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Abstract

About 65 percent of family law litigants in Washington State come to court without a lawyer.[1] Plain language forms will give many of these *pro se* litigants the ability to conduct their lawsuits without legal representation or with limited assistance. Such forms also reduce costs for litigants and the courts. As part of the implementation of the Washington State Plan for Integrated Pro Se Services (Pro Se Project), a joint initiative of the Washington State Access to Justice Board, the Washington State Administrative Office of the Courts, and the Washington State Office of Administrative Hearings, work has been

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[1] JUDICIAL SERVS. DIV., ADMIN. OFFICE OF THE COURTS, AN ANALYSIS OF PRO SE LITIGANTS IN WASHINGTON STATE 1995–2000 (2001), *available at* http://www.courts.wa.gov/wsccr/docs/Final%20Report_Pro_Se_11_01.pdf [hereinafter ANALYSISOF PRO SE LITIGANTS]. Please note that statistical sampling varies from county to county and from case type to case type. The general presumption based on the statistics is that in about 50 percent of the cases, neither side is represented by an attorney, and that in about 80 percent of the cases, one side is not represented.

underway to translate 211 mandatory family law court forms into plain language.

This article describes some of the ethical justifications for, and practical benefits of, plain language forms. It also discusses basic linguistic principles that underpin clear, concise, and plain language. The latest version, as of this writing, of one of the most important plain language forms, the Parenting Plan, is appended.

This article also examines the broader aspects of plain language adoption nationally. Legal forms have taken on new relevance after the US Supreme Court's decision in *Turner v. Rogers*,[2] which obliges judiciaries to take steps to ensure that unrepresented litigants' rights to due process are adequately protected. Plain language forms are an effective means of dispelling the due process concerns noted in *Turner*, and a necessary element of a genuinely accessible justice system.



[2] 131 S. Ct. 2507 (2011).

## I. INTRODUCTION

Throughout the country, those working to improve access to the justice system are continually exploring, evaluating, and implementing ways to make the system more accessible for *pro se* litigants.[3] This process includes scrutiny of existing justice system components to ensure that each component is useful to, and usable by, those litigants

[3] The term "*pro se*" in this article refers to anyone who goes to court without a lawyer. Other names for *pro se* litigants include "self-represented litigants" and "pro per."

who seek resolution of their grievances, including those with disabilities and language barriers. In this regard, the traditional "pattern" court form, a court approved template for a specific legal proceeding, has come under growing scrutiny as increasing numbers of litigants appear *pro se*.

The Pro Se Project—a joint undertaking by the Washington State Access to Justice Board (ATJ Board), the Washington State Administrative Office of the Courts (AOC), and the Washington Office of Administrative Hearings (OAH)—has been working to improve the usability of pattern court forms by rewriting them in a plain language format. Plain language is a term commonly used to describe language that is in a "format and words that . . . readers find appealing and easy to use and understand."[4] To be clear, "plain language" does not mean drab, ugly, or base.[5] Traditional legal writing, or "legalese" as it is known, has that honor, being characterized as "wordy, unclear, pompous, and dull."[6] Quite fittingly, law books have been described as "the largest body of poorly written literature ever created by the human race."[7] The goal of using plain language is to make documents intelligible to the greatest possible number of intended readers.[8] Though pattern forms have long been used in the legal profession, they have not generally been written in clear and easy-to-understand language.

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[4] TRANSCEND TRANSLATIONS, INC., READABILITY: HOW TO WRITE AND DESIGN DOCUMENTS THAT ARE EASY TO READ (2012) [hereinafter READABILITY]. Transcend Translations, Inc., is a Davis, California-based company that provides readability consultation services, including the translation of "legalese" into plain language format. The company refers to itself simply as Transcend.

[5] JOSEPH KIMBLE, WRITING FOR DOLLARS, WRITING TO PLEASE: THE CASE FOR PLAIN LANGUAGE IN BUSINESS, GOVERNMENT, AND LAW 11–12 (2012).

[6] *Id.* at 12 (quoting David Mellinkoff).

[7] *Id.* at 12 (quoting John Lindsey).

[8] *Id.* at 31.

The purpose of this article is to explore the justifications and benefits of plain language in pattern court forms, to report on the Pro Se Project's effort to convert 211 existing family law forms into a plain language format as a first step towards broader form conversion, and to share some of the lessons learned along the way. An understanding of plain language principles is necessary for members of the Washington State legal community who work with court forms, access to justice advocates across the country interested in the theoretical and practical aspects of the Washington State experience, and scholars who wish to explore the jurisprudential assumptions, assertions, and implications of this systemic change occurring in Washington State.

## II. HISTORY OF PLAIN LANGUAGE DEVELOPMENT NATIONALLY AND IN WASHINGTON STATE

There is a "Plain Language Movement" in this country[9] driven by a confluence of factors, including an increasing number of *pro se* litigants in the courts;[10] a growing poverty population that is culturally and linguistically diverse;[11] a reduction in funding for civil legal aid and pro bono programs that can provide counsel, advice, and

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[9] KIMBLE, *supra* note 5.

[10] *See* THOMAS GEORGE & WEI WANG, WASH. STATE CTR. FOR COURT RESEARCH, ADMIN. OFFICE OF THE COURTS, WASHINGTON'S COURTHOUSE FACILITATOR PROGRAM FOR SELF-REPRESENTED LITIGANTS IN FAMILY LAW CASES 10-11 (2008) *available at* http://www.courts.wa.gov/wsccr/docs/Courthouse%20Facilitator%20Program.pdf (summarizing national and state data resources). *See also* ANALYSIS OF PRO SE LITIGANTS, *supra* note 1; resources cited, *infra* note 51.

[11] *See* U.S. CENSUS BUREAU, *State and County QuickFacts*, http://quickfacts.census.gov/qfd/states/53000.html (last visited Feb. 14, 2013). According to data from the US Census Bureau, as of 2011, 12.7% of Washington's population is foreign born, 17.8% of the population does not speak English at home, and 12.5% live below the poverty level. *Id*. The national numbers are quite similar. *Id.*

representation to low income people;[12] and the increasing complexity of court forms and procedures. While the Plain Language Movement is but one small example of a national effort to create meaningful access to the courts, it is pushing many in the legal profession and the judiciary to take a critical look at one of the most significant barriers to access: forms written by lawyers and judges in a language only they understand.[13]

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[12] *See* LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2009), *available at* http://www.lafla.org/pdf/justice_Gap09.pdf (documenting the growing inadequacy of legal aid funding nationwide). *See also* TASK FORCE ON CIVIL EQUAL JUSTICE FUNDING, WASHINGTON STATE SUPREME COURT, THE WASHINGTON STATE CIVIL LEGAL NEEDS STUDY (2003), [hereinafter LEGAL NEEDS STUDY] *available at* http://www.courts.wa.gov/newsinfo/content/taskforce /civillegalneeds.pdf (documenting this inadequacy for Washington State in particular).

[13] *See, e.g.*, JOHN M. GREACEN, MICHIGAN STATE BAR FOUND., RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE "STATE OF THE ART" (2011) [hereinafter GREACEN, RESOURCES], *available at* http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf; JOHN M. GREACEN, MICHIGAN STATE BAR FOUND., RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE "STATE OF THE ART" app. (2011), [hereinafter GREACEN, app.], *available at* http://www.msbf.org /selfhelp/appendices.htm. Furthermore, a survey by the Texas Access to Justice Commission found a high level of support for standardized forms among state representatives. TEXAS ACCESS TO JUSTICE COMM'N, STATE RESPONSES ON STANDARDIZED FORMS, *available at* http://www.texasatj.org/files/file /1StateResponsesonStatewideForms.pdf [hereinafter STATE RESPONSES]. *See also* AM. BAR ASS'N STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, STANDARDS FOR LANGUAGE ACCESS IN COURTS (2012) [hereinafter ABA STANDARDS FOR LANGUAGE ACCESS], *available at* http://www.americanbar.org /content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards _for_language_access_proposal.authcheckdam.pdf; Conference of Chief Justices & Conference of State Court Administrators, *Resolution in Support of Passage of* Standards for Language Access in the Courts *Per ABA Resolution 113* (Dec. 8, 2011), *available at* http://www.americanbar.org/content/dam/aba/administrative /legal_aid_indigent_defendants/ls_sclaid_ccj_cosca_resolution.authcheckdam.pdf; PLAIN LANGUAGE ACTION AND INFORMATION NETWORK, http://www .plainlanguage.gov/ (last visited Feb. 14, 2013).

The Plain Language Movement received an unexpected and indirect endorsement from the United States Supreme Court in *Turner v. Rogers*.[14] Turner, an unrepresented defendant, was incarcerated for civil contempt for failure to pay child support.[15] The Court held that although there was no right to an attorney in this civil action, the lower court failed to inform the defendant of any affirmative defenses, which in this case included an inability to pay.[16] Under *Turner*, due process requirements may be satisfied in a number of ways, such as providing litigants with court forms that gather all relevant information.[17] Such forms would allow judges to make informed findings—for example, that a defendant is or is not able to pay child support. The Court was explicit that the defendant must understand his available affirmative defenses, essentially holding that due process, though not necessarily mandating a right to state-appointed counsel in civil contempt proceedings, does require that judiciaries implement "alternative procedures," such as forms, to ensure that litigants' due process rights are protected.[18] *Turner* is the first statement by the US Supreme Court describing trial courts' due process responsibilities to unrepresented litigants.[19] Many access to justice advocates and self-represented litigant networks are lauding *Turner* as a landmark decision for self-represented litigants and a call to action for those working to create a

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[14] 131 S. Ct. 2507 (2011).
[15] *Id.* at 2509.
[16] *Id.* at 2519–22.
[17] *Id.* at 2520.
[18] *Id.* Since the Court held that the defendant's due process rights require that he understand his affirmative defenses, if a court form is used to provide that right, then presumably the defendant must have access to the form and the form must be understandable on its own to the defendant. By extension, a form that is not understandable to the defendant, perhaps because of the defendant's illiteracy, would not suffice, so further aid, such as an interpreter, may be needed.
[19] Richard Zorza, *Implications for Access to Justice Strategies*, 95 JUDICATURE 255, 255 (2012) [hereinafter Zorza, *Implications*].

more equitable justice system.[20] On this topic, Richard Zorza, a nationally known expert on self-represented litigants, notes the following:

By effectively endorsing forms as an access to justice tool—and indeed mandating them in certain situations—the Supreme Court has challenged access communities and national institutions to put in place national and local strategies for deploying forms for access. Such state strategies are likely to include . . . [r]eview of existing forms for compliance with plain language standards.[21]

*Turner* establishes that effective procedural safeguards, where there is no right to a state-appointed attorney, includes the following: (1) some form of notice to litigants of the critical issues in their case; (2) some means, such as forms, that allow litigants to provide important information; (3) the opportunity for litigants to respond to questions and expand upon information they provide; and (4) express finding by the court with regard to the issue addressed by the forms and information in question.[22] Plain language forms fulfill all four of these elements.

First, by their very nature, plain language forms do an effective job of describing what information is needed, entailing that they explain *why* such information is needed. Second, plain language forms do a better job of telling litigants what information they must provide and how to provide it. Third, a well-written plain language form allows litigants to better understand how such information will be used, which can help them anticipate follow-up questions and prepare information

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[20] Richard Zorza, *A Final Turner Post from Your Co-Hosts, Richard Zorza and David Udell*, CONCURRING OPINIONS (June 28, 2011, 12:20 PM) (part of a *Turner* post-decision online symposium), http://www.concurringopinions.com /archives/category/symposium-turner-v-rogers.

[21] Zorza, *Implications, supra* note 19, at 266.

[22] *See generally Turner*, 131 S. Ct. at 2519.

that may not be required by the form, but which might help their case. Fourth, clear and relevant information provided by litigants via plain language forms allows judges to more effectively render a just and considered opinion.

Based on a recent study, there are twenty-four states that have extensive plain language court forms for use in family law and other areas.[23] Of these, fourteen states mandate their use, and eight states mandate their acceptance by the courts, but other forms can be used as well.[24] Fourteen states and the District of Columbia have a limited number of plain language court forms in family law and other areas.[25] Twelve states, including Washington State,[26] have yet to develop plain language forms.[27] Table 1 below outlines which states have plain language forms and whether the forms' use is mandatory (mandatory use); whether the plain language forms must be accepted by the courts but other forms are allowed (mandatory acceptance); or whether acceptance by the courts is determined by the individual court (not mandated).

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[23] *Spreadsheet of Information on the Websites of Each State and the District of Columbia*, *in* GREACEN, app., *supra* note 13, [hereinafter GREACEN, *Spreadsheet*], *available at* http://www.msbf.org/selfhelp/appendices /spreadsheetofstateswebsites .pdf. The data in the following paragraph: GREACEN, *Spreadsheet*, has a table for each state and a specific entry in each table regarding mandatory use as well as a specific entry regarding plain language. Table 1 notes which states fall into which category.

[24] *Id*.

[25] *Id.*

[26] *Id.* at 105–07.

[27] *See generally* GREACEN, *Spreadsheet*, *supra* note 23. Some of these states, including Washington State, have developed other programs such as self-help centers, court facilitators, and judicial education programs, aimed at aiding *pro se* litigants gain better access to the courts. *See id.*(listing state-created programs). Of course, many of the states with well-developed plain language forms have similar programs, but not all. *See infra* Table 1.

**TABLE 1.** Plain Language Form Use Across the United States

| Plain Language Forms | Use | States |
|---|---|---|
| Extensive number of forms | Mandatory use | Colorado, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, Vermont, and West Virginia |
| Extensive number of forms | Mandatory use, with exceptions | Florida[28] and Missouri[29] |
| Extensive number of forms | Mandatory acceptance | Alabama, Alaska, Arizona, Connecticut, Idaho, Indiana, Nebraska, and Utah |
| Extensive number of forms | Not mandated for acceptance | Oregon and South Dakota |
| Limited number of forms | Mandatory use | California, the District of Columbia,[30] |

[28] GREACEN, *Spreadsheet*, *supra* note 23, at 17. Florida mandates forms, but local courts may modify them. *Id.*
[29] *Id.* at 44. Missouri mandates only that *pro se* litigants must use these forms, but attorneys may choose to use them as well. *Id.*
[30] *Id.* at 16. The District of Columbia mandates the use of those forms provided by the DC Bar, which are in plain language but do not cover all family law forms. *Id.*

| Plain Language Forms | Use | States |
|---|---|---|
| | | New York, Tennessee,[31] and Wisconsin.[32] |
| Limited number of forms | Mandatory acceptance | Delaware and North Dakota[33] |
| Limited number of forms | Not mandated for acceptance | Arkansas,[34] Georgia,[35] Montana,[36] Oklahoma,[37] Pennsylvania,[38] South |

[31] *Id.* at 87–89. Tennessee is in the process of developing family law court forms and has mandated the use of some of them. *Id.* at 87.

[32] *Id.* at 109–10. Wisconsin's mandatory forms are rated by Greacen as close to being in plain language, with instructions in the margins that help. *Id.* at 109. Wisconsin has special forms for pro se litigants. *Id.*

[33] *Id.* at 69. North Dakota has plain language forms only for uncontested divorce. *Id.*

[34] *Id.* at 4. Arkansas has a protection order kit, *available at* https://courts.arkansas.gov/forms-and-publications/court-forms/domestic-relations-division (last visited Mar. 17, 2013); as well as some widely-accepted Access to Justice Commission forms. *Where to go for Help*, ARKANSAS ACCESS TO JUSTICE, *available at* http://www.arkansasjustice.org/ineedhelp (last visited Mar. 17, 2013).

[35] GREACEN, *Spreadsheet*, *supra* note 23, at 18. Georgia has a number of family law court forms in plain language done by local legal aid offices. *Id.* The courts actively discourage *pro se* litigants except in magistrate court. *Id.*

[36] *Id.* at 45. Montana's forms were developed by Montana Legal Services Association and the Montana Commission on Self-Represented Litigants. *See, e.g.*, Montana Legal Servs. Ass'n, Introduction to Family Law in Montana, http://courts.mt.gov/content/library/forms/end_marriage/dis_wc/all.pdf (noting how this form was created). They are not mandatory, but recommended by the courts. Email conversation between Charles R. Dyer and Judith Meadows, Montana State Law Librarian, (Dec. 19, 2012) (on file with author).

[37] GREACEN, *Spreadsheet*, *supra* note 23, at 71. Oklahoma only has a protection order kit in plain language. *Id.*

[38] *Id.* at 73–74. Pennsylvania has plain language forms in several areas of law, but not for family law. *See id.*

| Plain Language Forms | Use | States |
|---|---|---|
| | | Carolina,[39] Texas,[40] and Wyoming. |
| No plain language forms yet, but some features for pro se litigants | | Illinois,[41] New Jersey,[42] Hawaii,[43] and Washington |
| Other states | | Kentucky, Louisiana,[44] |

[39] *Id.* at 76–85. South Carolina has a simple divorce kit available. *Id.* at 76.

[40] *Id.* at 90. Texas has plain language forms provided by legal aid. *Id.* Texas is currently under a Texas Supreme Court order to develop mandatory plain language forms for simple divorce. *See* Order Creating Uniform Forms Task Force, Misc. Docket No. 11-9046 (Tex. Mar. 15, 2011), *available at* http://pdfserver.amlaw.com/tx/order_creating.pdf.

[41] GREACEN, *Spreadsheet*, *supra* note 23, at 21. Illinois Legal Aid has a series of legal clinics throughout the state at public libraries, offering either staffed mediated services or hot lines and training for local library staff. *See* Legal Self-Help Centers, ILLINOIS LEGAL AID, http://www.illinoislegalaid.org/index.cfm?fuseaction=directory.selfHelpCenterList. On November 28, 2012, the Illinois Supreme Court issued a new rule that plain language court forms be created in all areas wherein the Illinois Supreme Court Access to Justice Commission determines there is a high volume of "self-represented litigants" and that these forms be accepted in all state courts. *See* ILL. SUP. CT. R. 10-100 (2012).

[42] GREACEN, *Spreadsheet*, *supra* note 23, at 49–62. New Jersey has forms designated for pro se litigants, but they are not in plain language, and none are for use in family law cases. *Id.* at 49.

[43] *Id.* at 19. Hawaii has developed a series of high-quality instruction videos, accessible on the Hawai'i State Judiciary website. *See* HAWAI'I STATE JUDICIARY, LUNCH 'N' LEARN THE LAW, http://www.courts.state.hi.us/outreach/lunch_n_learn_the_law.html (last visited Feb. 14, 2013).

[44] GREACEN, *Spreadsheet*, *supra* note 23, at 29. The Louisiana State Bar has made recommendations to the supreme court based on data from a pilot self-help center in Orleans Parish Court to make the Orleans Parish center permanent, develop similar centers statewide, and create the position of statewide pro se coordinator. *Id.*

| Plain Language Forms | Use | States |
|---|---|---|
| | | Michigan,[45] Mississippi, North Carolina, Ohio,[46] Rhode Island,[47] and Virginia[48] |

All federal agencies are currently required to put into plain language any new or revised "letter, publication, form, notice, or instruction."[49] There is no comparable Washington State requirement.

The vast majority of litigants who appear *pro se* do so because they cannot afford an attorney.[50] The access barriers faced by those who

[45] Michigan is in the process of strategically planning for improving access to courts for *pro se* litigants. JOHN M. GREACEN, MICHIGAN STATE BAR FOUND., RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE "STATE OF THE ART" 8 (Michigan Ed. 2011), *available at* http://msbf.org/selfhelp/GreacenReportMichiganEdition.pdf.

[46] GREACEN, *Spreadsheet*, *supra* note 23, at 70. Ohio does have a few forms translated into other languages. *Id.*

[47] Rhode Island has mandatory forms that must be used;however, unlike in Washington State, these forms are not in plain language. *Id.* at 75; *See also id.* at 105–07.

[48] Virginia has mandatory forms that must be used; however, unlike Washington State, these forms are not in plain language. *Id.* at 95–104.

[49] Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (codified as amended at 5 U.S.C. § 301 note (2010)).

[50] A 1995 survey by the Unified Family Court in King County, Washington, found that seventy-two percent of litigants were without lawyers because of cost, and only seven percent because of a mistrust of attorneys or because the litigants were unhappy with previous legal assistance. UNIFIED FAMILY COURT OF KING COUNTY, PRO SE RESOURCE CENTER—TASK FORCE REPORT (1995) [hereinafter FAMILY COURT TASK FORCE REPORT]. A majority of the litigants using the Washington State Courthouse Facilitator program are low income. *See* GEORGE & WANG, *supra* note 10, at 12. *See also*, Francis L. Harrison et al., *California's Family Law Facilitator Program: A New Paradigm for the Courts*, 2 J. CTR. FOR CHILD. & CTS. 61, 89 Table 2 (2000), *available at* http://www.courts.ca.gov/partners/documents

venture into the civil justice system without representation or assistance have been thoroughly documented in this state[51] as well as nationally.[52] In Washington State, the courts, administrative agencies, the organized bar, and civil legal aid providers have mounted significant and successful initiatives[53] over the past three decades to address these barriers. The thrust of most of these initiatives has been to provide in-person or online assistance to help people navigate and interpret the existing justice system. While these efforts have benefitted *pro se* litigants, Washington State has fallen behind other states in the plain language form movement.[54] The plain language movement balances the need to make the justice system more understandable and accessible with the need to pursue more easily attainable reforms. While there has always been tacit acknowledgement of the complexity of the justice system, there also has been an operating assumption that Washington State's system of complex and "legalese" laden mandatory forms was sacrosanct and likely could not be changed. But a post-*Turner* decision world puts court systems on notice that due process requires that they take a more active stance in assuring that unrepresented litigants are

/061harrison.pdf.

[51] *See, e.g.*, LEGAL NEEDS STUDY, *supra* note 12; JUDICIAL SERVS. DIV., ADMIN. OFFICE OF THE COURTS, AN ANALYSIS OF PRO SE LITIGANTS IN WASHINGTON STATE 1995-2000 (2001), *available at* http://www.courts.wa.gov/wsccr/docs/Final%20Report_Pro_Se_11_01.pdf.

[52] RICHARD ZORZA, THE SELF-HELP FRIENDLY COURT: DESIGNED FROM THE GROUND UP TO WORK FOR PEOPLE WITHOUT LAWYERS 11–12, 15 nn.1 & 5 (2002); *See also id.* at 15 n.5 (citing FAMILY COURT TASK FORCE REPORT, *supra* note 50). The Self-Represented Litigation Network (SRLN) brings the resources of many national advocacy organizations to bear on the problems of *pro se* litigants. SRLN's website contains a wide variety of such materials. *See* THE SELF-REPRESENTED LITIGATION NETWORK, www.selfhelpsupport.org (last visited Feb. 13, 2013). See DEBORAH L. RHODE, ACCESS TO JUSTICE (2004) for a good, general text listing the many cultural and economic barriers to self-represented litigants, as distinct from the analytical and linguistic ones noted here.

[53] *See, e.g.*, WASH. ST. CT. GEN. R. 27; WASH. REV. CODE § 26.12.240 (2005).

[54] *See supra* notes 23–27 and accompanying text.

given every opportunity to effectively plead their cases. The operating assumption is no longer valid, and the sacrosanct must give way to the just. Plain language forms are an essential component of a more fair and accessible justice system.

### *A. Creating the Statewide Pro Se Plan*

In 2009, the Washington State ATJ Board convened a statewide discussion with key justice system stakeholders to identify improvements to the justice system for *pro se* litigants.[55] Participants included representatives from the Washington State Administrative Office of the Courts (AOC) and the Washington Office of Administrative Hearings (OAH), as well as legal aid advocates, court clerks and administrators, judges, law librarians, and law school students and faculty. After conducting a comprehensive assessment of existing services, and with the goal of developing practical, sustainable, and coordinated improvements, project participants agreed to focus on court-based enhancements. The consensus was to begin by addressing the legalese-laden content of the mandatory court forms and the complexity of court procedures and to start with the "translation" of family law mandatory court forms into plain language, as these comprise a substantial percentage of superior court case filings. Participants identified a long-term goal to convert these plain language

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[55] *See* ACCESS TO JUSTICE BD., PLAN FOR THE DELIVERY OF CIVIL LEGAL AID TO LOW INCOME PEOPLE IN WASHINGTON STATE (Rev. 2006), *available at* http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice Board/~/media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/Plan%20for%20the%20Delivery%20of%20Civil%20Legal%20Aid%20to%20Low%20Income%20People%20in%20Washington%20State%20-%20Revised%202006.ashx. (requiring the ATJ Board to address legal system barriers for *pro se* litigants.). Statewide discussions stemmed from this plan, beginning in 2009.

forms into online interactive guided formats, readily available over the Internet.

By the end of June 2010, the participants had created *The Washington State Plan for Integrated Pro Se Assistance Services* (Pro Se Plan).[56] The Pro Se Plan detailed a long-term vision for an online self-help center to enable *pro se* litigants to access an array of information through their home computers or through community based self-help centers located in courthouses, community centers, public libraries, law libraries, domestic violence shelters, county or city buildings, and other public gathering places. For example, a *pro se* litigant seeking a family law parenting plan could visit a website, click on an icon representing the civil justice system, and then be guided through information on all aspects of securing a parenting plan. Available information would include a petition with the applicable county-specific court form rendered in plain language,[57] instructions on how to file the petition electronically, an outline of any additional necessary steps in the process, and the expected time line for securing the parenting plan. Information on any additional necessary forms, resources for assistance in completing the forms—including local legal aid providers, an online chat-based assistant, or a toll-free number for assistance from a knowledgeable staff person—would also be available.

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[56] THE PRO SE PROJECT, THE WASHINGTON STATE PLAN FOR INTEGRATED PRO SE ASSISTANCE SERVICES (2010), *available at* http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJ-Committees/~/media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/Washington%20State%20Plan%20for%20Integrated%20Pro%20Se%20Services%20-%202010.ashx.

[57] County-specific forms, often used to set hearing times or note mediation procedures, etc., are not mandatory forms. Each county's superior court would have to make provision or approval for the translation into plain language. The Online Self-Help Center would then collect them for its website.

Ideally, the portal would also include short instructional videos on court-related procedures.

Recognizing not all individuals can successfully access this information because of disabilities, language barriers, or literacy barriers, the Pro Se Plan provides for a core staff of knowledgeable individuals, ideally attorneys, who can field questions either by telephone or online from self-represented individuals who are confused about a procedure, form, resource, or referral. Users would be able to contact staff by online chat, a toll-free telephone number, or a dedicated telephone at a kiosk or community computing center linked to the centralized staffing base. All information—forms, electronic filing instructions, procedures, resources, and referrals—will be written in plain language. Online translation services will be a key component of the system. Significantly, partnerships would be developed with existing *pro se* services, including Washington State's network of county-based courthouse facilitators, who assist *pro se* litigants with the preparation of mandatory family law forms. Efforts are underway in the state of Washington to expand the work of courthouse facilitators to multiple areas of law and administrative proceedings.

*B. Implementation to Date*

Looking to successes in other states and with the guidance of plain language experts,[58] Pro Se Project members first attempted to convert a set of family law forms themselves—the parenting plan forms—into plain language, as a test to see what the process would entail. They soon realized that they had neither the time nor the expertise to undertake this effort on their own. Beginning in 2011, with funding

[58] *See* TRANSCEND TRANSLATIONS, INC., http://www.transcend.net (last visited Feb. 13, 2013) (offering "plain language, accessible formats, audio, and culturally competent text and graphics").

from the Washington Supreme Court and the Washington State Bar Association, the ATJ Board and the AOC contracted with Transcend, a Davis, California-based company specializing in legal and court translation utilizing principles of readability.[59] During 2011, eighteen forms were translated by Transcend and then reviewed and modified by a Pro Se Project workgroup. The forms converted in this pilot project were well received, and the Pro Se Project proceeded to convert all 211 mandatory family law court forms. The Pro Se Project established workgroups of volunteers to provide legal oversight over the forms' translation process. The Pro Se Project also recognized the need to introduce the initiative to the courts and to members of the legal profession in order to both garner support and obtain feedback on the usability of the forms, as well as establish workgroups of volunteers to make presentations and to test the effectiveness and readability of the forms with legal professionals.[60] Over seventy volunteers, representing all key justice system stakeholders, have worked on the initiative since its inception in 2009.[61] A key partner in this effort has been the Washington State Pattern Forms Committee, charged by the supreme

[59] Transcend Translations, Inc., the company that initially translated Washington State's family law court forms into plain language, has worked on family law court forms in California, Nevada, Utah, Texas, Tennessee, Alabama, and Ohio. Some of these efforts were for legal aid or legal service organizations. Transcend has also done translations for six other states' non-court governmental entities and for Guam. There are several other consulting companies that provide plain language communications services to government and business entities; some of these assisted with the court form translations that have been accomplished so far.

[60] The Pro Se Project had sufficient funds to retain a part-time program manager and was fortunate to have a staff attorney from the Northwest Justice Project donate time to provide legal and substantive oversight of the process. Over seventy volunteers, representing all key justice system stakeholders, have worked on the initiative since its inception in 2009.

[61] One of these volunteers is Laurie Garber, a staff attorney at the Northwest Justice Project (NJP). With NJP's approval, Ms. Garber has provided nearly full-time legal and substantive oversight for the creation of the forms, and has also spearheaded the Forms Review Workgroup.

court with developing and updating mandatory forms. Members of the Committee have provided invaluable support to all aspects of the Pro Se Project. As of this writing, the Pattern Forms Committee has agreed to publish the completed forms for public comment. After the public comment period expires and final changes are made, the forms will become the official mandatory pattern family law forms in Washington State. The Pro Se Project's members hope that AOC, in collaboration with key stakeholders, will move to convert all mandatory court forms into plain language format.

## III. WHY PLAIN LANGUAGE FORMS ARE NECESSARY

Plain language forms are a desirable—this article will argue, necessary—element of an accessible justice system. There are a number of compelling practical and ethical arguments that support the use of plain language as a way to maximize accessibility.

### *A. Practical Justifications for Plain Language Forms*

**Increased Use of the Courts by Those Without Lawyers.** Over the years, judicial officers throughout Washington State have anecdotally noted an appreciable increase in self-represented litigation, especially in family law matters.[62] An optional "pro se tracking code" was instituted in 1994.[63] Because of coding variances across the state, and because parties may be represented, or not, at different points in their cases, it has not been an easy task to accurately track self-representation.[64] A 2001 report by the State Administrative Office of the Courts revealed that, between 1995 and 2001, self-represented status increased in dissolutions with children from 42.7 percent in 1995

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[62] *See* JUDICIAL SERVS. DIV., *supra* note 51.
[63] *Id.* at 2.
[64] *Id.*

to 46.7 percent in 2001; for dissolutions without children, the rate increased from 55.8 percent to 62.3 percent.[65] As this report indicates, "[a] more uniform statewide practice would significantly enhance our ability to identify both statewide and individual court *pro se* trends."[66] Even with these limitations, self-representation in family law matters comprises a significant portion, and in some case types, a substantial percentage of cases in Washington State.[67] Widespread use of plain language forms will encourage people to use the courts, rather than to take no action at all or to turn to churches or community resources.[68]

**Readability.** As traditional legal forms were typically written by lawyers and for lawyers, they inherently required that the user have a very high level of education in order to accurately understand and complete the form. However, forty-three percent of our population reads at or below basic literacy skills, which is a sixth or seventh grade reading level.[69] People usually stop reading when the text exceeds their reading ability.[70]

Enhancing readability can be done by making simple language changes on forms, such as using "immediate" instead of "ex parte," "person asking for order" instead of "petitioner," or "divorce" instead of "dissolution."[71] These types of simple word changes allow persons

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[65] *Id.* at 3.
[66] *Id.* at 2.
[67] *See id.* at 3, Table 1.
[68] *See* LEGAL NEEDS STUDY, *supra* note 12, at 47–48 (describing where people turn for help when they do not get legal assistance).
[69] READABILITY, *supra* note 4, at 1 (citing the National Assessment of Literacy Survey (2003)).
[70] *Id.* at 61 n.8 (citing the 1993 National Adult Literacy Study conducted by the National Center for Educational Statistics).
[71] Occasionally there may be a legal or policy reason for considering whether to continue using a more complex term. In Washington State, the Dissolution Act of 1973 substituted "dissolution" for "divorce" and made other changes with the objective "to simplify all proceedings, to reduce friction, and to promote amicable resolution of problems of the family." H.B. 392, 43d Leg., 1st Exec. Sess. (Wash.

who read at a basic literacy level to understand and complete the forms with little to no assistance. Plain language forms improve a *pro se* litigant's understanding of the relevant law and procedure.

In his recent book on plain language, Joseph Kimble gives a synopsis of fifty studies on the effects of plain language with regard to "saving time and money" and "pleasing and persuading readers."[72] The evidence is persuasive. Of particular note are two studies on court forms. As a result of its forms revision of 1994, the Family Court of Australia found that *pro se* litigants accurately completed the new forms sixty-seven percent of the time, as compared to fifty-two percent for the old ones.[73] Furthermore, for the same group, the number of applications rejected because of errors dropped from forty-two percent to eight percent.[74] A California study conducted in 2005 found that the new plain language proof of service showed a reader comprehension of eighty-one percent accuracy, as compared to sixty-one percent for the earlier version, and the new plain language subpoena scored a ninety-five percent accuracy rate in comprehension as compared to sixty-five percent for the original.[75]

Plain language forms do not "dumb down" the law. To the contrary, they sharpen and clarify it. At its best, the argument that plain language

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1973). This bill was enacted in 1973, when there were negative connotations associated with the word 'divorce.' In switching over to 'no-fault divorce,' 'divorce' was changed to 'dissolution.' Today, 'divorce' no longer has these negative connotations.

[72] KIMBLE, *supra* note 5, at 107–67.

[73] GORDON MILLS & MARK DUCKWORTH, THE GAINS FROM CLARITY: A RESEARCH REPORT ON THE EFFECTS OF PLAIN-LANGUAGE DOCUMENTS, at v (1996), *available at* http://www.clarity-international.net/downloads/Gains%20from%20Clarity.pdf.

[74] *Id.*

[75] Maria Mindlin, *Is Plain Language Better? A Comparative Readability Study of Court Forms*, 10 SCRIBES J. LEGAL WRITING 55, 61 (2005–06). The study's sixty test subjects were obtained from a jury pool. *Id.* at 55.

"dumbs down" the law is a retelling of the myth that plain language is less precise than legalese. Professor Kimble, who led the work of redrafting the Federal Rules of Civil Procedure and the Federal Rules of Evidence, stated the following:

> [T]he choice between precision and clarity is usually a false choice. If anything, plain language is *more* precise than traditional legal and official writing because it uncovers the ambiguities and gaps and errors that traditional style, with all its excesses, tends to hide. So not only is plain language the great clarifier, it improves the substance as well.[76]

Indeed, the Pro Se Project, in its effort to convert the family law forms, has uncovered "ambiguities and gaps and errors" in the traditional forms. In addressing these deficiencies, the new plain language forms are much more readable, but also are improved substantively.

**Access for Limited English Proficiency (LEP) Litigants.** In Washington State, there are significant populations for whom English is a second language.[77] Once a form is in plain language format, it is relatively easy to create culturally appropriate plain language forms in various languages, dramatically increasing the justice system's ability to serve limited English proficiency (LEP) litigants.[78] It has also been shown that interpreter services can be conducted with forty percent less

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[76] KIMBLE, *supra* note 5 at 40.

[77] HYON B. SHIN & ROBERT A. KOMINSKI, U.S. CENSUS BUREAU, LANGUAGE USE IN THE UNITED STATES: 2007, at 9 (2010), *available at* http://www.census.gov /prod/2010pubs/acs-12.pdf. In Washington State, Spanish is the second most spoken language. *Id.* Within the King County court system, interpreters have been provided for more than seventy languages. *See, e.g.*, Washington Court, *Washington State Court Interpreter Program* (last visited Oct. 20, 2013), http://www.courts.wa.gov/programs_orgs/pos_interpret/.

[78] *See* ABA STANDARDS FOR LANGUAGE ACCESS, *supra* note 13, at 78 (commentary on Standard 7.1) (discussing the importance of increasing the accessibility of court forms).

expense when translating plain language forms, as compared to other forms.[79]

**Reduced Costs to Litigants.** *Pro se* litigants who understand the forms they are completing may be able to avoid unnecessary trips and expenses to visit courthouse facilitators, or to hire document preparers. *Pro se* litigants complete plain language forms more accurately and completely than other forms, thereby avoiding rejection by court clerks or continuances by the court. Those who understand the orders from the court are more likely to comply with them, which lead to fewer return visits.[80] Depending on the complexity of the case, some litigants may find it unnecessary to engage a lawyer even when they can afford one, thereby removing a financial and psychological obstacle to proceeding *pro se*.[81]

**Reduced Costs to Courts.** In 2004, the Washington State court system was ranked as the most poorly funded court system in the country.[82] The widespread use of plain language forms can reduce costs

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[79] Mindlin, *supra* note 75, at 63. This reduction in cost may well be very important given the *Language Access Guidance Letter to State Supreme Courts* from Assistant Attorney General Thomas E. Perez. Letter from Thomas E. Perez, Asst. Att'y Gen., US Dept. of Justice. to State Supreme Courts (Aug. 16, 2010), [hereinafter DOJ Letter on Language Access] *available at* http://www.lep.gov/final_courts_ltr_081610.pdf.

[80] GORDON MILLS & MARK DUCKWORTH, LAW FOUND. OF NEW SOUTH WALES, THE GAINS FROM CLARITY: A RESEARCH REPORT ON THE EFFECTS OF PLAIN-LANGUAGE DOCUMENTS 67–68 (1996), *available at* http://www.clarity-international.net/downloads/Gains%20from%20Clarity.pdf. Greacen notes the adverse effects of judicial expectations on *pro se* litigants that all parties in family law and divorce matters will be represented by counsel. *See* GREACEN, RESOURCES, *supra* note 12, at 5–6. In Washington State, self-represented litigants are held to the same standard as represented litigants. *See In re* Marriage of Wherley, 661 P.2d 155 (Wash. Ct. App. 1983).

[81] *See* discussion of The "Home Depot" Effect, *infra* note 94 and accompanying text.

[82] "Consider that Washington State ranks 50th in the nation providing funding for our trial courts, prosecution, and indigent defense." COURT FUNDING TASK FORCE,

in several ways. First, plain language forms are cheaper to process.[83] Second, courts will realize greater efficiencies if forms completed by self-represented litigants are free from errors and if litigants have a clear understanding of the court process.[84] And third, California's Administrative Office of the Courts noted a forty-three percent reduction in the printing and translation costs of plain language documents because they are typically forty percent shorter than untreated documents.[85] Although the new Washington State forms are not that short in comparison to the old forms, some savings should be expected.

**Increasing Accommodations of the Courts for the Needs of the Self-represented.** Courts have found it necessary to increase services and accommodations for self-represented litigants, if for no other reason than to enable the courts to handle very large number of cases.[86] Programs such as Washington State's Courthouse Facilitator Program[87] have been established by necessity to prevent the inundation of the courts with poorly completed forms.[88] Plain language forms, for reasons discussed throughout this article, will promote the submission of completed forms.

**The Changing Face of the Legal Profession and the Economics of the Practice of Law.** Washington State, like many other states, has

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BD. FOR JUDICIAL ADMIN., JUSTICE IN JEOPARDY: THE COURT FUNDING CRISIS IN WASHINGTON STATE 4 (2004), *available at* http://www.courts.wa.gov/programs_orgs/pos_bja/wgFinal/wgFinal.pdf.

[83] *See, e.g.*, READABILITY, *supra* note 4, at 1.

[84] *Id.* at 61 n.9.

[85] *Id.* at 60.

[86] *See, e.g.*, FAMILY COURT TASK FORCE REPORT, *supra* note 50.

[87] *See* WASH. REV. CODE § 26.12.240.

[88] GEORGE & WANG, *supra* note 10, at 16.

adopted a rule allowing limited scope representation.[89] Limited scope representation enables an attorney to contract with a litigant to handle only a specific part of the litigant's case, rather than be responsible for the entire case. This enables a litigant to hire an attorney to perform specific services such as providing general advice in a short session, reviewing the litigant's intended filings, or appearing with a client for just one hearing. With plain language forms, and one or two sessions with an attorney, some litigants will be able to complete their cases for a significantly reduced cost. On the other hand, an individual who cannot afford to hire an attorney for full representation may enlist an attorney's help for a specific limited component of the case, thus broadening the attorney's practice. Some attorneys conduct the majority of their practices through limited scope representation, and plain language forms should help to promote and broaden this practice.

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[89] *See, e.g.,* WA RULES PROF'L CONDUCT 1.2(c) (amended 2006); Editorial, *Courts and the Self-Represented – The Road Ahead*, 84 JUDICATURE 300 (2001), *available at* http://www.ajs.org/prose/pro_ editorial.asp;
Anthony P. Capozzi, *Responding to the Pro Per Crisis*, CAL. ST. B.J. (Feb. 2004), *available at* http://archive.calbar.ca.gov/%5CArchive.aspx?articleId =54777&categoryId=54521&month=2&year=2004; John Greacen, *Self-Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know* (2002), *available at* http://www.courts.ca.gov/partners/documents /SRLwhatweknow.pdf. For discussions on the relative merits of limited scope representation, see Barrie Althoff, *Limiting the Scope of Your Representation: When Your Client Wants, or Can Afford, Only Part of You*, 51 WASH. STATE BAR NEWS 45 (June 1997); Barrie Althoff, *Limiting the Scope of Your Representation: Questions of Cost, Candor, and Disclosure*, 51 WASH. STATE BAR NEWS 33 (July 1997); William Hornsby, *Improving the Delivery of Affordable Legal Services Through the Internet: A Blueprint for the Shift to a Digital Paradigm* (Nov. 1999), *available at* http://www.zorza.net/resources/hornsby.html; Barrie Althoff, *Unbundling Your Law Practice – Opportunities and Dangers*, Seattle University School of Law Presentation on Current Developments in Ethics and Professionalism (Oct. 2002), http://www.freecle.com/materials/current.html (last visited Feb. 13, 2013). *See also* AM. BAR ASS'N STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., *Limited Appearances*, http://www.americanbar.org/ groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/limit ed_appearances.html (last visited Feb. 13, 2013).

While there have been concerns that lawyers' livelihoods may be adversely affected as a result of plain language forms that do not require the assistance of counsel to complete, these concerns have proven to be unfounded. In 2011, the Texas State Access to Justice Commission surveyed twenty-two states and found no evidence that mandatory plain language forms negatively affect lawyers' businesses.[90] There has actually been some increase in lawyer work through increased limited scope representation.[91]

**Non-lawyer Practice.** The Washington Supreme Court has adopted Admission to Practice Rule 28, entitled "Limited Practice Rule for Limited License Legal Technicians."[92] This rule, the first of its kind in the country, allows non-lawyers with certain required training to provide technical help on simple legal matters, including selecting and completing court forms, informing clients of applicable procedures and timelines, reviewing and explaining pleadings, and identifying additional documents that may be needed in a court proceeding. The development of plain language forms will enhance the ability of these

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[90] STATE RESPONSES, *supra* note 13.

[91] As limited scope representation is rather new, there are few detailed studies. Most have dealt with how the expansion of "virtual legal services" (i.e., limited scope practice through the internet), are meeting or failing to meet limited scope ethical rules. However, there is a recent surge in the number of books and training programs for lawyers interested in developing limited scope practices. *See* AM. BAR ASS'N STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., http://www.americanbar.org/groups/delivery_legal_services.html (last visited Feb. 13, 2013) (listing a growing number of articles, books, and training programs in this area).

[92] *In re* The Adoption of New APR 28–Limited Practice Rule for Limited License Legal Technicians, Order No. 25700-A-1005 (Wash. June 15, 2012), *available at* http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf. Since 2000, California has allowed a more limited practice, known as the legal document assistant, which is restricted to helping self-represented litigants finish their court forms, but does not extend to advising litigants on forms or procedures. CAL. BUS. & PROF.CODE § 6400(c) (2004).

Limited License Legal Technicians (LLLTs) to provide legal assistance within the scope of the rule.

**The "Home Depot" Effect—Changes in Consumer Tastes and Expectations.** This refers to the societal "do-it-yourself" trend to tackle projects and problems, e.g., home repair, self-publishing, and self-representation. With the advent of the Internet, increased speed and storage capacity of computers, and other technological advances, consumers increasingly expect fast and customized information and services. This expectation is impacting health care, commerce, and the legal system.[93] The justice system must be capable of accommodating the increasing demand for user-friendly online court forms and information.[94]

These arguments underline the fact that a need for accessible forms, consistent with the *Turner* opinion, is also a need for plain language within those forms.

### *B. The Ethical Case for Plain Language*

In addition to the economic, sociological, and cultural reasons to convert court forms into plain language, there is an ethical imperative to convert court forms into a format that can be readily understood and used by everyone.

The American Bar Association's Model Rules of Professional Conduct, mimicked in Washington State's Rules of Professional Conduct, imparts an obligation on the legal profession to "seek improvement of the law, access to the legal system, the administration

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[93] *See, e.g.*, *12 Crucial Consumer Trends for 2012*, TRENDWATCHING, http://trendwatching.com/trends/12trends2012/ (last visited Feb. 14, 2013).
[94] *See* Donald E. Gibson, *On the Home Depot Effect*, DONALDEGIBSON.COM (June 5, 2006, 11:55 PM), http://www.donaldegibson.com/?q=node/99.

of justice and the quality of service rendered by the legal profession."[95] Plain language forms do all of this. They improve the law by clarifying the subject matter.[96] They provide easier access to the legal system.[97] They facilitate the administration of justice, and they increase the quality of service rendered by the legal profession.[98]

Further support from the ABA comes from a resolution adopted in February 2012 that set standards for language access in courts.[99] The ABA states the following:

> [A]s a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access services, so that persons needing to access the court are able to do so in a language they understand, and are able to be understood by the court.[100]

The ABA goes on to say that "[l]ack of access to translated materials in the context of legal proceedings and court services creates impediments to justice and can result in great harm."[101] To overcome the potential harm and to facilitate meaningful access to those whose first language is not English, the ABA states that written materials should be translated.[102] The ABA notes that translation is made easier

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[95] MODEL RULES OF PROF'L CONDUCT Preamble: A Lawyer's Responsibility § 6 (2012); WA RULES OF PROF'L CONDUCT Preamble: A Lawyer's Responsibility § 6 (2006).
[96] KIMBLE, *supra* note 5, at 40.
[97] *See* Zorza, *Implications, supra* note 19, at 266 (stating *Turner* effectively endorsed forms as an access to justice tool).
[98] Turner v. Rogers, 131 S.Ct. 2507, 2519–20 (2011) (noting the use of a form to elicit relevant financial information is one safeguard that can reduce the risk of erroneous deprivation of liberty); *see* KIMBLE, *supra* note 5, at 103–04 (stating plain language improves customer service).
[99] ABA STANDARDS FOR LANGUAGE ACCESS, *supra* note 13.
[100] *Id.* at 15.
[101] *Id.* at 77.
[102] *Id.*

and more efficient when documents are written in plain language.[103] In addition, plain language documents are quicker to understand, and readers make fewer errors when they fill out forms, resulting in quicker and more accurate compliance to requirements.[104]

While the ABA resolution was targeted to help those whose first language is not English, it is equally applicable to anyone not versed in legalese, because documents written in legalese are confusing and difficult to understand for lay English speakers as well.[105] Opponents of the plain language movement have defended legalese claiming that it is more precise than plain language.[106] This myth, however, has been widely disproven.[107] The law has never been very precise to begin with, and legalese does not make it any more precise than plain language.[108] In fact, plain language can actually be more precise than traditional legal writing.[109]

The United States Supreme Court's decision in *Turner* offers even more support for plain language. *Turner* makes it clear that due process violations may occur where litigants have neither counsel nor access to alternate procedures, such as judicial questioning and the availability of court forms.[110] Specifically, the Court established that "[t]here is a due process right to court 'procedural safeguards' that ensure the protection of the right to be heard in cases involving potential deprivation of a constitutionally protected interest."[111] This has the practical implication

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[103] *Id.* at 83–84. See the Commentary to Standard 7.2 for a list of ways that plain language forms help reduce costs to translations. *Id.* at 84–89.
[104] *Id.* at 84–85.
[105] KIMBLE, *supra* note 5, at 23–24.
[106] *Id.* at 37.
[107] *Id.*
[108] *Id.* at 40.
[109] *Id.*
[110] Zorza, *Implications, supra* note 19, at 256.
[111] *Id.*

of imposing an obligation on the justice system to ensure that access to justice is met, beyond simply appointing or not appointing counsel.[112] As noted earlier, this obligation can, in part, be met by adopting plain language forms.

A simple form that can be used to gather vital information, such as facts, from the litigants is one procedural safeguard that can facilitate access to justice.[113] The Court endorsed such a form as one component of "substitute procedural safeguards" that can "significantly reduce the risk of an erroneous deprivation of liberty." [114] When properly implemented, plain language forms advance all four elements laid out in *Turner*.[115] While the Court did not outline specific requirements for any given form, it is clear that forms that are difficult to understand and use do not meet *Turner's* standards.[116] Plain language forms, on the other hand, explain themselves, are easier to understand and use, and, therefore, better satisfy the obligations imposed by *Turner*.[117]

Plain language forms help litigants *interact* with a body of settled law. They provide an easy means to gather relevant facts that are necessary to decide the case at hand. As an example, the mandatory family law forms in Washington State reflect settled family law. The forms are designed to allow a litigant to describe his or her circumstances and to request appropriate relief. The forms ask the litigant to fill in the facts that are necessary for the court to determine whether the litigant falls within a class covered by the statutes and prevailing case law ensuring that the relief requested is appropriate.

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[112] *Id.*
[113] Turner v. Rogers, 131 S. Ct. 2507, 2519–20 (2011) (noting the use of a form to elicit relevant financial information is one safeguard that can reduce the risk of erroneous deprivation of liberty).
[114] *Id.*
[115] *See supra* note 23 and accompanying text.
[116] Turner, 131 S. Ct. at 2519; *See also supra* note 23 and accompanying text.
[117] *See* Zorza, *Implications, supra* note 19, at 259, 266.

Facts can be expressed in everyday language, i.e. names of the parties, the number of children, income and expenses, etc. The decisions that the parties must make, such as who will pay the mortgage and who will take a child on the weekends, are also just facts. The value in creating readable plain language forms is that the number of *pro se* litigants who can understand the question, and provide a straightforward response, is vastly increased. Given that legal representation for every litigant is not available, readable plain language forms are necessary if the justice system is to provide meaningful access to justice for those who cannot afford a lawyer.

More worrisome is what happens if we do not adopt plain language forms. Legalese has long been used to reinforce social stratification, an accepted distinction between "commoners" and "elites," and the vast majority of court forms used in Washington State, and all over the country, continue to reinforce the dominance of legal practitioners over laypersons. Such stratification is particularly troubling in a democratic republic such as the United States.[118] A consequence of this is that those who are representing themselves against parties represented by counsel are put at a further disadvantage. This is a direct affront to the holding in *Turner*, which established judiciaries must strive to provide fair and equal access to justice for the unrepresented. The adoption of

[118] *See* DOJ Letter on Language Access, *supra*, note 79. The Department of Justice has warned state supreme courts that due process requires that state judicial systems must provide translation services for those litigants who do not understand English. *Id.* However, if those litigants who do speak English still cannot understand what is being said in court, this would appear to have the same outcome: litigants being denied due process because they cannot comprehend what is being said at their proceeding. Contrast this to H.L.A. Hart, among many others, who refers to an "internal" viewpoint of the law, held by those within the legal community, as opposed to an "external" viewpoint, held by those outside the legal community. H.L.A. HART, THE CONCEPT OF LAW 55, 86–87, 96 (1961).

plain language forms can help offset the disadvantages of self-representation and promote fairness in the judicial process.

Legal concepts can and must be expressed in plain language.[119] The continued use and abuse of technical vocabulary; archaic, formal, and unusual words; impersonal constructions; overuse of nominalizations and passives; overuse of modal verbs; multiple negations; long and complex sentences; and just plain poor organization does nothing but create a caste system based on trade and must be eliminated.[120]

## IV. LINGUISTIC ASPECTS OF PLAIN LANGUAGE FORMS

### *A. An Analysis of Readability Standards from a Linguistics Viewpoint*

The following techniques should be used in order to ensure readability:[121]

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[119] A large number of more modern legal theorists have rejected H.L.A. Hart's notion of a necessary separation between law and the rest of our society. For an examination of these theories, see GARY MINDA, POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END (1995). Not mentioned in Professor Minda's survey, but perhaps more relevant here, is the jurisprudential theory expressed in STEVEN L. WINTER, A CLEARING IN THE FOREST: LAW, LIFE, AND MIND (2001). Professor Winter bases his jurisprudence on cognitive linguistics, one of the two prominent linguistic theories of our time (the other being generative grammar), which we also employ in explanations in this section. *Id.* Professor Winter notes that legal discourse in actual use is no clearer, even to its experienced users, than ordinary plain language and plain meaning interpretations. *Id.* Incidentally, Professor Minda later wrote a strongly favorable review of Steven Winter's work in a later symposium on his work. *See* Gary Minda, *Steve Winter's a Clearing in the Forest*, 67 BROOK. L. REV. 1207 (2002). *See* Lawrence M. Solan, *Finding Ordinary Meaning in the Dictionary*, LANGUAGE AND THE LAW: PROCEEDINGS OF A CONFERENCE 255 (2003); Lawrence M. Solan, *Vagueness and Ambiguity in Legal Interpretation*, VAGUENESS IN NORMATIVE TEXTS 73 (V.K. Bhatia et al. eds., 2005).

[120] *See* PETER M. TIERSMA, LEGAL LANGUAGE 203–10, 241 (1999) (confronting the difficulties of understanding the law, especially for the lay user).

[121] *See* READABILITY, *supra* note 4. Transcend is a nationally recognized plain language translation consulting firm that has translated court forms in at least twelve states. *See supra* notes 58-59 and accompanying text. It is the firm

- Use familiar words and phrasings, i.e., use smaller words and sentences.
- Convert levels of sentence hierarchy into bullet lists, check boxes, etc.
- Create a step-by-step pattern to the document.
- Avoid using too many nouns.
- Eliminate extra words and unnecessary details.
- Use active voice and direct address.
- Avoid foreign words, jargon, and specialized terms. If you must use specialized terms, explain them.
- Match the reading grade level to your audience. The average American's reading level proficiency is generally considered to be fifth – seventh grade.

Although universal readability is hampered by subjective considerations such as cultural context,[122] these techniques create a standard of readability that is as objective as one might hope for. For example, reading grade levels for written materials are determined by one of a number of tests used by plain language experts.[123] Using this test-based metric as a reference point, the application of the other methods works to improve the readability of written material by

providing the initial plain language translations for family law court forms for Washington State. *Id.* The remainder of the list is implied by other activities in READABILITY and summarized here.

[122] Issues of "cultural competency," as it is called in the Limited English Proficiency Plans (LEP Plans) of legal services organizations and other agencies that serve low-income litigants, are beyond the scope of this article. They are also beyond the scope of court forms generally. It is not possible for a form to contain explanations of all the cultural references within the form.

[123] Most word processor programs have some such test, but plain language experts use more sophisticated tests. For a review of readability tests and their use see William H. DuBay, *The Principles of Readability* (2004), *available at* http://www.nald.ca/library/research/readab/readab.pdf. Incidentally, the bulleted list in the text, minus the last bullet, was originally found on page 1070 of this article.

lowering the reading grade level. What follows is an explanation of how these techniques improve readability.

**1. Smaller Words**

Transcend recommends "Keep it short—short words, short sentences, short paragraphs, and short documents. Consumer publications should average twelve words per sentence."[124] Short words are "basic level terms"[125]—words that invoke a clear mental picture and arise from a common cultural and/or social experience, not scientific categorization. For example, children in America are introduced to the words "cats" and "dogs" as basic level terms. "Mammal," however, is not a basic level term, even though "bird" is. Once basic level terms are learned, they become the building blocks to superordinate and subordinate level terms.[126]

For most people the term "plaintiff" is a term that needs to be defined in basic level terms. To those versed in the law, "plaintiff" is a recognizable concept that is sufficiently defined to work. Practitioners know that a person, a corporation, or a government can be a plaintiff. In family law, it is acceptable to define "plaintiff" or, in this case, "petitioner," as "the person who first files the lawsuit." There is no loss of meaning in this simplification, at least in the context of family law.

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[124] READABILITY, *supra* note 4, at 4.

[125] *See*, *e.g.*, WILLIAM CROFT & D. ALAN CRUSE, COGNITIVE LINGUISTICS 82–87 (2004); JOHN R. TAYLOR, LINGUISTIC CATEGORIZATION 48 *passim* (3rd ed. 2003).

[126] "*Superordinate level terms*" are those terms that are hierarchically superior to basic level terms, e.g., "mammals," "vehicles," or "furniture." "*Subordinate level terms*" are those that are hierarchically inferior to basic level terms, e.g., "German Shepherd," "Toyota Camry," or "Tiffany lamp." As people grow, they develop a deeper understanding of many subordinate level terms and some superordinate level terms, but which ones they learn (and use in their own language) will depend on their own personal experiences and education. Basic level terms are much more commonly experienced by nearly everyone.

As basic level terms are more recognizable by a broader segment of the population,[127] these should be used in any plain language document. If a higher-level term is absolutely necessary, it should be defined using basic level terms.

Table 2 below is part of a glossary,[128] created by the Pro Se Project's Forms Review Work Group, to help resolve word choice issues uniformly across different forms. Many words can be replaced relatively easy, with more accessible plain language terms.

**TABLE 2.** Excerpts from the Pro Se Project Plain Language Glossary

| **Original** | **Plain Language** |
|---|---|
| Admit/Deny | Agree/Disagree |
| Adopt | Approve |
| Attorney | Lawyer |
| Comply with | Obey/Follow |
| Decree | Order |
| Determine (validity of a marriage) | Decide |
| Dissolve (marriage or domestic partnership) | End |
| Dissolution | Divorce |
| Enter | Approve, Order, Sign |

[127] Plain language does not rely exclusively on using short words, and indeed it should not. The word "loan" and the word "lien" have the same number of letters. The first is a basic level term that most every child learns readily. The second is a complicated term that implies a business and legal understanding of secured instruments.

[128] This glossary is a work in progress as of the date of this article.

| **Original** | **Plain Language** |
|---|---|
| Excluding… | Does not include… |
| Expiration date | You must obey these orders until… This order lasts until… This order ends on… |
| Full faith and credit | This order is valid in… |
| Impairment | Problem |
| Modification/Adjustment | Change |
| Motion | Request |
| Per annum | Every year |
| Preserved for collection | Still due |
| Prior | Previous |
| Provisions | Rules |
| Reimbursement | Repayment |
| Requesting party | Person who asked for this order |
| Reside with | Live with |
| Residential address | Home address |
| Restrained and enjoined from | Must not |
| Shall | Must |
| Show cause | Show why the court should not… Show why XX should not be approved |

| **Original** | **Plain Language** |
|---|---|
| Surrender (weapons) | Turn in |
| Transferring, removing, encumbering, concealing or in any way disposing of (property) | Move, take, hide, damage, borrow against, sell or try to sell, or get rid of |
| Without good cause | Without a good reason |

Use of short, basic level terms provides a more reliable means of relaying meaning when compared to longer and more complicated words. In some cases, several basic level terms may have to be put together to achieve the meaning needed, but in others, the meaning may be implied from context by reducing the number of words. Legal documents tend to contain unnecessary repetition or other readability obstacles that increase word count, and therefore plain language forms tend to be the same size as, or significantly shorter than, traditional forms.

**2. Sentence Hierarchy**

The ability to create a wide variety of hierarchical structures in sentences is considered a primary characteristic of human language and evidence of a higher level of linguistic development than in other animals. Of particular note is the use of dependent clauses to refine meaning. A dependent clause[129] buried in a sentence increases length and requires more thought as a reader tries to comprehend just what the dependent clause is referring to, and how it affects the meaning of the sentence as a whole.

[129] An example of a sentence with one dependent (in this case, relative) clause: "The person who is next in line can come forward." The dependent clause is "… who is next in line …."

Humans can usually understand several levels of hierarchy before becoming totally lost, but multiple levels of hierarchy are harder to comprehend than fewer levels. Legal documents are notorious for including a series of thoughts within a single sentence, especially if there is a choice to be made. Sentences that include several elements are visually dull and difficult to decipher. A common fix for such a problem is a bulleted list. If there is a logical order to the list, then the elements might be numbered. If the list requires the reader to make choices, then a very simple fix is to create a bulleted list with check boxes instead of bullets.

Another source of potential problems is a type of dependent clause known as a conditional clause. This is your "if – then" statement; if the state noted in the first part of the sentence occurs, then the event noted in the second part of the sentence will occur. Often, a legal event will occur when a set of requirements are met. The description of the legal event and the predicate requirements are complicated and usually very important; it is critical that such a description be as clear and simple as possible. One method of simplification in these cases is to create a checklist of elements with appropriately placed checkboxes and a concluding sentence at the end declaring that, if all the boxes are checked, the event will take place. The checkboxes help reduce the reader/filer's work to two activities: (1) read the simple concluding sentence and (2) check the appropriate boxes.

In several of the new forms, new checkbox lists have been added where previously litigants were expected to write sentences into blank lines. The checkbox system not only improves understanding for pro se litigants who might otherwise fail to include items they should, but it also increases readability for the judge, who can now rely upon information provided in a uniform and readable form.

**3. Step by Step**

Numbered steps are a common and accepted feature of everyday life. Indeed, most of the original forms contain numbered steps, although the legal numbering system (1, 1.1, 1.1.1, etc.) is not commonly known and can be confusing to *pro se* litigants. Plain language forms use numbered steps, but the numbers are made very obvious and use simple numbers.[130]

Numbered steps should be presented in a logical order that makes sense to the reader. Components of forms that are relevant to each other, such as financial data or information about children, should be placed together in the step-by-step process. Similar numbered steps, appearing on different but related forms, in similar locations on each form, further improves clarity.[131]

The Pro Se Project has also found it often useful to include a separate check box for "Does not apply." This check box informs the court that the party filling out the form has considered the elements in question and determined that those elements of the form are not applicable to his or her situation. Family law attorneys, who are used to deleting inapplicable steps in a form, will now be asked to leave in the number and descriptive text of the step and simply check the box that says "Does not apply." This keeps the step numbers uniform in all cases, and ensures that the judge and the parties have considered all the necessary steps.

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[130] A few forms also include interior sub-steps, designated by lowercase letters (a., b., etc.).

[131] Compare the new Parenting Plan form in the Appendix in this article, *infra*, with the existing form, www.courts.wa.gov/forms/documents/dr1_0400.doc. Please note that, after the new forms are implemented, the old forms will likely be moved to a different website.

**4. Charts and Tables**

In addition to bulleted or numbered lists, the new forms make extensive use of charts and tables. The term "chart" refers to the use of a tabulated list, such as a line-by-line list of debts by category with blank lines on the right to fill in the amounts. A chart can also be used to differentiate information so that it is more easily understood, as in this example:

a. **Major decisions.** Who makes important decisions affecting the children about:

School / Educational ☐ Petitioner ☐ Respondent ☐ Joint
Health care
(not emergency): ☐ Petitioner ☐ Respondent ☐ Joint

Religion and religious
Activities: ☐ Petitioner ☐ Respondent ☐ Joint

Other *(specify):* _____ ☐ Petitioner ☐ Respondent ☐ Joint

Tables also present information in an easy-to-read form. A table contains "boxes" with space for the user to fill in the required information. For an example of a table format, see the list of original and plain language words in *Part IV. Linguistic Aspects of Plain Language Forms*, sub-section 1 Smaller Words.

Typically, the Pro Se Project uses charts when there is only one piece of data to fill in for a category. Tables are used to gather related pieces of information, such as a child's name, birth date, county of residence, etc., and to separate this data from similar information about a different entity (such as a second child's). Charts and tables are effective ways to solicit factual information and to highlight missing data (by presenting blank spaces to the person filling out the form). Word processing programs generally support tables, so litigants familiar with them can

expand the tables as needed, i.e., adding rows to include more children than the original table would accommodate.

From a linguistic viewpoint, charts and tables access the brain's ability to process spatial patterns by presenting information in a spatially-ordered format through rows, columns, and other visually ordered elements. This is a beneficial side effect of our spatial awareness of the physical world; a substantial part of our brain activity is devoted simply to organizing the world around us.[132] In the chart example above, no explanation is needed about which checkboxes go with which decision. The spatial arrangement automatically gives us the clue.[133]

**5. Avoid Too Many Nouns**

A common feature of legal writing is the use of several nouns that all reference the same general concept, such as "alteration, amendment, or redraft." This is common practice in legal writing and is consistent with the notion that this retelling covers all the bases. English is unusual in

[132] Remembering where you are spatially involves a substantial amount of the neurons in our cerebral cortex and other parts of the brain. GERALD M. EDELMAN & GUILIO TONONI, A UNIVERSE OF CONSCIOUSNESS: HOW MATTER BECOMES IMAGINATION 95–97 (2000). The cerebellum, a smaller portion of the brain located in the lower back of the head, actually contains about four times the number of neurons that reside in the cerebrum, and its major purpose is tracking motion, position, and orientation. *Cerebellum,* WIKIPEDIA, http://en.wikipedia.org/wiki /Cerebellum (last viewed July 25, 2012); CHRISTOF KOCH, CONSCIOUSNESS: CONFESSIONS OF A ROMANTIC REDUCTIONIST 42–43 (2012). While the cerebrum is fundamental in reading maps and charts, orientation (which employs the cerebellum) must be included. Try reading a map with South at the top. Aileen Buckley, *Map orientation: When true north is NOT at the top*, ARCGIS RESOURCES BLOG, (Feb. 14, 2012), http://blogs.esri.com/esri/arcgis/2012/02/14/map-orientation-when-true-north-is-not-at-the-top/.

[133] The totality of the chart arrangement works to provide such clues even to someone whose first language is Chinese or Hebrew, i.e., reading left-to-right is a newly learned skill. The choices for each decision must be the checkboxes on the right, not the ones above or below, for the chart to make sense.

offering an array of words that represent essentially the same concept. In the case of a court form, redundant nouns merely create confusion. This practice, fortunately, has now fallen out of favor.[134]

**6. Eliminate Extra Words and Unnecessary Details**

Extraneous words are often found in legal writing. "Power words" are necessary words that carry meaning; non-power words that cause unnecessary clutter should be eliminated.[135]

Linguists often refer to extraneous words as "fudge" words. They recognize that fudge words do not convey meaning in the usual sense but instead convey the mood of the speaker or writer, typically one of caution or forcefulness in making a statement. Words like "nevertheless" and "moreover" are commonly used in this manner.

Some extraneous words do not even indicate moods, such as phrases like "It is clear …," "Absolutely," and "Everyone knows …." These words contribute almost nothing to the meaning of the sentences they are part of.[136] If extra words are needed, this probably indicates that the drafter does not understand the concept being presented sufficiently to say it plainly. Genuine understanding of a concept *facilitates* its expression in plain language, and vice versa. Court forms should be simple and direct.

**7. Use an Active Voice**

A common feature of legal writing is the use of a passive voice.[137] This often happens in legal drafting because the attorney is writing

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[134] *See, e.g.*, REED DICKERSON, FUNDAMENTALS OF LEGAL DRAFTING (1965); RICHARD C. WYDICK, PLAIN ENGLISH FOR LAWYERS (5th ed. 2005).
[135] WYDICK, *supra* note 134.
[136] Article-abstracting software often uses such phrases to locate sentences that are the controversial sentences in the articles and display unsupported premises.
[137] Most people recognize that "Mary wrote the letter," is easier to understand than "The letter was written by Mary." Even more difficult are sentences such as, "The

about another person, and therefore falls into using the passive voice. The unsophisticated reader—in our case, the self-represented litigant—is often confused by this, as sentences written in a passive voice can be challenging to understand. Passive voice also increases the word count of a sentence because it uses helping verbs such as "have" and prepositional phrases instead of actual subjects.[138]

In comparison, non-legal forms tend to be written in the active voice. The active voice, also known as "direct address," is a form of writing where commands are used to direct the person reading the document. For example, the statement, "The pleading must be filed with the clerk" uses passive voice. The same statement written in active voice would read as, "File the pleading with the clerk." When forms are written in the active voice, they are easier for unsophisticated readers to understand and fill out completely.

### *B. Visual Accessibility*

Several other features contribute to readability, such as good layout, careful use of fonts, and occasional graphics.[139]

#### 1. Layout

Forms should be nearly as easy to read as printed advertisements. They should be immediately comprehensible. For readers of English, the item read first is that presented in the upper left corner.[140] In

letter, written by Mary, was later mailed by John." The words "which was" before "written by Mary" would aid in comprehension, but would clutter the sentence that much further.

[138] Changing the document to an active voice is not a complete cure. We would not want to use the expression "The judge wants to know …" for instance. That much is understood implicitly by just about everybody. So we change the statement into a command, e.g., "List your children …."

[139] *See* READABILITY, *supra* note 4, at 14–19.

[140] *Id*. at 15.

Washington State, supreme court rules require that the top three inches of a document be left blank for clerical processing.[141] Following this blank space should be the title of the form. The caption has been moved to the right side so that the first thing the reader sees is the title of the form. While additional white space adds to the number of pages on longer forms, pages with sufficient white space reduce eyestrain and are easier to comprehend.

**2. Fonts**

Text in books and periodicals should be in ordinary Roman text, as the serifs give quick visual clues to readers of the letters in long passages. But text is usually short in court forms that apply plain language rules, and san-serif fonts work better then. So Arial 11-point type will be the standard font.[142]

ALL CAPS slow the reader down. Better ways to emphasize text include the following:

- Using **boldface** sparingly for a word, phrase, or short sentence.
- Using *italics* for emphasis or to identify foreign words.[143]

Use underlines and ~~strikeouts~~ only for editing. Don't use reverse text,[144] as it does not fax or photocopy well.

**3. Graphics**

Graphics, used sparingly and for specific effects, are being added to the new plain language forms. The graphics are outside the regular

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[141] WASH. ST. GEN. CT. R. 14(a) (2008).
[142] Older readers usually prefer serif fonts, but younger readers prefer sans-serif fonts, such as Arial. READABILITY, *supra* note 4, at 17.
[143] See the form in the Appendix for examples of **bold** and *italic* text.
[144] Reverse text is the use of white or light-colored letters against a black or dark-colored background.

body of text and are quite small. This is allowed under Washington State court rules.

For example, the new Immediate Restraining Order has a graphic of handcuffs in the location describing the potential sanction of imprisonment if the order is violated, and a small graphic of a courthouse (a building with columns in front) where the time of the hearing is noted.[145] These graphics have been found very helpful during field-testing with self-represented litigants.

## V. LEGISLATIVE AND POLICY CONSIDERATIONS

The legislature regularly amends statutes, and this often requires changes in the language of mandatory court forms as well as directions for using the forms.[146] The Pro Se Project has encountered many instances where the current mandatory family law forms do not comply with the relevant statute or court rule.[147] Thus, the process of

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[145] The graphics were provided by Transcend, our plain language consultant. "Good graphics convey meaning." READABILITY, *supra* note 4, at 19.

[146] *See, e.g.*, 2003 Wash. Sess. Laws 679 (requiring mandatory background checks, both criminal and CPS-involved, before non-parental custody petitions can be granted); 2007 Wash. Sess. Laws 2318 (mandating that court records be checked before the court may grant a final parenting plan); 2007 Wash. Sess. Laws 616 (creating domestic partnerships in Washington); 2008 Wash. Sess. Laws 24 (expanding the rights and responsibilities of state-registered domestic partnerships); 2011 Wash. Sess. Laws 1758 (clarifying and expanding the rights and obligations related to parentage for state-registered domestic partners and other couples); 2009 Wash. Sess. Laws 2881 (changing parenting plan arrangements and modifications for parents serving in the military); 2012 Wash. Sess. Laws 199 (recognizing same-sex marriage in Washington).

[147] One glaring example was the use of "Motion to Show Cause" as part of the title for ex parte restraining orders, i.e., restraining orders obtained and served prior to a hearing. Such orders are good for a very limited period of time, enough to allow the court to hold a hearing. What was really meant was "Notice of Hearing," as the respondent would simply default if he or she failed to attend the subsequent hearing. There is no statute or court rule that would allow a "show cause" order, which would compel appearance and enable a contempt proceeding if the respondent failed to show.

converting the forms into plain language has provided the additional benefit of improving the forms' compliance with statutes and the legislative intent. The most common problem is that the text of a current form is overly restrictive, going beyond the requirements of the statute. On other occasions, the form's text was insufficiently representative of the intent of the statute.

In some cases, the statutory language itself has presented problems. These cases typically fall into one of two categories: (1) the statute presents some requirement that is extremely difficult to maintain in actual practice, such as calling for a determination by the court that is an impractical evidentiary requirement, or requiring a party to meet a standard that imposes too high a cost;[148] or (2) the statute requires the repetition of language in the form that is not plain language and is not easily deciphered by self-represented litigants.

There are also instances where legislative intent interferes with plain language, has little relevance, or creates confusion with other jurisdictions. One example is the use of the term "dissolution" in Washington State in lieu of "divorce," which is commonly used in other jurisdictions.[149] Another example is the use of "residential time" as opposed to "custody." To avoid confusion, the new forms explain that "residential time" or "parenting time" means "custody" for the purposes of federal and other states' laws.

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[148] For example, the requirement that a parent keep a child within the court's jurisdiction during divorce proceedings may seem reasonable, requiring the parent to obtain an order to allow the child to go on a long trip. But what does that mean to a parent in Vancouver, Washington, who simply wants to go to Costco across the river in Portland, Oregon? Must the parent locate a babysitter, or is it okay to take the child out of state since the trip is very short and obviously meant not to deny the court jurisdiction over the child? The next question is, of course, what does "jurisdiction" even mean in such an instance? Is the next county also out of bounds?

[149] *See supra* note 71 and accompanying text.

Members of the Pattern Forms Committee who sit on the Forms Review Executive Committee have noted several of these issues and plan to bring some of them to the attention of the Washington State Legislature to seek clarification or request the necessary legislative changes. After plain language forms are adopted, the Pattern Forms Committee will be charged with making changes necessitated by legislation, but in clear, understandable, and plain language.

## VI. CONCLUSION

The work of the Pro Se Project is a collaborative effort, with input from many stakeholders, and intended to effect systemic change within Washington State's court system. The Project's effort to implement plain language forms is one step towards that goal. These new forms, and continued implementation of the Pro Se Plan, will provide major advances in access to justice for self-represented litigants, as well as greater effectiveness and efficiency for the justice system as a whole.

Though large-scale institutional change is always difficult, the Pro Se Project has the support of many key stakeholders, all of whom are committed to improving access to the justice system for the increasing number of individuals who navigate the system on their own. That said, dedicated members and partners are not the only things required for success, and a lack of funding is the greatest obstacle to full implementation of the Pro Se Plan.

Over the last two decades, the Access to Justice Board has facilitated the creation of a state justice community motivated by a long-term vision for equal access to justice, guided by the principle that equal access to justice is a fundamental right in a just society. The Pro Se Plan is a road map for such access; it is the mission of the Pro Se Project, and all other equal access to justice advocates, to build the roads.