

4. Plain Language

Overview

Plain Language is a form of communication that prioritizes the reader's understanding and aims to eliminate confusion.²⁰ Beyond its literal definition, Plain Language is the idea that both written and oral communication should be clear, concise, and easily understood. In fact, the Plain Language movement emerged from a push to simplify convoluted and unintelligible legal documents.

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Importance/Use in Legal Aid

Today, Plain Language is not just an idea, but an enforceable requirement. The Plain Writing Act of 2010²¹ requires federal agencies to use clear and straightforward communication that the public can both understand and use. Legal aid practitioners also must ensure that their clients understand the law and other written materials related to their cases. No amount of resource packets, self-help materials, or workshops will do anyone any good if the content within is cryptic and unclear. The ability of clients to fully understand their case may mean the difference between a win and a loss and between participation and complete withdrawal. Legal aid practitioners bear the responsibility of empowering their clients through clear and accessible legal communication.

When not to use Plain Language

While plain language is often encouraged to make information accessible and understandable to a broader audience, there are situations where its use might be limited or not preferred:

- **Complex Legal Arguments or Concepts.** When conveying intricate legal theories, precedents, or arguments, the specificity and technicality of traditional legal language may be necessary to accurately capture the nuances of the case and ensure precise interpretation by legal professionals.
- **Contract Drafting and Estate Planning.** In certain areas of law, the use of defined terms and industry-specific language can be crucial. These documents often require precise terminology that has been established and interpreted by courts over time to ensure enforceability²².
- **Pleadings and Other Legal Documents.** Pleadings, briefs, and other litigation documents might require a more formal tone and use of traditional legal language to argue effectively before a court or other tribunal²³.
- **Communicating with Other Legal Professionals.** When the primary audience is other lawyers or judges, the use of plain language may be less effective or appropriate. In these instances, the specialized language serves as a shorthand that can convey complex ideas more efficiently among professionals.

Client communication

When communicating with client populations, it is important to remember that the average American is considered to have a readability level equivalent to a 7th-8th grader; that is, someone who is 12-14 years of age.²⁴ The following tips should be used when communicating with clients:

- **Keep it Simple.** Avoid the use of legal jargon. Provide easy-to-understand definitions for more advanced vocabulary and concepts. Only tell the audience what is necessary for their understanding of the matter. A person facing a legal problem may be scared, stressed, and in need of immediate assistance. Tell the client that there is help and provide resources and reassurance.
- **Keep it Open.** Leave room for the client to ask questions. Encourage the client to seek additional self-help resources. Organizations should consider creating an FAQ for the legal issues that are handled frequently. Be mindful that while this may be the 100th eviction hearing the organization has handled this month, it is likely the client's first. It is the duty of organizations to prepare clients for each stage of the legal process. Clear communication builds trust and strengthens the attorney-client relationship, easing the process for both parties.

Using Plain Language to Create Self-Help Resources

Knowledge is power. Legal self-help resources are a common avenue for organizations to disseminate knowledge to client populations facing any number of legal challenges. The information provided in self-help materials plays a vital role in empowering clients to take control of their legal dilemmas and make well-informed choices to improve their situations. A client struggling to understand—or worse yet, misunderstanding—the information contained within an organization's resources could have disastrous consequences. Adhering to the guiding principles of Plain Language and readability when creating or editing these crucial resources significantly reduces this risk and removes a barrier to access for those seeking assistance.

When creating self-help materials, consider the following:

- **What is Being Offered?** Different resources require different considerations and approaches. Is the resource informative (for example, a Know Your Rights pamphlet for the eviction process) or is it directing the reader to a service (for example, an eviction defense hotline)? The answer to this question will help frame the structure of the content.
- **What Does the Reader Need to Know?** What legal issue is addressed in the material? What are the consequences of delay or inaction? Keep the information in the resource direct and simple but never assume that a fact or condition is implied or inherent.

- **What Actions Does the Reader Need to Take?** This is a good stage in the process to be mindful of active voice. For example, active phrasing like “There is Help” or “Apply Now” is more direct than passive phrasing such as “help is available” or “applications now open.” The benefit of active voice, in addition to increasing the readability of a text, is that it urges a reader to act.²⁵ Use of the active voice is essential in materials for time-sensitive issues such as eviction or public benefits applications.

Plain Language Tools and Resources²⁶

Below is a reference table for some common online tools that can be used to check written materials for readability. Each of these tools is discussed in depth.

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Disclaimer: Do Not Put Confidential Information into Unvetted Tools

Under no circumstances should confidential client information be entered into unvetted tools or software. Unvetted software includes programs not provided by your organization and includes

things like ChatGPT, free grammar and spell check services, or other software. Attorneys are required to keep client information confidential under the Rules of Professional Conduct (see ABA Model Rule 1.6 – check state rules for further guidance). Before inputting any confidential client information into a tool or software, users must carefully review the terms and conditions and privacy policy to ensure that they provide adequate protection of client information. Attorneys are responsible for understanding the security and privacy measures these tools employ and ensuring they are suitable for handling confidential data.

If a user is unsure about whether a particular tool is unvetted or appropriate for confidential client information, they should seek guidance from their firm's leadership or compliance officer.



Measuring Readability

Many of the tools and resources discussed in this section rely on at least one (if not all) of the following methodologies to determine the readability of a written text:

- **Flesch-Kincaid Readability Tests**²⁷: The Flesch-Kincaid readability tests are a series of formulas used to assess the readability of a text. Scores are based on average sentence length and average syllables per word, with results typically presented as a grade level score. Don't let the formula intimidate you – there are a host of tools discussed in this toolkit that do the work of calculating Flesch-Kincaid grade levels automatically.

- **The Gunning Fog Index:** Like Flesch-Kincaid Readability Tests, the Gunning Fog Index is a formula used to assess the readability of a text based on average sentence length and the percentage of words considered to be complex. Results are presented as a grade level score.
- **Web Content Accessibility Guidelines (WCAG)²⁸:** The Web Content Accessibility Guidelines (WCAG) are a set of accessibility standards created by the Web Accessibility Initiative, or W3C, to provide developers with best practices for making web content accessible to those with disabilities. There are testable “success” criteria for each of the guidelines that organizations should aspire to. To learn more about WCAG and how your organization can improve web accessibility, visit <https://www.w3.org/TR/WCAG21/>

Grammarly

Grammarly is an online grammar checker with free and premium versions. Grammarly can be used on the web, as a Google Chrome extension, or downloaded for use on desktop. In addition to grammar and spelling checks, the premium version of Grammarly provides users with additional feedback and suggestions on sentence structure, tone, and clarity.

In addition to the Grammarly tool, the online Grammarly blog hosts many free resources and guides focused on Plain Language and readability.

For more information, visit [grammarly.com](https://www.grammarly.com)

Microsoft Word’s Editor

Subscribers to Microsoft’s suite of Office products have access to Word’s Editor, which scores a user’s writing based on document length and errors flagged for review by the Editor. Users can select the style of writing —formal, casual, or professional —and receive recommended spelling and grammar corrections, along with additional refinements like clarity, vocabulary, and conciseness. Additionally, Editor offers document insights such as:

- Word, character, and paragraph count
- Estimated reading time
- Flesch-Kincaid readability test score²⁹

Microsoft also offers a free-to-download Editor extension for Google Chrome, though without a Microsoft 365 subscription, the features are limited.

To access Editor within Word, simply navigate to the Home tab and click the blue pencil icon on the far right of the tools ribbon. For more information on how to use Editor, visit <https://www.microsoft.com/en-us/microsoft-365/microsoft-editor>

LSNTAP's WriteClearly

WriteClearly is a free, easy to use web extension that can be accessed right from your browser's bookmarks bar. WriteClearly provides suggestions on how to improve web pages using Plain Language. Users can analyze entire sites or select specific passages for a Flesch-Kincaid grade level score, suggestions for improving readability, and simpler synonyms for complex words and phrases.

To learn more about WriteClearly, visit <https://www.openadvocate.org/writeclearly/>

Google Docs

At the time of this toolkit's publication, Google Docs does not offer much in the way of readability and Plain Language checks beyond basic spelling and grammar. It does, however, allow for integration with several existing tools like Grammarly and the Editor Chrome extension. Organizations using the Google Suite of products should consider integrating a Plain Language tool. Below are some free extensions to consider:

Readable.com

Readable is a free website that reviews text for readability with different scores and indexes. Text is pasted into the browser and analyzed by Readable to determine:

- **Grade:** Readable grades the selected text on a scale of A-E. This scale was developed by readable so that organizations have an easy way to standardize measures of readability across units and teams. Organizations should strive for an A grade to maximize the readability of their written content.
- **Reach:** The reach calculation is the percentage of readers that will be able to understand the selected text.
- **Text Statistics:** Users can view text statistics, including syllable and word count, reading and speaking time, and a passive voice checker.
- **Other issues:** This section includes tone, sentiment, personalism³⁰, and even keyword density analysis, along with spelling and grammar checks.

Along with a Flesch-Kincaid readability test score³¹, Readable tests the pasted text using the Gunning Fog Index³², another popular readability test used to measure reading level by grade.

For more information, visit <https://readable.com/features/>

Plainlanguage.gov

PlainLanguage.gov is home to an abundance of resources for those looking to learn more about Plain Language. The site includes information on the law and requirements of the Plain Writing Act, official writing guidelines, free and paid training videos, and real-world examples of Plain Language.

For more resources, visit plainlanguage.gov

Adobe Acrobat Pro

Adobe's Acrobat Pro recently released a feature that allows users to create and scan PDF files for accessibility issues. Adobe scans the document for compliance with accessibility standards like Web Content Accessibility Guidelines (WCAG) and presents users with an interactive accessibility report that summarizes the identified issues and includes recommendations for corrective actions.

For more information, visit <https://helpx.adobe.com/acrobat/using/create-verify-pdf-accessibility.html>



Plain Language vs Legalese

Imagine a world where lawyers ditch their verbose phrasing in favor of straightforward sentences that don't require a decoder ring to decipher. They would be abandoning legalese - the pejorative term for the overly complex, difficult-to-understand style of writing inherent in legal practice.

Despite the increasing adoption of Plain Language in modern legal writing, legalese tends to thread itself into the wording of boilerplate contracts, forms, and many other templates utilized by law firms. The prevalence of legalese poses a significant challenge for legal aid organizations serving diverse client populations with varying levels of education and English proficiency. Legalese is difficult to understand for native English speakers of any educational background, and even more difficult to translate clearly and effectively to other languages. Organizations should consider taking the following steps to reduce client's exposure to legalese:

- **Audit existing resources.** Organizations should examine the client-facing material that is distributed or displayed in their offices and on their website. Particular attention should be paid to content that has not been updated recently. Often, legalese is hiding in a disclaimer at the bottom of a web page or in the instructions for a signature.
 - **Get feedback from multiple staff members.** It never hurts to have a second (or third) set of eyes review client-facing content- especially when those eyes are not connected to a lawyer's brain. If the selected materials are easily read and understood by staff in other departments, there is a greater likelihood that the same will be true for the recipients of said resources.
 - **Adhere to Plain Language principles.** When creating or updating client-facing materials, be mindful of word choice, sentence structure, and formatting. Take advantage of free online tools and checkers. Use Plain Language as a standard rather than an afterthought.
 - **Consider Client Input.** Many organizations conduct informal exit interviews or send questionnaires to clients to gauge their experience. Organizations should also consider asking specific questions about the client's experience navigating any written or digital materials. Targeted questions can help identify common sticking points and problematic phrasing. For example:
 - Were the written materials we provided clear and easy to understand?
 - Were you able to locate the information you needed in our written materials easily?
 - What, if any, challenges did you encounter while reading our written materials?
 - What additional feedback would you like to provide us with regarding our written materials?
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20 Plain Language and Information Network, "Definitions". Plain Language.

<https://www.plainlanguage.gov/about/definitions/>

21 U.S. Government Publishing Office. "Public Law 111-274: Plain Writing Act of 2010." Accessed June 13, 2024. <https://www.govinfo.gov/app/details/PLAW-111publ274>.

22 The ability of a legal document to be legally upheld or enforced in a court of law

23 A type of court or body established to settle certain types of disputes

24 Marchand, M. "What is Readability?" Center for Plain Language. <https://centerforplainlanguage.org/what-is-readability/> (Accessed January 24th, 2024)

25 Purdue Online Writing Lab, "Active and Passive Voice,"

https://owl.purdue.edu/owl/general_writing/academic_writing/active_and_passive_voice/active_versus_passive_voice.html.

26 The tools and resources listed here and throughout this document are provided for informational purposes only. The authors have not received any compensation for featuring these tools, software, or services. Please note that the availability, details, and features of the tools referenced in this manual will change over time. Users are encouraged to conduct their own research before relying on any tools mentioned in this toolkit.

27 Readability Formulas. "Learn How to Use the Flesch-Kincaid Grade Level."

<https://readabilityformulas.com/learn-how-to-use-the-flesch-kincaid-grade-level/>.

28 World Wide Web Consortium (W3C). "Web Content Accessibility Guidelines (WCAG)." Accessed June 13, 2024. <https://www.w3.org/WAI/standards-guidelines/wcag/>.

29 Readable.com, "Flesch Reading Ease & Flesch-Kincaid Grade Level,"

<https://readable.com/readability/flesch-reading-ease-flesch-kincaid-grade-level/>. (Accessed January 30th, 2024)

30 In writing, personalism is a scale of how personal or impersonal a text is perceived to be. The level of personalism to strive for depends heavily on the type of writing and the audience.

<https://help.readable.com/en/article/tone-sentiment-personalism-and-reach-xc2eog/#:~:text=Personalism%20is%20a%20scale%20of,we%20or%20our>'.

31 Readable.com, "Flesch Reading Ease & Flesch-Kincaid Grade Level,"

<https://readable.com/readability/flesch-reading-ease-flesch-kincaid-grade-level/>. (Accessed January 30th, 2024)

32 Readable.com, "The Gunning Fog Index," <https://readable.com/readability/gunning-fog-index/> (Accessed February 2nd, 2024)

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