

39th Annual Report

2004-2005

Michigan

Law

Revision

Commission

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Michigan
Law Revision Commission

THIRTY-NINTH ANNUAL REPORT
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This report may be downloaded from the Commission’s Internet website,
<http://council.legislature.mi.gov/>

**MICHIGAN LAW REVISION COMMISSION
THIRTY-NINTH ANNUAL REPORT TO THE LEGISLATURE
FOR CALENDAR YEARS 2004-2005**

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission hereby presents its thirty-ninth annual report pursuant to section 403 of Act No. 268 of the Public Acts of 1986, MCL § 4.1403.

The Commission, created by section 401 of Act No. 268 of the Public Acts of 1986, MCL § 4.1401, consists of two members of the Senate, with one from the majority and one from the minority party, appointed by the Majority Leader of the Senate; two members of the House of Representatives, with one from the majority and one from the minority party, appointed by the Speaker of the House; the Director of the Legislative Service Bureau or his or her designee, who serves as an ex-officio member; and four members appointed by the Legislative Council. The terms of the members appointed by the Legislative Council are staggered. The Legislative Council designates the Chairman of the Commission. The Vice Chairman is elected by the Commission.

Membership

The legislative members of the Commission during 2004-2005 were Senator Michael D. Bishop of Rochester; Senator Hansen Clarke of Detroit; Representative Edward J. Gaffney of Grosse Pointe Farms; and Representative Stephen F. Adamini of Marquette. As Legislative Council Administrator, John G. Strand was the ex-officio member of the Commission. The appointed members of the Commission were Richard D. McLellan, Anthony Derezinski, William C. Whitbeck, and George E. Ward. Mr. McLellan served as Chairman. Mr. Derezinski served as Vice Chairman. Professor Kevin C. Kennedy of Michigan State University - Detroit College of Law served as Executive Secretary in 2004 and Gary B. Gulliver of Michigan State University – College of Law served as Executive Secretary beginning in January 2005 to present. Brief biographies of the 2004-2005 Commission members and staff are located at the end of this report.

The Commission's Work in 2004-2005

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and to recommend needed reform.
2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association, and other learned bodies.
3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers, and the public generally as to defects and anachronisms in the law.

4. To recommend such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the civil and criminal law of this state into harmony with modern conditions.
5. To encourage the faculty and students of the law schools of this state to participate in the work of the Commission.
6. To cooperate with the law revision commissions of other states and Canadian provinces.
7. To issue an annual report.

The problems to which the Commission directs its studies are largely identified through an examination by the Commission members and the Executive Secretary of the statutes and case law of Michigan, the reports of learned bodies and commissions from other jurisdictions, and legal literature. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission's efforts during the past year have been devoted primarily to three areas. First, Commission members provided information to legislative committees related to various proposals previously recommended by the Commission. Second, the Commission examined suggested legislation proposed by various groups involved in law revision activity. These proposals included legislation advanced by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and the law revision commissions of various jurisdictions within and without the United States. Finally, the Commission considered various problems relating to special aspects of current Michigan law suggested by its own review of Michigan decisions and the recommendations of others.

As in previous years, the Commission studied various proposals that did not lead to legislative recommendations. In the case of certain uniform or model acts, the Commission sometimes found that the subjects treated had been considered by the Michigan Legislature in recent legislation and, therefore, did not recommend further action. In other instances, uniform or model acts were not pursued because similar legislation was currently pending before the Legislature upon the initiation of legislators having a special interest in the particular subject.

Proposals for Legislative Consideration in 2006

In addition to its new recommendations, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 2004-2005:

- (1) Use of Technology to Conduct Government Meetings, 2003 Annual Report, page 9.
- (2) Governor's Power to Remove Public Officials from Office, 2003 Annual Report, page 21.
- (3) Inclusion of Future Disability within Protection of Persons with Disabilities Act, 2001 Annual Report, page 104.
- (4) Immunity for Court-Appointed Psychologists, 2000 Annual Report, page 84.
- (5) Pre-Dispute, Contractual Venue Selection Clauses, 1998 Annual Report, page 203.

- (6) Uniform Unincorporated Nonprofit Associations Act, 1997 Annual Report, page 144.
- (7) Prison Mailbox Rule, 1997 Annual Report, page 137.
- (8) Uniform Conflict of Laws-Limitations Act, 1997 Annual Report, page 151.
- (9) E-Mail and the Freedom of Information Act, 1997 Annual Report, page 133.
- (10) Revisions to Lemon Law, 1995 Annual Report, page 7.
- (11) Uniform Putative and Unknown Fathers Act, 1994 Annual Report, page 117.
- (12) Motorcycles and the No-Fault Insurance Act, 1993 Annual Report, page 131.
- (13) Tortfeasor Contribution under MCL 600.2925a(5), 1992 Annual Report, page 21.
- (14) International Commercial Arbitration, 1991 Annual Report, page 31.
- (15) Uniform Contribution among Joint Tortfeasors Act, 1991 Annual Report, page 19.
- (16) Uniform Statutory Rule against Perpetuities, 1990 Annual Report, page 41.
- (17) Standardization of Condemnation Powers Provisions, 1989 Annual Report, page 15.
- (18) Consolidated Receivership Statute, 1988 Annual Report, page 72.

Current Study Agenda

Topics on the current study agenda of the Commission are:

- (1) Survey of laws that would be affected by the adoption of the proposed Civil Rights Initiative
- (2) Review of economic development laws
- (3) Review of laws regulating burials and embalming
- (4) Review of emergency preparedness laws
- (5) Dual registration for real estate brokers
- (6) Review of ecclesiastical corporation laws
- (7) Notarized statements from physicians in medical malpractice cases
- (8) Review of limits on amount of fines assessed for violations of property association's bylaws
- (9) Review of ethics laws
- (10) Guidelines for determining the reasonableness of medical charges and costs under the No-Fault Act

The Commission continues to operate with its sole staff member, the part-time Executive Secretary, whose offices are at Michigan State University - College of Law, East Lansing, Michigan 48824. The current Executive Secretary of the Commission is Gary Gulliver, who was responsible for the publication of this report. By using faculty members at the several Michigan law schools as consultants and law students as researchers, the Commission has been able to operate at a budget substantially lower than that of similar commissions in other jurisdictions. At the end of this report, the Commission provides a list of more than 120 Michigan statutes passed since 1967 upon the recommendation of the Commission.

The Legislative Council Administrator handles the fiscal operations of the Commission under procedures established by the Legislative Council.

The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Richard D. McLellan, Chairman
Anthony Derezinski, Vice Chairman
William C. Whitbeck
George E. Ward
Senator Michael D. Bishop
Senator Hansen Clarke
Representative Edward J. Gaffney
Representative Stephen F. Adamini
John G. Strand

**A SPECIAL TRIBUTE
HONORING
KEVIN KENNEDY**

A resolution to commend and thank Kevin Kennedy for his service to the Michigan Law Revision Commission.

Whereas, It is with great admiration for the many ways in which he has contributed to strengthening the effectiveness of our state's legal system that we honor and commend Kevin Kennedy, the Executive Secretary to the Michigan Law Revision Commission, as he completes his outstanding tenure of service. His service over the past nine years has been marked by the highest standards of integrity and dedication; and

Whereas, Kevin Kennedy's impact on the law in Michigan has taken many forms. A graduate of the University of Michigan, Harvard University, and Wayne State University, Mr. Kennedy has garnered invaluable experiences in numerous areas of the law. He is the author of dozens of law review articles, and the co-author of a respected treatise on international trade law. His background also includes work in private practice and as a trial attorney for the U.S. Department of Justice. Since 1987, he has been a law professor at the Michigan State University- Detroit College of Law; and

Whereas, As Executive Secretary of the Michigan Law Revision Commission since December 1995, Professor Kennedy has served during an era of historic change in lawmaking in Michigan with the implementation of term limits. His knowledge and leadership have been invaluable in enhancing the quality of Michigan's laws; now therefore, be it

Resolved by the membership of the Michigan Law Revision Commission, That we extend our sincere thanks to Kevin Kennedy in gratitude for his exemplary service as the Executive Secretary of the Michigan Law Revision Commission over the past nine years.

Adopted by the Michigan Law Revision Commission on September 14, 2005

Similarly, other provisions of the sentencing guidelines law, M.C.L. 777.33 (1) and (2), provide:

(1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following apply and *by assigning the number of points attributable to the one that has the highest number of points*:

(c) Life threatening or permanent incapacitating injury occurred to a victim..... 25 points

(f) No physical injury occurred to a victim..... 0 points

(2) All of the following apply to scoring offense variable 3:

(d) *In multiple offender cases, if 1 offender is assessed points for death or physical injury, all offenders shall be assessed the same number of points.*

(emphasis added).

People v. Morson, 471 Mich. 248 (2004), concerned a sentence imposed on defendant Latasha Morson. Ms. Morson had waited in a car while her friend, Iesha Northington, committed a robbery at gunpoint, using a gun obtained from the defendant. Ms. Northington had shot a man attempting to thwart the robbery. Ms. Morson was sentenced for her participation in the crimes. The court, in imposing the sentence on Ms. Morson, assessed points under M.C.L. 777.31 and Ms. Morson was assessed 25 points under offense variable (OV) 1 and 25 points under OV 3.

Ms. Northington had previously been sentenced by another judge for the same crimes under the same variables, but had been assessed only 15 points under OV 1 and zero points under OV 3. The issue on appeal was whether, pursuant to M.C.L. 777.31(1) and 777.33(1), Ms. Morson should have been assessed the highest number of points under OV 1 and 3 or whether, pursuant to M.C.L. 777.31(2) and 777.33(2), she should have been assessed a lower number of points, the same number of points as Ms. Northington had been assessed.

The Michigan Court of Appeals held and the Michigan Supreme Court affirmed its holding that Ms. Morson should have been assessed the same number of points as Ms. Northington, relying on “the plain language of the statute.” 471 Mich. 260.

Chief Justice Corrigan concurred, but noted that the statutory provisions at issue “contain[ed] language that may be contradictory in some cases, such as the instant case.” 471 Mich. 263 (Corrigan, C.J., concurring). The Chief Justice also noted that the trial court had not followed its statutory charge to have assessed the highest number of points attributable to Ms. Northington. The Chief Justice stated:

In these circumstances, the language of subsection 1 of OV 1 and OV 3 conflicts with the language of subsection 2(b) in OV 1 and OV 3. The trial court could not have followed one provision without rendering the other nugatory.

Because it is the duty of the judiciary to interpret, not to write, our laws, we, as judges, are unable to correct the conflicting language of OV 1 and OV 3. Rather that task is left to the Legislature. 471 Mich. 269 (Corrigan, C.J., concurring).

B. Question Presented

Should M.C.L. 777.31 and 777.33 be amended to resolve the apparent conflicts when multiple offenders are involved and a sentencing judge has already erred? If so, should they be amended using the “practical approach” suggested in the Chief Justices’ concurrence of requiring trial courts “to assess offenders in multiple offender cases the same number of *accurately scored* points.” 471 Mich. 269 (Corrigan, C.J., concurring)

C. Recommendation

The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action.

II. Granting of Appeal of Sentencing Error Not Preserved Below

A. Background

Michigan law provides, in the second sentence of M.C.L. 769.34(10):

A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentencing range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.

People v. McCraine, 471 Mich. 879 (2004), concerned a party’s application for leave to appeal the Michigan Court of Appeals’ decision to refuse to hear an appeal challenging the scoring of the sentencing guidelines, which appeal had not been made in compliance with M.C.L. 769.34 (10). The Michigan Supreme Court, in lieu of granting leave to appeal, remanded the case to the trial court for resentencing “in light of *People v. Kimble*, 470 Mich. 305(2004)” because the trial court had made an error in sentencing. *Id.* Chief Justice Corrigan concurred, noting that *Kimble* “entitled defendant to this relief” because, “[d]espite [the] plain language [in the second sentence of M.C.L. 769.34(10) prohibiting appeals not in compliance with the provision], the *Kimble* majority held that this provision did not apply where a sentence falls outside the appropriate guidelines range.” 471 Mich. 879 (Corrigan, C.J., concurring). The Chief Justice also stated that “[i]n light of the holding in *Kimble*, the Legislature may wish to consider another means of effectuating its intent to preclude the Court of Appeals from reviewing unpreserved scoring errors.” *Id.*

B. Question Presented

Should state law be amended to override *Kimble*? If so, should it be amended in the manner related by the Chief Justice in her concurrence? (“[T]he Legislature could prescribe that the Court of Appeals lacks jurisdiction to review scoring errors that were not preserved in one of the required ways, regardless of whether the sentence falls within the appropriate guidelines range.” *Id.*)

Note: Justice Young joined in the Chief Justice’s concurrence. Justice Markman concurred in the decision, but indicated uncertainty as to whether corrective legislation of the type proposed by the Chief Justice would “fall within the Legislature’s authority.” 471 Mich. 879 (Markman, J., concurring). Justice Weaver would have denied leave to appeal based on the plain language of M.C.L. 769.34(10). 471 Mich. 879 (Weaver, J., dissenting).

C. Recommendation

The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action. Senator Clarke does not concur in this recommendation.

III. Treble Damages for Conversion

A. Background

The unpublished Michigan Court of Appeals opinion in *Valente v. Valente*, No. 242552, 2004 WL 1778817 (Mich. Ct. App. Aug. 10, 2004), concerned the conversion of trust assets and the damages assessed for that conversion. Plaintiffs sought to have treble damages imposed under M.C.L. 600.2919a against the trustee who had converted the trust assets. The statutory provision reads:

A person damaged as a result of another person's buying, receiving, or aiding in the concealment of any ...converted property when the person buying, receiving, or aiding in the concealment of any ... converted property knew that the property was ... converted may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney's fees.

The Court denied the claim for treble damages because the defendant converted the assets for his own use and not in knowing assistance of a third party's acts of conversion, noting:

Although we find it illogical that the party actually converting the property of another cannot be held liable to the same extent as his or her accomplice, we are bound by the statute and case law that strictly applies the plain language of the statute to affirm the probate court's denial of treble damages. The skewed result that occurs from this statute is left for the Legislature to address. *Id.* at *3.

B. Question Presented

Should state law provide for treble damages to be assessed against the actual converter of property as it currently provides are assessed against one assisting the converter?

C. Recommendation

The Commission recommends the assessment of treble damages against the actual converter of property as well as the one assisting the converter.

Note: Legislation mirroring the Commission's recommendation was enacted as 2005 PA 44.

IV. Minors' Names on the Sex Offenders Registry

A. Background

In *In the Matter of Hardwick*, No. 239951, 2004 WL 316459 (Mich. Ct. App. Feb. 19, 2004), a minor convicted of statutory rape unsuccessfully challenged the constitutionality of the Sex Offenders Registration Act requiring his name to continue to be placed on the sex offender registry, even after he reached the age of eighteen. The Court stated:

“We invite the Legislature to reconsider whether the implied purpose of the act, public safety, is served by requiring an otherwise law-abiding adult to forever be branded as a sex offender.”

B. Question Presented

Should the name of minors on the sex offender registry be removed after the minors reach the age of eighteen?

C. Recommendation

The Commission makes no recommendation on this issue.

V. Child Custody

A. Background

In *Zulkowski v. Zulkowski*, No. 253056, 2004 WL 1622049 (Mich. Ct. App. July 20, 2004), the Court of Appeals reversed a trial court's decision to deny the biological mother's motion for a change in custody from the minor's paternal grandmother, with whom the minor had lived for nine years. The Court stated:

“We urge the Legislature to address this question and to clarify the rights of a third-party custodian in situations such as this, where a fit parent requests custody.”

B. Question Presented

Should the law on child custody be amended to clarify the rights of third-party Custodians?

C. Recommendation

The Commission makes no recommendation on this issue.

VI. Exception to Arrest Requirement for Operating Vehicle While Under the Influence of Intoxicating Liquor

A. Background

In *People v. Stephen*, 262 Mich. App. 213 (2004), the Michigan Court of Appeals reversed and remanded a decision of the circuit court, which had affirmed a decision of the district court to dismiss a charge of operating a motor vehicle while under the influence of intoxicating liquor (OUIL) brought under M.C.L. 257.625. The district court had dismissed the charge under *People v. Wood*, 450 Mich. 399 (1995), because, at the time the police officer arrested the defendant, the vehicle was wedged on a parking log, the defendant was asleep in the vehicle, the engine was not running, and the keys to the vehicle were in the defendant's pocket. The court determined the defendant was not operating the truck when the police officer came upon him. That decision was in line with the holding in *Wood*, in which the Michigan Supreme Court held that, for purposes of the OUIL statute, the term “operating” in the OUIL statute applies only when a vehicle is “in motion, or in a position posing a significant risk of causing a collision.” *Id.* at 405. The circuit court, in affirming the dismissal, also determined that the truck becoming wedged on the parking log did not constitute an accident for purposes of the so-called “accident exception” of M.C.L. 764.15(1)(h) and, therefore, could not serve as the basis for a lawful arrest.

The Michigan Court of Appeals reversed, based upon its reading of M.C.L. 764.15(1)(d), which authorizes a peace officer to arrest a person if “[t]he peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days...has been committed and reasonable cause to believe the person committed it.” It then noted that the crime of OUIL is a misdemeanor punishable by imprisonment for not more than 93 days and that the police officer “had reasonable cause to believe the crime of OUIL had been committed, and that defendant had committed it.” *Stephen*, at 220.

The Court of Appeals, in its reversal of the lower court, did not find it necessary to determine whether it agreed with the prosecution's argument that the arrest was also authorized under M.C.L. 764.15(1)(h), the so-called “accident exception.” That provision permits a peace officer to arrest a person if “the person was, at the time of an accident in this state, the operator of a vehicle involved in the accident and was

operating the vehicle in violation of section 625(1), (3), (6), or (7) or section 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and 257.625m.” (emphasis added.)

The defendant argued the arrest was invalid under the philosophy espoused in *People v. Keskimaki*, 446 Mich. 240 (1994), regardless of the provision of M.C.L. 764.15 under which the arrest was based. In *Keskimaki*, the Michigan Supreme Court had earlier stated in regard to the “accident exception” of M.C.L. 764.15(1)(h):

We noted earlier that one of the purposes of the accident exception was to facilitate the safety of both the public and the drunken driver. To conclude that an accident has occurred when a drunk driver has recognized his impairment and left the road in an attempt to recover his sobriety by sleeping is to discourage the one drop of sensible conduct in a sea of irresponsible action. We do not believe the Legislature intended these consequences, and we decline to interpret “accident” in a manner both inconsistent with and subversive to our perception of the legislative intent underlying the accident exception.” *Id.*, at 57.

The *Stephen* Court refused to “extend the *Keskimaki* analysis to disallow an arrest that was clearly valid under M.C.L. 764.15(d).” *Stephen*, at 220.

B. Question Presented

Should state law be amended to codify the philosophy espoused in *Keskimaki* in regard to any OUIL arrest, regardless of the provision of M.C.L. 764.15 under which it is made, or should state law be amended to negate *Keskimaki*?

C. Recommendation

The Commission makes no recommendation on this issue.

VII. Protection of the Institutionalized, Incapacitated Individuals

A. Background

Cawood v. Rainbow Rehabilitation Center, Inc., Docket No. 263146, 2005 WL 3289402 (Mich. Ct. App. Dec. 1, 2005), concerned a tort action brought against a home for brain-damaged individuals for a sexual assault of a resident of the home by an employee of the home. The Court of Appeals affirmed the summary judgment of the trial court for the defendant home in response to claims that the home was either vicariously liable or directly liable for the injury sustained. As part of the direct liability claim, the plaintiff indicated that the home had “inherently inadequate” staffing. The Court cited with approval the defendant’s response that it was in compliance with state statutory and regulatory staffing requirements.

The Court of Appeals, while affirming the lower court’s judgment, stated at *1, footnote 9, “[w]e encourage the legislature to thoroughly review this important public policy matter.”

B. Question Presented

Should the Legislature increase staffing level requirements for homes for institutionalized, incapacitated individuals?

C. Recommendation

The Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action.

VIII. Interest on Costs and Attorney Fees in Mediation Sanctions

A. Background

In *Ayar v. Foodland Distributors*, 472 Mich. 713 (2005), the Michigan Supreme Court reversed a decision of the Court of Appeals, which had itself reversed a decision of the trial court. The trial court, in determining the interest levied on the costs and attorney fees as part of the mediation sanctions, calculated the interest as of the date the complaint was filed. The Court of Appeals calculated the interest only from the date the judgment awarding the mediation sanctions was entered.

The Supreme Court agreed with the trial court, holding that “[t]he clear language of this statute [M.C.L. 600.6013(8)] indicates that [the interest] accrues from the date of the filing of the complaint.” *Id.* at 714. The Court, however, also noted that “[w]e invite our Legislature to reconsider whether interest should be imposed on mediation sanctions from the date a complaint is filed” because “the amount of the mediation sanctions might not be determined until several years after the filing date.” *Id.* at 718.

B. Question Presented

Should the interest imposed on mediation sanctions accrue from the date the judgment awarding the mediation sanctions was entered or from the date the complaint leading to the sanctions was filed?

C. Recommendation

The Commission recommends legislative review of the issue, but makes no recommendation of specific legislative action.

Note: Justice Cavanagh wrote separately, stating that “[t]he majority should not ... engage in the business of ‘inviting’ the Legislature to revisit a policy.” *Id.* at 720 (Cavanagh, J., concurring in part and dissenting in part).

IX. Assessment of Reasonableness in No-Fault Cases

A. Background

In *Advocacy Organization for Patients & Providers v. Auto Club Ins.*, 472 Mich 91 (2005), the Michigan Supreme Court addressed the reasonableness of medical charges and costs under two sections of the Michigan no-fault act, M.C.L. 500.3107 and 500.3157. The Court affirmed the Court of Appeals decision, holding that the defendant was entitled to a review of the charges and that “the trier of fact [should] determine whether a medical charge, albeit ‘customary,’ is also reasonable.” *Id.* at 95 (citing *Advocacy Organization*, 257 Mich. App. at 379). In his concurrence, Justice Cavanagh, in regard to which methodologies should be employed in determining the reasonableness of medical charges and costs, stated “I agree also with the Court of Appeal concurrence that urged our Legislature to address this issue and implement some guidelines in this area, as other no-fault states have done *Id.* at 96 (Cavanagh, J. concurring).

B. Question Presented

Should the Legislature provide guidelines to be used in determining the reasonableness of medical charges and costs under the no-fault act?

C. Recommendation

The Commission recommends legislative enactment of guidelines to be used in determining the reasonableness of medical charges and costs under the no-fault act. Senator Clarke does not concur in this recommendation.

X. Notice Tolling for Medical Malpractice Actions

A. Background

Short v. Antonini, No. 256223, 2005 WL 3479692 (Mich Ct. App. Dec. 20, 2005), concerned the interplay of several sections of the Revised Judicature Act for medical malpractice actions. The plaintiff in the action was appointed as personal representative of the decedent on November 11, 2000, after the decedent's death on May 11, 2000. On October 1, 2002, the plaintiff sent defendants a notice of intent to file a medical malpractice claim pursuant to MCL 600.6912b. The complaint was filed on April 21, 2003. The Court of Appeals, relying on precedent, dismissed the claim because the statute of limitations had run.

Judge Davis concurred, but wrote separately because he was "certain that the Legislature did not intend such a result." *Id.* At *2. The judge noted first that MCL 600.5852 provides that if a person dies before the period of limitations has run, an action may be brought by a personal representative of the decedent within 2 years after letters of authority are issued. Based upon the issuance date of November 3, 2000, the statute would permit the action to be brought no later than November 3, 2002. Pursuant to MCL 600.2912b, the plaintiff filed a notice of intent to file a medical malpractice claim on October 1, 2002. That section prohibits the filing of a claim until 182 days after the notice of intent is filed. Because the court held the statute of limitations ran out 34 days after the notice of intent was filed, it dismissed the action.

Judge Davis, however, indicated that such a result, while in line with precedent, violated the Legislature's intent, noting that MCL 600.5856(d) [since slightly reworded and moved to MCL 600.5856 (c)] provides that "if the period of limitations would expire during the notice period, the period of is tolled for 182 days." If such a tolling were permitted, the action would have timely filed. However, according to Judge Davis, the Michigan Supreme Court had found otherwise in *Waltz v. Wyse*, 469 Mich. 642 (2004). He indicated it did so because it felt MCL 600.5852 was "not itself a statute of limitations, but an exception to a statute of limitations [and, therefore,] the notice tolling provision [did] not apply." *Id.* Judge Davis indicated his belief that the legislation was meant to provide claimants with "a reasonable time in which to prepare their cases" and that "[t] anomaly that exists ... may be something ... our Legislature may wish to reconsider." *Id.* at *4.

B. Question Presented

Should the Legislature provide that notice tolling provision of MCL 600.5856 applies to MCL 600.5852?

C. Recommendation

The Commission makes no recommendation on this issue, but notes the existence of decisions rendered since *Short*, which have further addressed the decision in *Waltz*.

A REPORT ON THE EXECUTIVE REORGANIZATION ORDER PROJECT

At the 1961-62 Michigan Constitutional Convention, Delegate Alvin Bentley, Chairman of the Committee on Executive Branch's Subcommittee on Executive Reorganization, described the organizational structure of the executive branch of Michigan state government, as it then existed, as a "labyrinth of horrors or chamber of horrors." 1961-62 Constitutional Convention Record, Vol II, p 1837. Michigan's executive branch had also been described earlier in a constitutional studies booklet prepared by the consultant for both the subcommittee and its parent committee as a "jungle of 115 agencies," "[a]uthority and responsibility [for which] are dispersed, confused and obscure." Ferrel Heady, State Constitutions: The Structure of Administration (State Constitutional Studies Project Booklet No. 4), (National Municipal League 1961) p 35, quoting Frank Landers & Howard Hamilton, "State Administrative Reorganization in Michigan: The Legislative Approach," Public Administration Review, XIV (Spring 1954), p 99. The complex and confusing nature of the executive branch's organizational framework prior to the adoption of the Michigan Constitution of 1963 was most clearly demonstrated by the attached chart prepared by the Michigan Joint Legislative Committee on Reorganization of State Government, which was distributed to the constitutional delegates. See Attachment A.

In response to the situation described by Delegate Bentley, the Subcommittee on Executive Reorganization proposed new constitutional language that, with some alterations, became Mich Const 1963, art V, sec 2. The first clause of the provision mandated the allocation by law of all agencies of the executive branch of state government into not more than 20 principal departments with exceptions for the offices of governor and lieutenant governor and the governing bodies of the institutions of higher education. Mich Const 1963, art V, sec 2, cl 1. As Delegate John Martin, Chairman of the Committee on Executive Branch, explained at the time the proposal was offered to the floor of the Constitutional Convention, the clause was intended "to reduce the number of agencies under the direct supervision of the governor to manageable proportions, and to bring about a more effective grouping of departments according to major purposes." 1961-62 Constitutional Convention Report, Vol I, p 1765.

Pursuant to that clause, the Executive Organization Act of 1965 (hereinafter EOA), 1965 PA 380, MCL 16.101 to 16.608, was enacted. The act established 19 principal departments, transferred all agencies subject to the constitutional mandate to those departments, and apportioned each transferred agency's powers between the agency and the department. The transfers of agencies and the assignments of functions made by the EOA were made by one of three types of statutorily defined transfers. The first type of transfer, defined in the EOA as a Type I transfer, moved the agency addressed by the transfer into a principal department but maintained the agency's existence as a separate entity within the department. An agency transferred by a Type I transfer retained its "prescribed statutory powers, duties and functions," but all of its budgeting, procurement, and related management functions were to be performed under the direction and supervision of the head of the department. See MCL 16.103(a).

The second type of transfer, defined as a Type II transfer, moved the agency into a department, continued the statutory recognition of the agency as a separate entity within the department, but transferred all of its statutory authority, powers, duties and functions, records, personnel, property, and funding to the department. See MCL 16.103(b). Lastly, each agency transferred by a Type III transfer was abolished by the transfer, with all of its statutory authority, powers, duties and functions, records, personnel, property, and funding being transferred to the department. See MCL 16.103(c).

While Mich Const 1963, art V, sec 2, cl 1, and the EOA, as a legislative implementation of that provision, resulted in a new structuring of the executive branch with clearer lines of authority and departmental supervision of agencies replacing direct gubernatorial supervision of the agencies, it did not address a

more systemic problem, the lack of a constitutional grant of power to the governor to continually organize the branch in a fashion he or she thought more efficient without requiring the passage of legislation. That issue was addressed by Mich Const 1963, art V, sec 2, cl 2. The provision provided that after the initial allocation of the executive branch agencies, the governor was authorized to “make changes in the executive branch or in the assignment of functions among its units.” Mich Const 1963, art V, sec 2, cl 2. The clause further provided that if the “changes require[d] the force of law, they shall be set forth in executive orders and submitted to the legislature.” Id. If such orders were not rejected by a majority vote of the members elected to and serving in each house, the constitutional provision provided the orders would then take effect. Id.

Michigan governors have used the reorganizational powers conferred by the provision very liberally in the past 40 years to continually restructure the executive branch to meet changing conditions or to correspond to their philosophies as to the manner in which the branch could more effectively function. Through 2004, Michigan governors have promulgated more than 400 executive orders reorganizing the executive branch of state government. (Since the enactment of legislation in 1968 so providing, such orders, in addition to their numbering by the governors as executive orders, have also received numbering as executive reorganization orders. The orders reorganizing the executive branch, which have been promulgated after the effective date of the 1978 legislation, therefore, have an Executive Order number such as EO 1982-7 and an Executive Reorganization Order number such as ERO 1982-3. The numbering denotes the fact that while the order was the seventh executive order of the year, it was only the third executive order that year that reorganized the executive branch. Executive Reorganization Orders are also given section number designations such as MCL 247.823 as part of the compilation of Michigan law. After this point, I shall refer to executive orders reorganizing the executive branch as executive reorganization orders or EROs regardless of their date of promulgation.

While the constitutional provision under review has had the desired effect of first causing the Legislature to enact the EOA and second allowing Michigan governors to reorganize the executive branch in a manner they deem more effective without legislative approval, a problem has arisen concerning the relationship of both the EOA and the EROs with the rest of the Michigan statutory law. When the EOA was enacted, making sweeping changes in the level of autonomy, duties, powers, and even the existence of executive branch agencies, the other Michigan statutes that were in conflict with the EOA were not amended to address and resolve those conflicts. As a result, Michigan law continued to refer to entities that no longer existed, to ascribe powers and duties to entities that no longer had those powers and duties, and even to refer to departments by names that had been changed in the EOA. Four decades later, the Legislature has yet to address many of those inconsistencies. This confusing situation has been considerably exacerbated by the promulgation after the EOA’s enactment of scores of often very comprehensive and complex EROs without the amendment of the laws in conflict with those EROs.

As a result, a Michigan citizen attempting to read the Michigan Compiled Laws in either its hard copy or on-line form to determine which agency to consult in relation to a statutory provision would find it difficult to ascertain exactly which agency or even which department is now responsible for the implementation of the statutory provision. (A scholar trying to draw the same type of organizational chart referenced earlier in this report might well find it even more difficult to create such a chart, given the contradictory indications in statutes and EROs as to whether specific entities still exist, the current name of the agency or department, or the agency or department legally responsible for the execution of the statutory powers and duties.) In short, the enactment of the EOA and the promulgation of the EROs with no corresponding changes in the Michigan statutes in conflict with the EOA and the EROs have created the type of “defect or anachronism in the law”, the Michigan Law Revision Commission has been statutorily charged to address and to recommend reforms. MCL 4.1403(1)(a). For that reason, the Commission entered into a contract in 2004 with Gary Gulliver to prepare a four-part study of the matter with the resulting product to provide the Michigan citizenry, the Michigan Legislature, the members of

the State Bar of Michigan, and the executive branch agencies themselves a clear indication of the status of Michigan law in regard to the duties and powers of agencies affected by the EOA, subsequent acts, and the EROs promulgated through 2004.

The first part of the four part study, which part required an examination of the EOA and the EROs of 1965 and the preparation of an index of the statutory provisions affected by the EOA and the EROs which remain in conflict with the act and the EROs, has been completed and is linked to this report. The second part of the study will result in an updating of the index, reflecting the EROs promulgated through 2004. The third part will further amend the index to address post-1965 acts that have affected the organization of the executive branch of state government. Lastly, the fourth part of the study will result in the preparation of footnotes for the on-line version of the Michigan Compiled Law sections identified in the index indicating the appropriate department or agency to which the section should refer. The three parts of the study yet uncompleted shall be included in subsequent annual reports of the Commission.

**PRIOR ENACTMENTS PURSUANT TO
MICHIGAN LAW REVISION COMMISSION RECOMMENDATIONS**

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some cases amendments thereto by the Legislature:

1967 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Original Jurisdiction of Court of Appeals	1966, p. 43	65
Corporation Use of Assumed Names	1966, p. 36	138
Interstate and International Judicial Procedures	1966, p. 25	178
Stockholder Action Without Meetings	1966, p. 41	201
Powers of Appointment	1966, p. 11	224
Dead Man's Statute	1966, p. 29	263

1968 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Possibilities of Reverter and Right of Entry	1966, p. 22	13
Stockholder Approval of Mortgage of Corporate Assets	1966, p. 39	287
Corporations as Partners	1966, p. 34	288
Guardians Ad Litem	1967, p. 53	292
Emancipation of Minors	1967, p. 50	293
Jury Selection	1967, p. 23	326

1969 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Access to Adjoining Property	1968, p. 19	55
Recognition of Acknowledgments	1968, p. 64	57
Dead Man's Statute Amendment	1966, p. 29	63
Notice of Change in Tax Assessments	1968, p. 30	115
Antenuptial and Marital Agreements	1968, p. 27	139
Anatomical Gifts	1968, p. 39	189
Administrative Procedures Act	1967, p. 11	306
Venue for Civil Actions	1968, p. 17	333

1970 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships	1969, p. 41	90
Minor Students' Capacity to Borrow Act	1969, p. 46	107
Warranties in Sales of Art	1969, p. 43	121
Appeals from Probate Court	1968, p. 32	143
Circuit Court Commissioner Powers of Magistrates	1969, p. 57	238

1971 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Revision of Grounds for Divorce	1970, p. 7	75
Civil Verdicts by 5 of 6 Jurors in Retained Municipal Courts	1970, p. 40	158
Amendment of Uniform Anatomical Gift Act	1970, p. 45	186

1972 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Summary Proceeding for Possession of Premises	1970, p. 16	120
Interest on Judgments	1969, p. 59	135
Business Corporations	1970, Supp.	284
Constitutional Amendment re Juries of 12	1969, p. 60	HJR "M"

1973 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Execution and Levy in Proceedings Supplementary to Judgment	1970, p. 51	96
Technical Amendments to Business Corporation Act	1973, p. 8	98

1974 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Choice of Forum	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the Michigan General Corporations Act	1973, p. 37	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
Technical Amendments to the Business Corporation Act	1974, p. 30	303
Amendment to Dead Man's Statute	1972, p. 70	305
Attachment and Collection Fees	1968, p. 22	306
Contribution Among Joint Tortfeasors	1967, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Due Process in Seizure of a Debtor's Property (Elimination of Pre-judgment Garnishment)	1972, p. 7	371

1975 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Hit-Run Offenses	1973, p. 54	170
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 12	288
Disposition of Community Property Rights at Death	1973, p. 50	289
Insurance Policy in Lieu of Bond	1969, p. 54	290
Child Custody Jurisdiction	1969, p. 23	297

1976 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Due Process in Seizure of a Debtor's Property (Replevin Actions)	1972, p. 7	79
Qualifications of Fiduciaries	1966, p. 32	262
Revision of Revised Judicature Act Venue Provisions	1975, p. 20	375
Durable Family Power of Attorney	1975, p. 18	376

1978 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Juvenile Obscenity	1975, p. 133	33
Multiple Party Deposits	1966, p. 18	53
Amendment of Telephone and Messenger Service Company Act	1973, p. 48	63
Elimination of References to Abolished Courts:		
a. Township Bylaws	1976, p. 74	103
b. Public Recreation Hall Licenses	1976, p. 74	138
c. Village Ordinances	1976, p. 74	189
d. Home Rule Village Ordinances	1976, p. 74	190
e. Home Rule Cities	1976, p. 74	191
f. Preservation of Property Act	1976, p. 74	237
g. Bureau of Criminal Identification	1976, p. 74	538
h. Fourth Class Cities	1976, p. 74	539
i. Election Law Amendments	1976, p. 74	540
j. Charter Townships	1976, p. 74	553
Plats	1976, p. 58	367
Amendments to Article 9 of the Uniform Commercial Code	1975, Supp.	369

1980 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures	1968, p. 8	87
Technical Revision of the Code of Criminal Procedure	1978, p. 37	506

1981 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to the Justice of the Peace:		
Sheriff's Service of Process	1976, p. 74	148
Court of Appeals Jurisdiction	1980, p. 34	206

1982 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Limited Partnerships	1980, p. 40	213

Technical Amendments to the Business Corporation Act	1980, p. 8	407
Interest on Probate Code Judgments	1980, p. 37	412

1983 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of References to Abolished Courts:		
Police Courts and County Board of Auditors	1979, p. 9	87
Federal Lien Registration	1979, p. 26	102

1984 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Legislative Privilege:		
a. Immunity in Civil Actions	1983, p. 14	27
b. Limits of Immunity in Contested Cases	1983, p. 14	28
c. Amendments to Revised Judicature Act for Legislative Immunity	1983, p. 14	29
Disclosure of Treatment Under the Psychologist/Psychiatrist- Patient Privilege	1978, p. 28	362

1986 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Amendments to the Uniform Limited Partnership Act	1983, p. 9	100

1987 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Amendments to Article 8 of the Uniform Commercial Code	1984, p. 97	16
Disclosure in the Sale of Visual Art Objects Produced in Multiples	1981, p. 57	40, 53, 54

1988 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Repeal of M.C.L. § 764.9	1982, p. 9	113
Statutory Rule Against Perpetuities	1986, p. 10	417, 418
Transboundary Pollution		
Reciprocal Access to Courts	1984, p. 71	517

1990 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to Abolished Courts:		
a. Procedures of Justice Courts and Municipal Courts	1985, p. 12; 1986, p. 125	217
b. Noxious Weeds	1986, p. 128; 1988, p. 154	218
c. Criminal Procedure	1975, p. 24	219
d. Presumption Concerning Married Women	1988, p. 157	220
e. Mackinac Island State Park	1986, p. 138; 1988, p. 154	221
f. Relief and Support of the Poor	1986, p. 139; 1988, p. 154	222
g. Legal Work Day	1988, p. 154	223
h. Damage to Property by Floating Lumber	1988, p. 155	224

1991 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to Abolished Courts:		
a. Land Contracts	1988, p. 157	140
b. Insurance	1988, p. 156	141
c. Animals	1988, p. 155	142
d. Trains	1986, pp. 153, 155; 1987, p. 80; 1988, p. 152	143
e. Appeals	1985, p. 12	144
f. Crimes	1988, p. 153	145
g. Library Corporations	1988, p. 155	146
h. Oaths	1988, p. 156	147
i. Agricultural Products	1986, p. 134; 1988, p. 151	148
j. Deeds	1988, p. 156	149
k. Corporations	1989, p. 4; 1990, p. 4	150
l. Summer Resort Corporations	1986, p. 154; 1988, p. 155	151
m. Association Land	1986, p. 154; 1988, p. 155	152

n. Burial Grounds	1988, p. 156	153
o. Posters, Signs, and Placecards	1988, p. 157	154
p. Railroad Construction	1988, p. 157; 1988, p. 156	155
q. Work Farms	1988, p. 157	156
r. Recording Duties	1988, p. 154	157
s. Liens	1986, pp. 141, 151, 158; 1988, p. 152	159

1992 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Determination of Death Act	1987, p. 13	90

1993 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures of Home Rule Villages	1989, p. 17	32
Condemnation Procedures Regarding Railroads	1989, p. 25	354
Condemnation Procedures Regarding Railroad Depots	1989, p. 26	354

1995 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures Regarding Inland Lake Levels	1989, p. 24	59
Condemnation Procedures of School Districts	1989, p. 24	289

1996 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Felony Murder and Arson	1994, p. 179	20, 21

1998 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures of General Law Villages	1989, p. 16	254
Repeal of Article 6 of the Uniform Commercial Code	1994, p. 111; 1997, p. 131	489
Uniform Fraudulent Transfer Act	1988, p. 13	434
Uniform Trade Secrets Act	1993, p. 7	448
Revisions to Lemon Law (recommendation to include leased vehicles)	1995 , p.7	486

2002 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Guilty but Mentally Ill-Burden of Proof	2000, p. 85	245

2003 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Anatomical Gifts	1993, p. 53	62, 63

2004 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Governor's Power to Remove Public Officials from Office (recommendation on school board and intermediate school board members)	2003, p. 21	234

BIOGRAPHIES OF COMMISSION MEMBERS AND STAFF

RICHARD D. McLELLAN

Richard D. McLellan, is Chairman of the Michigan Law Revision Commission, a position he has filled since 1986 following his appointment as a public member of the Commission in 1985.

Mr. McLellan is a lawyer with the law firm of Dykema Gossett PLLC and serves as the Member-in-charge of the firm's Lansing Office and as the leader of the firm's Government Policy Department. He is responsible for the firm's public policy, administrative law and lobbying practices in Lansing, Chicago and Washington, D.C.

Mr. McLellan started his career as an administrative assistant to Governor William G. Milliken and as director of the Michigan Office of Drug Abuse.

Following the 1990 Michigan elections, McLellan was named Transition Director to then Governor-elect John Engler. In that capacity, he assisted in the formation of Governor Engler's Administration and conducted a review of state programs. He has also been appointed by the Governor as Chairman of the Corrections Commission, a member of the Michigan Export Development Authority, a member of the Michigan International Trade Authority, a member of the Library of Michigan Board of Trustees, a member of the Michigan Jobs Commission, a member of the McPherson Commission On Charter Schools and Chairperson of the Michigan Film Advisory Commission.

During the administration of President Gerald Ford, he served as an advisor to the Commissioner of the Food and Drug Administration as a member of the National Advisory Food and Drug Committee of the U.S. Department of Health, Education and Welfare.

In 1990, Mr. McLellan was appointed by President George Bush as a Presidential Observer to the elections in the People's Republic of Bulgaria. The elections were the first free elections in the country following 45 years of Communist rule. In 1996, he again acted as an observer for the Bulgarian national elections. And again in February, 1999, he acted as an observer for the Nigerian national elections with the International Republican Institute.

Mr. McLellan is a member of the Board of Governors of the Cranbrook Institute of Science, one of Michigan's leading science museums. He helped establish and served for 10 years as president of the Library of Michigan Foundation. He helped establish and served as both President and Chairman of the Michigan Japan Foundation, the private foundation providing funding for the Japan Center for Michigan Universities.

Mr. McLellan has served as member of the Board of Trustees of Michigan State University-College of Law and is a member of the Advisory Board for MSU's James H. and Mary B. Quello Center for Telecommunication Management and Law. He is a Member of the Board of Commissioner of the State Bar of Michigan by appointment of the Supreme Court where he also serves as co-chair of the Standing Committee On Justice Initiatives.

Mr. McLellan is a former Chairman of the Board of Directors of the Michigan Chamber of Commerce, and is a member of the Board of Directors of the Mackinac Center for Public Policy, the Native Nations Foundation and the Cornerstone Foundation.

Mr. McLellan served as a member of the Board of Directors of the Mercantile & General Life Reassurance Company of America and Crown America Life Insurance Company and is a Trustee of JNL Trust established by the Jackson National Life Insurance Company. He is also the former Chairman of the Michigan

Competitive Telecommunications Providers Association and former Chairman of the Information Technology Association of Michigan.

Mr. McLellan has been active in matters concerning persons with disabilities. He is a former President of the Arthritis Foundation, Michigan Chapter, a former member of the National Advocacy Committee of the Arthritis Foundation and a former member of the National Research Committee, Arthritis Foundation.

He is a graduate of the Michigan State University Honors College and the University of Michigan Law School. He has served as an adjunct professor of international studies at Michigan State University.

ANTHONY DEREZINSKI

Mr. Derezinski is Vice Chairman of the Michigan Law Revision Commission, a position he has filled since May 1986 following his appointment as a public member of the Commission in January of that year.

Mr. Derezinski is Director of Government Relations for the Michigan Association of School Boards. He also serves as an adjunct professor of law at the University of Michigan Law School and at the Department of Education Administration of Michigan State University, and previously was a visiting professor of law at the Thomas M. Cooley Law School.

He is a graduate of Muskegon Catholic Central High School, Marquette University, the University of Michigan Law School (Juris Doctor degree), and Harvard Law School (Master of Laws degree). He is married and resides in Ann Arbor, Michigan.

Mr. Derezinski is a Democrat and served as State Senator from 1975 to 1978. He was a member of the Board of Regents of Eastern Michigan University for 14 years and currently serves on the Committee of Visitors of the University of Michigan Law School. He also is a member of the Boards of Ann Arbor Blues and Jazz Festival and the Center for the Education of Women in Ann Arbor.

He served as a Lieutenant in the Judge Advocate General's Corps in the United States Navy from 1968 to 1971 and as a military judge in the Republic of Vietnam. He is a member of the Veterans of Foreign Wars, Derezinski Post 7729, the National Association of College and University Attorneys, the Michigan and National Councils of School Attorneys, and the American Bar Association.

WILLIAM C. WHITBECK

Judge William C. Whitbeck is a public member of the Michigan Law Revision Commission and has served since his appointment in January 2000.

Judge Whitbeck was born on January 17, 1941, in Holland, Michigan, and was raised in Kalamazoo, Michigan. His undergraduate education was at Northwestern University, where he received a McCormack Scholarship in Journalism. He received his LL.B. from the University of Michigan Law School in 1966, and was admitted to the Michigan Bar in 1969.

Judge Whitbeck has held a variety of positions with the state and federal governments, including serving as Administrative Assistant to Governor George Romney from 1966 to 1969, Special Assistant to Secretary George Romney at the U.S. Department of Housing and Urban Development from 1969 to 1970, Area Director of the Detroit Area Office of the U.S. Department of Housing and Urban Development from 1970 to 1973, Director of Policy of the Michigan Public Service Commission from 1973 to 1975 and Counsel to Governor John Engler for Executive Organization/Director of the Office of the State Employer from 1991 to 1993. He

served on the Presidential Transition Team of President-Elect Ronald Reagan in 1980, and as Counsel to the Transition Team of Governor-Elect John Engler in 1990.

In private practice, Judge Whitbeck was a partner in the law firm of McLellan, Schlaybaugh & Whitbeck from 1975 to 1982, a partner in the law firm of Dykema, Gossett, Spencer, Goodnow and Trigg from 1982 to 1987, and a partner in the law firm of Honigman Miller Schwartz and Cohn from 1993 to 1997.

Judge Whitbeck is a member of the State Bar of Michigan, the American Bar Association, the Ingham County Bar Association, the Castle Park Association, and has served as Chair of the Michigan Historical Commission. He is a Fellow of both the Michigan State Bar Foundation and the American Bar Foundation.

Judge Whitbeck and his wife, Stephanie, reside in downtown Lansing in a 125-year-old historic home that they have completely renovated. They are members of St. Mary Cathedral.

Governor John Engler appointed Judge Whitbeck to the Court of Appeals effective October 22, 1997, to a term ending January 1, 1999. Judge Whitbeck was elected in November of 1998 to a term ending January 1, 2005. Chief Judge Richard Bandstra designated Judge Whitbeck as Chief Judge Pro Tem of the Court of Appeals effective January 1, 1999. The Supreme Court appointed Judge Whitbeck as Chief Judge of the Court of Appeals effective January 1, 2002 and reappointed him as Chief Judge effective January 1, 2004 and effective January 1, 2006.

GEORGE E. WARD

Mr. Ward is a public member of the Michigan Law Revision Commission and has served since his appointment in August 1994.

Mr. Ward was the Chief Assistant Prosecuting Attorney in Wayne County in the administration of the Honorable John D. O'Hair. Prior to that, he was a clerk to a justice of the Michigan Supreme Court and in private civil practice for 20 years in the City of Detroit. He recently returned to private practice in Wayne County.

He is a graduate of Sts. Peter and Paul High School, Saginaw, the University of Detroit, and the University of Michigan Law School. He is married and the father of five children.

Mr. Ward is an Adjunct Professor at Michigan State College of Law, Wayne State University Law School, University of Detroit Mercy Law School, and University of Michigan - Dearborn; a member of the Board of Directors of Wayne County Catholic Social Services; past President of the Incorporated Society of Irish American Lawyers; a former member and President of the Board of Control of Saginaw Valley State University; a former commissioner of the State Bar of Michigan; a former commissioner and President of the Wayne County Home Rule Charter Commission; and a former member of the Board of Directors of Wayne Center.

MICHAEL D. BISHOP

Mr. Bishop is a legislative member of the Michigan Law Revision Commission and has served on the Commission since March 2003.

Mr. Bishop (R-Rochester) was first elected to the Michigan Senate in November 2002 after two terms in the Michigan House of Representatives. He was sworn into office in January to represent Michigan's 12th District in the State Senate, which includes the communities of Auburn Hills, Keego Harbor, Lake Angelus, Sylvan

Lake, Pontiac, Rochester, and Rochester Hills, and the townships of Addison, Independence, Oakland, Orion, and Oxford.

Mr. Bishop was chosen as Assistant Senate Majority Leader, chairman of the Senate Banking & Financial Institutions Committee, and as vice chairman of both the Gaming & Casino Oversight Committee and Judiciary Committee. He also serves as co-chair of the Joint Committee on Administrative Rules.

During his four-year tenure in the Michigan House, Mr. Bishop served as vice chairman of the Commerce Committee and as a member of the Energy & Technology, Criminal Justice, Redistricting & Elections, and Commerce Subcommittee on Appropriations. He was also appointed to chair the Commerce Subcommittee on Banking & Finance, Congressional Redistricting Subcommittee, and Joint Committee on Administrative Rules.

Mr. Bishop is a member of the American Bar Association, State Bar of Michigan, Oakland County Bar Association, Macomb County Bar Association, Sports Lawyer Association, and Michigan Association of Realtors. He served on the Municipal Law and Business Law Committees of the Oakland County Bar Association and is a member of the National Association of Sportsmen Legislators. Mr. Bishop was sworn in as a member of the United States Supreme Court Bar, as well as the District of Columbia Bar in December 2002.

A 1989 graduate of the University of Michigan, Mr. Bishop received his law degree from the Detroit College of Law in 1993. He is a practicing attorney for Simon, Galasso & Frantz, PLC, a licensed real estate broker, and president/owner of Freedom Realty, Inc. and Pro Management, Inc.

Mr. Bishop, 39, resides in Rochester with his wife, Cristina, and three children, Benjamin Donald, Gabriella Maria, and Nathan Michael.

HANSEN CLARKE

Mr. Clarke is a legislative member of the Michigan Law Revision Commission and has served on the Commission since March 2003.

Mr. Clarke was elected to the Michigan State Senate in 2002 when he defeated an incumbent state Senator. Mr. Clarke had previously been elected to the Michigan House of Representatives three times. He currently serves on the Senate Appropriations Committee, is Assistant Democratic Caucus Chair, and has been the Treasurer of the Michigan Legislative Black Caucus for four years.

Before being elected to his recent tenure in public office, Mr. Clarke was active in the nonprofit community. He is the former President of the Michigan Public Purchasing Officers Association and a former Trustee of the Michigan Housing Trust Fund. He also served on the St. John NorthEast Community Hospital Board of Trustees. As a college student, Mr. Clarke was an elected member of the Cornell University Board of Trustees. He is currently a member of the Cornell University Council.

Mr. Clarke is the former chief of staff to Congressman John Conyers, Jr. He also served as Executive Assistant to the Wayne County Executive and as an Administrator in Wayne County Government.

Mr. Clarke graduated from Cornell University in 1984 with a Bachelors of Fine Arts degree in painting. In 1987, he graduated from Georgetown University Law Center with a Juris Doctorate degree. Mr. Clarke is licensed to practice law in Michigan.

EDWARD J. GAFFNEY

Mr. Gaffney is a legislative member of the Michigan Law Revision Commission and has served on the Commission since February 2003. He has been an attorney practicing in Michigan for 30 years.

He serves on the House Health Policy; Oversight, Elections, and Ethics; Insurance; Tort Reform; and Regulatory Reform Committees. He also is a member of the Legislative Council.

Mr. Gaffney attended Michigan State University and graduated with a master's degree in history. After graduating from MSU, he took a position with the Michigan Legislative Service Bureau working in the research division. He entered the first class at Cooley Law School. After graduating, he joined the legal division and worked drafting legislation.

Mr. Gaffney left Lansing to be a legislative analyst with the American Automobile Manufacturing Association. He was promoted to a position as a regional manager and dealt with state legislatures in Michigan, Ohio, Indiana, Illinois and Kentucky. Mr. Gaffney eventually went to work for the Michigan Trucking Association where he managed a safety grant to help experienced truck drivers learn how to be safer drivers.

In 1991, Mr. Gaffney ran for Grosse Pointe Farms city council. He won the election and eight years later was elected mayor. He was elected to the state House in 2002 and re-elected in 2004.

STEPHEN F. ADAMINI

Mr. Adamini is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2001.

Mr. Adamini represents the 109th House District. He currently is serving his third term in the House.

Mr. Adamini has practiced law for over 35 years. He is senior partner at Kendricks, Bordeau, Adamini, Chilman & Greenlee, P.C., a Marquette law firm. He is a graduate of Negaunee High School, and received his Bachelor of Arts degree in political science from the University of Michigan in 1967 and his Juris Doctorate from the University of Michigan Law School in 1970.

Mr. Adamini serves as the Democratic vice-chair of the House Health Policy Committee, and he also sits on the House Insurance Committee and House Judiciary Committee.

Mr. Adamini has a longtime civic commitment to the Central Upper Peninsula community. From 1971 to 1976, he served on the Michigan Boundary Commission. From 1973 to 1979, he served on the Alger-Marquette Community Mental Health Board, including one term as chair and two terms as treasurer. Mr. Adamini chaired the Marquette County Democratic Party from 1986 to 1992. He served on the Michigan Transportation Commission, appointed by former Governor Jim Blanchard, from 1987 to 1991. In 1991, he served on the Marquette County Re-Appportionment Commission. From 1994 to 1999, he served on the Marquette County Airport Board, including two terms as Chairperson. From 1997 to 2000, he served on the Executive Committee of the Gwinn Area Chamber of Commerce.

Mr. Adamini and his wife Linda, a retired elementary school teacher, reside in Marquette. They have two adult children, Corrine Adamini Ricker and Stephen Jr. They also have three grandchildren, Alexandra, Marki, and Ryan.

JOHN G. STRAND

Since January 2001, Mr. Strand, as the Legislative Council Administrator, has served as the ex-officio member of the Michigan Law Revision Commission. The following agencies fall under his supervision: Legislative Service Bureau, Legislative Council Facilities Agency, Joint Committee on Administrative Rules staff, Michigan Law Revision Commission, and the Commission on Uniform State Laws.

Prior to being appointed to the Legislative Council, Mr. Strand served as Chairman of the Michigan Public Service Commission since October 1993 and had been a Tribunal Judge for the Michigan Tax Tribunal from January 1993 to October 1993. He had previously served six terms as a state legislator beginning in 1981, serving in a leadership position and as vice-chairman of the Insurance and the House Oversight Committees and as a member of the Taxation and Judiciary Committees.

Mr. Strand is a member of the State Bar of Michigan. He holds a B.A. from the University of Pittsburgh in Economics and Political Science (1973) and a J.D. from Case Western Reserve University (1976). Mr. Strand, his wife Cathy, and sons Michael and Matthew live in East Lansing, Michigan.

KEVIN C. KENNEDY

Mr. Kennedy served as the Executive Secretary to the Michigan Law Revision Commission, from December 1995 to December 2004.

Mr. Kennedy joined the faculty of Michigan State University - Detroit College of Law in 1987 and has taught courses in civil procedure, conflict of laws, international trade, and international litigation. He is a graduate of the University of Michigan, Wayne State University, and Harvard University. He was a law clerk at the U.S. Court of International Trade, was a private practitioner in Hawaii, and served as a trial attorney for the U.S. Department of Justice. He is married.

Mr. Kennedy is the author of nearly 40 law review articles concerning international law, international trade, and civil procedure. He is the co-author of World Trade Law, a treatise on international trade law.

GARY B. GULLIVER

Mr. Gulliver served as Legal Counsel and Director of Legal Research for the Legislative Service Bureau from 1974 to 2004. Mr. Gulliver served as the liaison between the Michigan Law Revision Commission and the Legislative Service Bureau since May 1984. In January 2005, he was appointed as Executive Secretary of the Commission.

He joined the faculty of the Michigan State University – College of Law in 2004 and has taught classes in Legal Research, Writing and Advocacy.

Mr. Gulliver is a graduate of Albion College (with honors) and Wayne State University Law School. He is married and has four children.