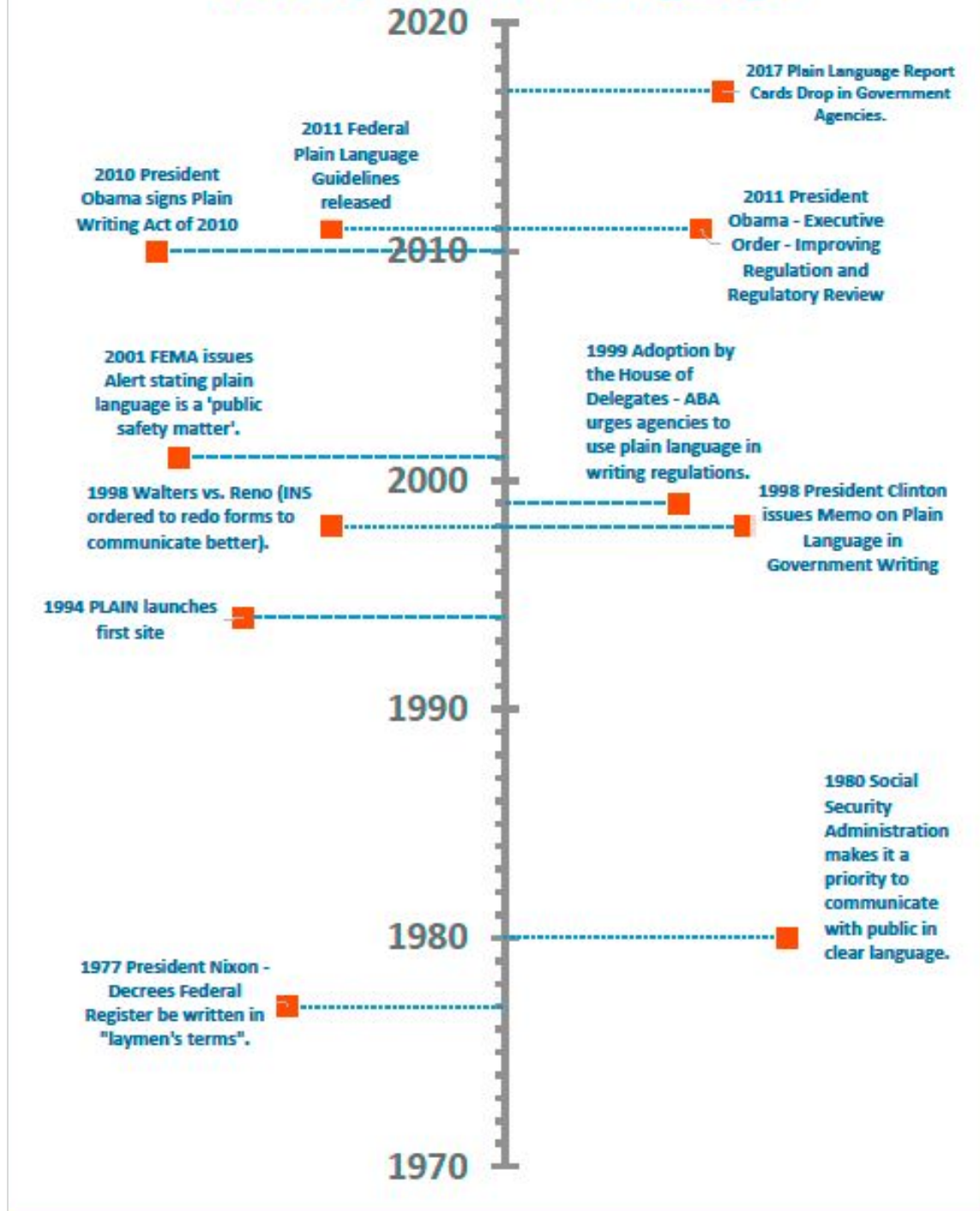
In this Guide, the word retains that meaning and extends it to include “*plain language*”, communication your audience can understand the first time they read or hear it. The concept is so prevalent there is a namesake acronym referring to the **Plain Language Action and Information Network (PLAIN)**¹ which is a community of federal employees dedicated to the idea that citizens deserve clear communications from the government.

The timeline below demonstrates how this style and concept of writing was directed and has evolved in our country. In this Guide, NACM offers guidelines, resources, and examples for our courts, following the requirements of the [Plain Writing Act of 2010](#) action so your court users can:

- Find what they need;
- Understand what they find; and
- Use what they find to meet their needs.

¹ Federal Plain Language Guidelines, March 2011, Revision 1, May 2011.
<https://plainlanguage.gov/media/FederalPLGuidelines.pdf>, accessed May 8, 2018.

History of Plain Language



2 Why Use Plain Language

We see examples of plain language used in government communication all the time, but perhaps we do not recognize them as such. Take, for example, the evolution of the “Don’t Walk” sign for crossing the street. We used to see this to let us know it is not safe to cross the street as a pedestrian:



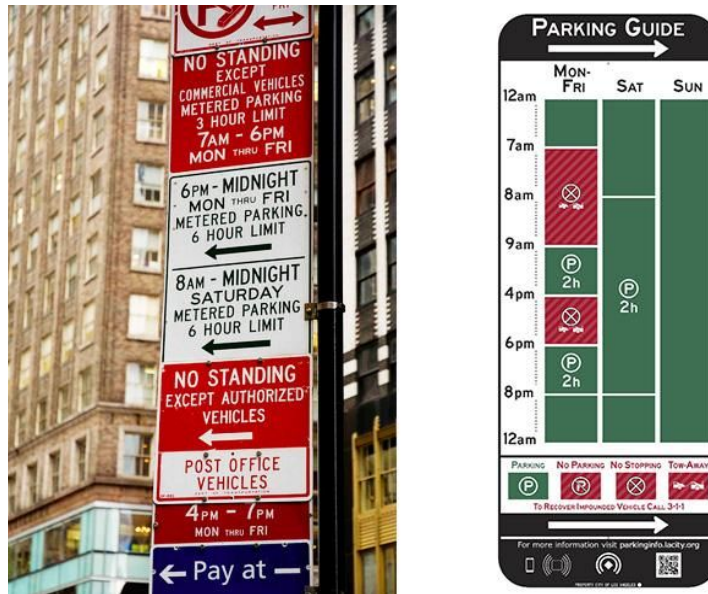
Have you noticed the evolution from the sign with words, to the sign with a picture or symbol? Now we more commonly see this:



The message has not changed - it is still unsafe to cross the street - but the comprehension opportunity has increased. Instantaneously, and without reading, albeit only two words, the user of this signs knows not to cross the street just yet. In

addition to improving comprehension time, the use of this symbol is also meaningful to non-English speakers or those with reading deficits.

Another traffic example, and definitely a more extreme one, is depicted in this side-by-side comparison:



Using a simple grid and symbols with a key or legend, a plain language version summarizing the numerous signs on the left is created eliminating some confusion over when and for how long one is permitted to park in this area.

Much like the goal of the Parking Guide above, our goal as court professionals is to provide users with the tools and understanding they need to effectively navigate the rules and laws governing their legal matters. We do not want to confuse users resulting in mistakes but rather empower users to make their own decisions regarding how to manage legal issues in their lives.

Whether in law, government, medicine, or other fields, the consensus around plain language is clear. Studies ranging from patients' adherence to their prescription drug regimens to voters at the ballot box all emphasize that plain and direct language increases understanding and application of information.² Federal guidelines promote

² D. James Greiner, Dalié Jiménez, and Lois Lupica, *Self-Help, Reimagined*, 92 IND. L. J. 1119,1172 (2017), available at <https://www.repository.law.indiana.edu/ilj/vol92/iss3/6/>.

plain language so that users can “find what they need, understand what they find, and use what they find to meet their needs.”³

This is all the more important in explaining court processes. Studies of stress and psychological barriers to understanding highlight that even for those with high literacy and familiarity with a topic, stress can limit a person’s ability to digest and process information. People often come to court as a last resort or after a crisis in their family, home, or workplace requires legal action. Plain and direct language can be crafted to overcome these barriers to ensure understanding and accurate completion of procedural requirements.

Improving one’s ability to navigate the court has obvious benefits for the court user in that the user will avoid additional stress resulting from lack of comprehension, the user will feel empowered to follow through with clearly defined tasks, and the user will feel a greater sense of ability to at least work toward success, if not achieve it. But, there are also benefits to court operations when users have increased and improved ability to navigate process and procedure. For example:

1. There may be a reduced need for human interaction with patrons, thus freeing up staff to help those who really have complex issues to navigate and to complete other business of the courts, such as special project work, day-to-day operational tasks, statistical analysis, etc.; and
2. Judges and staff may notice less protracted litigation from self-represented litigants, who will now have a better ability to understand their legal options and remedies and, when coupled with meaningful referrals to community-based resources, may also have a better understanding of non-legal options for resolution of their issue.

All of this culminates in reduced stress on patrons, reduced stress on Judges and court staff, and reduced stress on the building and physical spaces within the courthouse.

When we improve the public’s ability to understand the work of the courts and their legal options available to remedy legal problems, we increase the likelihood that users will select the right path to resolution of their issue, which may include non-legal remedies altogether. The use of plain language is a cornerstone of

³ Federal Plain Language Guidelines (rev.) 94 (2011), available at <http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf>.

transparent government. Allowing the public to have a clear understanding of the work of the courts is important to improving the public trust and confidence in the third branch. Access to justice exists when the public can understand, use, and afford information and services to prevent and resolve their legal disputes and to achieve just outcomes without delay.⁴

The remainder of this Guide endeavors to allow readers to understand where, when, and how to incorporate plain language into their forms, instructions, signage, and other materials intended for public use. Readers will find tools and resources to help in this journey, as well as supplemental reading and research. As you read through the Guide, please put yourself into the shoes of the court users and ask yourself, If we choose to disregard these guidelines, will we be providing adequate access to justice?

■

⁴ Karen Cohl, “Access to Justice Themes—‘Quotable Quotes’: Background Paper for The Law Society of Ontario’s Access to Justice Symposium Creating a Climate for Change, October 29, 2013” (Toronto: Law Society of Upper Canada, 2013), 5. Available at Quotable Quotes.

3 Plain-Language Principles

Information from courts should be understandable. While the goal of providing clear and understandable information may be self-evident, applying plain-language principles can be a challenge. Fortunately, court staff do not have to reinvent the wheel: communication experts in government, health, and adult education have tested strategies for conveying information that people without expertise can understand and act on. All we have to do is apply those strategies in the courts. This section demonstrates some of the best practices in plain language writing and visual formatting that have proven effective in other fields.

3.1 What Does Plain Language Look Like?

Shorter sentences

Most sentences are too long. The first step in reducing unnecessary complexity or ambiguity is to remove unnecessary words. As Professors Greiner, Jiménez, and Lupica describe in their article, *Self-Help, Reimagined*,

“The education literature recommends the use of short sentences. Very short. Perhaps so short that they lack subjects and verbs. Some that are not grammatically correct. Write the way the intended user speaks and thinks. Write as though you are competing for the time and attention of busy and stressed individuals. Because you are.”⁵

The level of formality may depend on the type of material, but all court information would benefit from shorter sentences.

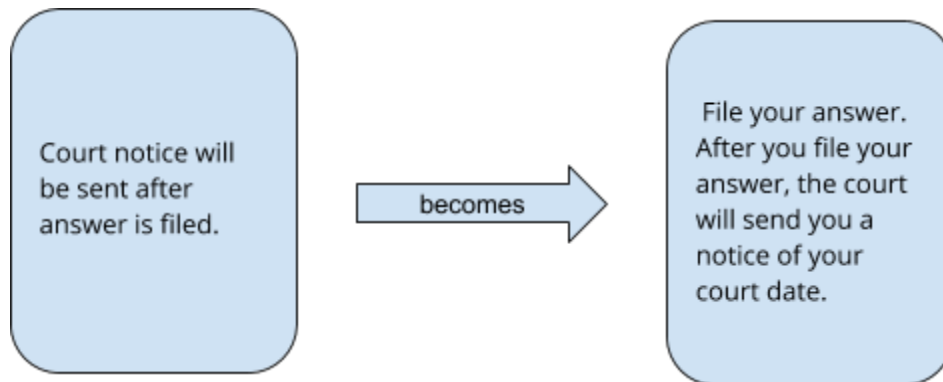
Change passive voice to active voice

The second step to improving clarity is through the use of active voice. Official court language frequently uses passive voice. Passive voice means that there is an object *being acted on* rather than a subject *taking action*, as in: “your motion was denied” rather than “the judge denied your motion.” In communicating with court users,

⁵ Greiner et al., *supra* n. 2, at 1135.

passive voice runs the risk of taking concrete action steps and transforming them into confusing abstractions. When you change a sentence from passive to active voice, you will find you have to be more precise and specific: rather than taking the easy way out and say that a task will be done, active voice requires some thought about who is responsible for the task, and what the task requires.

For example:



Address the reader directly

As you can see from the example above, court materials also tend to use the third person (“the parties shall,” “it is the plaintiff’s responsibility,” etc.) instead of addressing the reader directly. Addressing the court user directly makes it clear that indeed the court user is to be the actor. Including the word “you” can make instructions shorter and clearer.

Take this example from the executive branch:⁶

<i>Before</i>	<i>After</i>
“When the process of freeing a vehicle that has been stuck results in ruts or holes, the operator will fill the rut or hole created by such activity before removing the vehicle from the immediate area.”	“If you make a hole while freeing a stuck vehicle, you must fill the hole before you drive away.”

⁶ Plain Language Action and Information Network (PLAIN) before-and-after examples, available at http://www.plainlanguage.gov/examples/before_after/wordiness.cfm.

Reduce the reading level

Over 40% of Americans read at a “basic” or “below basic” proficiency level.⁷ In addition to baseline literacy, stress can reduce a person’s ability to understand, process, and act on written information.⁸ Direct, precise language can reduce cognitive load and reach a broader audience.

While not clear proof of direct and precise language, automated reading-level tools provide a quick readability assessment. While there is no single industry standard, the authors recommend a benchmark of 6th grade reading level.

Most word-processing applications also have readability features. However, these features are often optional, so you must activate them. Online tools have more features. Free websites exist that rate text for readability, including reading level, sentence complexity, word use, and passive voice. In [section 4.3](#), we outline some of the tools you can use to measure the reading level of web content.

More than words: formatting and visual design

In addition to the words themselves, the format of words on a page or a website have a significant impact on a person’s ability to digest and act upon the information presented.

Capitalization

The clearest lesson from the literature is to avoid ALL CAPS at all costs.⁹ COURT NOTICES TOO OFTEN INCLUDE THE MOST IMPORTANT INFORMATION IN ALL CAPS.

⁷ Mark Kutner, Elizabeth Greenberg, and Justin Baer, National Assessment of Adult Literacy (NAAL): A First Look at the Literacy of America’s Adults in the 21st Century, Washington, D.C., National Center for Education Statistics (2005), available at <http://nces.ed.gov/naal/pdf/2006470.pdf>.

⁸ J. KIMBLE, WRITING FOR DOLLARS, WRITING TO PLEASE: THE CASE FOR PLAIN LANGUAGE IN BUSINESS, GOVERNMENT, AND LAW (Carolina Academic Press 2012).

⁹ Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic Layout and Design into the Text of Legal Writing Documents*, 2 J. ASS’N. LEGAL WRITING DIRECTORS 108, 115 (2004).

Readers tend to skip words and sentences where all letters are capitalized, meaning that the most important information is the least likely to be read.

White space and headings

Overall, the less text and more white space on a page, the easier it is to digest and understand. The goal of reducing the number of pages often comes at the expense of white space, but effective forms and self-help materials can balance these two needs. Plain-language consultants at [Transcend Translations](https://transcend.net) also recommend numbering sections and adding clear descriptive subheadings on the page to help the reader understand each section in context.¹⁰

Typeface

Typeface is the word that describes the way the text looks: whether the letters have little flourishes or “feet” on them, like Times New Roman (serif) or are without those flourishes, like Arial or Helvetica (sans serif). Experimental findings suggest that the typeface (serif or sans serif) does not affect comprehension.¹¹ That said, there are practical considerations when choosing a typeface. Court staff often resort to photocopying rather than printing new forms directly, resulting in fuzzy or blurry text. With that in mind, sans serif¹² (rather than serif) fonts are a better choice, as they result in cleaner photocopies. That said, typeface is a matter of organizational preference.¹³ Two additional recommendations to consider: (1) select different typeface for your headings to create contrast between heading and text; and (2) once you’ve made a decision, be consistent throughout your materials.

Font size also plays a role in making text accessible and understandable. The CDC recommends 12-size font in health communication materials.¹⁴

¹⁰ Maria Mindlind, Transcend Translations (2012), available at https://transcend.net/library/legalCourts/PL_ProPerLitigants.pdf.

¹¹ Maria Lonsdale, Mary C. Dyson & Linda Reynolds, *Reading in Examination-type Situations: The Effects of Text Layout on Performance*, 29 J. RES. READING 433-453 (2006).

¹² Examples of sans serif fonts include Helvetica, Avant Garde, Arial, and Geneva.

¹³ Indeed, this Guide itself has followed its authors’ preference for serif font in the body of the text and sans serif headings.

¹⁴ Centers for Disease Control and Prevention, Toolkit for Making Written Material Clear and Effective, <https://www.cdc.gov/Outreach-and-Education/Outreach/WrittenMaterialsToolkit/ToolkitPart05.html>.

Visuals

Illustrations that relate to the text increase the likelihood that someone will follow the instructions.¹⁵ Effective visuals can sometimes replace lengthy text instructions.

For example, the instruction,

“Once you have received the complaint, mail copies of your Answer to both the Plaintiff and the Court. Retain a copy for your own records,”

can be visually depicted.¹⁶



In addition to cartoons, other visual representations of information include roadmaps and flow charts. The key is to provide a visual that clearly conveys information in a way that the reader can understand.

¹⁵ Peter S. Houts et al., *The Role of Pictures in Improving Health Communication: A Review of Research on Attention, Comprehension, Recall, and Adherence*, 61 *PATIENT EDUC. COUNSELING* 174, 175 (2006); W. Howard Levie & Richard Lentz, *Effects of Text Illustrations: A Review of Research*, 30 *EDUC. COMM. & TECH.* 195, 206 (1982) (analyzing 155 studies on the effect of illustrations on reading comprehension); J.M.H. Moll, *Doctor-Patient Communication in Rheumatology: Studies of Visual and Verbal Perception Using Educational Booklets and Other Graphic Material*, 45 *ANNALS RHEUMATIC DISEASES* 198, 202 (1986).

¹⁶ D. James Greiner & Andrea Matthews, *The Problem of Default, Part I* (2015), available at <http://a2jlab.org/current-projects/signature-studies/default/>. Thanks to Hallie Jay Pope from the Graphic Advocacy Project for the cartoon.

Before:

An appeal from an administrative agency decision, also referred to as a “30A appeal,” or a request for “judicial review of an administrative agency decision,” is what you file in the Superior Court when you want a judge to review a final decision made by a state agency. You have 30 days from the date of the decision to file a 30A appeal.

The moving party files the complaint, civil action cover sheet, and filing fee with the Clerk’s Office, and receives a summons to serve along with the complaint on the opposing party/ies within 90 days of filing. The opposing party has 90 days to respond.

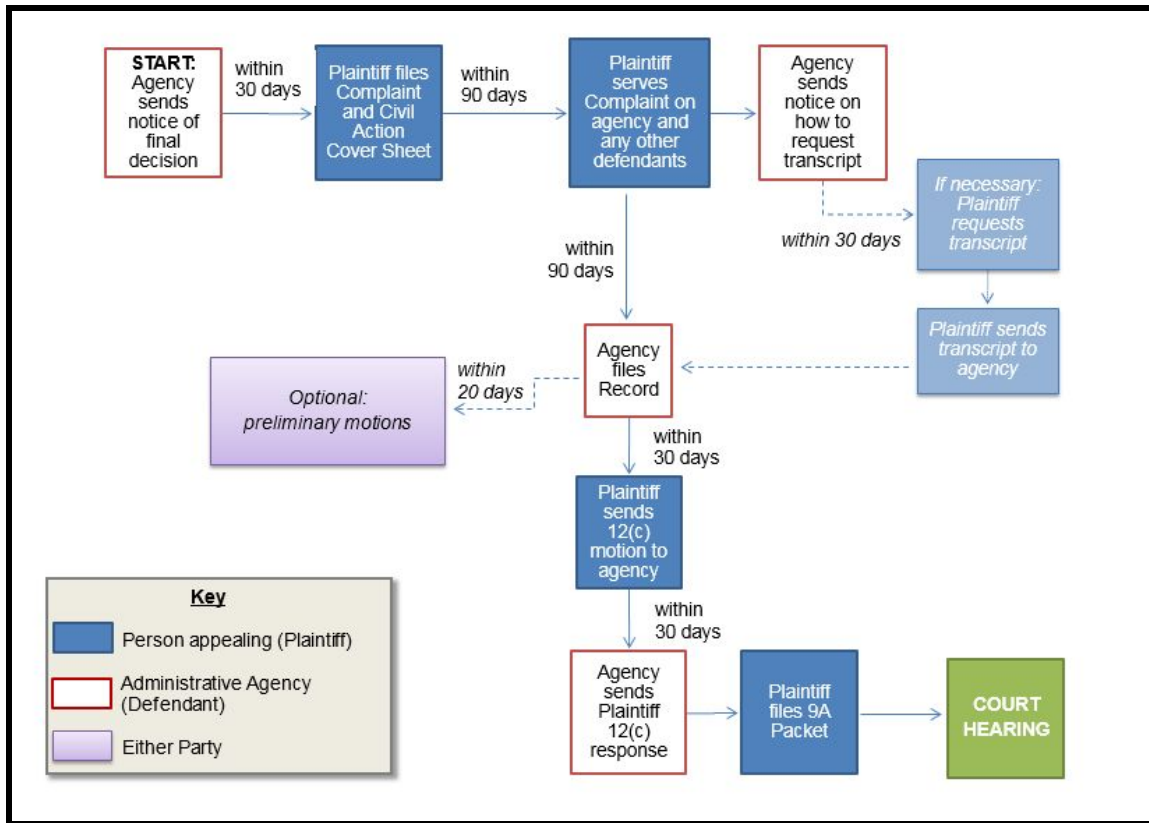
The opposing parties serve the moving party with the answer and administrative record and any transcript requested. Within 30 days of receipt, the moving party serves copies of the motion, memorandum, and all supporting papers on all other parties, without filing with the Court. The opposing parties serve the original opposing memorandum and papers (to be filed by the moving party with the Court), and serve copies of all opposing memoranda and papers on all parties, including the moving party. Oppositions to motions are served 30 days after

service of a motion (except a summary judgment motion, which must be served within 20 days of filing of the administrative record and must adhere to the provisions of Rule 9A).

After time for a response has passed, the moving party assembles a “Rule 9A package” for filing with the Superior Court, which includes its motion and supporting papers and timely opposition memoranda and supporting papers. “A separate document accompanying the filing shall list the title of each document in the Rule 9A package”. If the moving party doesn’t receive an opposition in the time permitted, it files its motion and supporting papers along with an affidavit “reciting compliance with this rule and receipt of no opposition in timely fashion, unless the moving party has notified all parties that the motion has been withdrawn.”

Upon filing the Rule 9A package, the moving party gives “prompt notice of the filing of the Rule 9A package to all other parties by serving... a copy of a certificate of notice of filing on a separate document.” (See Rule 9A(b) (2), Rule 9A(b) (3) and Rule 9A(b) (4) for exceptions to this procedure.)

After:



3.2 A Deeper Look: Making Content Usable and Useful

Emphasize Procedural Knowledge Over Conceptual Understanding

The first step to develop and test court forms and informational material is to identify the legal problem or court process then break that process down into all of its parts. For example, when an individual comes to the courthouse or court website looking for information on how to defend a small claims court debt collection case, what are the steps that a person has to take to defend that case? Explaining these steps does not require legal advice or even legal information. Most of these steps are logistical, administrative “legal mundanity.” Such as the following:

- How many copies should the person make of their court papers?
- Where do they go when they first come to the courthouse?
- Do they need to check in with anyone?
- Where do they sit while they are waiting?

- How long should they be prepared to be at the courthouse?
- Will they need to go through security and, if so, what should they expect?
- Do they need to bring copies of any documents with them such as pay stubs or identification, etc.?

Most court notices and instructions overlook some of these steps as they have little to do with formal law. But from the perspective of the court user, they are both critical to the process and completely unknown without court guidance.

Affirmation and Motivation

“Modern self-help materials fail to address many psychological and cognitive barriers that prevent the individuals who use them from successfully deploying their contents.”¹⁷

Breaking a court process down into its constituent parts for the court user might include:

- Overcoming the fear or intimidation about the court itself
- Making a plan to come to court
- Gathering and understanding information about what will happen at court
- Preparing for what will happen
- Following through

In addition to the concrete procedural and logistical steps, in order for information to be effectively deployed, the reader must feel like it is achievable. Studies show that increasing feelings of self-efficacy increase the likelihood that a person will take a recommended course of action.¹⁸ Research further suggests that providing instructions on what specific actions to take in order to deal with a stressful situation can be effective, for example by providing a specific action plan for getting flu shots.¹⁹ Specific, proximate goals or action steps can increase a patient’s success in managing

¹⁷ Greiner et al., *supra* n. 2, at 1119.

¹⁸ James E. Maddux & Ronald W. Rogers, *Protection Motivation and Self-efficacy: A Revised Theory of Fear Appeals and Attitude Change*, 19 J. EXPERIMENTAL SOC. PSYCHOL. 469 (1983).

¹⁹ Kevin D. McCaul & Rebecca J. Johnson, *The Effects of Framing and Action Instructions on Whether Older Adults Obtain Flu Shots*, 21 HEALTH PSYCHOL. 624, 627 (2002).

a medical condition.²⁰ They may also increase a court user’s success in navigating complex court procedures.

Is this outside the scope of a court’s obligations? Not at all! In fact, a notice of trial or other notice to appear is specifically intended for the recipient to read and to follow the course of action – to come to court. If a party does not come to court, the adversarial process grinds to a halt, and in many jurisdictions, time and money is spent on alternative ways to force the party to attend (e.g., civil arrest warrant).

Modify Court Process

Forms and court notices are reflective of process. Sometimes all the plain language description in the world can’t save a process from being unnecessarily complex. Using the form or notice itself as a starting point, court administrators can look at the processes themselves from the perspective of the court user and simplify the process to the extent possible.

Process improvement starts with identifying all the steps in the current process. It can be a painstaking endeavor but it can also serve to illustrate barriers that we were overlooking as well as duplications of effort that can be consolidated. So, if we start with the notice itself, track every single place that notice goes until the matter is resolved. Who hands this paper to whom? Which inbox does this paper go into next. What does that person then do with it? And so on and so forth. Most redundancies, unnecessary, or arduous steps will rise to the surface on their own. After those are identified, read critically through the steps that remain asking yourself “What value does this step add to the process? Is it necessary?”

3.3 You’ve Drafted Something. Now What?

Test to See What Works

User testing is useful when developing a new written tool. Consider conducting interviews, focus groups, or surveys of people who use the information. User testing at its best is an iterative or repetitive process and an inclusive one. Users can include litigants, lawyers, interpreters, and clerical staff. Iterative feedback from court users can improve the end result and highlight underlying court processes that can be simplified.

²⁰ P.G. Gibson & H. Powell, *Written Action Plans for Asthma: An Evidence-Based Review of the Key Components*, 59 *THORAX* 94, 94-95 (2004).

After initial user testing, it is important to build rigorous evaluation into the rollout of any new intervention, including new court forms. The most scientifically rigorous evaluation technique is randomized study. This means rolling out a new intervention in a randomized fashion, with a control group (status quo) and a treatment group (the group that receives the new form).

Below is a useful checklist for testing design and content developed by the [Center for Plain Language](#):²¹

Test the design at multiple points

- Were audience needs, such as top tasks, prioritized based on user research?
- Did you test navigation labels and information organization for predictability?
- Did you test the content for readability and understandability?
- Did you test the final product?

Use evidence-based testing strategies

- Were the participants representative of the target groups?
- Did you test your design and content with enough people?
- How was understanding and ability to act measured?
- Was there a before-and-after comparison to demonstrate improvement?

Check that the final product is useful and usable

- Ask readers to describe who and what the document or site is intended for
- Have them show you how they would find the information they want or need
- Ask them to describe key concepts or processes in their own words
- Observe whether target users can finish key tasks easily and confidently
- Note where they stumble or misunderstand and rethink those parts of the site or document

²¹ <https://centerforplainlanguage.org/learning-training/five-steps-plain-language/>, accessed August 7, 2018.

4 When and Where to Use Plain Language

4.1 Court Forms

In this era that emphasizes customer service, courts around the country are trying to meet the challenges posed by a relatively new customer—the self-represented litigant. The difficulty is that court systems are not designed to serve these customers. As a result, individuals seeking “service” from the court system and those involved in providing service are frustrated. Confusing language, rules, and procedures frustrate litigants. Unprepared self-represented litigants frustrate attorneys by delaying proceedings, which may increase expenses. Judges must remain neutral.

Challenges begin when self-represented litigants make their first contact with the court system. The self-represented litigant is seeking some form of assistance from the court clerk about how to start the proceeding. The court clerk must balance the training they have received on providing customer service, workload demands, and legal and ethical constraints concerning the unauthorized practice of law. As a result, the court clerk is faced with a customer that may require an explanation of a number of items, but the clerk is not sure what information is appropriate to provide. The uncertainty of this situation likely results in limited information being provided to self-represented litigants.

This is where the plain-language legal court form can bridge the gap in services that the court clerk can provide. Researchers have examined the user experience in the court system and found that the public's trust in the justice system is driven far more by whether their interaction with the courts was positive or negative, i.e., whether they were treated with respect and felt heard, rather than whether they win or lose.²²

To fully serve the self-represented litigant, a plain-language legal court form should be written with clarity (more fully explained below), and the court form should include instructions explaining the procedural process and any other form that the litigant might need to complete the process (for example, an order, notice of court, or summons).

²² Tom Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26 (2007-2008)
<http://amjudges.org/publications/courtrv/cr44-1/CR44-1-2Tyler.pdf>.

Plain-language court forms are effective because they:

- Educate litigants about the law and help them better present their cases;
- Better inform other parties of claims and issues;
- Give the court relevant information on which to make decisions; and
- Allow decisions and orders to be more specific, thus easier to comply with and to enforce.

Plain-language court forms have the following impact on **users**:

- Users may have an easier time starting their case;
- Users may understand upfront if the circumstances in their case qualify them for the relief they are seeking;
- Users may be more confident and less pressured in the courtroom because they feel that the forms present the key information;
- Users may be better notified of the likely positions of the opposing side, leading to better preparation and fewer surprises; and
- Users may make fewer errors and be less confused.

Plain-language court forms have the following impact on **judges** and **court staff**:

- There may be less wasted time answering questions, reviewing forms, rescheduling hearings, etc.;
- There may be fewer errors by litigants;
- Ability to improve access to justice; and
- They create a more transparent court system.

Drafting Court Forms

Do not assume your readers have knowledge of the subject or have read any related information. Clearly ask or explain in a way that your reader understands and knows what to do with the information. Eliminate unnecessary words. Be concise. Define and use terms consistently. Use the same words your reader would use.

Before:

PETITION FOR CHANGE OF NAME (single / plural)	3253 (Rev. 12/08)																														
<table style="width: 100%; border: none;"><tr><td style="width: 30%; border: 1px solid black; padding: 5px;">IN THE MATTER OF THE PETITION OF</td><td style="width: 40%; text-align: center; border: none;">_____</td><td style="width: 30%; border: none;"></td></tr><tr><td style="border: none;"></td><td style="text-align: center; border: none;">CASE NUMBER</td><td style="border: none;"></td></tr><tr><td style="border: none;"></td><td style="text-align: center; border: none;">PETITION FOR CHANGE OF NAME</td><td style="border: none;"></td></tr><tr><td style="border: 1px solid black; padding: 5px;">FOR CHANGE OF NAME</td><td style="text-align: center; border: none;">(single / plural)</td><td style="border: none;"></td></tr><tr><td style="border: none;"></td><td style="text-align: center; border: none;"></td><td style="border: 1px solid black; padding: 5px; text-align: center;">File Stamp Here</td></tr><tr><td style="border: 1px solid black; padding: 5px;">DATE OF BIRTH</td><td style="border: none;"></td><td style="border: none;"></td></tr></table>	IN THE MATTER OF THE PETITION OF	_____			CASE NUMBER			PETITION FOR CHANGE OF NAME		FOR CHANGE OF NAME	(single / plural)				File Stamp Here	DATE OF BIRTH			<p style="text-align: center;">TO THE HONORABLE JUDGE OF THE CIRCUIT COURT</p> <p>Your petitioner(s) respectfully show as a resident(s) of the State of Illinois and have resided in said State for six (6) months prior to the filing of this petition; having been a resident of the State of Illinois since _____. Your petitioner(s) who were born in _____ <small style="margin-left: 100px;">state / county</small> desire to change name(s) according to the provisions of 735 ILCS 5/21 in such case made and provided, and now, in that behalf, respectfully show and now bears the name of :</p> <p>_____</p> <p>and are known and called by this name; and desire to assume the name of:</p> <p>_____</p> <p>by which may afterward be known and called. That given notice of this intended application by publication for three (3) successive weeks in _____ a newspaper of general circulation, published in DuPage County, a copy of said published notice, with the certificate of the publisher thereon is hereto annexed and made part of this petition.</p> <p>WHEREFORE, your petitioner(s) pray(s), the premises being considered and name(s) be changed from it's present form to:</p> <p>_____</p> <p>as provided by statute, and that such other or future relief in the premises as this Honorable Court shall deem met, according to law.</p> <p>Name: _____ <input type="checkbox"/> PRO SE</p> <p>Attorney Number: _____</p> <table style="width: 100%; border: none;"><tr><td style="width: 40%;">Attorney for: _____</td><td style="width: 20%; text-align: center;">Date _____</td><td style="width: 40%; text-align: center;">Date _____</td></tr><tr><td>Address: _____</td><td></td><td></td></tr><tr><td>City/State/Zip: _____</td><td style="text-align: center;">Petitioner _____</td><td style="text-align: center;">Petitioner _____</td></tr><tr><td>Telephone Number: _____</td><td></td><td></td></tr></table>	Attorney for: _____	Date _____	Date _____	Address: _____			City/State/Zip: _____	Petitioner _____	Petitioner _____	Telephone Number: _____		
IN THE MATTER OF THE PETITION OF	_____																														
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Address: _____																															
City/State/Zip: _____	Petitioner _____	Petitioner _____																													
Telephone Number: _____																															
AFFIDAVIT																															
_____ being duly sworn on oath deposes and says that they are acquainted with the petitioner(s) in this cause, who have signed this petition; and that have hereby read this petition, and knows the contents thereof, and that the same, and the matters and things herein stated are true.																															
Signed and sworn to before me																															
_____	_____	_____																													
Date	Circuit Clerk or Notary Public	Affiant																													

After:

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois courts.

STATE OF ILLINOIS, CIRCUIT COURT _____ COUNTY	REQUEST FOR NAME CHANGE (ADULT)	<i>For Court Use Only</i>
Instructions ▼ Directly above, enter the county name where you will file this case. Enter your current name. DO NOT enter a Case Number, the Circuit Clerk will add it.	Request of: _____ Your current name (<i>First, middle, last name</i>)	_____ Case Number

In 1, enter your complete current name.	<p>I ask the court to enter an order to change my name, and I state:</p> <p>1. My current name is:</p> <p style="text-align: center;">_____</p> <p style="text-align: center;"><i>First Middle Last</i></p> <p>2. I wish my name to be changed to:</p> <p style="text-align: center;">_____</p> <p style="text-align: center;"><i>First Middle Last</i></p> <p>3. My address is: _____</p> <p style="text-align: center;"><i>Street City State ZIP</i></p> <p>4. I have lived continuously in Illinois for at least 6 months beginning: _____</p> <p style="text-align: center;"><i>Date</i></p> <p>5. My birth date is: _____</p> <p style="text-align: center;"><i>Date</i></p> <p>6. My place of birth is: _____</p> <p style="text-align: center;"><i>City County State/Province Country</i></p> <p>7. I <input type="checkbox"/> have <input type="checkbox"/> have not been adjudicated or convicted of a felony or misdemeanor in Illinois or any other state for which a pardon has not been granted.</p> <p>8. I <input type="checkbox"/> do <input type="checkbox"/> do not have an arrest for which charges have not been filed.</p> <p>9. I <input type="checkbox"/> do <input type="checkbox"/> do not have a pending felony or misdemeanor charge.</p> <p>10. I <input type="checkbox"/> have <input type="checkbox"/> have not been convicted of or placed on probation for a crime which requires me to register as a sex offender in Illinois or any other state.</p> <p>11. I <input type="checkbox"/> have <input type="checkbox"/> have not been convicted of or placed on probation for identity theft or aggravated identity theft in Illinois or any other state.</p> <p>12. I <input type="checkbox"/> have <input type="checkbox"/> have not been convicted of or placed on probation for a felony in Illinois or any other state.</p>
In 2, enter the new full name you would like.	
In 3, enter your complete current address.	
In 4, enter the date you started living in Illinois.	
In 5, enter your date of birth	
In 6, enter the city, county, state, and country where you were born.	
In 7-9, check the boxes that apply to your criminal history.	
In 10, 11, and 12 check whether you have or have not been convicted or put on probation for the crime listed.	
If you checked "have" in 10 or 11 and have not been pardoned, <u>the court cannot give you a name change.</u>	
If you checked "have" in 12 and have not been pardoned or have not completed your probation or sentence over 10 years ago, the court may not give you a name change.	

Enter the Case Number given by the Circuit Clerk: _____

In 13, describe what you were convicted of or placed on probation for, if you checked "have" in 10, 11, or 12.
If you run out of space, use a separate piece of paper.

13. If you checked "have" in 10, 11, or 12 complete the following:

Description of Felony or Misdemeanor	Date of Conviction or Probation	Sentence Received (include parole and supervised release)	Date Sentence Completed	Pardoned? (Yes or No)

Under the Code of Civil Procedure, [735 ILCS 5/1-109](#), making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

I certify that everything above is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under [735 ILCS 5/1-109](#).

/s/ _____
Your Signature

_____ Street Address

_____ Print Your Name

_____ City, State, ZIP

_____ Telephone

GETTING COURT DOCUMENTS BY EMAIL: If you agree to receive court documents by email, check the box below and enter your email address. You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information or notice of court dates. Other parties may still send you court documents by mail.

I agree to receive court documents at this email address during my entire case.

_____ Email

NOTE
This section should be filled out by someone else, not the person asking for a name change.

Witness: Enter your full name.

Under the Code of Civil Procedure, [735 ILCS 5/1-109](#), making a statement on this form that you know to be false is perjury, a Class 3 Felony.

VERIFICATION BY WITNESS

I, _____
First Middle Last

certify that what is stated above is true and correct to the best of my knowledge and belief.

_____ Witness Signature

_____ Witness Name

Write in Short Sentences/Questions

It is difficult to determine the intended meaning of a complex sentence. Readable sentences are simple, active, affirmative, and declarative. The more a sentence deviates from this structure, the harder the sentence is to understand.

Follow these guides for writing sentences:

- State one thing and only one thing in each sentence.
- Divide long sentences into two or three short sentences.

- Remove all unnecessary words. Strive for a simple sentence with an implied subject and implied verb. Eliminate unnecessary modifiers.

Before:

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT

Your petitioner(s) respectfully show as a resident(s) of the State of Illinois and have resided in said State for six (6) months prior to the filing of this petition; having been a resident of the State of Illinois since _____. Your petitioner(s) who were born in _____ ^{state / county} desire to change name(s) according to the provisions of 735 ILCS 5/21 in such case made and provided, and now, in that behalf, respectfully show and now bears the name of:

and are known and called by this name; and desire to assume the name of:

by which may afterward be known and called.

WHEREFORE, your petitioner(s) pray(s), the premises being considered and name(s) be changed from it's present form to:

as provided by statute, and that such other or future relief in the premises as this Honorable Court shall deem met, according to law.

After:

I ask the court to enter an order to change my name, and I state:

1. My current name is:

First Middle Last

2. I wish my name to be changed to:

First Middle Last

3. My address is: _____

Street City State ZIP

4. I have lived continuously in Illinois for at least 6 months beginning: _____

Date

5. My birth date is: _____

Date

6. My place of birth is: _____

City County State/Province Country

Use Understandable Expressions

When choosing a word, balance the following:

- Use the most basic word.
- If the most basic word has many definitions and if those definitions can cause confusion, use a more precise word.
- Use industry-standard words.

- When a law is referenced, use the core words of the law. Do not use the legalese, if possible.

Before:

AFFIDAVIT		
<p>_____ being <u>duly sworn on oath</u> deposes and says that they are acquainted with the petitioner(s) in this cause, who have signed this petition; and that have hereby read this petition, and knows the contents thereof, and that the same, and the <u>matters and things herein stated are true.</u></p>		
Signed and sworn to before me		
_____ Date	_____ Circuit Clerk or Notary Public	_____ Affiant

After:

VERIFICATION BY WITNESS		
<p>I, _____ <i>First</i> <i>Middle</i> <i>Last</i></p>		
<p>certify that what is stated above is true and correct to the best of my knowledge and belief.</p>		
		_____ <i>Witness Signature</i>
		_____ <i>Witness Name</i>

Put the instructions on how to complete the form right on the form

STATE OF ILLINOIS, CIRCUIT COURT	REQUEST FOR NAME CHANGE (ADULT)	<i>For Court Use Only</i>
_____ COUNTY		
Instruction: ▼ Directly above, enter the country name where you will file this case. Enter your current name. DO NOT enter a Case Number, the Circuit Clerk will add it.	Request of: _____ Your current name (<i>First, middle, last name</i>)	_____ Case Number

Use Hyperlinks

Hyperlinks can be used throughout the form to connect the reader to specific references.

A hyperlink is appropriate when it is necessary for providing more information for the reader, such as definitions, instructions, or step-by-step guides, or citing an online source within the text, such as statutes or other court forms.

<p>Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.</p>	<p>I certify that everything above is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.</p>	
<p>If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.</p>	<p>/s/ Your Signature</p>	<p>Street Address</p>
	<p>Print Your Name</p>	<p>City, State, ZIP</p>
		<p>Telephone</p>

It's More than Well-Drafted Forms

Very little frustrates a self-represented litigant more or slows down the administration of justice than having a court hearing when a necessary step in the process was not completed, or even worse, when the litigant is disqualified from the type of relief they are seeking. It is essential that the materials that accompany forms include any necessary notices and orders. Further, the instructions must:

- (1) prompt the user to ask “do the specific circumstances allow me to seek this relief”; and
- (2) explain the process from filing to court hearing.

Explaining the Process

HOW TO CHANGE YOUR NAME (for an Adult)

Who can ask the court for a name change?

To change your name, you **MUST**:

- Be at least 18 years old; AND
- Have lived in Illinois for at least 6 months.

You **CAN** ask the court for a name change if you have been convicted of:

- A felony and have not been pardoned or you finished your sentence less than 10 years ago; OR
- Identity theft or aggravated identity theft and have not been pardoned; OR
- Felony or misdemeanor: criminal sexual abuse when the victim at the time is under 18 years of age, sexual exploitation of a child, indecent solicitation of a child, or indecent solicitation of an adult, or any other offense that requires you to register as a sex offender, and have not been pardoned.

What forms do I need to fill out?

- *Request for Name Change*: provides the information needed to decide on your name. A person who knows you must also sign the form.
- *Publication Notice of Court Date for Request for Name Change*: tells the court to change your name. It must appear in a newspaper for 3 weeks.
- *Order for Name Change*: is issued by the court after your *Request for Name Change* is approved.

What costs will I need to pay?

- **Filing Fee**: to file your forms.
- **Publication Fee**: to put your name change notice in a newspaper.
- **Certified Copy Fee**: if you need certified copies of your forms.

If you cannot afford these fees, you may apply for a fee waiver.

Step 3: Get a Certificate of Publication from the newspaper and file it with the court.

- After the notice appears in a newspaper for 3 weeks, get a Certificate of Publication from the newspaper.
- Ask the newspaper how you will get the Certificate of Publication. The newspaper will either:
 - Send the Certificate directly to the Circuit Clerk;
 - Mail the Certificate to you; OR
 - Tell you to pick up the Certificate in person.
- Take the Certificate of Publication to the courthouse and file it with the Circuit Clerk before your court date.
- If the newspaper sends the Certificate directly to the Circuit Clerk, make sure it arrives before your court date and ask the newspaper to send you a copy.

What happens at the court hearing?

The judge will review your forms and the Certificate of Publication. If approved, the judge will sign the *Order for Name Change*. You will receive a copy of the *Order for Name Change* and the Certificate of Publication. You must bring these to the courthouse to change your name.

What happens after the hearing?

After the hearing, you will receive a copy of the *Order for Name Change* and the Certificate of Publication. You must bring these to the courthouse to change your name. You will also receive a copy of the *Order for Name Change* and the Certificate of Publication. You must bring these to the courthouse to change your name.

Asking qualifying questions

HOW TO CHANGE YOUR NAME (for an Adult)

Who can ask the court for a name change?

To change your name, you **MUST**:

- Be at least 18 years old; AND
- Have lived in Illinois for at least 6 months.

You **CAN** ask the court for a name change if you have been convicted of:

- A felony and have not been pardoned or you finished your sentence less than 10 years ago; OR
- Identity theft or aggravated identity theft and have not been pardoned; OR
- Felony or misdemeanor: criminal sexual abuse when the victim at the time is under 18 years of age, sexual exploitation of a child, indecent solicitation of a child, or indecent solicitation of an adult, or any other offense that requires you to register as a sex offender, and have not been pardoned.

What forms do I need to fill out?

- *Request for Name Change*: provides the information needed to decide on your name. A person who knows you must also sign the form.
- *Publication Notice of Court Date for Request for Name Change*: tells the court to change your name. It must appear in a newspaper for 3 weeks.
- *Order for Name Change*: is issued by the court after your *Request for Name Change* is approved.

What costs will I need to pay?

- **Filing Fee**: to file your forms.
- **Publication Fee**: to put your name change notice in a newspaper.
- **Certified Copy Fee**: if you need certified copies of your forms.

If you cannot afford these fees, you may apply for a fee waiver.

Step 3: Get a Certificate of Publication from the newspaper and file it with the court.

- After the notice appears in a newspaper for 3 weeks, get a Certificate of Publication from the newspaper.
- Ask the newspaper how you will get the Certificate of Publication. The newspaper will either:
 - Send the Certificate directly to the Circuit Clerk;
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What happens at the court hearing?

The judge will review your forms and the Certificate of Publication. If approved, the judge will sign the *Order for Name Change*. You will receive a copy of the *Order for Name Change* and the Certificate of Publication. You must bring these to the courthouse to change your name.

What happens after the hearing?

After the hearing, you will receive a copy of the *Order for Name Change* and the Certificate of Publication. You must bring these to the courthouse to change your name. You will also receive a copy of the *Order for Name Change* and the Certificate of Publication. You must bring these to the courthouse to change your name.

Other Forms

Often in the course of filing a new case or responding to an existing case, there is the petition or answer, but then there are other procedural forms needed, like a summons or a notice. It is necessary to provide litigants with all possible forms they may need, including a well-drafted order that the judge can fill out at the conclusion of the legal matter.

Notice

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois courts.		
STATE OF ILLINOIS, CIRCUIT COURT _____ COUNTY	PUBLICATION NOTICE OF COURT DATE FOR REQUEST FOR NAME CHANGE (ADULT)	<i>For Court Use Only</i>
Instructions ▼ Directly above, enter the name of the county where the case was filed. Enter your current name. Enter the case number given to you by the Circuit Clerk.	Request of: _____ Your current name (First, middle, last name)	_____ Case Number
<p style="text-align: center;">There will be a court date on my <i>Request</i> to change my name from:</p>		
Enter your current full name.	_____ <i>First Middle Last</i>	
to the new name of:		
Enter the new full name you would like.	_____ <i>First Middle Last</i>	
Get the court date and time from the Circuit Clerk when you file the <i>Request for Name Change</i> . Make sure the date is at least 8 weeks after the date you file this form with the Circuit Clerk.	<p>The court date will be held:</p> on _____ at _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m., <i>Date Time</i>	
Enter the address of the court and the court room number.	at _____, <i>Street Address City County</i>	
If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.	in Courtroom # _____ <i>Room Number</i>	
For information on how to publish this Notice, see <i>How to Change your Name (for an Adult)</i> .	_____ <i>/s/ Your Signature</i>	
_____ <i>Your Current Name</i>		

Order

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois courts.

<p style="text-align: center;">STATE OF ILLINOIS, CIRCUIT COURT</p> <p style="text-align: center;"> <input type="text" value="COUNTY"/> COUNTY </p>	<p>ORDER FOR NAME CHANGE (ADULT)</p>	<i>For Court Use Only</i>
<p>Instructions ▼</p> <p>Directly above, enter the county name where the case was filed.</p> <p>Enter your current name.</p> <p>Enter the case number given to you by the Circuit Clerk.</p>	<p>Request of:</p> <p>Your current name <i>(First, middle, last name)</i></p>	<p>Case Number</p>

The Court reviewed your Request for Name Change and finds:

DO NOT check any boxes on this form. The judge will check the correct boxes at the hearing.

The Court has jurisdiction.

Correct notice was done by newspaper publication.

In this Newspaper: _____

On these Dates: _____

The statements made in the *Request for Name Change* meet the statutory requirements.

The statements made in the *Request for Name Change* do not meet the statutory requirements.

IT IS ORDERED:

The *Request for Name Change* is GRANTED.

The name of:

is changed to:

The *Request for Name Change* is DENIED.

The *Request* is denied for the following reason(s): _____

DO NOT enter the Judge and Date. The judge will sign here.

ENTERED:

Provide Forms in Multiple Formats

Once you have a plain-language court form and instructions explaining the process, it is time to increase usability of the suite by making them ADA compliant, providing

access to them in multiple formats, creating a guided interview, and translating them into non-English languages.

Print and PDF

Forms should be available at courthouses, public libraries, and other relevant community spaces in print version for users that do not have the ability to use a computer. The form should also be publicly available in a fillable PDF format. When posting a fillable PDF on the web, Courts should always ensure that the PDF complies with the [Americans with Disabilities Act Section 508](#). Under 508, disabled members of the public must have comparable access to information that is available to those without disabilities.

According to Transcend the features of an accessible PDF include²³:

- Alternate text for important images that convey information;
- Active links;
- Logically organized page structure with headers, subheads, paragraphs, etc., so that the text can be read in the proper order; and
- Properties that specify the document's source language

Guided Interviews

The Access to Justice: Meeting the Needs of Self-represented Litigants Project studied how self-represented litigants navigated the court system and identified the process of selecting and completing court forms as a major hurdle for self-represented litigants to overcome.²⁴ Guided interviews can help self-represented litigants choose the correct forms, guide them in answering the questions, provide additional helpful information through the process, and return the completed documents to them ready to file.²⁵

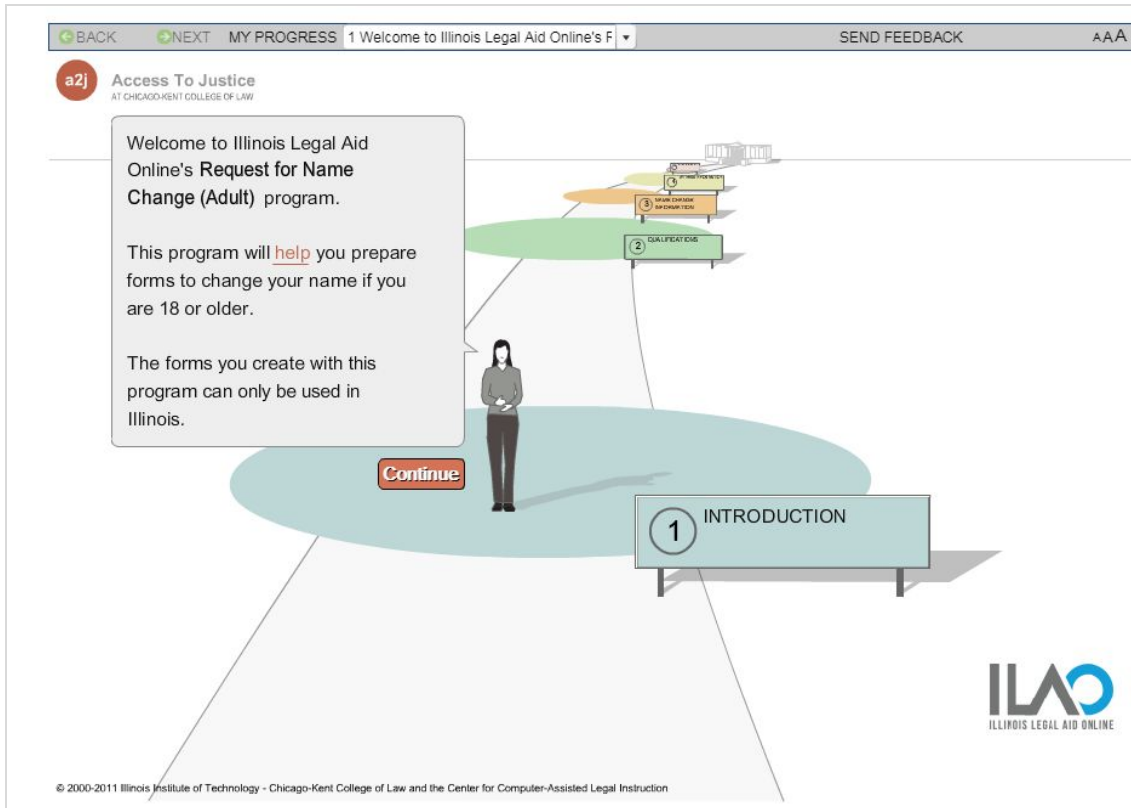
²³ Transcend, Accessible PDFs, available at <https://transcend.net/services/webAccessibility.html#features>.

²⁴ JULIE MACFARLANE , THE NATIONAL SELF-REPRESENTED LITIGANTS PROJECT: IDENTIFYING AND MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS FINAL REPORT <http://www.representingyourselfcanada.files.wordpress.com/2014/02/reportm15-2.pdf> [<https://perma.cc/PTH6-YAMZ>.]

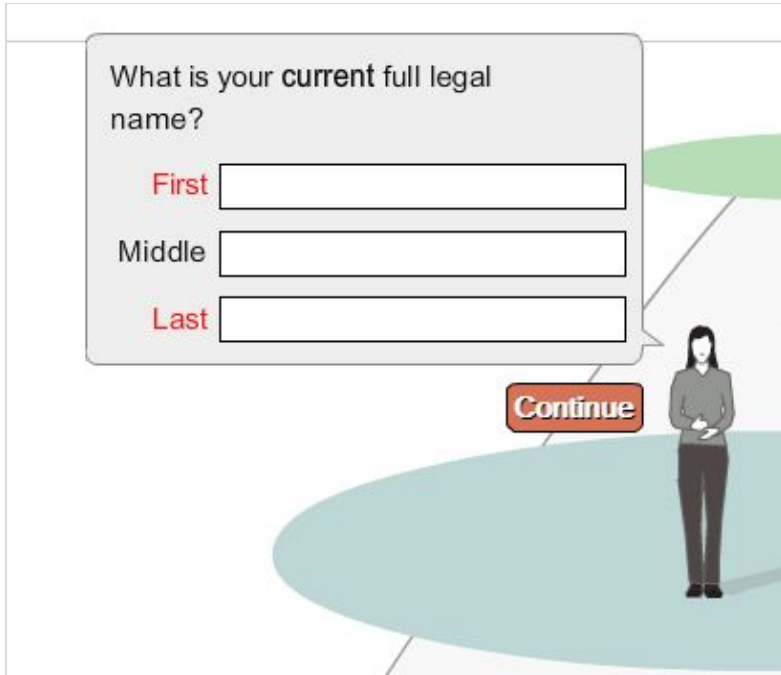
²⁵ Example of guided interview was created by Illinois Legal Aid Online using A2J Author software and is hosted by Law Help Interactive. A link to the full interview can be found here: <https://lawhelpinteractive.org/Interview/GenerateInterview/6195/engine>

Advantages of guided interviews include:

- The interface is less intimidating than a court form.



- Qualifying questions are asked up front.
- Questions are asked one at a time and on one topic.



- Self-represented litigants are given additional information as needed.



Translate into Non-English Languages

The 2011 American Community Survey, conducted by the U.S. Census Bureau, tells us that over 60 million people (21 percent of the 291.5 million surveyed) speak a language other than English at home, and over 25 million speak English less than “very well.”²⁶ Translating forms and other self-help content into the most common languages spoken in your part of the country is a vital way to improve access to the civil justice system.

CÓMO CAMBIAR SU NOMBRE (para un adulto)

¿Quién puede pedirle un cambio de nombre a la corte?

Para cambiar su nombre, **TIENE QUE:**

- Tener por lo menos 18 años de edad; Y
- Haber vivido en Illinois por lo menos durante 6 meses.

NO PUEDE cambiar su nombre si fue condenado por:

- Un delito grave y no fue perdonado, o cumplió con su sentencia hace menos de 10 años; O
- Robo de identidad, o robo de identidad agravado, y no ha sido perdonado; O
- Delito grave o delito menor: abuso sexual penal cuando la víctima tenía menos de 18 años de edad, explotación sexual de un menor; solicitud sexual indecente a un menor de edad o un adulto; o cualquier otra infracción que requiera su inscripción como infractor sexual, y no ha sido perdonado.

¿Qué formularios tengo que llenar para cambiar mi nombre?

- **Solicitud de cambio de nombre (Request for Name Change):** le proporciona a la corte la información que necesita para poder aprobar su cambio de nombre. El formulario tiene que ser firmado también por una persona que lo conozca.
- **Aviso de presentación de una solicitud de cambio de nombre (Notice of Filing a Request for Name Change):** le informa al público que está solicitando a la corte que cambie su nombre; tiene que ser publicado en un periódico durante 3 semanas.
- **Orden de cambio de nombre (Order for Name Change):** este formulario es utilizado por el juez para otorgar o denegar su *Solicitud de cambio de nombre*.

¿Cuánto tendré que pagar para cambiar mi nombre?

- **Cuota de presentación:** para presentar sus formularios ante el secretario de la corte de circuito.
- **Cuota de publicación:** para colocar su aviso en el periódico.
- **Cuota de copia certificada:** si le otorgan el cambio de nombre y necesita copias certificadas de la orden de la corte.

Si no puede pagar estas cuotas, puede pedirle a la corte que le otorgue una exención de cuotas.

¿Qué hago después de llenar mis formularios?

Paso 1 – Presente sus formularios ante el secretario de la corte de circuito del condado donde se inició el caso.

- Haga copias de sus formularios para usted y para cada parte del caso.
- Llame al secretario de la corte de circuito y pregúntele cuánto costará presentar sus formularios y cómo puede pagar (efectivo, cheque, crédito, en línea).
- Si no puede pagar la cuota de presentación, llene y presente una *Solicitud de exención de cuotas de la corte (Application for Waiver of Court Fees)*, que podrá encontrar en: <http://www.illinoiscourts.gov/Forms/approved/>. Si ya le otorgaron una exención de cuotas para este caso de la corte, no hace falta que tome este paso.
- Presente sus formularios ante el secretario de la corte de circuito en persona, por correo o en línea, si es permitido.
- Cómo presentar en persona
 - Vaya a la corte del condado donde se inició su caso.
 - Déle al secretario de la corte de circuito sus formularios originales y las copias para que las selle.
 - El secretario de la corte de circuito se quedará con sus formularios originales y le devolverá las copias selladas.
 - Pague la cuota de presentación o presente su *Solicitud de exención de cuotas de la corte*.
- Cómo presentar por correo
 - Envíe sus formularios originales y una copia al secretario de la corte de circuito.
 - Incluya la *Carta al secretario de la corte de circuito (Letter to the Circuit Clerk)*, que puede encontrar en: <http://www.illinoiscourts.gov/Forms/approved/>.
 - Incluya un sobre con porte pagado y su dirección para que el secretario de la corte de distrito le pueda enviar a vuelta de correo su copia presentada-sellada.
 - Incluya el pago de la cuota de presentación o su *Solicitud de exención de cuotas de la corte*.
- Cómo presentar en línea

²⁶Camille Ryan, Language Use in the United States: 2011, American Community Survey Reports, issued August 2013, available at <https://www.census.gov/prod/2013pubs/acs-22.pdf>.

Este formulario ha sido aprobado por la Corte Suprema de Illinois y todas las cortes de circuito de Illinois están obligadas a aceptarlo.

ESTADO DE ILLINOIS CORTE DE CIRCUITO	SOLICITUD DE CAMBIO DE NOMBRE (ADULTO)	<i>Solo para uso de la corte</i>
CONDADO DE _____		Solo para información
Instrucciones ▼	Solicitud de:	No entregue a la corte
Escriba más arriba el nombre del condado donde va a presentar el caso.		
Escriba su nombre actual.	Solo para información.	
NO escriba un número de caso; el secretario lo agregará.	Su nombre actual (<i>Nombre de pila, segundo nombre, apellido</i>)	Número de caso

Le pido a la corte que publique una orden para cambiar mi nombre, y declaro:

En 1, escriba su nombre actual completo.	1. Mi nombre actual es: Solo para información. Nombre de pila Segundo nombre Apellido
En 2, escriba el nuevo nombre completo que desea tener.	2. Quiero que mi nombre se cambie a: Nombre de pila Segundo nombre Apellido
En 3, escriba su dirección actual completa.	3. Mi dirección es: _____ Calle Ciudad Estado Código postal
En 4, escriba la fecha en que comenzó a vivir en Illinois.	4. He vivido continuamente en Illinois por lo menos durante 6 meses, comenzando el: _____ Fecha
En 5, escriba el año en que nació. NO ponga su fecha de nacimiento completa.	5. Mi año de nacimiento es: _____ Año
En 6, ponga la ciudad, condado, estado y país donde nació.	6. Mi lugar de nacimiento es: _____ Ciudad Condado Estado/Provincia País
En 7, 8 y 9 indique si ha sido condenado o ha recibido una condena condicional por el delito indicado.	7. Yo <input type="checkbox"/> he <input type="checkbox"/> no he sido condenado o recibí una condena condicional por un delito que requiere que me registre como infractor sexual en Illinois o cualquier otro estado.
Si marcó "he" en 7 u 8 y no ha sido perdonado, la corte no puede aprobar su cambio de nombre.	8. Yo <input type="checkbox"/> he <input type="checkbox"/> no he sido condenado o recibí una condena condicional por robo de identidad o robo de identidad agravado en Illinois o cualquier otro estado.
	9. Yo <input type="checkbox"/> he <input type="checkbox"/> no he sido condenado o recibí una condena condicional por un delito grave en Illinois o en cualquier otro estado.

Interested in Drafting Your Own Plain-Language Court Forms?

Limit drafting to proceedings where self-representation is high (family law, small claims, landlord/tenant, guardianship, name change, etc.). Include areas with a known history of avoidable litigant confusion. Identify proceedings where developing forms is not a priority (for example, cases where appointed counsel is available, cases that involve money and there are resources to hire counsel, and cases that are too complex).

4.2 Correspondence from the Court

Correspondence from the Court

- Identify your audience (besides the person you are writing to, consider any additional readers)
- Organize letters to meet your users' needs
- Start with the main message
- After the main message, use an overview sentence about the content
- Use headings to organize the content
- Limit each paragraph to one topic
- Use bulleted lists
- Use a professional, compassionate tone
- Focus on the reader by using “you” and the active voice
- Use a sympathetic opening when appropriate
- Apologize, if appropriate
- Use terms such as “we regret” or “unfortunately” when delivering bad news
- Express requirements and requests clearly

Content – Writing with Clarity

Don't assume your readers have knowledge of the subject or have read any related information.

- Clearly ask or explain in a way that your reader understands and knows what to do with the information.
- Eliminate unnecessary words. Be concise.
- Define and use terms consistently.
- Use the same words your reader would use.

Use the Present Tense

Write so the subject speaks as of the time it is applied, not as of the time it is drafted.

<i>Do not say:</i>	<i>Say:</i>
It was decided by the court to grant the request.	The court granted your request.

Use Active Voice

Use the active voice in correspondence to communicate effectively. Active voice clearly identifies the action and who is performing that action. Unfortunately, much of legal and government writing is in the passive voice, giving documents a wordy, bureaucratic tone.

Active voice makes documents stronger by showing responsibility or giving credit for an action. When we don't identify the doer of the action, the sentence can sound vague. An active voice sentence generally uses fewer words to communicate the same information, and more closely resembles spoken language.

Active Voice

- A sentence's voice indicates whether its subject acts or is acted upon. When the subject does something or acts, the verb is in the active voice.
- Active voice makes it clear who has acted and who is responsible for what action.
- Active voice is important so that readers can easily tell who did what action.
- Active voice follows natural sentence structure: doer-verb-receiver of action, i.e., "The attorney (doer) wrote (verb) the correspondence (receiver)".
- Passive voice reverses natural sentence structure. When the subject receives the action or is acted upon, the verb is in the passive voice.
- The correspondence (receiver) was written (verb) by the coordinator (doer).
- With passive voice, sentences are usually longer and responsibility is not as clear. Sentences written in the passive voice are obscure and often raise more questions than provide answers.

Passive:	The rule was adopted by the supreme court.
Active:	The supreme court adopted the rule.

<i>Do not say:</i>	<i>Say:</i>
If it is found that the applicant is qualified, a license will be issued.	The department will issue a license if it finds that the applicant is qualified.
The social worker performs an assessment of the child's injuries.	The social worker assesses the child's injuries.

Tone

Tone in a document is the impression we leave about our professionalism, our attitudes toward the subject, and even our attitudes toward the reader. The choice of personal pronouns is an important factor in giving your document a friendly, personal, human tone.

Address the reader by name or as “you”

Use “you” or “your” often to express a conversational tone. This will make your documents sound more natural, open, and much less bureaucratic.

Refer to yourself as “I” instead of “we”

Using “I” instead of “we” when the document is clear that only one person carried out the action makes you seem more real to your reader. Refer to yourself or the person signing the letter as “I” instead of “we.” You will communicate accountability, a professional friendliness, and a personal interest in the document you are signing. Use “we” when you are referring to actions you and at least one other person carried out and “I” when referring to yourself as the subject of the action.

Avoid jargon

Avoid unfamiliar, jargon. Use specific, concrete words to ensure the writing is as direct and clear as possible. For example, instead of writing “We need to move forward, seizing low-hanging fruit,” write “We need to move forward with an achievable goal.”

Avoid Repetitive and Redundant Words

Redundant expressions needlessly repeat ideas and add no value to your documents. For example, in the expression “final outcome,” the word final is redundant because outcome implies finality.

Delete repetitious words. Ex. Each and every student voted to strike in protest.
Correction: Each student voted to strike.

Redundant Words

Do not use the same word or words that have the same meaning within a sentence.

<i>Do not say:</i>	<i>Say:</i>
The Child Support Department and the Child Welfare Department worked together on a joint project.	The Child Support and Welfare Departments worked on a project.

Avoid Redundancies

Do not use word pairs if the words have the same effect or where the meaning of one includes the other.

Examples:

- any and all
- full and complete
- authorize and direct
- order and direct
- cease and desist
- each and every

Avoid Indefinite Words and References

Examples:

- Frequently
- Untimely

- Unseasonable
- Temporarily
- Promptly
- Reasonably

<i>Do not say:</i>	<i>Say:</i>
Total disclosure of all facts is very important to make sure we draw up a total and completely accurate picture of your financial position.	Disclosing all facts is important to create an accurate picture of your financial position.

Superfluous and Verbose Expressions

<i>Do not say:</i>	<i>Say:</i>
The attorney general is empowered to appoint such personnel as may reasonably be required to carry out the functions prescribed for his office.	The attorney general may appoint personnel to carry out the office's functions.
Absolutely null and void and of no effect	Void
Adequate number of	Enough
At the same time	When
At the place	Where
For the purpose of In order to	To
During such time as	While
By virtue of By means of	By, under

Give consideration to	Consider
Have knowledge of	Know
Is authorized and directed to Is directed to Is required to It is the duty	Shall
Is authorized to Is empowered to It shall be lawful	May
In case In the event that However or provided	If
Is able to	Can

Write Positively

Express negative ideas in positive form.

<i>Do not say:</i>	<i>Say:</i>
A decision will not be made unless all information has been received.	A decision will be made when all information is received.
The request cannot be approved without payment.	The request will be approved when payment is received.

Use Action Verbs

<i>Do not say:</i>	<i>Say:</i>
is applicable to	applies to
is concerned with	concerns
make payment	pay
denial	deny
Make application to	apply
give recognition to	recognize

Hidden Verbs

Hidden verbs found in endings such as -ment, -tion, -sion, and -ance or link with verbs such as achieve, effect, give, have, make, reach, and take. Often, you will find a hidden verb between the words “the” and “of.”

<i>Do not say:</i>	<i>Say:</i>
If you cannot make the payment of the \$100 fee, you must make an application in writing before you file your form.	If you cannot pay the \$100 fee, you must apply for a fee waiver in writing before you file your form.

Use Singular Nouns Rather Than the Plural Nouns

Using singular nouns instead of plural nouns avoids confusion of whether the noun applies separately or jointly.

<i>Do not say:</i>	<i>Say:</i>
The applicant shall submit the required fee or fees.	The applicant shall submit the required fees.
The guard will issue a security badge to each employee who works in Building D and each employee who works in Building E.	The guard will issue security badges to the employees who work in Buildings D and E.

***Exception: Use plural nouns for headings and titles.*

Use Elliptical Clauses

An elliptical clause is a clause in which some words have been left out.

<i>Do not say:</i>	<i>Say:</i>
For excusable delays that are not caused by weather, the Department pays your added costs.	For excusable delays not caused by weather, the Department pays your added costs.
If the Court determines that a claim is without merit, you may...	If the Court determines a claim is without merit, you may...

Use Parallel Phrases

Parallel phrases balance a sentence when a series of words, thoughts, or ideas appear in one sentence.

<i>Do not say:</i>	<i>Say:</i>
A copy may be obtained by mail or if a person appears personally.	You may obtain a copy by mail or in person.

Avoid Prepositions

Avoid prepositions but do not eliminate them if non-parallel phrases are created as a result.

<i>Do not say:</i>	<i>Say:</i>
authority of the Judge	Judge's authority
order for the court	Court order

Avoid Split Infinitives

An infinitive consists of the word to and the base form of a verb. A split infinitive occurs when another word is placed between to and the verb.

<i>Do not say:</i>	<i>Say:</i>
Be sure to promptly reply to the invitation.	Be sure to reply promptly to the invitation. <i>or</i> Be sure to reply to the invitation promptly.

Avoid Adjectives

Adjectives composed of two or more words are usually hyphenated when they precede a noun, even though the phrase would not be hyphenated if standing alone, such as "low income," "one year," "full time," and "part time." This is necessary to avoid ambiguity.

<i>Do not say:</i>	<i>Say:</i>
A patron may purchase two dollar tickets.	A patron may purchase two-dollar tickets.
Low income persons may serve three year terms.	Low-income persons may serve three-year terms.

Do not hyphenate between an adverb ending in "ly" and the adjective it modifies. For example, "substantially new construction" does not need a hyphen.

Using the Words *Shall, Will, Must, Should, and May*

shall	imposes an obligation to act, but may be confused with prediction of future action
will	predicts future action
must	imposes obligation, indicates a necessity to act
should	infers obligation, but not absolute necessity
may	indicates discretion to act
may not	indicates a prohibition

To determine whether the use of "shall" or "may" is correct, a helpful test is to mentally substitute for the word "may" the words "has the authority to" and substitute for the word "shall" the words "has the duty to." This reading will make it readily apparent whether the usage is correct.

<i>Do not say:</i>	<i>Say:</i>
The Governor shall approve it.	The Governor must approve it. [obligation] The Governor will approve it. [future action]
The department should ...	The department shall
The department should not ...	The department may not ...

Avoid Unnecessary Qualifiers

Qualifiers do not add meaning to a sentence and will cause misinterpretations.

Examples:

- actual
- all (only use to differentiate between partial and whole quantities)
- any (only use to specify a choice)
- completely
- existing (with remove, reconstruct, salvage, abandon, or obliterate)
- Do not use respective and respectively.

<i>Do not say:</i>	<i>Say:</i>
All forms are listed under the names of their respective sections.	Forms are listed under the names of their corresponding sections.

Avoid Use of Exceptions

State a rule or category directly. Do not describe the rule or category by stating its exceptions.

<i>Do not say:</i>	<i>Say:</i>
All persons except those 18 years or older...	Each person under 18 years of age...

Use an exception only to avoid long and cumbersome lists or elaborate descriptions. State the rule or category first then state its exception.

<i>Do not say:</i>	<i>Say:</i>
Alabama, Alaska,... (listing 47 states) and Wyoming must ration...	Each state except Texas, New Mexico, and Arizona must ration... (In this case the category "each State" is established first and then the exceptions are stated.)

Do not use general phrases such as "except as otherwise specified" or "except as otherwise shown." Be specific and state the particular items to which the specification does not apply. Use "Specify:."

Write Short Sentences/Questions

It is difficult to determine the intended meaning of a complex sentence. Readable sentences are simple, active, affirmative, and declarative. The more a sentence deviates from this structure, the harder the sentence is to understand. Follow these guides for writing sentences:

1. State one thing and only one thing in each sentence.
2. Divide long sentences into two or three short sentences.
3. Remove all unnecessary words. Strive for a simple sentence with an implied subject and implied verb. Eliminate unnecessary modifiers.

<i>Do not say:</i>	<i>Say:</i>
When the device is not in use for less than one work shift, turn off the device.	When the device is not in use during a work shift, turn it off.
In the event that the director objects to the filing of the complaint, the director, in his discretion, may file a responsive pleading subsequent to the filing.	If the director objects to the complaint, the director may file a responsive pleading.

Be Consistent

Use simple specific words. Do not use abstract, vague, or different words to say the same thing.

<i>Do not say:</i>	<i>Say:</i>
Each motor vehicle owner must register their car with the Department of Motor Vehicles.	Each automobile owner must register their automobile with the Department of Motor Vehicles.

Use Parallel Structure

Arrange sentences so that parallel ideas look parallel. When using lists, the lead-in sentence along with each item in the list should read as though it is a stand-alone sentence.

Use lists and numbered steps when presenting information that has several parts or is chronological. Even if the information isn't too complicated, a list adds white space and helps with understanding.

<i>Do not say:</i>	<i>Say:</i>
<p>The duties of the Executive Secretary of the Administrative Committee are:</p> <ul style="list-style-type: none"> ● To take minutes of all the meetings ● The Executive Secretary answers all the correspondence ● Writing of monthly reports 	<p>The duties of the Executive Secretary of the Administrative Committee are to:</p> <ul style="list-style-type: none"> ● Take minutes of all meetings ● Answer all correspondence ● Write monthly reports

Use Preferred Expressions

<i>Do not say:</i>	<i>Say:</i>
in accordance with conformance with as determined by	according to
subsequent to	after
permit permitted	allow allowed
at no cost to the Petitioner	at the Agency's expense
for the reason that due to the fact that	because

prior to	before
commence initiate	begin
alter modification revision	change
adequate number of sufficient number of	enough
excluding	except
in the interest of with reference to	for
when subject to in case in the event that provided that	if (except use when in reference to time and where in reference to location)
in lieu of	instead of
deems	is
retain	keep

When choosing a word, balance the following:

- Use the most basic word.
- If the most basic word has many definitions and if those definitions can cause confusion, use a more precise word.
- Use industry-standard words.
- When a law is referenced, use the core words of the law. Do not use the legalese, if possible.

Omit Needless Words

<i>Do not say:</i>	<i>Say:</i>
with regard to	about
located at at the following location	at
because of the fact that	because
by means of	by
at no time	do not
during the course of during the duration of	during
for the period of	for
in a manner that in a manner which	how
in the event of should it appear that	if
including, but not limited to	including
at a later date	later
on a monthly basis	monthly
close proximity	near
there will be no	no
related to	of
pertaining to	of, about
such that	that

so as to in order to	to
as a means of for the purpose of	to, for
until such time	until

Use Simple Language

<i>Do not say:</i>	<i>Say:</i>
Accorded, afforded	given
cease	stop
ascertain	determine
cognizant of	aware of
deem	consider
effectuate	carry out
execute	sign
indicate	show
institute	begin, start
interrogate	question
of each year	annually
opt for	choose
optimum	best
preserve	keep

pursuant to	under
subsequent	later
summons	send for, call, request

For more plain language alternatives, see section [5.1 Plain Language Alternatives to Commonly Used Terms](#).

Ranges of Numbers, Days, Dates, and Ages

To specify ranges of numbers, ages, and dates: to, through, between, and from.

<i>Do not say:</i>	<i>Say:</i>
From July 1, 2002, to. . .	After June 30, 2002, and before. . .
Between July 1, 2002, and. . .	After June 30, 2002, and before. . .
Before July 1, 2002. . .	To (or until or by) June 30, 2002. . .
between the ages of 17 and 45	17 years old or older and under 46
who has passed his 17th birthday [or who is 17 years old or older] unless you mean who is 18 years old or older	who is more than 17 years old
over 17 members	at least 18 members not fewer than 18 members

Statutory language

What to do when you can't change the legal language? Avoid citing statutory language. If you have to keep it, keep it small. Provide a hyperlink to direct the user to a specific section. <https://docs.legis.wisconsin.gov/statutes/prefaces/toc>

Legalese:

- Remove legalese language (therefore; whereas; hereafter; wherein; etc.).
- Rewrite in a way that the reader will understand.
- When a law is referenced, use the core words of the law.

Definitions:

- It is important not to define a word in a sense significantly different from the way it is normally understood by the persons to whom it is primarily addressed.
- Rewrite to try to eliminate the need for most definitions.
- Define the word where you use it in your form.
- If you must have a definition section, place it at the beginning or the end of your form and direct word definitions within the form with hyperlinks.

Acronyms

Define initialisms and acronyms when first introduced. For example, “American Bar Association (ABA).” Thereafter, refer to the entity defined only by the initials or acronym. If the entity is mentioned only once in a writing, do not use the initials or acronym but rather the full name.

Bulleted Lists

Use bulleted lists to clarify text. These lists make text simple and emphasize important points.

Colloquialisms

Avoid using colloquial phrases in correspondence as they will confuse the reader. Colloquial language includes slang, but also informal words, phrases known only to native speakers of the language, and regional/local phraseology.

4.3 Websites

Web Accessibility

What is web accessibility? In simple terms, it is ensuring that every visitor to a website is able to access, navigate and understand all of the content displayed.

Web accessibility is for everyone, irrespective of the method of access. Website users can be broadly categorized into three groups:

1. Users who are not visually impaired and use a mouse to navigate and access content on a website. These ‘sighted’ users can easily look through the content without assistance. These users also benefit from web accessibility features such as “alt” text for images wherein they can just hover over the image and see information about it rather than having to click on the image.
2. Visually impaired users or those that use a keyboard to navigate a website. These users require web accessibility features enabled so as to provide them with the same access to content as ‘sighted’ users. For example, having “link outline” enabled helps keyboard users find their way on the webpage by highlighting the link that their ‘cursor’ is on. Without an outline it is nearly impossible to find your place on a website. See example below.
3. Users with assistive devices such as screen readers gain the maximum benefit from web accessibility. Screen readers read aloud the content on the webpage including images, navigation, hyperlinks etc. Without web accessibility features, these users face an uphill task to access and navigate a webpage. For example, a simple “alt” text for an image helps these users as the assistive device would read aloud the “alt” text to help the user understand that this is an image with a title. Without web accessibility, imagine trying to access, understand and navigate a webpage with the monitor off. It is impossible to know your place on the page much less navigate it.

Keeping all these users in mind, it is every web developer’s responsibility to ensure that their sites, forms, documents and other media are accessible to users by implementing web accessibility guidelines to the fullest extent possible.

There are several resources available to help implement web accessibility. Here are some guidelines:

- Web Accessibility Initiative (WAI): <https://www.w3.org/standards/webdesign/accessibility>
- Web Accessibility in mind (WebAIM) : <https://webaim.org/>
- Web Content Accessibility Guidelines (WCAG): <https://www.w3.org/WAI/standards-guidelines/wcag/>

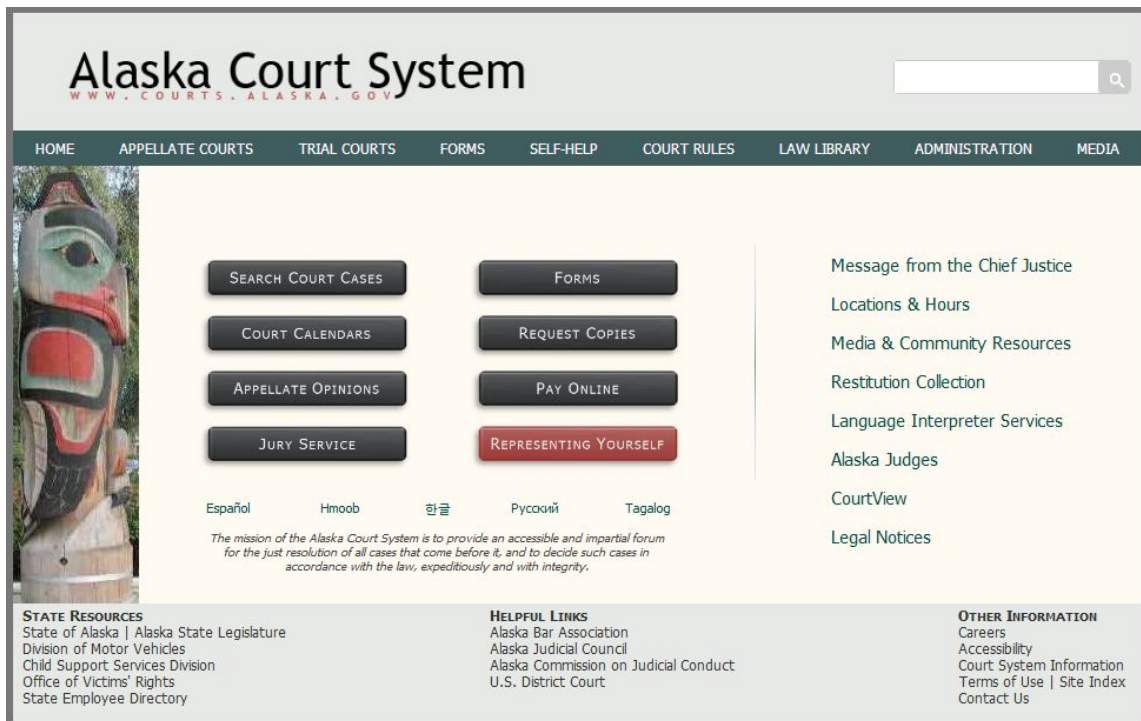
- U.S. Government-wide IT Accessibility Program – Section 508:
<https://www.section508.gov/>

Tools to check for web accessibility:

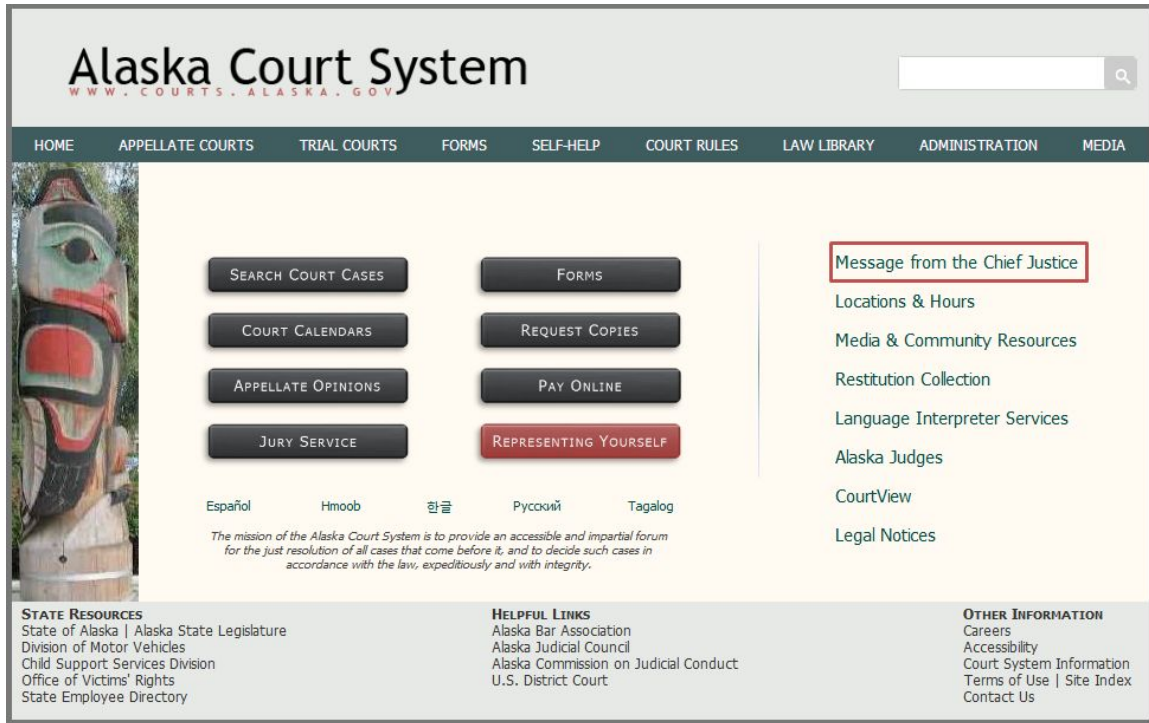
- Web Accessibility Evaluation Tools List - <https://www.w3.org/WAI/ER/tools/>

Example of a webpage without outlines for links

Do you know where you are?



(Hint: The link that is in focus/tabbed over is “Message from the Chief Justice”, the first link in the right hand side menu bar.)



The same web page with an outline for a link that is in focus or tabbed on, which gives the keyboard user a visual cue as to the location of the cursor. Options for styling of the outline range from a simple dotted border to solid lines of color as shown below. No matter the style, it should still meet accessibility guidelines.

Tools

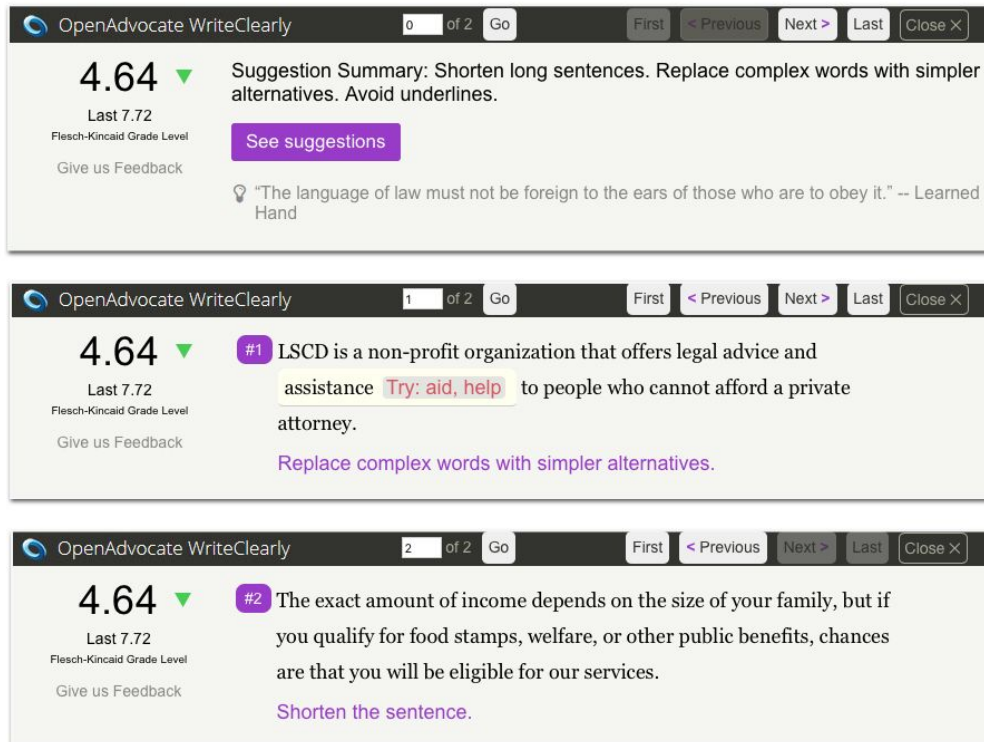
WriteClearly

Web experts recommend that web content should be at 8th grade reading level ²⁷ or lower in order to reach a broad audience. Writeclearly is a free web tool that is designed for helping authors write more readable web content. WriteClearly analyzes the reading grade level of a web page and offers suggestions for improving readability. WriteClearly is a web browser “bookmarklet” which a snippet of code that can be easily saved as a web browser bookmark You do not need to install any software.

Get WriteClearly at <http://openadvocate.org/writeclearly>

Once you have WriteClearly installed as a bookmarklet in your web browser’s bookmarks toolbar, visit a web page you want to analyze and then click/select the bookmarklet. WriteClearly will analyze the web page and display a panel with the results. (To inspect only part of the text on a web page, select the text and then click on the WriteClearly bookmark.)

²⁷ Jakob Nielsen, *Lower-Literacy Users: Writing for a Broad Consumer Audience*, <https://www.nngroup.com/articles/writing-for-lower-literacy-users/> March 14, 2005 (accessed Nov 9, 2018)



WriteClearly will display Flesch-Kincaid Grade Level²⁸ of the web page along with a summary of the suggestions. By clicking on the “See suggestions” you can review all the suggestions. (The suggestion number is added to corresponding section in the web page as a purple marker.)

1. WriteClearly identifies complex words and suggests simpler synonyms.
2. Short paragraphs are easier to read and understand. WriteClearly identifies long paragraphs and suggests breaking them into several shorter paragraphs.
3. Shorter sentences are better for conveying complex information. WriteClearly identifies long sentences and suggest breaking up into smaller sentences.
4. On the Internet, text in ALL CAPS is associated with “yelling.” Excessive use of ALL CAPS makes text harder to read. WriteClearly identifies excessive use of ALL CAPS and suggests avoiding the practice to improve readability.

²⁸ Wikipedia, Flesch–Kincaid Readability Tests https://en.wikipedia.org/wiki/Flesch%E2%80%93Kincaid_readability_tests (accessed Nov 9, 2018)

5. Large passages of underlined text look ugly and are hard to read. On the web, underlined text can also be mistaken for a link. WriteClearly catches instances of underlined text and suggests avoiding it to improve readability.
6. Multiple exclamation points should be avoided in professional writing. WriteClearly identifies instances of multiple exclamation points and suggests toning it down.
7. Bold and italics should be used sparingly as they reduce readability of text. WriteClearly identifies excessive use of bold and italics.
8. Don't use "Click Here" for links as it degrades web accessibility of the web page. WriteClearly catches instances of "click here" and suggests avoiding the practice.
9. Images on web pages should have alternative text to make the content understandable in screen readers. WriteClearly displays an alert when a page has images without alternative text.

The development of WriteClearly was funded by a Technology Initiative Grant ("TIG")²⁹ from the Legal Services Corporation ("LSC").³⁰

ReadClearly

Legal web content presents unique challenges for the web author due to complexity of legal information. While rewriting legal content to use plain language is helpful, it is not always possible to eliminate legal terms completely. ReadClearly is a free tool that enables website visitors to look up explanations for complex legal terms on your website. ReadClearly's pre-built glossaries are designed to assist with improving the readability of legal services websites.

It's easy to add ReadClearly to a website. Just add a Javascript code snippet to your website and ReadClearly does the rest. To install ReadClearly please see <https://github.com/openadvocate/readclearly/blob/master/HOWTO.md>.

²⁹ Learn more about TIG <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig>.

³⁰ Abhijeet Chavan, Improve Readability of Web Content With WriteClearly, Innovations in Legal Aid, Jan 22, 2018, <https://medium.com/innovations-in-legal-aid/improve-readability-of-web-content-with-writeclearly-3-0-2a2d2f64a74a> (accessed Aug 29, 2018).

Once installed, ReadClearly highlights words that are in its glossary of complex legal terms. The web page visitor can then click on the word to see a plain language explanation.

juvenile court that handled the delinquency or child in need of services case.

When deciding whether to grant the petition, the juvenile court may review:

- The best interests of the child.
- The age of the person during the person's contact with the juvenile court or law enforcement agency.
- The nature of any allegations.
- Whether there was an informal adjustment or an adjudication.
- The disposition of the case.
- The manner in which the person participated in a hearing of the case or with the juvenile court or with any law enforcement agency.
- Whether the person acquired a criminal record.
- The person's current status.

If expungement is granted, the records may be destroyed or given to the person who requested expungement.

The judge's decision in a case or action.

Was this hint helpful?

Yes No

i

✓

ReadClearly offers a choice of four pre-built glossaries:

1. *Basic English Legal Glossary with Spanish Explanations* (349 terms) For English-language websites. The 100 most commonly used English terms have Spanish explanations to assist bilingual readers.
2. *Common Usage Spanish Legal Glossary* (100 terms) For Spanish-language websites.
3. *Expanded Plain Language English Legal Glossary* (1763 terms) Plain language explanations to assist readers understand advanced-level legal content.
4. *Basic English Legal Glossary* (349 terms).

In addition to the pre-built glossaries offered by ReadClearly, you have the option to use glossaries contributed by other users, or contribute your own. Contributed glossaries can be found in our GitHub repository <https://github.com/openadvocate/readclearly>.

The development of ReadClearly was funded by a TIG from the LSC.³¹

4.4 Building Signage

How can we deliver the message of “welcome, we respect you, whatever situation brings you to our house?”

Building signage should be considered the first step to minimizing an otherwise confusing, frightening experience for first time court users. When people understand a process, they are more accepting to decisions, even if the decision is unfavorable. In the justice system, minor adjustments such as helping court users navigate a courthouse may translate into increased compliance with court orders and enhanced perceptions of legitimacy.³² Ultimately, improving procedural justice through improved signage creates a welcoming atmosphere, helps court users navigate the building more easily, and communicates rules and procedures clearly and respectfully.

Implementing or improving building signage may follow a Why? Where? How? process.

Why should we care or invest in building signage? The referenced study, “Improving Courthouse Signage”, identified the initiative as two primary elements of procedural justice:

- Treating people respectfully; and
- Helping them understand key procedures.

³¹ Abhijeet Chavan, Add Legal Glossaries To Websites with ReadClearly, Innovations in Legal Aid, Jan 22, 2018, <https://medium.com/innovations-in-legal-aid/add-legal-glossaries-to-websites-with-readclearly-3-0-57d62a3baf31> (accessed Aug 29, 2018)

³² RALPH POPE-SUSSMAN, IMPROVING COURTHOUSE SIGNAGE: PROCEDURAL JUSTICE THROUGH DESIGN (Center for Court Innovation 2015).

If a court is using this plain language guide to improve understanding by the court user of court procedures, forms and communication; it is imperative that this goal be extended to the arrival and departure of the court user.

In its publication, “What do Defendants Really Think?”,³³ The Center for Court Innovation found that people are more likely to perceive the justice system as fair when they feel they are treated with respect, understand the process, have opportunities to be heard, and that decision-makers are unbiased.

What can we do to achieve this improved understanding?

- Create a welcoming atmosphere through logos and welcoming signage, including the court’s mission in a visible, prominent location;
- Enable court visitors to navigate the courthouse more easily with building directories by the elevator on every floor and clearly identified courtrooms; and,
- Communicate court rules and procedures clearly and respectfully, such as cell phone, dress attire, and recording device policies.

Before:

After:



Where should this improved signage be located? Eye-level, visible signage with well-known terminology will lessen the “fear of the unknown” in the court user.

³³ RACHEL SWANER ET AL., WHAT DO DEFENDANTS REALLY THINK?(Center for Court Innovation 2018), available at <https://www.courtinnovation.org/publications/what-do-defendants-really-think>, accessed November 13, 2018.

Performing a walk-thru of your courthouse with a friend who has never been there will help you see what a new court user sees. Where would they look for directions? In the elevator? Upon exiting the elevator? As you walk down a corridor? At a turning point in the corridor? Don't expect the court user to remember where the arrow was pointing when they exited the elevator. Constantly encourage them that they are going in the right direction with repeated signs with simple labels and legible lettering.

Investing in professional, commercial signs versus typed paper signs tells the court user that he/she is worth the time, effort and investment.

Before:



After:



How can we deliver the message of “welcome, we respect you, whatever situation brings you to our house?”

Be cognizant of court users with limited abilities, whether it is language needs or physical needs. Place signage at a level that someone with a physical disability can easily read. Include signage in languages most commonly used in your area. On the topic of language access, The National Center for State Courts refers to ‘Wayfinding’ in their report and recommendation to California courts.³⁴

³⁴ National Center for State Courts, Wayfinding and Signage Strategies for Language Access in the California Courts: Report and Recommendations, Judicial Council of California (February 2017), available at www.courts.ca.gov/languageaccess.htm, accessed October 19, 2018.

- Include signage that directs court users with impaired hearing on where to go for assistance;
- Assure that signs at elevators and corridors and courtroom entrances have raised and Braille characters;
- Identify those areas limited to court staff in clear language;
- We’ve discussed using symbols and icons versus wordy documents and forms in earlier sections. Building signage lends itself to these types of signs. Not only do recognized symbols accomplish delivery of the message at first sight, the cost of signage is reduced;



- Rethink language that is common to court staff but confusing to the court user, such as “community supervision.” Replace this term with “probation.”
- Avoid signage that may be confusing. For example, replace “payments” with “court costs and fine payments”; and
- Revise or fine tune signage along the way if you see it is ineffective or misleading.

The Tennessee Supreme Court Access to Justice Commission during its 2012 Clerks' Conference listed easy steps to assisting the self-represented litigant navigate an unknown territory full of uncommon phrases and words.

- Keep sentences to fifteen words or less;
- Never use ALL CAPS or *italics*. This formatting makes words harder to read.
- Use common terms as much as possible. Use 'lawyer' instead of 'attorney'; and,
- Use contractions. Use 'can't' instead of 'cannot.'

Remember that eliminating or minimizing fear of the unknown for the court user allows them to develop trust and confidence in the justice system, even at a time when the outcome is uncertain.

4.5 Training Court Professionals

Within federal agencies, complying with the Plain Language Writing Act of 2010 is measured by Report Cards.³⁵ The Report Card grades federal departments within each agency and advises them how to improve.

The two main criteria are:

1. **Compliance** - Does the agency content submitted fulfill the requirements of the [Plain Writing Act of 2010](#)?
2. **Writing and Information Design** - Do the samples consistently make documents and web pages easier to read, understand and use?

Since this concept of using plain language in our courts is not mandated, there are no Report Cards. However, NACM encourages court managers to review current court processes, forms, building signage, websites, and other materials and implement the use of plain language to ensure all communications are easily understood by court customers. Using the Report Card as a guide, courts can make their best effort to comply with the Act even if not mandatory.

³⁵ Center for Plain Language/Reports, <https://centerforplainlanguage.org/reports/federal-report-card/>

Establish a Plain Language Committee

Creating a governance structure around a large and iterative process is integral to success. When establishing your Plain Language Committee, identify and assign a key member from each department to review the current court processes; forms; and other materials for their respective areas. For example, judicial officers, forms attorneys, clerks of court, and division supervisors (criminal, civil, probate, etc.). This committee would then:

1. Develop a plain language drafting process,
2. Educate respective staff on style and formatting guidelines,
3. Designate persons to oversee ongoing compliance³⁶ with established guidelines,
4. Develop training modules on the usage of plain language,
5. Test new forms and customer service scripts, and
6. Prioritize the forms drafted in plain language.

Communicating the benefits of using plain language in court materials early on in the process will go a long way to change the court culture so that use of plain language becomes systemic in your court.

Design a Checklist for Implementing Plain Language


Design a Checklist for Implementing Plain Language in Court Processes and Forms

Example Checklist

√ / X	AREA:	ACTION:
	Mission Statement	
	Court Customers	
	Instructions on Courtroom Decorum	
	Public Signage in Courtrooms	

³⁶ Administrative Conference of the United States, Plain Language in Regulatory Drafting, December 2017, <https://www.acus.gov/recommendation/plain-language-regulatory-drafting>, accessed May 9, 2018.

	Juror Education – What to Expect if Summoned?	
	Instructions for Self-represented Litigants	
	Kiosks and Electronic Court Dockets	
	Process for Communicating with a Judge	
	Forms:	
	Court Notices	
	Generic Court Orders	
	Self-Help Documents	
	Attorney Appointment/Reimbursement Forms	
	Juror Instructions	
	Grand Juror and Petit Juror Oaths	
	Personnel:	
	Orientation Materials	
	Staff Training Manuals	
	Job Descriptions (Roles & Responsibilities)	
	Strategic Plan	
	Addressing the Media	
	Public Speaking	
	Telephone Etiquette	
	Social Media Etiquette	
	Coordinator’s Oath and Understanding the Canons	
	Filing a Grievance	
	Example:	
√	Court Notices	Can the notice be easily understood after the first reading? Does the notice tell the person receiving it what he or she must

		<p>do, if anything?</p> <p>Could images be used in the notice to help further communicate the message? For example:</p> <p>Affix postage </p> <p>See other examples in the Court Forms section 4.1.</p>
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Test New Forms and Customer Service Scripts

Employing the methods for testing discussed in Chapter 3, test your court forms and customer service scripts (verbal communication) to ensure that others easily understand the information being communicated.



5 Tools and Resources

1. [Center for Plain Language](#): They offer resources to help government agencies and businesses write so clearly that their intended audience understands what they are saying the first time they read or hear it.
2. [FDA: Plain Writing: It's the Law!](#) Explains [Plain Writing Act of 2010](#), and explains how to improve the effectiveness and accountability of Federal Agencies to the public by promoting clear communication that the public can use and understand.
3. [Federal Plain Language Guidelines](#): The Plain Language Action and Information Network (PLAIN) is a community of federal employees dedicated to the idea that citizens deserve clear communications from government.
4. [How Users Read on the Web](#), by NN/G Nielsen Norman Group, *Evidence-Based User Experience Research, Training, and Consulting*: Research shows that 79 percent of the test users scanned a web page, and 16 percent read word-by-word. This article explains how to write scannable text for web content.
5. [Illinois Courts Access to Justice Standardized State Forms](#): Illinois standardized state forms examples.
6. [Legal Writing in Plain English](#), by Bryan Garner: This book takes a practical approach to legal writing. The author has three decades of experience working with law students, lawyers and judges. Practical exercises accompany each section of the book.
7. [Plain English and the Law](#): The legal consequences of clear and unclear communication. This booklet highlights the importance and benefits of clear communication from a legal perspective. Explains how plain English can save time and money by avoiding unnecessary legal costs.

8. [Plain Language Disaster Sheets to help people affected by natural disasters:](#) Sample print flyers.
9. [Plain Language Examples](#), *British Columbia Web Content and Development*: The British Columbia government lists plain language examples, word lists, and usage.
10. [ReadClearly](#): ReadClearly identifies complex legal terms on your website and displays a plain language explanation.
11. [SRLN Brief: Plain Language Resources for 100% Access](#): As described by the federal government on plainlanguage.gov, plain language is communication your audience can understand the first time they read or hear it.
12. [The Office of the Federal Register \(OFR\) Plain Language Tools: Writing Resources](#): The Office of the Federal Register (OFR) offers resources to help writers comply with the Plain Writing Act of 2010 and Presidential Memorandum of June 1, 1998 – Plain Language in Government Writing.
13. [Transcend–Plain Language Tips for Courts & Law](#): Transcend, a translation agency, offers plain language tips.
14. [Transcend–Plain Language Works for Pro Per Litigants](#), by Maria Mindlin and Katherine McCormick: An article about plain language and how it works.
15. [Usability.gov: Improving the User Experience: Writing for the Web](#): People read differently online than they do when they read print materials – web users typically scan for information. This article helps explain how to write specifically for web pages.
16. [Webinar: How to Incorporate Plain Language into Court Forms, Websites, and Other Materials](#): The National Association for Court Management, in partnership with the Self-represented Litigation Network (SRLN) provides this webinar.
17. [WriteClearly](#): Use WriteClearly to test the reading grade level of a web page.

18. [Writing For Self Represented Litigants. A guide for Maryland’s courts and civil legal services providers](#): Addresses writing for the needs of self-represented litigants in order for them to better understand what they are reading.
19. [Behavioral Insights Communications Checklist from the Department of Labor](#): Quick tool to make sure you are communicating effectively.
20. *Article: [Plain Language in Government Suffers in 2017](#)*: Highlights the importance of usable FAQ pages and infographics on websites. Provides insight into what the Center for Plain Language looks for when assessing government web pages and resources for usability. Includes seven criteria upon which the Center assesses resources.
21. *Webinar: [Infographics: Plain Language Considerations](#)*: Discussion about effective plain language infographics. Discusses considerations and questions as you plan creation of an infographic. Moves to understanding effective use of data in infographics. Ends with a discussion of effective communication with target audience through infographics.
22. [Writing for Self-Represented Litigants](#): A guide produced by the Maryland Access to Justice Commission.
23. *Article: [Self-Help, Reimagined](#)*: Discusses the social science behind the use of plain-language and graphics in instructional materials in the law.



5.1 Plain Language Alternatives to Commonly Used Terms

A

(an) absence of	no, none
abundance	enough, plenty, a lot (or say how many)
accelerate	speed up
accentuate	stress
accommodation	where you live, home
accompanying	with
according to our records	our records show
acquire	buy, get
accordingly	so
accrue	add, gain
accurate	correct, exact, right
achieve	do, make
additional	added, more, other
address	discuss
adjacent to	next to
adjustment	change, alteration
admissible	allowed, acceptable
admit	agree
adopt	approve
advantageous	useful, helpful
advise	recommend, tell
advise	tell, say (unless you are giving advice)
affix	add, write, fasten, stick on, fix to
aforesaid	this, earlier in this document
aggregate	total
alter	change
alleviate	ease, reduce
allocate	divide, share, give
alternative	(a) choice, (the) other
amendment	change
anticipate	expect
apparent	clear, plain, obvious
appear	seem
applicant (the)	you
apprise	inform, tell
appropriate	proper, right, suitable
approximately	about, roughly
as a consequence of	because
ascertain	find out, learn
as of the date of	from
assist, assistance	aid, help
attain	reach, get, win
attempt	try
attorney	lawyer

B

benefit
 by means of
 belated
 beneficial
 bestow
 breach
 by means of

help
 by, with
 late
 helpful, useful
 give, award
 break
 by

C

calculate
 capias
 capability
 caveat
 cease
 circumvent
 clarification
 commence
 communicate
 competent
 compile
 complete
 completion
 comply
 components
 comprises
 (it is) compulsory
 conceal
 concept
 concerning
 conclude
 concur
 condition
 consequently
 considerable
 constitutes
 consult
 contains
 contemplate
 contrary to
 correspond
 counter
 courteous
 cumulative

work out, decide
 warrant
 ability
 warning
 finish, stop, end
 get round, avoid, skirt, circle
 explanation, help
 start, begin
 talk, write, telephone (be specific)
 able, can
 make, collect
 fill in, finish
 end
 do, follow
 parts
 is made up of, includes
 (you) must
 hide
 Idea, plan
 about, on
 end, finish
 agree
 rule
 so
 great, important
 is, forms, makes up
 talk to, see, meet
 has
 think about
 against, despite
 write
 against
 polite
 added up, added together

D

decree
 deduct

order
 take off, take away

deem	believe, consider, think
defer	put off, delay
demonstrate	prove, show
depart	leave
directive	order
designate	appoint, choose, name
desire	want, wish
determine	decide, figure, find
detrimental	harmful, damaging
develop	grow, make
disburse	pay, pay out
discharge	carry out
disclose	show
discontinue	drop, stop
discuss	talk about
disseminate	give, issue, pass, send
dissolution	divorce
documentation	papers, documents
domiciled in	living in
duration	time, life
during which time	while
dwelling	home

E

effect modifications	make changes
elapse	pass, go by
elect	choose, pick
eligible	allowed, qualified
eliminate	cut, drop, end
emphasize	stress
employ	use
empower	allow, let
encounter	meet
endeavor	try
enumerate	count
enquire	ask
ensure	make sure
enter	approve, order, sign
equitable	fair
equivalent	equal
erroneous	wrong
establish	set up, prove, show
evaluate	test, check
evident	clear
examine	check, look at
exceedingly	highly
excessive	too many, too much
exclude	leave out, do not include

excluding
exclusively
exempt from
exhibit
expedite
expeditious
expend
expertise
expiration
expire
extended

apart from, except
only
free from
show
hurry, speed up
fast, quick
pay, spend
ability
end
run out
long

F

fabricate
facilitate
factor
failed to
favorable
feasible
final
finalize
forfeit
formulate
forthwith
forward
frequently
function
fundamental
furnish
furthermore

make, make up
ease, help
reason
didn't
good
can be done, workable
last
complete, finish
give up, lose
plan, devise
now, at once
send
often
act, role, work
basic
give, send
then, also, and

G

generate
grant

produce, give, make
give

H

has the capacity
henceforth
hereby
herein
heretofore
herewith
however

can, is able
from now on
now, by this (or edit out)
here
until now
below, here
but

I

identical
identify
imply

same
find, name, show
suggest, hint at

immediately
impacted
Impairment
implement
in accordance with
in advance
in addition
inasmuch as
inappropriate
in case of
in conjunction with
in consequence
in excess of
inform
in lieu of
in order that
in order to
initial
initiate
in receipt of
in regard to
in relation to
in respect of
in the absence of
in the course of
in the amount of
in the event of
in the near future
in the neighborhood of
issue
is applicable to
is authorized to
is of the opinion
it appears
it is known that
it is requested

at once
affected, changed
problem
carry out, start
by, following, per, under
before
also, besides, too
since
wrong, unsuitable
if
and, with
because, as a result
more than
tell
instead
for, so
to
first
start
get, have, receive
about, concerning, on
about, with, to
about, for
without
while, during
for
if
shortly, soon
about, around
give, send
applies to
may
thinks
seems
I/we know that
please, we request, I request

J
justify

prove

L
liaison
(a) large number of
legislation
locality
locate

discussion
many, most (or say how many)
law
place, area
find, put

M

magnitude	size
maintain	keep, support
majority	most
manufacture	make
marginal	small, slight
material	relevant
materialize	happen, occur
maximum	greatest, largest, most
minimum	least, smallest
modify	change
monitor	check, watch
moreover	and, also, as well
motion	request

N

narrate	tell
necessitate	cause, need
negligible	very small
nevertheless	but, however, even so
notify	let know, tell
notwithstanding	in spite of, still
numerous	many

O

objective	aim, goal
obligate	bind, compel
observe	see
obtain	get, receive
occupation	job, work, business
occur	happen
operational	working
on behalf of	for
on numerous occasions	often
optimum	best, ideal
option	choice
originate	start, came from
otherwise	or
outcome	result
outstanding	unpaid

P

parameters	limits
participate	join in, take part
perform	do
permissible	allowed
per annum	every year

permit
pertaining to
peruse
portion
position
possess
possessions
possibility
practically
precede
presently
preclude
predominant
prescribe
preserve
previous
principal
prior to
probability
procedures
proceed
procure
proficiency
programmed
prohibit
projected
promptly
promulgate
provide
provisions
purchase
pursuant to

let
about, of, on
read, read carefully, look at
part
place
have, own
belongings
chance
almost, nearly
go before, come before
now, soon
prevent
main
set, fix
keep, protect
earlier, past
main
before
chance
Rules, way
go ahead
get, obtain, arrange
skill
planned
ban, stop
estimated
quickly, at once
issue, publish
give, offer, say
rules, terms
buy
by, following, per, under

R

recapitulate
reconsider
reduce
reflect
regarding
relocation
regulation
reimburse
reiterate
relocate
render
remain
remuneration
render

sum up
think again about, look again at
cut
say, show
about, of, on
move
rule
repay, pay back
repeat, restate
move
make, give, send
stay
pay, payment
give, make

represents
request
require
requirement
reside
retain
review
revised
revocation

shows, stands for, is
ask
must
need
live
keep
look at (again)
new, changed
cancel, withdraw

S

selection
shall
significance
similar
simultaneously
solely
solicit
specified
state
statutory
subject
submit
subsequently
substantial
sufficient
supplement
supplementary
supply
surrender
surmise
susceptible

choice
must
meaning, point
like
at the same time
only
ask for
given, written, set
say, tell us, write down
legal, by law
the, this, you
send, give
after, later, then
large, much
enough
go with, add to
extra, more
give, sell, deliver
turn in
guess
open to

T

terminate
thereafter
thereby by that,
therefore
therein
thereof
thereto
the undersigned
thus
timely
transfer
transmit
transpire

end, stop
then, afterwards
because of that
so
there
its, their, of that
to that
I
so, therefore
prompt
change, move
send
happen, occur

U

ultimately	in the end, finally
unavailability	lack of
undersigned	I, we
undertake	agree, promise, do
unilateral	one-sided, one-way
unoccupied	empty
utilize	use

V

validate	confirm
verbatim	exact
viable	practical, workable
variation	change
vice	instead of, versus
virtually	almost (or edit out)
visualize	see, predict

W

warrant	call for, permit
whatsoever	whatever, what, any
whereas	because, since, but
with reference to	about
with the exception of	except for
witnessed	saw
whether or not	whether
with reference to	about
with regard to	about, for



About the Authors

Aurora Zamora, Chair

Aurora Zamora is employed with the Texas Office of Court Administration as a Court Services Consultant. In this role Aurora trains court personnel and court clerks and provides technical assistance to any of the courts in Texas in the area of case management and court processes. Aurora has been a member of the National Association for Court Management since 2003.



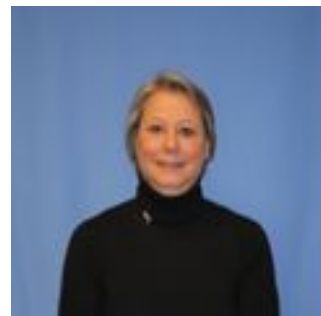
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Alyce Roberts works in the Administrative Office of the Alaska Court System where she serves as the special projects coordinator. In this capacity, she is the Administrative Office's primary liaison with clerks of court and is responsible for the management of statewide projects. Ms. Roberts has been a member of the National Association for Court Management since 2009, is currently serving on the NACM Board, and is the Communications Committee Chair. She is a Fellow of the Institute for Court Management (2010).



Terri Borrud

Terri first began working with forms and Form Management Programs over 38 years ago while employed with a large insurance company in Madison, Wisconsin. She set up their first "forms management program" for their home office and 7 branch offices. She has worked in various capacities of forms management over the years as an analyst, designer, sales representative and manager. She joined the Wisconsin Supreme Court, Director of State Courts office in the Court



Operations Department in 2005 where she manages nearly 1,000 court forms. She also staffs the Wisconsin Records Management Forms Committee which consists of judges, court commissioner, clerks of court, juvenile court clerk, register in probate, district court administrator, a member from the state bar and district attorney's office. This committee creates and maintains all the circuit court forms through an extensive review and approval process.

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Abhijeet Chavan has over 20 years of technology consulting experience with public sector, higher education, and non-profit clients. He is a consulting manager with *Tyler Technologies, Inc.* Abhijeet was named to the *Fastcase 50* list of global legal innovators in 2017. He regularly presents at conferences on access to justice and artificial intelligence. Abhijeet sits on committees of the *State Bar of California*, *American Bar Association*, and *National*



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Renee L. Danser, Esq.

Drawing on her knowledge of justice system operations and the pressures on the justice system, Ms. Danser joined the *Access to Justice Lab* at *Harvard Law School* to incorporate rigorous research into improving access to justice. Ms. Danser believes that for our research to be impactful, we must recognize the strengths and weaknesses of the communities reviewing and incorporating it. Using her court management and non-profit leadership experience, Ms. Danser encourages courts and the justice community to think about their needs and the needs of their



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Allison D. Spanner

Allison Downs Spanner works for the *Illinois Supreme Court* in the Access to Justice Division at the Administrative Office of the Illinois Courts. Alison staffs the *Illinois Supreme Court Commission on Access to Justice* and has worked on a variety of policy matters including the creation of plain language legal forms, an Illinois Supreme Court approved Plain Language Policy, procedural fairness, improving remote access to courts through technology, increasing awareness of and addressing implicit bias, and developing community trust and public confidence in the courts. She is also an adjunct legal writing professor at *Loyola University Chicago School of Law*.



Allison began her career in private practice where she worked on a wide range of matters including appeals, legal malpractice, family law, contract disputes, and employment litigation. Allison holds a Bachelors of Philosophy in Interdisciplinary Studies, *Miami University*, Oxford, OH, 2007; and, a Juris Doctor, *Chicago-Kent College of Law*, 2010.



Superior Court of Washington, County of _____

In re:

Petitioner/s *(person/s who started this case)*:

And Respondent/s *(other party/parties)*:

No. _____

Form Title Here
(DOCKET CODE HERE)

Commented [A1]: Alignment centered. Paragraph spacing: 150 pt before to create the 3" margin; 6 pt after to keep it away from the table

Commented [A2]: Or other appropriate descriptive info

Commented [A4]: Capitalize Each Word except and/or/the or short Prepositions

Commented [A3]: Or other appropriate descriptive info

Form Title Repeated Here [Style: WA Title]

Commented [A5]: 16 pt Arial Black, centered. Paragraph: 18 pt spacing before; Outline Level 1 (for Navigation Pane)

Use this template as a starter doc for your own forms.

- Delete or type over the sample text
- Cut and past the styles and sections as needed
- Delete the signature block types that do not apply.
- Delete the Motion Instructions box at the beginning if it doesn't apply

To both parties:

Deadline! Your papers must be filed and served by the deadline in your county's Local Court Rules, or by the State Court Rules if there is no local rule. Court Rules and forms are online at www.courts.wa.gov.

If you want the court to consider your side, you **must**:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by your county's Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

The court may not allow you to testify at the motion hearing. Read your county's Local Court Rules, if any.

Bring proposed orders to the hearing.

To the person filing this motion:

You must schedule a hearing on this motion. You may use the *Notice of Hearing* (form FL All Family 185) unless your county's Local Court Rules require a different form. Contact the court for scheduling information.

To the person receiving this motion:

If you do not agree with the requests in this motion, file a statement (using form FL All Family 135, Declaration) explaining why the court should not approve those requests. You may file other written proof supporting your side.

1. **Section Heading [Style: WA Item #]**

Regular body text with **no** checkbox or hanging indent [Style: WA Body .38" flush]

First level checkbox box and hanging indent text [Style: WA Body .38" hanging]

First level text in new paragraph below a checkbox box, **no** hanging indent text [Style: WA Body .63" flush]

Second level checkbox box and hanging indent text [Style: WA Body .63" hanging]

Second level text in new paragraph below a checkbox box, **no** hanging indent [Style: WA Body .88" flush]

Third level checkbox box and hanging indent text [Style: WA Body .88" hanging]

Commented [A6]: Use single list level numbering only (No 1.1, 2.1, or I. A. 1.) Number font is 12 pt Arial black. Paragraph: 12 pt spacing before; Outline Level 2 (for Navigation Pane)

Commented [A7]: Heading font is 12 pt Arial Bold. Capitalize each word if only 2 or 3 words. If it's a longer phrase, capitalize only the first word

Commented [A8]: All WA Body styles are Arial 11 font. Paragraph: 6 pt spacing before, 0 pt spacing after. Outline Level: body text.

Commented [A9]: Use a tab instead of spaces after the brackets to ensure hanging indent lines up with the first line text.

2. **Bullets and Numbering**

Use simple, one-level numbering, 1., 2., 3., **no** outline numbering

Bullet style is square like this:

- Style "WA Bullet"
- Spacing before may be tighter (3 pt)

➤ **Divide groups of sections with these 'Big Subhead' lines**

3. **Use bold for emphasis, italics in parentheses for instructions (like this)**

Parenthetical prompt text always goes in italics **before** the blank. Example:

(Name) _____

Generally bold the word "not" to add clarity and to distinguish between [] is [] is **not**...

Never use underline for emphasis. Only use it to show a blank that must be filled in.

Never use ALL CAPS.

4. **Avoid tables unless they are really needed**

If you do use a table, format it like this with the dotted border:

Table Rules	And Exceptions
Body Text within a table is usually 11 pt Arial Narrow font	Unless there is plenty of room, then it can be regular 11 pt Arial

5. **Instructional Text Boxes**

Put purely instructional information in a text box like this:

Important! Cut and paste this table to add an instructional text box. Use a heading, e.g., *Important!*, *Warning!*, etc. Use 11 pt. Arial Narrow in italics.

6. **Other**

➤ **Signature Block Samples** (Delete what you do **not** need)

7. Signature block for a Petition (with joinder)

Petitioner fills out below:

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at (city and state): _____ Date: _____

▶ _____
Petitioner signs here Print name

Petitioner's lawyer (if any) fills out below:

▶ _____
Petitioner's lawyer signs here Print name and WSBA No. Date

[] **Respondent fills out below if he/she agrees to join this Petition:**

I, (name): _____, agree to join this *Petition*. I understand that if I fill out and sign below, the court may approve the requests listed in this *Petition* unless I file and serve a *Response* before the court signs final orders. (Check one):

- [] I do not need to be notified about the court's hearings or decisions in this case.
[] I ask the Petitioner to notify me about any hearings in this case. (List an address where you agree to accept legal documents. This may be a lawyer's address or any other address.)

address city state zip
(If this address changes before the case ends, you **must** notify all parties and the court in writing. You may use the Notice of Address Change form (FL All Family 120). You must also update your Confidential Information Form (FL All Family 001) if this case involves parentage or child support.)

▶ _____
Respondent signs here Print name Date

8. Signature block for Motion

Person asking for this order fills out below:

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at (city and state): _____ Date: _____

Person asking for this order signs here _____ Print name here _____

I agree to accept legal papers for this case at (check one):

- my lawyer's address, listed below.
- the following address (this does **not** have to be your home address):

street address or PO box _____ city _____ state _____ zip _____

Note: You and the other party/ies may agree to accept legal papers by email under Civil Rule 5 and local court rules.

(If this address changes before the case ends, you **must** notify all parties and the court clerk in writing. You may use the Notice of Address Change form (FL All Family 120). You must also update your Confidential Information form (FL All Family 001) if this case involves parentage or child support.)

Lawyer (if any) fills out below:

Lawyer signs here _____ Print name and WSBA No. _____ Date _____

Lawyer's street address or PO box _____ city _____ state _____ zip _____

Email (if applicable): _____

Warning! Documents filed with the court are available for anyone to see unless they are sealed. Financial, medical, and confidential reports, as described in General Rule 22, **must** be sealed so they can only be seen by the court, the other party, and the lawyers in your case. Seal those documents by filing them separately, using a Sealed cover sheet (form FL All Family 011, 012, or 013). You may ask for an order to seal other documents.

9. Signature block for ex parte Orders

Ordered.

Date _____ Judge or Commissioner _____

Presented by: Petitioner or his/her lawyer Respondent or his/her lawyer

Sign here _____ Print name (if lawyer, also provide WSBA #) _____

10. Signature block for regular Orders (and Findings)

Ordered.

Date _____ Judge or Commissioner _____

Petitioner and Respondent or their lawyers fill out below.

This document *(check any that apply)*:

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

This document *(check any that apply)*:

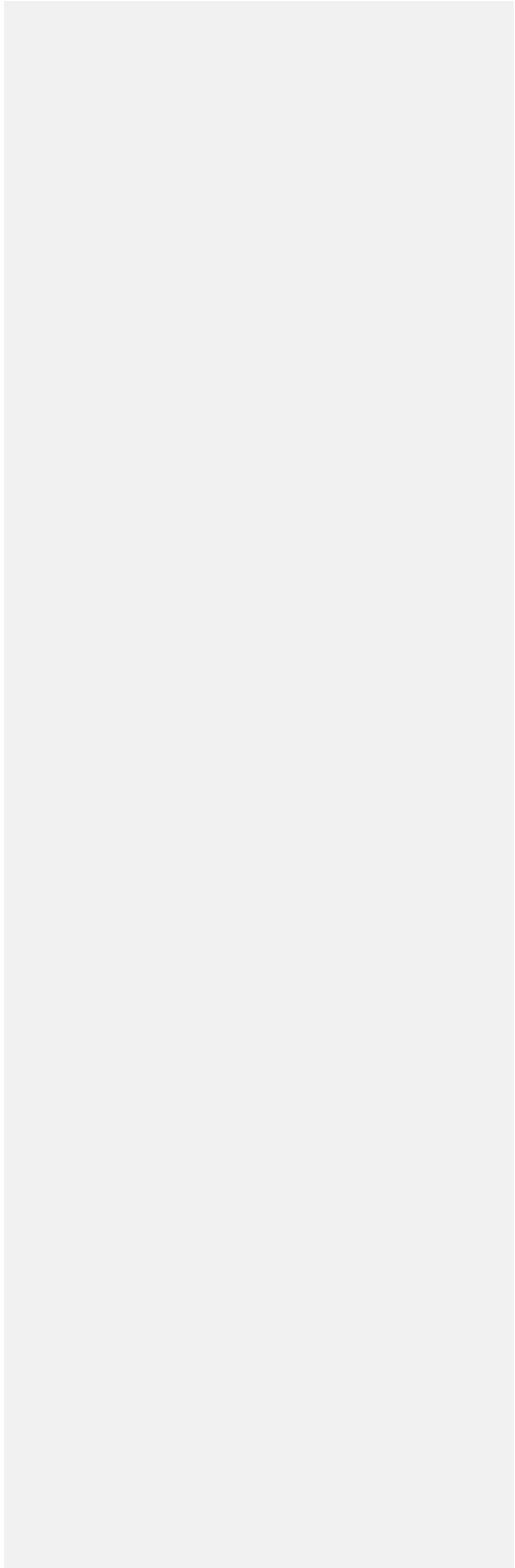
- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

Petitioner signs here or lawyer signs here + WSBA #

Respondent signs here or lawyer signs here + WSBA #

Print Name *Date*

Print Name *Date*



GENDER-SILENT LEGISLATIVE DRAFTING IN A NON-BINARY WORLD

DONALD L. REVELL AND JESSICA VAPNEK*

I. INTRODUCTION

Gender and sexual identity, as issues in law, have been with us for centuries. The rights of women to hold property, to vote, and even to serve in the legislature were once in doubt (and remain so in a handful of jurisdictions). Women's rights to govern their own bodies have been circumscribed by abortion laws and by laws against birth control. The right to work and to equal pay for work of equal value are recent developments in North America, as are statutory protections against sexual harassment and discrimination based on sex. These new protections and a dawning awareness do not mean that harassment of and discrimination against women have disappeared.¹ But the last 100 years have seen much progress.

What almost all women confronted in terms of overt discrimination, bias, harassment, and violence in the past (and present), members of the LGBTQIA+² community face now. Same-sex relationships are still a crime

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¹ See, e.g., *Me Too Movement*, WIKIPEDIA, https://en.wikipedia.org/wiki/Me_Too_movement [https://perma.cc/PV5M-GBP6] (last visited Jan. 10, 2020).

² Michael Gold, *The ABCs of L.G.B.T.Q.I.A. +*, N.Y. TIMES (June 21, 2018, updated June 7, 2019), <https://www.nytimes.com/2018/06/21/style/lgbtq-gender-language.html> [https://perma.cc/9HU3-DDVQ]. In this article, we use LGBTQIA+ to mean a person who is lesbian, gay, bisexual, transgender, questioning (or queer), or intersex, or who is an ally (or asexual). The plus sign refers to anyone else not included in the LGBTQIA formula.

in many countries, punishable by significant prison time or even death.³ LGBTQIA+ persons continue to face both legal and societal discrimination throughout the world, and even their ability to migrate to safety is restricted.⁴

Language is only a small part of discrimination, yet its effects are pervasive. Although many jurisdictions have taken steps to change legal language to place women on an equal footing, gender bias in language persists. This may derive from traditional views concerning legal personality, or it may stem from fixed ideas about legislation and legislative drafting: among the arguments against gender-neutral language are that it creates legal uncertainty; does not serve precision or clarity; fosters ambiguity; distracts readers; is indirect; is not specific; is not eloquent; and increases the length and thereby the cost of legislation.⁵

Other barriers may arise from the structure of the language itself. In some languages, for example, masculine plural nouns are used to refer to groups containing both genders.⁶ In the English language, “she” has been a “he” for purposes of statutory interpretation until recent decades.⁷

³ Nicole Chavez, *Same-Sex Relationships are Still a Crime in 69 Countries*, CNN HEALTH (Sept. 7, 2018), <https://www.cnn.com/2018/09/07/health/same-sex-relationships-worldwide-list-trnd/index.html> [https://perma.cc/Z55H-BEC3].

⁴ *Protecting and Assisting LGBT Refugees*, U.S. DEP’T ST. (“[I]n countries where they seek safety, LGBT refugees often risk being harassed, hurt, or even killed. They may be targeted by other refugees, host communities, or government officials and police, who may threaten to arrest and detain them.”), <https://2009-2017.state.gov/j/prm/policyissues/issues/c62979.htm> [https://perma.cc/AH48-BPVF] (last visited Feb. 6, 2020).

⁵ ENHANCING LEGISLATIVE DRAFTING IN THE COMMONWEALTH 55 (Helen Xanthaki, ed., 2016); *but see id.* at 55–56 (convincingly dispatching these arguments). *Cf.* Martin Patriquin, *Canadiens and Canadiennes in Uproar as Student Paper Takes Stand on Gender*, GUARDIAN (May 8, 2019) (the decision of a Québec university newspaper to use both the masculine and feminine “eats up more column inches”), https://www.theguardian.com/world/2019/may/08/canadiens-and-canadiennes-in-uproar-as-student-paper-takes-stand-on-gender?CMP=Share_iOSApp_Other [https://perma.cc/BR2D-7FFY].

⁶ MARK EVAN SEGAL, LEGISLATIVE DRAFTING: PRINCIPLES AND MATERIALS 102 (July 2011), <https://marksegaldotnet.files.wordpress.com/2011/07/legislativedrafting-marksegal.pdf> [https://perma.cc/T5SS-VQK6].

⁷ Interpretation Act (Ontario), R.S.O. 1990, c. I.11, s. 28(j) (Can) provided that: “In every Act . . . unless the contrary intention appears, words importing . . . the masculine gender only include . . . females as well as males and the converse . . .” <https://www.ontario.ca/laws/statute/90i11?search=interpretation+act> [https://perma.cc/D4G2-KPUE]. This was repealed on July 25, 2007, when the Legislation Act came into force. Section 68 stated:

Nonetheless, despite resistance and doubt, significant changes have occurred in legal language; what was once controversial (e.g., calling a female person who acts an “actor” rather than an “actress”) is now, in many cases, routine.

We believe that the trajectory of recent language changes to account for women’s rights should guide and inspire the next wave of language transformation to take account of LGBTQIA+ rights. Just as drafting conventions shifted over time in North America and elsewhere to reflect women’s changing legal status, we believe that legislative drafting should now change to reflect and support the legal status of transgender persons and the legal recognition of non-binary genders. These changes are essential because in addition to the traditional binary classifications of gender and sexual identity, there are now recognized persons with a third gender or no gender. Many jurisdictions in North America and elsewhere have begun making changes in the law related to gender and sexual identity to reflect growing LGBTQIA+ rights, having recognized that a change in language can be one small step in advancing equality. Much more can be done to recognize the rights of members of the LGBTQIA+ community in legal language to account for non-binary genders.

This article explores the implications for English-language legislative drafting (and potentially other legal drafting) of a growing recognition that gender and sexual identities exist along a continuum.⁸ The article first analyzes what we mean by gender-neutral drafting, then examines how such drafting has evolved in the English-speaking world and elsewhere. Drawing on our research and a survey we undertook with English-language drafters in the United States and throughout the Commonwealth of Nations and elsewhere, we offer a snapshot of how current drafters are taking account (or

“Gender-specific terms include both sexes and include corporations. S.O. 2006, c. 21 (Can.), <https://www.ontario.ca/laws/statute/s06021?search=legislation+act> [<https://perma.cc/LMW5-TGA8>]. This in turn was replaced in 2016 when the All Families Are Equal Act enacted a new section 68 of the Legislation Act, which reads: “Gender-specific terms refer to *any gender* and include corporations.” See S.O. 2016, c. 23, s. 56 (emphasis added), https://www.ontario.ca/laws/statute/s16023?search=gender-specific&use_exact=on [<https://perma.cc/S5GE-Y8HR>].

⁸ See *Gender Identity*, WIKIPEDIA, https://en.wikipedia.org/wiki/Gender_identity [<https://perma.cc/2TMU-PEPZ>] (last visited Feb. 6, 2020); see also *Understanding Gender*, GENDER SPECTRUM, <https://www.genderspectrum.org/quick-links/understanding-gender/> [<https://perma.cc/C7MY-GNC2>] (last visited Feb. 6, 2020). For an example of this growing recognition, see Richard Pérez-Peña, *English Freemasons Open Door to Transgender Members*, N.Y. TIMES (Aug. 1, 2018), <https://www.nytimes.com/2018/08/01/world/europe/uk-freemasons-transgender.html> [<https://perma.cc/PT58-EDPA>].

failing to take account) of gender issues. We argue that drafters should explicitly account for language issues arising from the increasing recognition of the rights of members of the LGBTQIA+ community and certain members' desire to be identified in non-binary terms in legislation and legal documents such as passports, birth certificates, marriage licenses, and driver's licenses. We review how some jurisdictions are already taking account of LGBTQIA+ rights, including in government forms.

To account for non-binary genders, we propose an all-inclusive legislative drafting style that we call "gender-silent legislative drafting," and we discuss its definitional, drafting, policy, and political implications. We conclude by proposing approaches to implement this drafting style in a manner that accords with the principles of plain language drafting. Our goal is to air the considerations surrounding gender in legislative and other legal drafting in light of LGBTQIA+ rights and non-binary genders and to provide practical guidance for policy makers, legislative drafters, and others who work with legal documents.⁹

II. WHAT IS GENDER-NEUTRAL LEGISLATIVE DRAFTING?

"Gender-neutral drafting" is a method of drafting that began gaining currency in the 1970s and 1980s with the objective of ensuring that legal language takes account of men and women equally.¹⁰ In 1986, a paper presented to the Drafting Section of the Uniform Law Conference of Canada set out five basic principles for gender-neutral drafting, which we paraphrase here:

1. Drafters have an obligation to use plain language.
2. Legislation should address all users equally.
3. The language of the law should not offend any of its readers.
4. Legislation should be drafted with language that is accurate and up to date without being either faddish or stodgy.
5. Drafters should use a style that is consistent with political reality.¹¹

⁹ We exclude from the scope of this article pronoun choice for non-binary persons, despite it being a current topic of discussion and policy making in workplaces and on campuses. We exclude it because the terminology deals with personal terms of address, which are not needed in legislative drafting.

¹⁰ See, e.g., *Legistics: Gender-Neutral Language*, CANADA DEPT. OF JUSTICE (last modified Jan. 7, 2015) [hereinafter *Legistics*], <https://canada.justice.gc.ca/eng/rp-pr/csi-sic/legis-redact/legistics/p1p15.html> [https://perma.cc/TJE4-S6L2].

¹¹ Donald L. Revell, Cornelia Schuh & Michel Moisan, *Sex and Gender in Legislative Drafting*, UNIFORM L. CONF. CAN. 68TH MTG. 91–92 (1986), <https://www.ulcc.ca/images/>

Most jurisdictions in the United States and Canada employ a gender-neutral legislative drafting style.¹² When that style was adopted, words such as “chairman” became “chair” or “chairperson,”¹³ “fireman” became “firefighter,”¹⁴ and “policeman” became “police officer.”¹⁵ Female job titles were adjusted (e.g., “stewardess” became “flight attendant”),¹⁶ and the personal pronoun “he” was often replaced by “he or she.”¹⁷ This gender-neutral style does not include those who identify as neither male nor female. The only way to employ the style in an inclusive manner is to use word strings such as “he, she, or it” or to rely on an interpretation act to say that, “in the laws of this jurisdiction, ‘he’ or ‘she’ and similar pronouns include entities that are neither male nor female.” But because both of these options violate key principles of legislative drafting, namely, to use plain language and to use as few words as possible, we find that the first-generation gender-neutral style falls short.

This gender-neutral drafting style was developed before the growing recognition of LGBTQIA+ rights including the right to fair and equal

[stories/Past_Proceedings_PDF/1986ULCC0068.pdf](https://perma.cc/K4GZ-JZKP) [https://perma.cc/K4GZ-JZKP]. This paper was subsequently published as Donald L. Revell, Cornelia Schuh & Michel Moisan, *Themselves and Non-Sexist Style in Canada*, 10 ENG. TODAY 10 (1994) [hereinafter English Today], <https://www.cambridge.org/core/journals/english-today/article/themselves-and-nonsexist-style-in-canadian-legislative-drafting/5DA66A5A26819AE32AFE69EC1A1D5686> [https://perma.cc/7YZM-VDDL].

¹² We base this assertion on the results of our survey, *see infra* Section IV, and a supplemental review of American federal and state laws and Canadian federal and provincial law.

¹³ 1990 STATUTE REVISION DESK BOOK, PROVINCE OF ONTARIO, Tab 21, *Gender-Neutral Terminology* (Aug. 31, 1990) (unpublished) [hereinafter DESK BOOK]. The Desk Book was prepared by staff of the Ontario Office of Legislative Counsel to provide legal and stylistic advice to those members of staff who were preparing the revised regulations and statutes of Ontario in 1990. It was not circulated outside the office. A copy of the Desk Book is on file with the Public Archives of Ontario.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Barbara Bean-Mellinger, *What Is the Difference Between a Stewardess & a Flight Attendant?* HOUS. CHRON., <https://work.chron.com/difference-between-stewardess-flight-attendant-5409.html> [https://perma.cc/34CG-4M8L] (last updated June 29, 2018) (“The terms ‘stewardess’ and ‘flight attendant’ describe the same basic job of tending to airplane passengers’ needs and safety. ‘Stewardess,’ however, is an outdated term that has been replaced by ‘flight attendant’ on all airlines.”).

¹⁷ DESK BOOK, *supra* note 13.

treatment under the law. We believe that the initial gender-neutral style works well as applied to persons who define themselves as female or male but does not work as applied to transsexual or transgender people, or to those who see themselves as neither male nor female. Before we address potential solutions, we review a bit of history.

III. EVOLUTION OF GENDER-NEUTRAL DRAFTING

Early in modern North American and British history, women had few, if any, independent legal rights. In 1765, William Blackstone wrote the following about the legal position of married women:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-French a feme-covert, foemina viro co-operta¹⁸

This state of affairs would continue in some jurisdictions well into the twentieth century with respect to the property rights of married women.¹⁹ Nor was a woman's right to vote recognized until early in the twentieth century.²⁰ In the United States, universal suffrage was not enshrined in a constitutional amendment until 1920,²¹ while equal suffrage for men and women at age twenty-one only came to England in 1928.²² Between 1916 and 1922, women in all Canadian provinces, except Quebec, secured the right to vote in provincial elections, and white women received the right to

¹⁸ 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS, 441 (emphasis removed) (footnote omitted).

¹⁹ Rosalie Silberman Abella, *Family Law in Ontario: Changing Assumptions*, 13 OTTAWA L. REV. 1, 9–10 (1981), <https://rdo-olr.org/en/1981/family-law-in-ontario-changing-assumptions/> [https://perma.cc/ML3B-AZRZ]; see also *Murdoch v. Murdoch*, [1975] 1 S.C.R. 423, 425 (Can.), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5346/index.do> [https://perma.cc/ZXH4-8TN5].

²⁰ *Universal Suffrage*, WIKIPEDIA, https://en.wikipedia.org/wiki/Universal_suffrage [https://perma.cc/B362-RAR8] (last visited Feb. 6, 2020).

²¹ *Id.*

²² *Suffrage*, WIKIPEDIA, https://en.wikipedia.org/wiki/Suffrage#United_Kingdom [https://perma.cc/VKD9-MJAZ] (last visited Feb. 6, 2020).

vote in federal elections in 1919.²³ Minorities (other than indigenous peoples) received the right to vote in Canada in 1948; indigenous peoples were given the right to vote in 1960.²⁴ Other countries lagged even further.²⁵ Equally, the role of women in the work force was restricted in the nineteenth century and well into the twentieth: although factories employed some women, they were primarily relegated to low-paying domestic tasks.²⁶ Legislatures, too, were not just male-dominated; they were exclusively male.²⁷ This state of affairs was inevitably reflected in legislation.

“Sexist language, based on the premise that the norm of humanity is male, had been used for over 150 years in English-language legislative texts.”²⁸ The first statement of the “masculine rule” that we found was in 1827, when a British criminal statute referred to “Words importing . . . the Masculine Gender only, yet the Statute shall be understood to include . . . Females as well as Males”²⁹

²³ *Women’s Suffrage in Canada*, Wikipedia, https://en.wikipedia.org/wiki/Women%27s_suffrage_in_Canada [https://perma.cc/P45U-LFEP] (last visited Feb. 7, 2020). According to this article, women in Quebec did not receive full suffrage until 1940. It also notes that women in Newfoundland received the right to vote in 1925. Newfoundland was not a part of Canada at that time.

²⁴ *Id.*

²⁵ *Universal Suffrage*, WIKIPEDIA, https://en.wikipedia.org/wiki/Universal_suffrage [https://perma.cc/B362-RAR8] (last visited Feb. 6, 2020).

²⁶ *Women in the Workforce*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/history-of-work-organization-648000/Women-in-the-workforce> [https://perma.cc/UW8E-T4T9] (last visited Apr. 6, 2020).

²⁷ The first woman was elected to the British Parliament in 1918. See *Women and the Vote*, UK PARLIAMENT, https://www.parliament.uk/about/living-heritage/transforming_society/elections/voting/womenvote/overview/womenincommons/ [https://perma.cc/FP37-GZLA] (last visited Feb. 6, 2020). The first woman was elected to the U.S. House of Representatives in 1916. See *Jeannette Rankin*, WIKIPEDIA, https://en.wikipedia.org/wiki/Jeannette_Rankin [https://perma.cc/468C-YSXT].

²⁸ Christopher Williams, *The End of the ‘Masculine Rule’? Gender-Neutral Legislative Drafting in the United Kingdom and Ireland*, 29 STATUTE L. REV. 139, 139 (2008).

²⁹ Sandra Petersson, *Gender Neutral Drafting: Historical Perspective*, 19 STATUTE L. REV. 93, 103 (1998) (quoting An Act for further improving the administration of justice in criminal cases in England 1827, 7 & 8 Geo. 4, c. 28, § 14 (Eng.)).

We believe that this likely emanated from the rule of coverture,³⁰ which tied a woman's legal standing to her husband. Important court interpretations bolstering the masculine rule include *In re Lockwood*, where the U.S. Supreme Court deferred to the Supreme Court of Virginia to determine whether a "person" meant only a man with respect to Bar admissions,³¹ and *Bradwell v. Illinois*, where three Supreme Court Justices joined a concurrence stating that women's "natural and proper timidity and delicacy" make them "unfit[] . . . for many of the occupations of civil life" and their "paramount destiny and mission . . . are to fulfill the noble and benign offices of wife and mother."³²

Not until the 1980s did progress towards gender-neutral language gain real traction. Numerous reports examining the adverse treatment of women in the legal system recommended the use of gender-neutral language in statutes, legal opinions, and other forms of legal writing.³³ Some U.S. states even began adopting gender-neutral language in their constitutions,³⁴ and sections on gender-neutral writing began appearing in legal textbooks.³⁵ A similar trend took place in Canada.³⁶

The goal of gender-neutral language is to avoid gender biases that have traditionally marginalized women.³⁷ Whether it reflects a changed society or actually helps to change society, gender-neutral language seeks to eliminate bias and treat all those affected by laws and other government

³⁰ See generally Jone Johnson Lewis, *Sex Discrimination and the US Constitution*, THOUGHTCO. (July 2, 2019), <https://www.thoughtco.com/constitution-sex-discrimination-3529459> [https://perma.cc/99P5-3DY8].

³¹ 154 U.S. 116, 118 (1894).

³² 83 U.S. 130, 141 (1873).

³³ See Petersson, *supra* note 29.

³⁴ The Associated Press, *Some States Are Going Gender Neutral*, N.Y. TIMES (May 22, 2003), <https://www.nytimes.com/2003/05/22/us/some-state-constitutions-are-going-gender-neutral.html> [https://perma.cc/P83E-UP59].

³⁵ Judith D. Fischer, *Framing Gender: Federal Appellate Judges' Choices About Gender-Neutral Language*, 43 U.S.F. L. REV. 473, 486 (2009) (footnote omitted).

³⁶ For an excellent summary of the situation in Canada up to the mid-1970s, see Marguerite E. Ritchie, *Alice Through the Statutes*, 21 MCGILL L.J. 685 (1975).

³⁷ EUROPEAN PARLIAMENT, GENDER-NEUTRAL LANGUAGE IN THE EUROPEAN PARLIAMENT 3 (2018) [hereinafter EP 2018] http://www.europarl.europa.eu/cmsdata/151780/GNL_Guide_lines_EN.pdf [https://perma.cc/PPW6-BE7E] ("The purpose of gender-neutral language is to avoid word choices which may be interpreted as biased, discriminatory or demeaning by implying that one sex or social gender is the norm.").

actions equally. Although many examples of gender bias find expression in laws and other legal language, we will look at only three:

- An invention of language that we call the “universal he”;
- Interpretation legislation that welded the “universal he” firmly into the law; and
- “Man words,” including exclusionary job titles.

A. *The “Universal He”*

The “universal he” is a conceit of the English language and not just legal language. It is based on the idea that in ordinary English, “he,” depending on context, impliedly includes “she.”³⁸ The “universal he” was endorsed by any number of experts. For example, in a published comment in 1976, after deriding the use of pronoun strings such as “he or she” and “he, she, or it,” Elmer Driedger, a former chief parliamentary counsel for Canada, used the following biblical example to make the point that “he” includes women: “He that hath ears to heare, let him heare”³⁹ Driedger argued that in this example, “he” was being used in the sense of gender rather than sex and that it was grammatically correct.⁴⁰ Driedger was supported in this view by Reed Dickerson, a former professor of legal drafting at Indiana University Bloomington.⁴¹ Similarly, in *The Elements of Style*, Strunk and White stated, without equivocation:

The use of *he* as a pronoun for nouns embracing both genders is a simple practical convention rooted in the beginnings of the English language. *He* has lost all suggestion of maleness. . . . [Using *he* instead of *he or she*] has no pejorative connotation; it is never incorrect.⁴²

³⁸ *He (pronoun)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/He_\(pronoun\)](https://en.wikipedia.org/wiki/He_(pronoun)) [https://perma.cc/JX8G-P7HU] (last visited Feb. 6, 2020).

³⁹ E.A. Driedger, *Are Statutes Written for Men Only?* 22 MCGILL L.J. 666, 667 (1976) (quoting *Mark* 4:9 (King James)). The anecdote comes from OTTO JESPERSEN, *ESSENTIALS OF ENGLISH GRAMMAR* 193 (Routledge 1933). Driedger also relies on HENRY WATSON FOWLER & ERNEST GOWERS, *A DICTIONARY OF MODERN ENGLISH USAGE* (Ernest Gowers, ed., 2d ed. 1965) to support his argument in favor of the “universal he.” Driedger, *supra*, at 668.

⁴⁰ Driedger, *supra* note 39, at 667.

⁴¹ REED DICKERSON, *THE FUNDAMENTALS OF LEGAL DRAFTING* 229 (2d ed. 1986).

⁴² WILLIAM STRUNK, JR. & E.B. WHITE, *THE ELEMENTS OF STYLE* 60 (3d ed. 1979).

Apologists for the “universal he” failed to see that its result was to exclude women from much of what people read and heard, and recent research has confirmed the deleterious effects.⁴³ Nonetheless, the “universal he” became firmly rooted in the legal lexicon, appearing in all forms of legal writing from judicial decisions to law review articles to contracts to statutory instruments.

B. Interpretation Acts

The “universal he” had a special relationship with the law, thanks to interpretation acts. An interpretation act is a law that sets out how to interpret all other acts in a particular jurisdiction. Interpretation acts have been around for at least 170 years,⁴⁴ and until recently they usually had a clause enshrining the “universal he.” According to an unpublished address by Australian Parliamentary Counsel, Geoff Lawn, the first interpretation ordinance enacted in 1843 in South Australia provided that “unless there was something in the subject or context repugnant to it, words importing the masculine gender . . . were to be construed to include the feminine . . . and vice versa, and bodies politic and corporate as well as individuals.”⁴⁵ Lord Brougham’s Act (the UK Interpretation Act) of 1850 contained a similar provision.⁴⁶ This formulation, with some variation in wording alone (but not

⁴³ Astghik Mavisakalyan & Clas Weber, *Linguistic Structures and Economic Outcomes*, 32 J. ECON. SURVEYS 916, 921 (2017) (citing evidence that gendered language reinforces discriminatory attitudes). Reviewing many other studies, the authors cite research demonstrating an astonishing number of negative impacts of gendered language, including on women’s participation in employment, the division of labor in households, and even women’s health. *Id.* at 924. One such study shows that “speakers of gendered languages are more likely to express support for giving men preferential access to jobs,” *id.* (citing Yehonatan Givati & Ugo Troiano, *Law, Economics, and Culture: Theory of Mandated Benefits and Evidence from Maternity Leave Policies*, 55 J.L. & ECON. 339 (2012); Astghik Mavisakalyan, *Gender in Language and Gender in Employment*, 43 OXFORD DEV. STUD. 403 (2015)), and are less likely to support “policies to combat gender imbalances . . .” *Id.* (citing Efrén O. Pérez & Margit Tavits, *Language Influences Public Attitudes Toward Gender Equality*, 81 J. POL. 81 (2019)).

⁴⁴ For example, the first British interpretation act, known as *Lord Brougham’s Act*, was enacted in 1850. Interpretation Act 1850, 13 & 14 Vict. c. 21 (Eng.).

⁴⁵ GEOFF LAWN, GEORGE TANNER MEMORIAL ADDRESS: INTERPRETATION ACTS AND CLEAR DRAFTING 11 (2014) (presented in 2014 at an Australasian Drafting Conference organized by the Australasian Parliamentary Counsel’s Committee).

⁴⁶ Interpretation Act 1850, 13 & 14 Vict. c. 21 (Eng.).

in intent and impact), appeared in interpretation acts well into the present century.⁴⁷

Even if the relevant provisions in an interpretation act are context-based (allowing a court to find that in a particular context the masculine does not include the feminine),⁴⁸ this does not solve the problem. Our view is that as a simple matter of fairness and equality, all persons covered by a law should see themselves in that law—or at least should be able to imagine themselves in it. Using justifications such as convenience or expedience to deem the masculine as including the feminine is not a sufficient argument for the status quo. All discrimination takes some effort to undo. The “universal he” and the effects of interpretation acts can be overcome with the stroke of a pen: “He that hath ears to heare, let him heare” can easily be changed to “Those that have ears to hear, let them hear,” to beneficial effect. We recommend that interpretation acts be rewritten to be truly gender-silent, with no reference to gender.

C. *The “Man Words”*

The “universal he” is only one example of exclusionary language. Other issues arise from what one might call “man words,” where “man” is either a prefix or a suffix or otherwise implies gender.⁴⁹ The following table contains a list of gendered words that were acceptable before the adoption of gender-neutral drafting standards at the federal level in Canada and that have now been replaced by the words in the right-hand column:

⁴⁷ For example, Ontario (then called Upper Canada) enacted An Act respecting the Statutes in 1858. The Interpretation Act (Ontario), R.S.O. 1990, c. I.11, s. 28(j) (Can.). For subsequent developments, *see supra* note 7.

⁴⁸ *See, e.g.*, Public Prosecutor v. BAB, SGCA 2 (Singapore) (2017), <http://commonlii.org/sg/cases/SGCA/2017/2.pdf> [https://perma.cc/E9T2-AXJH] (reversing the acquittal of a woman on one of several sex abuse crimes, rejecting the lower court’s holding that even the one subsection that did not refer to “a man” was intended only to cover men and not women). *See also In re Lockwood*, 154 U.S. 116 (1894); *Bradwell v. Illinois*, 83 U.S. 130 (1873).

⁴⁹ There are also “woman words” that imply gender, such as “seamstress,” but these have largely been phased out at the same time that male words were being de-gendered, as discussed in this section.

Avoid	Use
businessman	business executive, entrepreneur, businessperson
cameraman	camera operator
chairman	chairperson
fireman	firefighter
fisherman	fisher
foreman	supervisor
mailman	letter carrier
policeman	police officer
workman	worker ⁵⁰

Each of these gendered nouns is by its nature exclusionary. The fixes, as can be seen from the right-hand column, are simple.

Verbs such as “manning” and prefixes in nouns such as “mankind” suffer from the same exclusionary effect and, like the suffixes, can easily be fixed (e.g., “mankind” can become “humankind” and “manning” can become “working,” “staffing,” or “running”).⁵¹ In the 1970s and 1980s, battles raged over these issues.⁵² As we shall see, the “man word” controversies were put to rest in most if not all jurisdictions in the ensuing years.

D. Other Gendered Language in Law

Interpretation acts, the “universal he,” and the “man words” all had the effect of making women virtually invisible in the law. Rectifying this was

⁵⁰ *Legistics*, *supra* note 10. While “chairperson” is preferred in federal statutes in Canada, “chair” is preferred in Ontario. *DESK BOOK*, *supra* note 13.

⁵¹ CASEY MILLER & KATE SWIFT, *WORDS AND WOMEN* 20–24 (1977).

⁵² *Id.* at 3–34; DICKERSON, *supra* note 41, at 224–28.

relatively simple, and fixes sometimes took place in the legislative drafter's office without any actual legislative change. Interpretation acts do not mandate that legislative drafters use the "universal he" or the "man words"; they merely provide for the interpretation of such terms if they are used. Thus many drafting offices, as a matter of office policy, were free to and did adopt a gender-neutral drafting style.⁵³ Pronoun strings such as "he or she" and "he, she, or it" replaced the "universal he," while "their" replaced "his" or "he," so that "the policeman should always carry his badge" became "police officers should always carry their badges." The "man words," as noted above, were replaced by synonyms.

All of these simple fixes had immense social implications, and yet many took place at the level of the legislative drafter's office. In such an office, the legislative drafters analyze policy instructions and then convert those instructions into workable legislation. The drafter drafts legislation that will give legal effect to the policy choices of the instructing client, bearing in mind the state of the existing laws in the area as well as constitutional and other rights. The drafter cannot change existing laws, whether found in the common law as determined by the courts or in the statute book: such changes can only be effected by new legislation or further court decisions.

To highlight this distinction—between the types of gender bias in law that can be corrected by legislative drafters and the type that must wait for judges' or legislators' action—we next look closely at two Canadian cases. They show how gender-based discrimination can first become embedded in the law by the courts and then can only be remedied by courts or the legislature.

The first case is *Murdoch v. Murdoch*.⁵⁴ Irene Murdoch married James Murdoch in 1943 in Alberta.⁵⁵ The two initially worked on a series of ranches.⁵⁶ Using his own money, James got a stake in one ranch, which was

⁵³ Grace E. Hart, *State Legislative Drafting Manuals and Statutory Interpretation*, 126 *YALE L.J.* 438, 463–64 & n. 153 (2016) ("Thirty-four manuals from thirty-three states instruct bill drafters on the use of gender-neutral language . . ."), <https://digitalcommons.law.yale.edu/ylj/vol126/iss2/3> [https://perma.cc/8CLY-6C2P]. Readers may wonder why Hart's Note comes up with a total of 33 states when our results showed 42. *See infra* text at note 81. This is because Hart's analysis focuses on legislative drafting manuals only, with no mention of unofficial or official policies of particular legislative drafting offices that may also influence or mandate the office's legislative drafting style.

⁵⁴ [1975] 1 S.C.R. 423, 423 (Can.), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5346/index.do> [https://perma.cc/ZXH4-8TN5].

⁵⁵ *Id.*

⁵⁶ *Id.*

later sold at a profit.⁵⁷ By 1958, James had acquired a larger ranch.⁵⁸ Irene contributed to these ventures through her labor on these ranches.⁵⁹ The marriage broke down in 1964, and Irene sued for support and an undivided one-half interest in the land and in James's other assets, arguing that her labor had created a trust in her favor.⁶⁰ Although Irene got \$200 in monthly support, her claim to an interest in the land and other assets was denied at trial and on appeal to the Alberta Court of Appeal.⁶¹ At the Supreme Court of Canada, she lost again.⁶² The majority of the court found that there could be no resulting trust in favor of the appellant because, based on the findings at trial, her work "was the work done by any ranch wife."⁶³

Essentially, *Murdoch* confirmed that in Canadian property law, the man and the woman are one, and that one is the man.⁶⁴ Seventeenth century law lived on: Blackstone would have been quite comfortable with the court's decision. Justice Laskin, in dissent, took a close look at the appellant's role as ranch wife and found that she contributed "considerable physical labour to the building up of the assets claimed by the husband as his own and had also made a modest financial contribution to their acquisition."⁶⁵ Based on these financial and labor contributions, Justice Laskin found that a constructive trust had arisen, and he would have allowed the appeal.⁶⁶

The courts got a second look at this problem in *Rathwell v. Rathwell*.⁶⁷ Helen Rathwell was also a ranch wife, and her situation was remarkably similar to Irene Murdoch's.⁶⁸ In Mrs. Rathwell's divorce case, the court of first instance found against her but the Saskatchewan Court of Appeal found in her favor.⁶⁹ That decision, affirmed by the Canadian Supreme Court,

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 424.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 430.

⁶³ *Id.* at 436.

⁶⁴ *Id.* at 429–30; *id.* at 457 (Laskin, J., dissenting).

⁶⁵ *Id.* at 446 (Laskin, J., dissenting).

⁶⁶ *Id.* at 457.

⁶⁷ [1978] 2 S.C.R. 436 (Can.).

⁶⁸ *See id.* at 436.

⁶⁹ *Id.* at 437.

adopted the dissent in *Murdoch*, finding that a constructive trust arises where a wife contributes her money's worth to a marriage.⁷⁰

The *Rathwell* case affirmed the constructive trust remedy⁷¹ but left the widespread gender bias in matrimonial law untouched. This is because courts decide issues on a case-by-case basis and only the issues before them. This is where legislatures have a role to play as they have the power to enact laws of general application. And they did so, across Canada, after *Rathwell*. As Rosalie Abella noted:

Within two months of [the *Rathwell*] judgment Ontario passed the Family Law Reform Act. There was thus a simultaneous recognition by judiciary and legislature that the *status quo* had reached an intolerable state. Both the legislation and the *Rathwell* judgment reflected a dramatic shift in attitudes, or perhaps a dramatic shift in the willingness to recognize that attitudes had changed.⁷²

The Family Law Act⁷³ clarified the rules for family property, matrimonial homes, and support and mandated “that marriage be seen as a social and economic partnership of equals . . .”⁷⁴ The Act ensured that both spouses’ contributions to the marriage would thenceforth be considered of equal worth.

Ontario’s Family Law Act covered many more policy issues than were raised in *Murdoch* or *Rathwell*.⁷⁵ This is the type of wholesale change that only a legislature can make. Although the drafter would have had an important role in this process, the drafter would not have determined the policy. This contrasts with the power to make style choices—even choices

⁷⁰ See *id.* at 443.

⁷¹ *Id.* at 464–65.

⁷² Abella, *supra* note 19, at 11–12. One of the co-authors of this paper was a legislative counsel at the time of the *Rathwell* decision. They can safely say it was the plight of Mrs. Murdoch that led to the drafting of the Family Law Reform Act. (Note our use of the singular “they” – see *infra* text at nn. 186–189.)

⁷³ R.S.O. 1990, c. F.3. (Can.).

⁷⁴ Abella, *supra* note 19, at 12.

⁷⁵ See R.S.O. 1990, c. F.3 (Can.). The Act covers not just spousal rights but also dependent rights and addresses issues relating to property, support, inheritance, separation, and prenuptial agreements, among others.

correcting gender bias—that are well within the purview of the legislative drafter.⁷⁶

IV. CURRENT STATE OF GENDER-NEUTRAL DRAFTING IN ENGLISH-LANGUAGE JURISDICTIONS

We contacted approximately 200 legislative drafting offices to determine the current state of gender-neutral drafting in jurisdictions that draft in English. We sent a survey⁷⁷ to all U.S. states and to all jurisdictions on the mailing list of the Commonwealth Association of Legislative Counsel, and we received and analyzed a total of forty-seven replies,⁷⁸ as follows:

- 16 U.S. states,
- 11 Canadian provinces and territories,
- 7 Australian states and territories,
- 3 from the United Kingdom,
- 9 other countries, and
- 1 non-governmental organization.⁷⁹

We supplemented the survey with our own research on Australia, Canada, and the United States, so that we could comment on all states,

⁷⁶ Cf. David A. Marcello, *The Ethics and Politics of Legislative Drafting*, 70 TUL. L. REV. 2437, 2449 (1996) (“The decision [to use a gender-neutral drafting style]—political either way—is one capable of being made unilaterally within the unreviewable discretion of the drafter.”); see also Ruby King & Jasper Fawcett, *The End of “He or She”? A Look at Gender-Neutral Legislative Drafting in New Zealand and Abroad*, 2 N.Z. WOMEN’S L.J. 107, 116 (2018) (“While drafting offices have their own guidelines, the ultimate product largely depends on the style and preference of the drafter . . .”).

⁷⁷ See Annex 1 for the text of the survey.

⁷⁸ Donald L. Revell & Jessica Vapnek, Summary of Responses to Gender-Neutral Drafting Questionnaire (Jan 15, 2019) (unpublished data) (on file with authors). This was not a scientific survey, and some responses were not wholly clear. The weaknesses were due entirely to our design of the survey, which is in part why we supplemented it with additional research.

⁷⁹ The Church of England is a non-governmental organization with its own laws, and it employs its own legislative drafter. See *Legislation*, CHURCH OF ENGLAND, <http://churchofengland.org/about/leadership-and-governance/legal-services/legislation> [<https://perma.cc/CSK9-7S5A>] (last visited Feb. 6, 2020).

provinces, and territories—even those that did not respond. We believe the results of the survey and our additional research give a good snapshot of the current state of gender-neutral drafting in these jurisdictions. Our analysis is set out below.

*A. The United States*⁸⁰

Based on our survey and additional research, 42 of the 50 U.S. states officially use a gender-neutral style when drafting bills,⁸¹ and two more unofficially encourage gender-neutral language.⁸² Nine states still adhere to a policy in which the masculine “he” includes all other genders,⁸³ although seven of these states either officially or unofficially require the use of other gender-neutral drafting methods.⁸⁴

The federal government and most states have used the “he/she” style, but not all federal or state laws use this style consistently. This inconsistent approach can cause problems, as we saw in the Singapore case of *Public Prosecutor v. BAB*.⁸⁵

Thirty-three states avoid the use of the singular pronoun by repeating the nouns.⁸⁶ Five states recommend drafting in the plural,⁸⁷ while three states avoid plurals or draft in the singular to the greatest extent possible.⁸⁸ One state explicitly requires using the plural to avoid gender identification,⁸⁹ and another state requires that gender-specific terms relating to marital or familial relationships be construed as gender-neutral for all purposes.⁹⁰

Eight states offer the choice of repeating the noun, using the plural form, using passive voice, or writing “he or she,” leaving the ultimate selection to

⁸⁰ Throughout this section, we rely on our survey results as well as a review of state drafting manuals and recent state legislation to determine the legislative drafting styles used.

⁸¹ All states but Georgia, Idaho, Louisiana, Nevada, New York, Oklahoma, South Carolina, and Wyoming. See Revell & Vapnek, *supra* note 78, at 9–11.

⁸² *Id.* (Idaho, Nevada).

⁸³ *Id.* (Arkansas, Arizona, Georgia, Idaho, Kentucky, Louisiana, New Hampshire, Nevada, Michigan, North Carolina).

⁸⁴ *Id.* (Arkansas, Arizona, Idaho, Kentucky, New Hampshire, Nevada, Michigan, North Carolina).

⁸⁵ See *supra* note 48 and accompanying text.

⁸⁶ Revell & Vapnek, *supra* note 78, at 9–11.

⁸⁷ *Id.* at 10 (Maine); *id.* (Alabama, Massachusetts, Minnesota, North Carolina).

⁸⁸ *Id.* at 10 (Pennsylvania), 11 (South Dakota, Vermont).

⁸⁹ *Id.* (Montana).

⁹⁰ *Id.* (New Hampshire).

the drafter's discretion based on whichever is the least awkward.⁹¹ Fourteen states explicitly require the use of substitute gender-neutral nouns for nouns that denote masculine or feminine, such as "chair" for "chairperson,"⁹² unless the neologism is contrary to basic language rules.⁹³ Another state specified its preference for the term "person."⁹⁴ Seven others indicate that the drafter should use whatever format reads best or is least awkward,⁹⁵ while one more instructs drafters to use whichever style furthers the general goals of ensuring clarity and avoiding ambiguity.⁹⁶ Two other states instruct drafters to restructure the sentence entirely to avoid the need for any pronoun.⁹⁷

Of the 39 states for which we had information on when and why they changed their drafting styles, most changes were made in the 1970s and 1980s (18 states), with increasing adherence in the 1990s (5 states), 2000s

⁹¹ *Id.* (Alabama, Arizona, Connecticut, Florida, Maryland, Michigan, Minnesota, Nebraska).

⁹² *Id.* at 9 (Alaska); *id.* (Arkansas, Georgia, Illinois, Kansas, Kentucky, Massachusetts, New York, North Carolina, Oregon, Texas, Utah, Washington, Wisconsin).

⁹³ Colorado, North Carolina, Utah: DRAFTING MANUAL: C.1 FOUNDATIONAL DRAFTING PRINCIPLES (2014), <https://le.utah.gov/documents/LDM/draftingmanual.html> [https://perma.cc/MK6N-V7LE] ("Do not create gender-specific nouns that are not commonly understood in the English language. For example, use 'manhole,' not 'personhole.'" (Utah Drafting Manual section 2(e)(ii)). *But see* CALIFORNIA CITY COUNCIL REPORT, REFERRAL RESPONSE: BERKELEY MUNICIPAL CODE REVISION RELATED TO THE USE OF GENDER NEUTRAL LANGUAGE [hereinafter BERKELEY CITY COUNCIL REPORT] 8 (2019), <https://www.berkeleyside.com/wp-content/uploads/2019/07/2019-07-16-Item-01-Referral-Response-Berkeley-Municipal.pdf> [https://perma.cc/7HQX-TUNE] ("manhole" to become "maintenance hole" under new Berkeley, California, ordinance).

⁹⁴ *Id.* (Rhode Island).

⁹⁵ *Id.* (Alabama, Arizona, Connecticut, Idaho, Illinois, Massachusetts, Minnesota).

⁹⁶ North Carolina.

⁹⁷ Revell & Vapnek, *supra* note 78 (North Carolina, Tennessee). Also, Washington, D.C., prefers repeating a noun rather than using a pronoun, but using a pronoun is acceptable if the sentence structure is so complex or lengthy that a pronoun seems necessary to shorten the sentence. Alternatively, to simplify the wording of the sentence, Washington, D.C., suggests that the drafter should consider redrafting the sentence rather than using a pronoun. COUNCIL OF THE DISTRICT OF COLUMBIA, LEGISLATIVE DRAFTING MANUAL (Feb. 8, 2019), <https://dccouncil.us/office-general-counsel-2/legislative-drafting-manual-2019-edition-final/> [https://perma.cc/8F9E-QL2V].

(5 states), and 2010s (9 states). Extraordinarily, one adopted the style in 1889.⁹⁸ The impetus for the various changes came variously from a statutory mandate (19 states), office directive (4 states), state code commission (1 state), or drafting manual (2 states). Other cited reasons included general policies (12 states), such as promoting clarity, aiding interpretation, decreasing discrimination, reflecting the equal status before the law of men and women, decreasing confusion, eliminating sex bias, and eliminating conflict.⁹⁹ In another instance, the adoption of a gender-neutral style dated back to the first female in the legislature, who was able to promote and successfully convince the legislature to adopt a gender-neutral style.¹⁰⁰

*B. Canada*¹⁰¹

The “universal he” and the use of “man words” were standard practice in Canada and its provinces and territories until the 1980s.¹⁰² But in 1985, the province of Ontario adopted a policy of drafting all official documents in a gender-neutral style.¹⁰³ This policy was adopted by the Uniform Law Conference of Canada in 1986¹⁰⁴ and became the norm for all Canadian jurisdictions. However, our survey showed that different jurisdictions adopted different approaches to implementing the policy. For example, Ontario adopted the “he, she, or it” style for personal pronouns, although the province also used more repetition of nouns than it had in the past,¹⁰⁵ while Nova Scotia has adopted “he or she” when the actor is an individual but prefers to repeat nouns or use plurals otherwise.¹⁰⁶

Of the eleven provincial and territorial responses to our survey from Canada, nine jurisdictions stated that they have a gender-neutral drafting

⁹⁸ Revell & Vapnek, *supra* note 78, at 10 (North Dakota).

⁹⁹ *Id.*

¹⁰⁰ *Id.* (Montana).

¹⁰¹ For the three Canadian jurisdictions that did not respond to our survey, we researched their statutes to determine how they have been dealing with gender-neutral drafting. In the case of the Government of Canada, we also relied on its Legistics website. See *Legistics*, *supra* note 10.

¹⁰² A review of legislation from Canadian jurisdictions shows that all were still using the “universal he” in 1980.

¹⁰³ English Today, *supra* note 11, at 90.

¹⁰⁴ *Id.* at 91–92.

¹⁰⁵ Revell & Vapnek, *supra* note 78, at 8.

¹⁰⁶ *Id.* at 6–7 (Nova Scotia).

style.¹⁰⁷ Two said “no,”¹⁰⁸ but one of those added that, although the jurisdiction has no formal policy, it does use the “he or she” formulation.¹⁰⁹ Our research shows that one more jurisdiction uses “he or she,”¹¹⁰ while another has used “he, she, or it.”¹¹¹ The Government of Canada used “he or she” until recently, but since 2018 has been using a non-binary style.

Twelve jurisdictions responded to the question whether the drafters use the “he/she/it” formulation. Three said yes.¹¹² Three said they use or have used “he or she” but not “it.”¹¹³ Ten responded that, in new legislation, they avoid the use of the singular pronouns by repeating nouns.¹¹⁴ One territory noted that it rarely drafts in the plural but does use the singular “they.”¹¹⁵ Canadian jurisdictions gave a variety of responses to the question of when they moved to a gender-neutral style, including “the 1980s,” “the 1990s,” “over 20 years ago,” and “many years ago.”¹¹⁶

¹⁰⁷ *Id.* at 6 (Alberta, British Columbia, Newfoundland and Labrador), 6–7 (Nova Scotia), 8 (Nunavut, Ontario, Prince Edward Island, Saskatchewan, Yukon).

¹⁰⁸ *Id.* at 6 (New Brunswick, Northwest Territories). Post print publication, New Brunswick advised that it made an error in its survey response. It advises that it has a gender-neutral style.

¹⁰⁹ *Id.* (Northwest Territories).

¹¹⁰ Québec. *See, e.g.*, Workers’ Compensation Act, S.Q. 2002, c. A-3, s. 36(2) (Can.) <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/A-3> [https://perma.cc/4DFG-YWRN] (last visited Feb. 7, 2020).

¹¹¹ Manitoba. *See, e.g.*, Engineering and Geoscientific Professions Act, S.M. 1998, c. E120, s. 47(1)(e) (Can.) <https://web2.gov.mb.ca/laws/statutes/ccsm/e120e.php>. [https://perma.cc/8E4V-G9K9].

¹¹² Revell & Vapnek, *supra* note 78, at 6 (Newfoundland and Labrador), 8 (Ontario, Saskatchewan).

¹¹³ *Id.* at 6–7 (Northwest Territories, Nova Scotia), 8 (Prince Edward Island).

¹¹⁴ *Id.* at 6 (Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories), 6–7 (Nova Scotia), 8 (Nunavut, Ontario, Prince Edward Island, Saskatchewan, Yukon).

¹¹⁵ *Id.* at 8 (Yukon).

¹¹⁶ *Id.* at 6 (Ontario’s response, “the 1980s;” Prince Edward Island’s response “sometime in the 90s;” Saskatchewan’s response, “over 20 years ago;” and Yukon’s response, “many years ago”). The vagueness may be because many jurisdictions indeed implemented these changes in the 1980s and 1990s but with staff turnover in the intervening years, the institutional memory regarding these changes has been lost.

Thus, of the fourteen Canadian jurisdictions, thirteen have adopted a gender-neutral style. Of these, six have adopted, formally or informally, a gender-silent style,¹¹⁷ and one is experimenting with it.¹¹⁸

C. Australia

As noted above, South Australia, in 1843, was perhaps the first jurisdiction in the British Empire to enshrine the “universal he” in an interpretation act,¹¹⁹ and other Australian jurisdictions followed suit. Since the 1980s, all Australian jurisdictions have actively moved away from the use of gendered language in their legislation and have adopted interpretation legislation that includes all genders.¹²⁰

From our survey, Australian jurisdictions used the “universal he” and other gendered terminology into the 1980s. In 1983, New South Wales was the first to adopt a gender-neutral style, and all Australian jurisdictions were using “he or she” by the early 2000s. By 2018, all Australian jurisdictions had either already moved or were moving away from the use of personal pronouns and toward a gender-silent style. Our respondents from the states of Queensland, Victoria, and Western Australia noted that their move followed the decision in *NSW Registrar of Births, Deaths and Marriages v. Norrie*, in which the High Court of Australia recognized that not all people identify as male or female and that a person’s sex could be recorded in the birth register as “non-specific.”¹²¹

D. The United Kingdom

The masculine rule first appeared in British legislation in 1827.¹²² Although British legal texts began switching to a relatively consistent gender-neutral drafting in the 1980s,¹²³ we found that full incorporation is

¹¹⁷ *Id.* at 6 (Alberta, British Columbia), 8 (Nunavut, Saskatchewan, Yukon); *Legistics*, *supra* note 10; *see infra* Section V.A.

¹¹⁸ *Id.* at 8 (Ontario).

¹¹⁹ LAWN, *supra* note 45, at 11.

¹²⁰ Revell & Vapnek, *supra* note 78, at 2–5.

¹²¹ [2014] HCA 11, 21 (Austl.), <http://eresources.hcourt.gov.au/downloadPdf/2014/HCA/11> [https://perma.cc/7KC3-XQMG].

¹²² Petersson, *supra* note 29, at 93.

¹²³ Constanza Toro, *Gender Neutral Drafting: Gender Equality or an Unnecessary Burden?* 5 IALS STUDENT L. REV. 34, 35 (2018). *Contra* King & Fawcett, *supra* note 76, at 122 (“United Kingdom legislation is not gender-neutral at all . . .”). Although we are in accord with most of King and Fawcett’s article on gender-neutral drafting, we disagree with their characterization of UK legislation.

far from complete. Indeed, traces of the masculine rule continued to appear in legislative texts as recently as 2007.¹²⁴ The current Drafting Guidance from the Office of the Parliamentary Counsel states explicitly: “It is government policy that primary legislation should be drafted in a gender-neutral way, so far as it is practical to do so.”¹²⁵

The United Kingdom, Northern Ireland, and Scotland still construct some laws according to the masculine rule, possibly due to the vast body of existing laws that require amendment.¹²⁶ The British Office of Parliamentary Counsel has, however, provided specific guidance in this regard, stating that gender neutrality applies not only to drafting new legislation but also “when inserting text into older Acts which are not gender-neutral.”¹²⁷ The Office goes on to state that exceptions may be made “in very limited circumstances” where using gender-neutral language might be confusing.¹²⁸ The responses to our survey from Northern Ireland, Scotland, and the United Kingdom show that all three have a gender-neutral style, and they all try to avoid the use of singular personal pronouns. They repeat nouns, change the pronoun, rephrase to avoid the need for a pronoun or noun, or use other techniques.¹²⁹

E. Other Countries

In addition to the jurisdictions already mentioned, we received responses from Bermuda, Grenada, Hong Kong, Ireland, Isle of Man, Jamaica, New Zealand, Nigeria, Singapore, and Zambia. We also received a reply from the Church of England. The responses show that, of these eleven jurisdictions, only Bermuda has not adopted a gender-neutral drafting style of any kind, while Jamaica is transitioning to one. Nigeria’s Interpretation Act still reflects the masculine rule, providing that in an enactment, “words importing the masculine gender include females.”¹³⁰ At least one recent article advocates for gender-neutral drafting to be officially implemented in

¹²⁴ Williams, *supra* note 28, at 144–45.

¹²⁵ Office of the Parliamentary Counsel, Drafting Guidance 7 (2018) [hereinafter OPC], https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727629/drafting_guidance_July_2018.2..pdf [https://perma.cc/99JL-CRC6].

¹²⁶ Williams, *supra* note 28, at 152.

¹²⁷ OPC, *supra* note 125, at 7.

¹²⁸ *Id.*

¹²⁹ *Id.* at 7–11 (setting out several techniques for avoiding gendered language).

¹³⁰ Interpretation Act (2000) Cap. 192, § 14(a) (Nigeria), <http://www.nigeria-law.org/Interpretation%20Act.htm> [https://perma.cc/D6G2-EHMX].

Nigeria,¹³¹ and as will be seen below, some drafting is already gender neutral.

The first of the jurisdictions discussed in this section to adopt gender-neutral drafting appears to have been New Zealand in the 1980s. Others adopted the style in the 1990s,¹³² 2000s,¹³³ or within the last 20 years.¹³⁴

Several jurisdictions use “he or she” or “he, she, or it.”¹³⁵ All of the jurisdictions, except Bermuda and Nigeria, apparently strive to eliminate or reduce the use of “he or she” and “he, she, or it” by, among other techniques, repeating nouns, recasting provisions to avoid using pronouns, using the plural, or using the singular “they.”

Our research showed that in 2015, Ireland passed the Gender Recognition Act, which aimed to recognize and provide for different genders. While the goal of this legislation was to include all members of society, the text of the act, with perhaps unselfconscious irony, uses “he or she” and “him or her” to refer to the Minister and to applicants for gender recognition certificates.¹³⁶ In September of 2017, the Minister for Social Protection announced that the government would review this act to improve the language and include people who are non-binary.¹³⁷ An online search of the act shows that changes were not yet enacted as of April 1, 2020.

F. General Observations

From our survey and other research, we found that most of these jurisdictions employ a gender-neutral style recognizing, at a minimum, that the law should be specifically inclusive of females and that the “universal he” should no longer be the default for legislation. We found that many of

¹³¹ TONYE CLINTON JAJA, BARRISTER MEZIE & BARRISTER CHUKWUDI NWEKE, GENDER-NEUTRAL DRAFTING: A PERSPECTIVE FROM NIGERIAN LEGISLATION 95–97 (Institute for Legislative Studies, University of Abuja, & Association of Legislative Drafters and Advocacy Practitioners of Nigeria 2018) (typescript copy) (on file with authors).

¹³² Revell & Vapnek, *supra* note 78, at 14 (Ireland), 18 (Zambia).

¹³³ *Id.* at 12 (Church of England, Grenada), 13 (Hong Kong), 14 (Isle of Man).

¹³⁴ *Id.* at 14 (Ireland), 17 (Singapore).

¹³⁵ *Id.* at 12 (Church of England, Grenada), 13 (Hong Kong), 14 (Ireland, Isle of Man).

¹³⁶ See, e.g., Gender Recognition Act 2015 (Act No. 25/2015) (Ir.) §§ 6(1), 8(1), 9(2), 14(2), 16(4)(a), <http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/pdf> [https://perma.cc/2KQF-N7VW].

¹³⁷ Marie O’Halloran, *Review of Gender Recognition Act Will Start by September, Varadkar Announces*, IRISH TIMES (May 10, 2017), <https://www.irishtimes.com/news/politics/oireachtas/review-of-gender-recognition-act-will-start-by-september-varadkar-announces-1.3078764> [https://perma.cc/WT5B-Z8PQ].

these jurisdictions use “he or she” or “he, she, or it.” We also found that many jurisdictions try to reduce or eliminate the use of third person singular pronouns through a variety of techniques, such as repeating nouns, drafting in the plural, and using the singular “they.” These changes seem to have been adopted without controversy.¹³⁸

V. GENDER-SILENT IS THE NEW GENDER-NEUTRAL

The gender-neutral drafting style that evolved in the 1980s included both males and females. But it did not account for persons who identify as neither male nor female. For many in the LGBTQIA+ community, “he/she” binary terminology is just as incorrect and offensive as the “universal he” is to most women. From our survey and research, we found several jurisdictions that have moved, or are considering moving, beyond male-female gender neutrality to implement an all-inclusive drafting style, that we call “gender-silent.” In the following pages, we detail best practices for the use of this style and propose its wholesale adoption.

Gender-silent legislative drafting is not without its controversies. Just as some formulations set off alarms in the 1980s, some of the latest solutions to gendered drafting have alarmed linguists, grammarians, and members of Facebook groups like *I judge you when you use poor grammar*.¹³⁹ For example, a 2018 article by John McWhorter in the Atlantic, entitled *Call Them What They Wants*, examined what the author considered to be the most challenging language change faced in the author’s lifetime, namely, the

¹³⁸ To the extent that there was controversy, it seems to have come before the actual adoption of gender-neutral drafting and to have originated with male academics such as Driedger, *supra* note 39, and Dickerson, *supra* note 41. One co-author of this paper remembers that when Ontario adopted non-sexist writing, the biggest concerns revolved around small issues such as what to do about “chairman” and “manhole cover.” In the case of “chairman,” the issue was not whether to change but whether to use “chair” or “chairperson.” Some argued that a chair was a piece of furniture and not a presiding officer. Others said “chairperson” was unwieldy. Then-Chief Legislative Counsel, Arthur Stone, came down on the side of “chair,” declaring that the word was shorter and had been used to denote the Speaker of the Ontario Legislature for decades, as in the Speaker’s instruction to members to “address their remarks to the chair.” A search on February 8, 2020, showed that there are nine Ontario regulations, all drafted after Ontario adopted its gender-neutral style, that use “manhole.” See O. Reg. 40/15, 311/17, 503/09, 191/14, 350/06, 332/12, 88/19, 337/13, 509/18. Cf. *supra* note 93.

¹³⁹ *I judge you when you use poor grammar*, FACEBOOK, <https://www.facebook.com/groups/IJudgeGrammar/> [https://perma.cc/EU4N-NL97] (last visited Jan. 14, 2020).

rejection of the gender binary.¹⁴⁰ The author discussed why there is discomfort with sentences like “Ariella isn’t wearing the green one. They think it’s time to wear their other one.”¹⁴¹ As McWhorter explained, “pronouns . . . are a very deeply seated feature of language, generated from way down deep in our minds, linked to something as fundamental to human conception as selfhood in relation to the other and others.”¹⁴² On the other hand, we believe that changing times call for changes in the language we use and how we use it.¹⁴³

Legislative drafters must walk a tightrope between being faddish and being rigidly conservative. One need only read the letters-to-the-editor of any major newspaper to see how upset people get when others breach what the letter writer considers to be inviolate rules of grammar. It is our view that these concerns pale in comparison with the harms done by non-inclusive language. The research into the adverse effects on women of gendered language is staggering;¹⁴⁴ there is no reason to think that the deleterious effects on non-binary readers are any less harmful. In fact, it may be more harmful, given that women are half of the population and so at least visible, whereas non-binary members are a minority group—and in our view even more in need of seeing themselves reflected in (or at least not excluded from) legislative language.

Language is intrinsically a vehicle of representation in a society; it can blur lines between genders or accentuate their differences. In a study published in 2012, researchers found a correlation between gender equality and language. That is, countries where citizens speak a gender-neutral (e.g.,

¹⁴⁰ John McWhorter, *Call Them What They Wants*, ATLANTIC (Sept. 4, 2018), <https://www.theatlantic.com/ideas/archive/2018/09/the-new-they/568993/> [https://perma.cc/95PY-EXQS].

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ In this connection, we note that the American Dialect Society chose the singular “they” as the word of the decade, “recognising the growing use of third-person plural pronouns as a singular form to refer to people who identify their gender as neither entirely male nor entirely female.” *Singular ‘They’ Voted Word of the Decade by US Linguists*, GUARDIAN (Jan. 3, 2020), https://www.theguardian.com/world/2020/jan/04/singular-they-voted-word-of-the-decade-by-us-linguists?CMP=Share_iOSApp_Other [https://perma.cc/2FK8-NJ2L].

¹⁴⁴ See Mavisakalyan & Weber, *supra* note 43, at 922, 924; but see Venessa Mclean, *Is Gender-Neutral Drafting an Effective Tool Against Gender Inequality Within the Legal System?* 39 COMMONWEALTH L. BULL. 443 (2013) (questioning whether gender-neutral drafting can affect deep-seated gender inequality in society).

Swedish, Icelandic and Norwegian) or genderless (e.g., Finnish) language rank higher in gender equality than countries in which citizens speak gendered languages.¹⁴⁵

Language not only reflects a system of hierarchy; it also reinforces it. The authors of the 2012 study argue that grammatical gender in language might affect social perceptions of gender and consequently the lives of those assigned to a gender.¹⁴⁶ In this respect, English-language jurisdictions may have an advantage; gender is not baked into our language, as it is in many others. But that also means that we can decide to take the additional step of embracing a truly gender-silent style.

A. *Current State of Gender-Silent Legislative Drafting in English-Language Jurisdictions*

We now explore the current state of what we call gender-silent legislative drafting in the United States, Canada, Australia, and the United Kingdom.

1. *United States*

As an indication of how recently and rapidly things are changing, we learned that California's Office of Legislative Counsel in 2018 adopted new drafting rules to ensure that statutory and constitutional provisions are gender inclusive.¹⁴⁷ On the narrower question of whether the changes were made to shift to a non-binary style, only two other states indicated that specific changes were made for this purpose—Indiana to remove references to gender and Vermont to make modest changes such as “chair” instead of

¹⁴⁵ Jennifer L. Prewitt-Freilino, T. Andrew Caswell & Emmi K. Laakso, *The Gendering of Language: A Comparison of Gender Equality in Countries with Gendered, Natural Gender, and Genderless Languages*, 66 *SEX ROLES* 268, 268–75 (2012), https://www.researchgate.net/publication/257663669_The_Gendering_of_Language_A_Comparison_of_Gender_Equality_in_Countries_with_Gendered_Natural_Gender_and_Genderless_Languages [https://perma.cc/T8F8-FD3N].

¹⁴⁶ *Id.* at 269.

¹⁴⁷ See, e.g., Assemb. Con. Res. 260, c. 190 (Cal. 2018) (“Resolved by the Assembly of the State of California, the Senate thereof concurring, That the legislature should engage in a coordinated effort to revise existing statutes and introduce new legislation with inclusive language by using gender-neutral pronouns or reusing nouns to avoid the use of gendered pronouns”); *id.* (“[S]tate agencies should engage in similar efforts to use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance”).

“chairman.”¹⁴⁸ In December 2019, Illinois approved legislation allowing driver’s license applicants to select X as their gender,¹⁴⁹ following adoption of the practice in fifteen other states and the District of Columbia.¹⁵⁰

Related initiatives in other states include a bill in New Hampshire introduced in 2019 that provides a procedure for an individual to obtain a new birth certificate based on a change of gender identity,¹⁵¹ as well as a bill in Utah that offers non-binary options for birth certificates and driver’s licenses.¹⁵² Similarly, after a bill was rejected in 2018, New York re-introduced legislation in 2019 that would allow people to change their names to conform with their gender identity.¹⁵³ In Oregon, a House bill recognizes non-binary as a gender,¹⁵⁴ and several other states have followed suit.¹⁵⁵ Finally, although there has been no formal legislation introduced in Michigan, the state bar journal has published an article discussing the importance of recognizing non-binary gender.¹⁵⁶

Cities, too, can embrace a gender-silent legislative drafting style. Following the California legislature’s directive (mentioned at the beginning of this section), the City of Berkeley, California, recently adopted an

¹⁴⁸ Revell & Vapnek, *supra* note 78, at 10 (Indiana), 11 (Vermont).

¹⁴⁹ Governor Pritzker Signs Law Allowing for Gender-Neutral Markers on Driver’s Licenses, ID Cards, WSPY NEWS (Dec. 28, 2019), http://www.wspynews.com/news/local/governor-pritzker-signs-law-allowing-for-gender-neutral-markers-on/article_a12c9e7c-298e-11ea-9a48-bb35df6a2de8.html [https://perma.cc/AE2H-CXCL].

¹⁵⁰ *Legal Recognition of Non-Binary Gender*, WIKIPEDIA, https://en.wikipedia.org/wiki/Legal_recognition_of_non-binary_gender [https://perma.cc/K4FB-22KS] (last visited Apr. 16, 2020).

¹⁵¹ H.R. 446, 2019 Gen. Ct., 2019 Sess. (N.H. 2019).

¹⁵² Taylor Stevens, *Utahn Becomes One of the First in the State to Receive Nonbinary ‘X’ Markers on Birth Certificate and Driver License*, SALT LAKE TRIB. (Oct. 8, 2018), <https://www.sltrib.com/news/politics/2018/10/08/male-female-x-utahn/> [https://perma.cc/JZ4E-BZGH].

¹⁵³ H.R. 3457-B, 2019–20 Reg. Sess. (N.Y. 2019).

¹⁵⁴ H.R. 2412, 80th Leg. Assemb., Reg. Sess. (Or. 2019); *see also* H.R. 2856, 79th Leg. Assemb., Reg. Sess. (Or. 2017).

¹⁵⁵ Jessica A. Clarke, *They, Them, and Theirs*, HARV. L. REV. 894, 897 (2019), https://harvardlawreview.org/wp-content/uploads/2019/01/894-991_Online.pdf [https://perma.cc/T86N-9XZV].

¹⁵⁶ *See* Angie Martell, *Legal Issues Facing Transgender and Gender-Expansive Youth*, 96 MICH. BAR J. 30 (2017), <http://www.michbar.org/file/barjournal/article/documents/pdf4article3272.pdf> [https://perma.cc/NHA9-URTM].

ordinance to de-gender city legislation.¹⁵⁷ Although the bulk of the changes concern a shift away from “man” words and away from the “universal he”, the accompanying memo underlines that the purpose of the changes is to reflect a non-binary world: “In recent years, broadening societal awareness of transgender and gender nonconforming identities has brought to light the importance of non-binary gender inclusivity.”¹⁵⁸ Toward this end, the ordinance goes beyond simply making Berkeley’s legislation gender neutral; it fully embraces the gender-silent style. In particular, the ordinance provides that “‘They/them’ shall indicate a singular individual, unless the context indicates the contrary.”¹⁵⁹ For the same reasons, the ordinance requires the use of a job title instead of a gendered pronoun, for example “the Director’s office,” rather than “her office.”¹⁶⁰

2. *Canada*

In Canada, as noted above, the federal government is using a non-binary style, and of the eleven provincial and territorial respondents to our survey, five jurisdictions have formally or informally adopted a non-binary style.¹⁶¹ Six said they have no policy on this issue,¹⁶² but of these, three are considering adopting a gender-silent style.¹⁶³ Ten stated that they try to avoid the use of personal pronouns in favor of repeating nouns.¹⁶⁴ In our view, all jurisdictions that avoid the use of third-person pronouns are well

¹⁵⁷ Kayla Epstein, *Berkeley Plans to Remove Gendered Pronouns From its Municipal Code*, WASH. POST (July 18, 2019), https://www.washingtonpost.com/dc-md-va/2019/07/18/berkeley-plans-remove-gendered-pronouns-its-municipal-code/?utm_term=.b1b6092fc68b [https://perma.cc/ZLD7-TQ66].

¹⁵⁸ BERKELEY CITY COUNCIL REPORT, *supra* note 93, at 2.

¹⁵⁹ *Id.* at 4.

¹⁶⁰ *Id.* at 5.

¹⁶¹ Revell & Vapnek, *supra* note 78, at 6 (Alberta, British Columbia), 8 (Nunavut, Saskatchewan, Yukon).

¹⁶² *Id.* at 6 (New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia), 8 (Ontario, Prince Edward Island). Post print publication, New Brunswick advised that it made an error in its survey response. It avoids sex-specific nouns and pronouns and has used gender silence in some new legislation.

¹⁶³ *Id.* at 6 (Newfoundland and Labrador, Northwest Territories), 8 (Ontario).

¹⁶⁴ *Id.* at 6 (Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, Nova Scotia), 8 (Nunavut, Ontario, Prince Edward Island, Saskatchewan, Yukon).

on the road to a non-binary gender-silent style, especially if they also avoid gendered nouns and verbs.

One jurisdiction has not formally moved away from using “he, she, or it” but is evolving a style that does not rely on singular personal pronouns.¹⁶⁵ Similarly, although another state has in the past used “he, she, or it,” recent statutes do not use singular pronouns.¹⁶⁶ For example, its *Safe and Responsible Retailing of Cannabis Act (Liquor and Gaming Control Act and Manitoba Liquor and Lotteries Corporation Act Amended)*¹⁶⁷ repeats nouns and avoids gendered nouns.

3. *Australia*

In Australia, the Commonwealth of Australia and five of its states and territories have a formal policy on gender-silent legislative drafting.¹⁶⁸ Another, despite expecting a formal policy change at any time, appears to have already moved in that direction.¹⁶⁹ One has no formal policy, but it too appears to have already moved in that direction, as it avoids the use of singular pronouns and uses plural nouns and other techniques to avoid gendered language.¹⁷⁰ Several jurisdictions use personal pronouns where it is unavoidable,¹⁷¹ for example, when amending older legislation. It is our opinion that Australia is the most heavily invested and advanced of all countries in gender-silent legislative drafting.

4. *New Zealand*

According to a recent article, gender-neutral drafting in New Zealand is strongly encouraged, but not required.¹⁷² The Parliamentary Counsel’s Drafting Manual lists several techniques that can be used to further gender neutrality.¹⁷³ The manual allows the use of “he or she,” but suggests limiting its use.¹⁷⁴ The trend is clearly toward what we call gender-silent legislative

¹⁶⁵ *Id.* at 8 (Ontario).

¹⁶⁶ *See* *Safe and Responsible Retailing of Cannabis Act*, 3rd Sess., 41st Leg. (Manitoba 2018).

¹⁶⁷ *See id.*

¹⁶⁸ Revell & Vapnek, *supra* note 78, at 2 (Australian Capital Territory), 3 (Queensland), 4 (South Australia, Victoria), 5 (Western Australia).

¹⁶⁹ *Id.* at 3 (Northern Territory).

¹⁷⁰ *Id.* (New South Wales).

¹⁷¹ *Id.* (New South Wales, Queensland).

¹⁷² King & Fawcett, *supra* note 76, at 107.

¹⁷³ *Id.* at 111–12.

¹⁷⁴ *Id.* at 112.

drafting, since the gender-neutral drafting section of the manual explicitly states that “language (and law in general) should move beyond binary concepts of gender that undermine its applicability to all persons.”¹⁷⁵

5. *United Kingdom*

In December 2018, Scotland’s Parliamentary Counsel Office updated its internal guidance to provide specifically that drafters should avoid gender-specific pronouns and should “[b]ear in mind that some people who identify as non-binary do not use either of those gender-specific pronouns for themselves so this may have particular relevance for them.”¹⁷⁶ The respondent to our survey indicated that the policy will likely not require any changes in drafting style.

The U.K. drafting office adopted a gender-neutral drafting policy in 2007, which was amended in 2018 to remove a restriction on the use of the singular “they.”¹⁷⁷ The current guidance reads as follows:

2.1.16 They (singular). In common parlance, “they” is often used in relation to a singular antecedent which could refer to a person of either sex.

2.1.17 Whether this popular usage is correct or not is perhaps a matter of dispute. OED (2nd ed, 1989) records the usage without comment; SOED (5th ed, 2002) notes “considered erron[eous] by some”. It is certainly well-precedented in respectable literature over several centuries.

¹⁷⁵ *Id.* (citing *Principles of clear drafting*, N.Z. PARLIAMENTARY COUNS. OFF. 3.69A, <http://www.pco.govt.nz/clear-drafting/> [https://perma.cc/BQ4K-HVLK] (last visited Feb. 6, 2020)).

¹⁷⁶ *Drafting Matters!: Guidance on the Drafting of Primary Legislation*, SCOTTISH GOV’T (Dec. 6, 2018), <https://www.gov.scot/publications/drafting-matters/pages/6/> [https://perma.cc/FX6N-L6D2].

¹⁷⁷ For further reference on the use of the singular “they” in the UK, see GENDER-NEUTRAL LANGUAGE, 750 Parl Deb HL (5th ser.) (2013) (UK), <https://hansard.parliament.uk/Lords/2013-12-12/debates/13121276000394/LegislationGender-NeutralLanguage> [https://perma.cc/F85T-LUPT]; see also DRAFTING GUIDANCE, OFF. PARLIAMENTARY COUNS. 9 (Oct. 2, 2010, last updated July 17, 2018), <https://www.gov.uk/government/publications/drafting-bills-for-parliament> [https://perma.cc/PPF4-WQ8A]; GENDERED PRONOUNS, 792 Parl Deb HL (5th ser.) (2018) (UK), <https://hansard.parliament.uk/Lords/2018-06-25/debates/A1C1FAD6-81A9-405D-B451-20890306A6F1/LegislationGenderedPronouns> [https://perma.cc/H4DG-T8CK].

2.1.18 It may be that “they” as a singular pronoun seems more natural in some contexts (for example, where the antecedent is “any person” or “a person”) than in others.¹⁷⁸

Northern Ireland adopted its gender-neutral policy within the last ten years but has not explicitly adopted a gender-silent policy. Drafters occasionally use “he or she” but try to avoid the use of personal pronouns. The issue of gender silence has arisen on at least one occasion; our respondent gave the following example:

The question of persons who do not identify as male or female was raised recently at the drafting stage of some provisions. The drafter had at first adopted the “he or she” formulation in a handful of places where, in the drafter’s view, it was the most natural gender-neutral option. On the point being raised by the instructing Department, the provisions were re-drafted using “that person” and “the deceased”, with (at most) only a minor departure from the most natural phrasing.¹⁷⁹

B. New Principles for Gender-Silent Legislative Drafting

In Part II, we set out the five principles that were adopted by the Uniform Law Conference of Canada in 1986 to eliminate sexism in Canadian legal language—i.e., to implement a gender-neutral style.¹⁸⁰ We now introduce our proposed revisions to take account of non-binary genders—i.e., to implement a gender-silent style.

1. Drafters have an obligation to use plain language.

Plain language means that laws should be written in a style as close to ordinary language as is consistent with the accuracy requirements of the law. Updated and informed by a modern sensibility and sensitivity to non-binary concerns, this plain language principle means that a law should not use a sex-specific form when a correct user of the language would use a neutral form.

We believe that gender-silent legislative drafting is plain language at its finest for at least three reasons. First, it allows readers of any gender identity to imagine themselves as being included rather than excluded from the laws of the land. Second, the elimination of gendered pronouns and the repetition

¹⁷⁸ DRAFTING GUIDANCE, *supra* note 177, at 8–9.

¹⁷⁹ Revell & Vapnek, *supra* note 78, at 16 (Northern Ireland).

¹⁸⁰ See *supra* text at note 11.

of nouns eliminate the problem of incorrect pronominal reference. Third, the inclusion of LGBTQIA+ community members in all legislation reflects values of equality set out in some constitutions,¹⁸¹ domestic human rights codes,¹⁸² and international declarations. Recent scholarship also posits that plain language advances the goal of increasing access to justice.¹⁸³

2. *Legislation should address all users equally.*

No one should have to adjust their thinking to envision anyone other than a man being addressed or empowered by a particular statute. The use of “he or she” or “he, she, or it” and the embrace of words like “firefighter” and “worker” cure this issue for women but not for those members of the LGBTQIA+ community who do not identify as male or female.

3. *The language of the law should not offend.*

Women and members of the LGBTQIA+ community are often the butt of insensitive sexist or non-inclusive language which they rightly find offensive.¹⁸⁴ In our opinion, the “universal he” and other non-inclusive language is offensive as it excludes women. Many modern but now outmoded drafting practices leave the LGBTQIA+ community in the same situation. Gendered language that only accounts for two genders excludes all other members of the community. This appears to be a perfect illustration of the old Latin legal maxim *inclusio unius est exclusio alterius* (to include one is to exclude another).

4. *Drafted legislation should reflect the community.*

The legislative drafter is required to be aware of current developments in the language, and to use that language—but also to be aware of what is going on in the world beyond the drafting office. Drafters should avoid faddish language—language that, while current, has not gained general acceptance, such as slang—as it may cause difficulties for readers who are not up to date on the latest terminology or it may cause difficulties in the

¹⁸¹ See, e.g., U.S. CONST. amend. XIV; Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982 c 11, s. 15 (UK).

¹⁸² See Province of Ontario Human Rights Code, R.S.O. 1990, c. H.9, s. 1–3, 5, 7. (Can.).

¹⁸³ Yaniv Roznai & Nadiv Mordechay, *Access to Justice 2.0: Access to Legislation and Beyond*, No. 16-12 HEBREW UNIV. JERUSALEM LEGAL STUD. RES. PAPER SERIES 1, 22, 34 (2015).

¹⁸⁴ Christopher John Hunt, ‘It’s Just a Joke,’ *The Subtle Effects of Offensive Language*, CONVERSATION (July 13, 2016), <https://theconversation.com/its-just-a-joke-the-subtle-effects-of-offensive-language-62440> [https://perma.cc/DLS8-32NA].

future if the word disappears. Drafters should also avoid language that is excessively conservative or reflects another era.

Using language that reflects the world outside the drafting office means drafters should strive to use language that reflects the community. Resisting change means clinging to language that no longer reflects the persons and groups affected by the law. Gender-silent legislative drafting is not a fad. As we showed in the review of our survey and supplementary research, many jurisdictions are already using this form of drafting, and more are expressing interest every year. Moreover, the historical experience of gender-neutral drafting, which was met with hand-wringing and worse by the likes of Driedger, Dickerson, and others, confirms that what initially shocks the grammarian's sensibilities eventually becomes common, accepted, expected, and routine.

5. Drafters should facilitate the legislative process.

One need only look at the news to see that legislators in many jurisdictions are becoming more conscious of the rights and interests of the LGBTQIA+ community and are working to reflect those rights and interests. Given this widespread awareness, we are confident that many of those legislators (and their staff) will examine any proposed legislation arriving at their offices to ensure that its language is gender inclusive. They may then file a last-minute motion to amend these bills.

Many jurisdictions afford little time between the introduction of legislators' motions and the vote.¹⁸⁵ As a result, there may be little time to ensure that the motion (to amend to update the language to make it gender-silent) is consistent with the rest of the bill or to ascertain whether other complementary amendments are required. The last-minute changes may be hurried or awkward, and may spoil an otherwise well-drafted bill. It is for this reason that we advocate that bills be made gender-silent at the drafting stage, so as to avoid any issues arising unexpectedly and late in the legislative process.

C. Techniques for Gender-Silent Legislative Drafting

Our survey and searches of legislative databases confirm that many jurisdictions have already implemented drafting policies that will remove most if not all gendered terminology. Society is changing. In our view, now

¹⁸⁵ See *Parliamentary Proceedings for Meetings*, NOAA, U.S. DEP'T COM., https://www.afsc.noaa.gov/Education/Activities/PDFs/SBSS_Lesson6_roberts_rules_of_or_der.pdf [<https://perma.cc/8UXX-C8BG>] (suggesting, at least at some levels of the legislature, motions are introduced and voted on during the same meeting).

is the time to complete the move to a truly gender-neutral legislative drafting style. The following list of techniques, which we have adapted from the responses to our survey and from the Government of Canada's Legistics website,¹⁸⁶ should assist in accomplishing that goal. As with any such list, drafters must use their professional judgment in determining which, if any, of these solutions works best in any particular situation.

1. Use the singular "they"

Drafters may use the singular "they" and its other grammatical forms ("them," "themselves," and "their") to refer to indefinite pronouns and singular nouns. Canada, the Australian Capital Territory, Hong Kong, and the United Kingdom, among others, have already adopted this technique.¹⁸⁷ It is controversial, as described above.¹⁸⁸ But it is also simple. The following example of the use of singular "they" is taken from the Legistics website, which suggests replacing "Every taxpayer shall file his tax return no later than April 30 of the year following the year in which he earned the income on which he is paying tax" with "Every taxpayer shall file their tax return no later than April 30 of the year following the year in which they earned the income on which they are paying taxes."¹⁸⁹

The singular "they" may be a stumbling block for those who see it as a serious grammatical fault. Concerns about the grammar may get in the way of understanding the message and embracing the values underlying the change. We believe the singular "they" is an acceptable device despite the grammar fears (and we note that one of the leading texts on legislative drafting has embraced it),¹⁹⁰ but we suggest that it be used with caution.

2. Replace a possessive pronoun with a definite article

A definite article can often replace a possessive pronoun with no loss of meaning. For example, "The investigator must give a copy of *his or her*

¹⁸⁶ Legistics, *supra* note 10.

¹⁸⁷ Revell & Vapnek, *supra* note 78, at 2 (Australia Capital Territory), 6 (Canada), 13 (Hong Kong), 18 (UK).

¹⁸⁸ McWhorter, *supra* note 140; *see also* King & Fawcett, *supra* note 76, at 113–17 (discussing in detail the use of the singular "they" and its cousins).

¹⁸⁹ Legistics, *supra* note 10.

¹⁹⁰ King & Fawcett, *supra* note 76, at 116 (citing THORNTON'S LEGISLATIVE DRAFTING (Helen Xanthaki ed., 5th ed., Bloomsbury Professional 2013)) ("As the leading text in the area, *Thornton's Legislative Drafting's* advocacy for and recommendation of gender-neutral alternatives, even if not traditionally 'grammatical', ought to carry considerable weight.").

report to the supervisor” can be changed to “The investigator must give a copy of *the* report to the supervisor.”

3. *Replace gendered language with gender-silent language*

Gendered language can be replaced with gender-silent language, for both nouns and verbs: “If the occupational nurse is absent, the *foreman* must assign a *workman* who is a qualified first aid responder to *man* the safety office” can be changed to “If the occupational nurse is absent, the *supervisor* must assign a *worker* who is a qualified first aid responder to *staff* the safety office.” This technique applies equally to masculine and feminine gendered language. For example, as we saw earlier, “stewardess,” “actress,” and “waitress” have now been replaced by “flight attendant,” “actor,” and “waiter or “table server” in many jurisdictions.

4. *Repeat the gender-silent noun*

Some people find repeating gender-silent nouns instead of using personal pronouns awkward, but it has the virtue of eliminating exclusionary pronominal references. For example, “The commissioner must write a report setting out *his or her* findings regarding *his or her* refusal to grant a permit, and *he or she* must give a copy to *him or her*” could be changed to “The commissioner must write a report setting out the *commissioner’s* findings in respect of the refusal to grant a permit and ~~*he or she*~~ must give a copy to the applicant.” Note that this example repeats nouns and eliminates unnecessary pronouns.

5. *Recast the provision*

Sometimes it may be best to recast a provision to avoid any reference to gender. For example, “A person may be fined up to \$100 if he or she contravenes subsection (1)” could be changed to “A person who contravenes subsection (1) may be fined up to \$100.” Similarly, “The chief building official may issue a building permit and he or she may register it if he or she considers that the applicant has met the requirements of the building code” could be changed to “The chief building official may issue and register a building permit if satisfied that the applicant has met the requirements of the building code.”

6. *Draft in the plural*

Drafting in the plural can be quite effective but may sometimes introduce ambiguity, particularly in criminal or quasi-criminal laws. Replacing “A director shall be paid his or her reasonable expenses” with “The directors shall be paid their reasonable expenses” is easy. By contrast, “The directors are guilty of an offence if they contravene section 1” raises

the question whether this means a contravention by one is a contravention by all or whether there must be multiple directors colluding or conspiring in the contravention. Using the plural is an option, but we suggest using it with care.

7. *Eliminate the pronoun*

Not all pronouns are necessary. For example, “The director must give *his or her* opinion” can be replaced by “The director must give *an* opinion.”

8. *Use the passive voice*

Drafters rightly prefer using the active voice because the passive voice can create ambiguity or vagueness as to who must perform a duty or who receives a benefit or privilege.¹⁹¹ However, these issues do not always arise and the passive voice is perfectly acceptable, especially where it can eliminate gender references.¹⁹² For example, “The applicant must include *his or her* mailing address in *his or her* application” can become “The applicant’s address must be included in the application.” It does not matter who inserts the address in the application, so long as it is included.

9. *Use a verb in place of a noun*

Using a verb in place of a noun can eliminate some verbiage and sometimes provide a simple solution to the pronoun problem. For example, “An inspector may not enter any residence unless the occupant has given *his or her* consent” can become “An inspector may not enter any residence unless the occupant has consented.”

10. *Summary*

All of these techniques have been deployed by at least one jurisdiction, and most have been used by several. They all respect the principles of plain language and (with the exception of the singular “they”) are unlikely to cause discomfort to those troubled by changes in language. Carefully used, these solutions are often invisible to the reader. More importantly, they advance the goals of treating equally all those who are affected by the law.

¹⁹¹ RICHARD C. WYDICK, *PLAIN ENGLISH FOR LAWYERS* 27–31 (3d ed. 1994); *see also* ROBERT C. DICK, *LEGAL DRAFTING* 87, 91–92 (3d ed. 1995).

¹⁹² For a detailed explanation of the passive voice and when it should be used, *see* George D. Gopen, *Why the Passive Voice Should be Used and Appreciated – Not Avoided*, 40 *LITIG.* 16 (2014), https://www.georgegopen.com/uploads/1/0/9/0/109073507/litigation_10_why_the_passive_should_be_used.pdf [<https://perma.cc/A9NF-GJJZ>].

D. Government Forms

This section deals with an area of gendered drafting that we feel is worthy of separate consideration—government forms. Since time immemorial, governments have sought information on the people they govern, and government information gathering requires forms. Forms are one of the most common points of contact between the residents of a jurisdiction and the various levels of government.

Types of forms include applications for licenses and certificates; registration forms for births, deaths, marriages, and land titles; and tax filings. Governments also require forms for other official documents such as passports. In some cases, the forms are prescribed by statute, in others, by subordinate legislation or by administrative order. Some forms are developed informally by an administrative body. Most application forms require applicants or registrants to indicate their sex as male or female, and every resulting official document forever thereafter (such as a license, passport, or death certificate) sets out the selected sex.

Until recently, official forms did not recognize the possibility of non-binary alternatives. Some forms are now changing in many jurisdictions that recognize LGBTQIA+ rights. For example, Canada's Supreme Court outlawed discrimination based on sexual orientation in 1995.¹⁹³ Although the ban was effective immediately, it took some time for it to have an impact on government forms; only by the mid-2010s were changes occurring. For example, beginning May 1, 2017, the Government of Ontario adopted the following policy on gender identity in forms:

- sex will only be collected and used when it is required to deliver, monitor or improve the product or service
- Ontario government ministries must tell you why they are collecting the information and how it will be used
- when gender identity information is displayed on an ID, customers will have the option to choose
 - male 'M'
 - female 'F', or
 - 'X' which includes trans, non-binary, two-spirit, and binary people and people who do not want to disclose their gender identity.¹⁹⁴

¹⁹³ *Egan v. Canada* [1995], 2 S.C.R. 513, 522 (Can.).

¹⁹⁴ *Gender and Sex Information on Government IDs and Forms*, ONT. MINISTRY GOV'T & CONSUMER SERVS. (Aug. 8, 2016, last updated March 25, 2019), <https://>

The policy goes on to state that its objective “is to reduce the risk of trans and non-binary people facing harassment or discrimination because their ID is not consistent with their gender identity.”¹⁹⁵ Since the enactment of this policy, government ministries have been consulting with various stakeholder groups and reviewing any changes that may need to be made to forms and IDs.¹⁹⁶ Most other Canadian jurisdictions have adopted or are in the process of adopting similar policies.¹⁹⁷

The decision to allow persons to choose an ‘X’ is not without problems. In a Canadian news report, a non-binary transgender resident of Prince Edward Island commented:

As someone with a job that requires me to travel constantly (sometimes internationally), . . . I can’t help but wonder: If I had an ‘X’ on my passport, what would this mean if I show it to a border guard? Would I be safe? Too often trans and non-binary folks are forced to make the trade-off between validation and potentially becoming a walking target.¹⁹⁸

Incorporating language that accounts for the complete gender spectrum of individual identities is not easy, and it cannot prevent discrimination occurring once people see that someone has chosen a non-binary designation, but it is essential to ensure that neither gender stereotypes nor

www.ontario.ca/page/consultation-gender-and-sex-information-government-ids-and-forms

[<https://perma.cc/MM7C-BDQY>].

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ On November 4, 2019, an adjudicator ordered the Government of Manitoba to offer the option of using an X to indicate sexual identity on birth certificates. See Kayla Rosen, *Manitoba Government Ordered to Offer Non-Binary Sex Designation on Birth Certificates*, CTV NEWS WINNIPEG (Nov. 6, 2019), <https://winnipeg.ctvnews.ca/manitoba-government-ordered-to-offer-non-binary-sex-designation-on-birth-certificates-1.4672466>

[<https://perma.cc/A8TK-PJAM>]. The policy with respect to other forms was still under review as of November 2019. See DEPARTMENT OF FAMILIES, REPORT ON THE COLLECTION AND USE OF GENDER AND SEX DATA (2019), https://manitoba.ca/asset_library/en/proactive/2019_2020/fam_report_gender_based_data_nov2019.pdf [<https://perma.cc/58XX-NHFN>].

¹⁹⁸ Sara Fraser, *P.E.I. Government ‘Open to Exploring More Changes’ for Gender ID on Paperwork*, CBC NEWS (Sept. 22, 2018), <https://www.cbc.ca/news/canada/prince-edward-island/pei-gender-sex-x-other-trans-birth-certificate-1.4832853> [<https://perma.cc/4XZC-XEHD>].

gender identification denies equal treatment and representation for persons covered by the law.

Although advances in technology often attract criticism, they have an advantage in diminishing reliance on gender identity. As individuals increasingly can be identified through fingerprints and iris scans (such as the airport fast-pass system called CLEAR),¹⁹⁹ the less necessary it will be to track them by sex or to note it on official documents. Starting from birth, governments could use DNA, iris scans, footprint, or fingerprint identification. Privacy concerns aside, in the age of facial recognition software and perhaps DNA scans, using sex and gender on official documents may become obsolete.

Indications are that society is moving in this direction. In 2016, the State of Oregon eliminated the requirement that courts publish citizens' gender changes²⁰⁰ and also authorized driver's licenses to use "X" as an alternative to "M" or "F".²⁰¹ Sixteen other states and the District of Columbia have followed suit in allowing "non-binary" as an option on official documents.²⁰²

VI. ALIGNMENT WITH OTHER JURISDICTIONS

The treatment of sex and gender is not only an issue in the jurisdictions that we surveyed; changes are being considered in many others. Here is a brief overview of three other jurisdictions that are exploring how to account for non-binary gender.

¹⁹⁹ CLEARME, <https://www.clearme.com/> [https://perma.cc/QM75-9EKD] (last visited Feb. 6, 2020).

²⁰⁰ Shelby Hanssen, Note, *Beyond Male or Female: Using Nonbinary Gender Identity to Confront Outdated Notions of Sex and Gender in the Law*, 96 OR. L. REV. 283, 297 (2017), <https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/22999/Hanssen.pdf?sequence=1&isAllowed=y> [https://perma.cc/94M6-PJX5].

²⁰¹ *Id.*

²⁰² See WIKIPEDIA, *supra* note 150.

A. Germany

To inform the work of its Interministerial Working Group on Inter- and Transsexuality, the federal government of Germany undertook a comprehensive review of how its legislation treated sex and gender.²⁰³ The review was in part to take stock of policy results of the Civil Status Law of 2013 that allowed parents to leave the “gender” box blank on birth certificates.²⁰⁴ The report recommended introduction of a non-binary category to give effect to fundamental and human rights²⁰⁵ in line with other steps taken at the federal level to move toward a gender-inclusive legal system, such as abandoning gender-specific terms with respect to parenthood, marriage, and other family relationships.²⁰⁶

B. Sweden

Sweden has been proactive in addressing the issue of gender in its legislative drafting. In 2015, the pronoun “hen” was formally introduced into the Swedish dictionary.²⁰⁷ This new word is used to refer to a person who is transgender; whose gender is unknown or irrelevant; who wishes not to be identified with a gender; or whose gender the writer deems superfluous information.²⁰⁸ This is a positive trend toward equal treatment of all genders in language.

²⁰³ Nina Althoff, Greta Schabram & Petra Follmar-Otto, *Gender Diversity in Law: The Status Quo and the Development of Regulatory Models for Recognizing and Protecting Gender Diversity*, GERMAN INST. FOR HUMAN RTS. 4 (2017), <https://www.bmfsfj.de/blob/116952/2f2af83b324af52cbb1d0efbfda212e2/geschlechtervielfalt-im-recht--band-8---englisch---gender-diversity-in-law-data.pdf> [https://perma.cc/7TSD-YGUH].

²⁰⁴ *Id.* at 5.

²⁰⁵ *Id.* at 17.

²⁰⁶ *Id.* at 18.

²⁰⁷ AFP, *Sweden Adds Gender-Neutral Pronoun to Dictionary*, GUARDIAN (Mar. 24, 2015), <https://www.theguardian.com/world/2015/mar/24/sweden-adds-gender-neutral-pronoun-to-dictionary> [https://perma.cc/9323-BWUU].

²⁰⁸ *Id.*

C. European Parliament

In 2008, the European Parliament published a set of guidelines for gender-neutral language,²⁰⁹ and these were substantially updated in 2018.²¹⁰ The 2018 document states that “the aim of these guidelines is to ensure that, as far as possible, non-sexist and gender-inclusive language is used . . . in the Parliament’s documents and communications in all official languages.”²¹¹ The document sets out a number of recommendations for English-language documents, such as using plural forms of a noun (as in “officials shall carry out their duties”), omitting pronouns, and using the imperative.²¹² The guidelines state that it may not always be possible to avoid the occasional use of “he” or “his,” but strenuous efforts should be made to reduce such use to a minimum.²¹³

The 2018 document, which was developed jointly by linguists and policy officials,²¹⁴ recommends the following policies for three groups of European languages.

1. Neutral gender languages (Danish, English, Swedish)

Drafters in these languages, which use personal nouns and pronouns specific to each gender, should consider using words that are gender neutral (e.g., chairperson, spokesperson, director, principal, etc.).²¹⁵

2. Grammatical gender languages (German, Romance languages, Slavic languages)

These languages, which assign grammatical gender for every noun and where the personal pronoun gender matches the reference noun, should consider feminization, particularly in the context of professional nouns and job titles.²¹⁶

Countries like France (and others) have formally introduced new words into their language to create a feminine version for almost all titles of

²⁰⁹ EP 2018, *supra* note 37, at 2.

²¹⁰ *Id.*

²¹¹ *Id.* at 4.

²¹² *Id.* at 10.

²¹³ *Id.*

²¹⁴ *Id.* at 2.

²¹⁵ *Id.* at 5.

²¹⁶ *Id.*

masculine gender (e.g., *autrice* for *auteur*, *députée* for *député*).²¹⁷ In explaining the language changes, the Académie française noted that this is a “natural evolution” of French, “aim[ed] at recognising in language the place of women in today’s society” (although it goes on to warn that the changes should not “contravene the elementary and fundamental rules of language”).²¹⁸

In these languages, the use of the generic masculine noun is no longer the norm, even in legislation. For instance, the translation of the Treaty of Lisbon into German reads as “Unionsbürgerinnen und Unionsbürger” to indicate the word “citizens” in both masculine and feminine.²¹⁹

3. Genderless languages (Finnish, Hungarian, Estonian)

Languages that have no grammatical gender and no pronominal gender do not need a specific strategy to be gender inclusive.²²⁰ The European Parliament recognizes that there are significant differences between languages of member states and recommends appropriate solutions “in each specific context, taking into account the relevant linguistic and cultural parameters.”²²¹

D. Other Jurisdictions

Gender-silent legislative drafting has been adopted in Zambia.²²² It is under consideration by the Church of England, whose respondent to our survey indicated that they tend to avoid personal pronouns and repeat nouns. Gender-silent legislative drafting is also under close consideration in New Zealand, while gendered language is avoided in Isle of Man. As these and the previous examples show, many jurisdictions are already moving ahead with embracing gender-silent legislative drafting, and we urge more to do the same.

VII. CONCLUSION

The age of the “universal he” in legislation lasted several hundred years. We are currently less than forty years from the time most jurisdictions

²¹⁷ *Feminine Job Titles Get Go-Ahead in France*, BBC (Mar. 1, 2019), <https://www.bbc.com/news/world-europe-47414140> [https://perma.cc/FDD9-Y4NS].

²¹⁸ *Id.*

²¹⁹ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1 art. 8B.

²²⁰ EP 2018, *supra* note 37, at 6.

²²¹ *Id.* at 9.

²²² Revell & Vapnek, *supra* note 78, at 18 (Zambia).

accepted a binary view of gender-neutral drafting. Using “he or she” and “he, she, or it” is neutral as between male and female but does not reflect the growing recognition that many people do not self-identify as either male or female. Recently, many jurisdictions have moved to what we call a gender-silent style, and many more are transitioning to or considering moving to it. It is not a fad: it reflects the fact that society is changing.

Different jurisdictions are at different points on a path from the continuing use of the “universal he” to the full adoption of gender-silent legislative drafting. There may be lingering questions about how to handle gendered language in old legislation, but this focus on the artefacts of an earlier era should not hinder the transition to a gender-silent legislative drafting style.

To those who object that it takes extra effort to alter language to be more inclusive, the response is the same as it was in the 1970s when society was changing language to take account of women: the extra effort is important to ensure that those affected by a law do not feel excluded from it and that all members of society feel like full members. This is not to say that changing how we speak and write is easy: it is not. But as one Columbia University linguistics professor (and author of the *Atlantic* article we discussed earlier) recently pointed out, it also takes effort to learn grammatical constructions such as “John and I went to the store” and not “Me and John went to the store.”²²³ We absorb these grammar rules as children; we can and should make a greater effort as adults when people’s human rights and access to justice are at stake.²²⁴

In our view, the drafting office is the key to change. In the past, drafters (and others) tended to cling to comfortable, well-settled ways of writing legislation and to defend tradition vigorously.²²⁵ This is no longer the case. We believe that our survey and other research show that drafting offices are

²²³ McWhorter, *supra* note 140.

²²⁴ Heidi K. Brown, *We Can Honor Good Grammar and Societal Change Together*, A.B.A. J. (Apr. 1, 2018) (“The concept of inclusive legal writing is an opportunity for lawyers to be at the forefront of balancing grammatical correctness and cultivation of gender inclusiveness.”), http://www.abajournal.com/magazine/article/inclusive_legal_writing [https://perma.cc/K636-A9AW]; see also King & Fawcett, *supra* note 76, at 116 (“Thornton’s stance, that gender neutrality ought to trump what some people consider to be awkward grammar, ought therefore to be adopted if legislative drafting is to be done in a truly inclusive way.”).

²²⁵ See generally, e.g., Driedger, *supra* note 39; see also DICKERSON, *supra* note 41, at 228–29.

acting proactively and, commendably, taking a leading role in linguistic reform.

Language is an instrument that can be used as a tool to oppress, discriminate, and exclude—or it can equally well be used to advance equality. We cherish the values of inclusion, equal treatment, and non-discrimination, and we believe written laws should reflect these norms. The time has come for all jurisdictions to embrace gender-silent legislative drafting as an honorable way to treat one another in a non-binary world.

Annex 1**Survey of Heads of Legislative Drafting Offices****August 2018**

1. Does your jurisdiction use a gender-neutral drafting style in drafting English-language laws?
2. If yes to question 1,
 - a. Do you use *he/she/it* and their cousins *him/her/it*, *his/her/its*?
 - b. Do you try to avoid the singular personal pronouns by repeating nouns or drafting in the plural?
 - c. When did you adopt the style?If a. or b. do not apply, please describe what gender-neutral drafting style you use.
3. Has your drafting style changed to reflect an all-inclusive (non-binary) gender-neutral style, i.e. a style that recognizes that many people identify as neither male nor female?
 - a. If so, when did you adopt this style and can you give examples or provide us with a copy of any manuals or directives that you have on this style?
 - b. What, if any, problems or resistance did you receive in implementing the change?
 - c. What support did you receive?
4. If you haven't changed style in your jurisdiction, is such a change being considered?
 - a. Who do you see as supporting the move?
 - b. What obstacles to you see?
5. What is the name of your jurisdiction?
6. Do you have any other comments or suggestions that may help us developing our paper

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF
ACCESS TO JUSTICE TECHNOLOGY
PRINCIPLES

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ORDER

NO. 25700-B-627

WHEREAS, the responsible use of technology is central to providing access to justice for all individuals, and, to that end, technological tools should be developed and utilized that increase and enhance access to justice.

WHEREAS, the Access to Justice Board has developed technology principles that justice system decision makers should carefully consider whenever technology is purchased, planned or implemented, to avoid reducing access, and whenever possible, to use technology to enhance access to justice.

WHEREAS, the Access to Justice Technology Principles were considered at the June 28, 2019, meeting of the Judicial Information System Committee, and the committee unanimously passed a motion to endorse the principles for submission to the Washington Supreme Court.

WHEREAS, the Access to Justice Technology Principles were considered by the Supreme Court at the June 4, 2020, En Banc Conference, and were approved for adoption.

Now, therefore, it is hereby

ORDERED:

That the Access to Justice Technology Principles attached to this order are hereby approved and adopted for use by justice system decision makers.

DATED at Olympia, Washington this 5th day of June, 2020.

For the Court


CHIEF JUSTICE

Access to Justice Technology Principles

Preamble

The responsible use of technology is central to providing access to justice for all individuals. To that end, we should develop and utilize the technological tools that increase and enhance access to justice. These Principles do not mandate new expenditures, create new causes of action, or repeal or modify any rule. Rather they advocate that justice system decision makers carefully consider these Principles whenever technology is purchased, planned or implemented, to avoid reducing access, and, whenever possible, use technology to enhance access to justice.

Scope

The Access to Justice Technology Principles are adopted to:

- Guide the justice system's use of technology
- Combat discrimination, unfair treatment, and unjust biases in the justice system, and
- Ensure that technology does not create unfair results or processes for resolving legal problems.

The Access to Justice Technology Principles apply to everyone involved in administering the justice system including:

- Courts,
- Clerks of the Court,
- Administrative Office of the Courts, and
- Court Administrators.

Definition of Technology

"Technology" includes but is not limited to hardware and software, and all mechanisms and means used for the production, storage, retrieval, aggregation, transmission, communication, dissemination, interpretation, presentation, or application of information, including but not limited to data, documents, records, images, video, sound, and other media.

Access to Justice for All

Everyone should have access to the justice system.

Use of technology in our justice system should increase and must not diminish:

- equitable access to justice;
- opportunities for participation; and
- usability, accountability, efficiency, and transparency.

Technology in our justice system must start with a design for fairness and must be evaluated regularly against these rules.

All technology must be designed and used to eliminate discrimination, unfairness, and other unjust systemic biases and practices.

Openness, Privacy and Safety

Technology in the justice system must be open to the public and transparent, unless access is limited by law to protect the safety and privacy of the people involved.

Technology in the justice system must be designed to:

- assure that confidential information is not introduced into the public domain to the extent possible,
- ensure that people only have access to the appropriate information that they are allowed to see based on their role in the justice system,
- assure that information can be viewed, created, changed or deleted only by participants with the appropriate access levels, and
- assure that confidential information is not introduced into the public domain.

People must have meaningful access to view their own information and have it corrected if inaccurate.

Accountability and Fairness

The justice system must maximize the beneficial effects of technology while continuously improving technology to address the needs of people most impacted by or least able to engage effectively with the justice system. Users should have a voice in the acquisition and implementation of technology, including as testers.

The justice system must ensure that technology, especially algorithms, are periodically evaluated before, during and after development and implementation, for:

- inequitable processes,

- unfair outcomes, and
- unintended negative impacts.

Any proposed technology that would result in unfairness or inequity must not be implemented.

Technology that is already implemented that results in unfairness or inequity must be corrected, or if the harm cannot be eliminated, removed from use.

Maximizing Public Awareness and Use

The justice system must provide access to knowledge about itself and promote public awareness of its processes and resources.

Actors in the justice system must:

- regularly seek input from and listen to the public, and
- make regular improvements to technology, and the methods of providing information about the technology, based on user needs, experience, and feedback.

Usability

Technology in the justice system must be easy to use, affordable, and efficient.

Accessible Formats

Court information must be available to the public and should be available in ways that best enable its use. Information and resources must be offered in formats that do not place an undue financial burden upon users.

Plain Language

The justice system must strive to create legal information resources for the public in plain language, when possible.

Best Practices Workgroup

The technology committee of the Access to Justice Board will establish a workgroup that maintains and shares practical information, resources, definitions, and best practices for implementing the ATJ Technology Court Rules. The workgroup will periodically update periodically update these resources and publish them at: [URL]. The workgroup should

coordinate with Administrative Office of the Courts and will report to the Access to Justice Board and Judicial Information System Committee annually.

Accessibility

The justice system must consider, design, and implement technology systems for all persons, including those with disabilities.

Cultural Responsiveness

Technology in the justice system should incorporate principles and practices which address and respond to cultural variables and diversity of people and communities.

Human Touch

Technology should be used to increase the level of quality of human interaction, and to preserve or increase the humanity of our justice system.

Technology should be used to increase the satisfaction of the public's interaction with the justice system to ensure timely and fair outcomes.

Technology should be used to reduce the necessity of the public to physically go to court to resolve conflict.

Language Access

Courts should communicate in the preferred languages of people. Technology must be used in ways which enhance communication.