Opinion & Dissent: Magic Words

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Less is almost always more

To the Editor:

Kudos to Mark Cooney for his Plain Language article, “The Architecture of Clarity” (September 2016 Michigan Bar Journal). As an award-winning journalist, I could not have expressed the process any better. “Clarity comes from a firm grasp on substantive meaning...it requires an acute ambiguity radar and a host of fine editorial techniques.”

I am familiar with Mark not only from the Bar Journal but also as a member of Scribes. After the writer follows Mark’s suggestions and guidelines, re-read your draft and re-edit. It is a painful but necessary exercise to put the scalpel to one’s own writing. Edit and re-edit and you will find that less is almost always more.

James A. Johnson
Southfield

Magic Words

To the Editor:

I would like to respond to Chadwick C. Busk and Michael Braem’s article, “Curiouser and Curiouser Excuses for Legal Jargon,” published in the October 2016 edition of your journal. The article both misstates my positions and oversimplifies nuanced issues.

In educating law students on contract drafting, I’ve sought to prepare them to act as “chameleons,” adapting to the drafting styles and preferences of senior attorneys and clients. This was also my approach throughout my years as a big-firm transactional lawyer. I teach students to remove from contracts, whenever possible, meaningless jargon that has a plain-language equivalent, such as “herein, therein, hereby, and thereof.”

I thus hardly provide “excuses” for such jargon, contrary to what Busk and Braem assert. Yet, when it comes to terms of art in contracts, those heavily litigated terms that serve as shorthand for more complex legal concepts, I take the approach of Bryan Garner that there exist certain “unspellable terms of art.” Although Busk and Braem lump together terms like, say, “best efforts” and “whereas,” those terms pose different problems that require different solutions.

Daniel J. Andrews
The Villages, Florida
Throughout my years of teaching, students have often asked, “How will I know the difference between meaningless jargon and a term of art?” This question goes to the core of my scholarship, which Bush and Braem misunderstand in their article. I use methods of language analysis to determine both the motivations and the potential ethical implications of removing or rephrasing specific terms of art in the sophisticated commercial context.

In doing so, I hope to help transactional attorneys, those who have partners and clients to please, billable hours to consider, and various constituencies fighting for their attention. And, yes, I also want to help those who simply cannot rephrase into plain language every clause of a client’s preferred form, and those who operate in the gray area between a laudable desire to modernize and streamline contract prose on the one hand, and the demands of client representation on the other.

My article “Say the Magic Word” thus makes no “fanciful argument” despite what Bush and Braem suggest. To the contrary, I use rhetorical analysis to understand why a busy lawyer might rely on certain tested terms. In my article “The Ethics of Non-Traditional Contract Drafting,” I caution lawyers who hope to modernize contracts that they need to engage in adequate research and client counseling before arbitrarily rephrasing terms of art into untested, modern prose. These articles are available in the *Syracuse Law Review* and forthcoming in the *University of Cincinnati Law Review*, respectively.

In both articles, I aim to help students and practicing transactional lawyers about how to best represent their clients while still adhering to the goals of the plain-language movement. I posit that there is some gray area between the black and white of traditional and modern terms, and hope that students and lawyers will think critically about contract modernization. Bush and Braem’s view of the world of contract drafting as a simple “us” versus “them” is truly the more “fanciful” approach. Practicing transactional lawyers and law students need to deal with nuance. We all share the objective of matching contract language with client goals.

Lori D. Johnson
Las Vegas, Nevada

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MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals on January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of July 1, 2016 is 2.337 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

1. 13 percent a year, compounded annually; or
2. the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.