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Review of Lifting the Fog of Legalese

David I.C. Thomson

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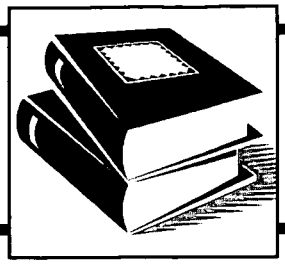
Review of Legal Resources



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COLORADO CAUSES OF ACTION: ELEMENTS, DEFENSES, REMEDIES, AND FORMS

by Douglas S. MacGregor and Alyssa Rosen (Bradford Publishing Company, 2005: 1743 Wazee St., Denver, CO 80202; (800) 446-2831; http://www.bradfordpublishing.com); 510 pp.; loose-leaf binder with searchable CD-ROM; $165.

Reviewed by David William Becker, Jr.

Becker is a plastic surgeon certified by two specialty boards associated with the American Board of Medical Specialties. An inactive Colorado attorney, he is a CBA member and serves on the University of Denver's Eleanor Roosevelt Institute Institutional Review Board—beckerdw@msn.com.

With the publication of *Colorado Causes of Action: Elements, Defenses, Remedies, and Forms* (*Causes of Action*), Bradford Publishing Company introduces a new product to Colorado law. Although *Causes of Action* is new to Colorado law, it is a "derivative" of the popular *Elements of Civil Causes of Action* (*Elements*), authored by South Carolina trial attorney Michael G. Sullivan and published by the Continuing Legal Education (CLE) Division of the South Carolina Bar in 2000. Thus, the South Carolina Bar CLE Division holds the copyright to the text of this loose-leaf bound reference and Bradford Publishing Company holds the copyright to the forms.

Bradford Publishing spent more than two years adapting the text of *Elements* to Colorado law. It then enlisted highly qualified Colorado attorneys to serve as legal editors, along with Bradford's managing editor and general editor, to check the accuracy of the adaptation. The result is a well-organized text consisting of thirty-six chapters arranged alphabetically by the name of the particular cause of action, starting with "Abuse of Process" and ending with "Wrongful Discharge." Each chapter is uniform in arrangement, covering "Definitions," "Elements," "Elements Defined," "Defenses," "Remedies," and one or more "Forms." The organization facilitates looking up material in the chapters.

In addition to exemplary organization, *Causes of Action* possesses a style that is clear and easy-to-read. However, this does not mean the text lacks substance. Notwithstanding General Editor Steven C. Choquette's modest understatement in the Introduction—"our objective was not comprehensive research or law review-level scholarship"—useful footnotes reminiscent of Law Reviews occupy at least half of each page of text. Unlike some Law Review articles, the footnotes do not interrupt the reader's concentration. Most references are useful citations to pertinent cases or statutes.

The companion CD-ROM contains the complete text of the publication in searchable PDF format, along with one or more complaint forms for each cause of action. The CD-ROM provides flexibility in accessing the publication, depending on the reader's preferences.

Readers of varying levels of experience will refer to *Causes of Action* for different reasons. The novice attorney will appreciate the structured organization discussing the elements, defenses, and remedies of a particular cause of action, and the forms on which to file the claim. On the other hand, the experienced attorney might just skim the material under a particular cause of action to make sure that he or she does not overlook either recent citations or related causes of action. For example, Chapter 24 on "Medical Malpractice" reminded me that "[B]esides a medical malpractice claim, a plaintiff may also wish to consider the possibility of a claim for negligent misrepresentation resulting in physical harm." (Chapter 27 covers "Negligent Misrepresentation.") Other attorneys and students of the law might read the various chapters either to refresh their knowledge of the law or merely for self-edification.

In summary, this book is a quality publication. The text is well written and a pleasure to read, and the references are pertinent and up-to-date. *Causes of Action* would make a great addition to any law library. It is a book most attorneys would be well-served to keep close at hand.

LIFTING THE FOG OF LEGALESE: ESSAYS ON PLAIN LANGUAGE

by Joseph Kimble (Carolina Academic Press, 2006: 700 Kent St., Durham, NC 27701; (919) 489-7486; http://www.cappress.com); 216 pp.; hardcover; $23.

Reviewed by David I. C. Thomson

Thomson is a Professor at the University of Denver's Sturm College of Law, where he teaches Lawyering Process, Administrative Law, and Discovery Practicum. He has authored numerous articles and given presentations in these areas, most recently at the biennial conference of the Legal Writing Institute in Atlanta, Georgia—dthomson@law.du.edu.

Joseph Kimble has taught legal writing at Thomas Cooley Law School (in Michigan) for more than twenty years. Kimble has become a respected authority in what is known as the

"plain language" movement. *Lifting the Fog of Legalese: Essays on Plain Language* (*Lifting the Fog*) collects the best of his regular columns from the *Michigan Bar Journal* on the subject of how lawyers should simplify their drafting language and eliminate unnecessary and costly "legalese."

Not only do Kimble's columns get to see the light of day again, but as a compilation, they make an even more powerful and compelling case in favor of more plain language in legal writing. I highly recommend *Lifting the Fog* to all attorneys—especially those who find themselves using words like "wherefore" and "hereunto" in their drafting. Kimble persuasively argues that this sort of obfuscation (and worse) just isn't necessary; then he shows us how to let go of the crutch these words provide so we can walk on the path of clear and concise legal writing.

One of the most interesting aspects of this debate is that even though legalese persists, it's not as if we don't know better. In a chapter entitled "Strike Three for Legalese," Kimble reports on a survey he conducted of 300 judges and 500 attorneys. The survey asked respondents which of six short paragraph pairs they favored—the one with legalese or the one without. The results: 85 percent of the judges and 80 percent of the lawyers preferred the plain English versions.

Kimble also confronts the belief that legalese plays a useful or appropriate role is some forms of legal writing. He classifies the defenses of legalese as "Myths," and then dispenses with each one in turn.

➢ The first Myth is that plain English advocates seek to reduce legal writing to some lowest-common denominator. Kimble clarifies that, in fact, plain English supporters merely want legal writing to be "simple, direct and economical," by dispensing with "obsolete formalisms, archaic terms, doublets and triplets" and similar facilitators of legal double-speak. Here, he touches on the key impediment to the elimination of legalese: plain English writing is just plain hard to do well.

➢ The second Myth that Kimble addresses is that plain English is too plain—that it does not allow for literary effect. Kimble says he has no problem with a rhetorical flourish in a persuasive brief, but believes there is little need for this in a contract or a will. Yet, he notes, that is where the legalese problem typically is the worst.

➢ The third Myth is that legal writing includes so many "terms of art" that dispensing with them in favor of plain English will cause important information to be lost. He notes that this one "dies hard" and admits there are some legitimate uses for such terminology, particularly when lawyers communicate directly with one other. However, when we address the public, these terms get in the way of the message. Kimble notes that a study of real estate sales agreements found that only 3 percent of the words had significant legal meaning based on precedent; the rest could have been written in plain English.

➢ The fourth Myth is that the law deals with complicated issues that require great precision. He admits to this one containing a kernel of truth, "but only a kernel." First, he notes that plenty of legalese is not precise at all—what do words like "hereby" and "said plaintiff" really add? Second, he notes that terms such as "reasonable doubt" and "gross negligence" are by nature imprecise, and so to criticize plain English for muddying the wa-

ters seems at best unfair. Third, and most important, is the belief that plain English actually can make even complicated ideas more clear. In other words, we must think of plain English not as an impediment to precision, but rather as a better method to achieve the goal of clear writing about complex topics.

In a chapter entitled "How to Write an Impeachment Order," Kimble dissects the impeachment order against former President Clinton, which he shows to be full of legalese, poorly written, full of inflated words, and "contorted" in its sentence structure. He then shows how to do it better, and his version is a model of clarity and simplicity, with no accuracy lost. It is in this example that he illustrates his view of why this subject is so important. Because our society is based on the rule of law, if the law cannot be clearly understood, we risk even more antipathy from the public toward lawyers than we already have.

Near the end of the book, Kimble offers a particularly useful list of words to use instead of their "legalese" equivalent. This list is worth the price of the book alone. He suggests, for example, that we use "buy" instead of "purchase," "send" instead of "transmit," "avoid" instead of "obviate," "a year" instead of "per annum," and "stop" instead of "desist." Every attorney should consider copying this list and posting it near his or her computer monitor.

Kimble does a great service to the legal profession by reminding us and guiding us to be clearer in our forms of expression about the mechanisms and operation of the rule of law that affects us all. We have an obligation to be clear and accessible in our writing, and Joe Kimble shows us the way.

NONLEGAL CAREERS FOR LAWYERS
by Gary A. Munneke, William D. Henslee, and Ellen Wayne, 5th ed. (ABA Publishing, 2006: 321 N. Clark St., Chicago IL 60610-0892; (800) 285-2221; http://www.ababooks.org); 173 pp.; $34.95.

Reviewed by Camilla Dellinger
Dellinger is a solo practitioner in Greenwood Village. She practices primarily in the areas of family law and estate planning—cldlaw@aol.com.

Nonlegal Careers for Lawyers (*Nonlegal Careers*) is a good overview of what opportunities are available to the law school graduate or practicing attorney who may be considering a career outside the traditional practice of law. It's worth noting that the professional background of the book's three authors consists largely of activities and employment outside traditional legal practice. Furthermore, all three authors have extensive knowledge and experience in the career placement of law students. The result is that some of the material may be more useful to recent law school graduates than to the experienced legal practitioner.

Nonlegal Careers is not designed to be a comprehensive listing of every job search technique and possible career placement outside the law. Instead, the book's strength lies in the easy-to-read overview of various law-related industries and the listing of additional resources the reader may use to gather more information on pursuing employment outside traditional practice.

Nonlegal Careers is organized into three parts. Part 1 addresses the issues surrounding the pursuit of a career outside the practice of law. The authors spend a fair amount of time discussing the reasons law students and attorneys seek career opportunities outside traditional practice, and the personal and economic considerations that must be taken into account before making such a decision. Part 1 also focuses on some basic job-search techniques, such as resume writing, interviewing, and contacting potential employers.

Part 2 sets forth specific industries in which an attorney might find his or her legal skills and education an asset. From government service to publishing and media, the authors provide an overview of various industries and examples of attorneys who have made the switch to nonlegal careers. Part 2 is interesting to read even for those not considering a jump from the traditional practice of law, as it provides a glimpse into the many different areas where legal education and experience can prove useful.

Part 3 supplies a comprehensive list of additional resources for further information on pursuing a nonlegal career. It includes publications, online resources, nonlegal job titles, and job directories. Part 3 is a strong section of the book, as it provides resources that the reader may use to focus on a specific law-related industry that matches a particular legal expertise or skill set.

Overall, *Nonlegal Careers* is informative and flows smoothly. Its easy-to-read, short format makes it a worthwhile starting point for anyone considering career options outside the traditional practice of law. The inexpensive price makes it a viable resource for law students and practicing attorneys alike.

Given the subject matter, the book may not be appropriate for every practitioner's library. However, for those individuals considering a jump from traditional practice, *Nonlegal Careers* is a solid resource. ■