

final minutes

Michigan Law Revision Commission Meeting

Wednesday, March 31, 2010 ▪ 12:00 noon
Legislative Council Conference Room ▪ 3 Boji Tower
124 W. Allegan ▪ Lansing, Michigan

Members Present:

Richard McLellan, Chair
Anthony Derezinski, Vice-Chair
Senator Ray Basham
Representative Mark Meadows
John Strand
George Ward
Judge William Whitbeck

Members Absent:

Senator Bruce Patterson
Representative Tonya Schuitmaker

Others Present:

Sean Bennett
Bob Ciaffone
Cliff Flood, State Bar of Michigan
Gary Gulliver, MLRC Executive Secretary
Susan Cavanagh, Office of the Legislative Council Administrator
Bruce Timmons, House Republican Policy Office

I. Convening of Meeting

Chairperson McLellan called the meeting to order at 12:00 noon. The clerk took the roll as each member and guest introduced themselves. A quorum was present.

II. Approval of June 24, 2009 Meeting Minutes

The Chair asked for a motion to approve the minutes of the last meeting. No corrections or amendments were offered.

Mr. Ward moved, supported by Senator Basham, to adopt the minutes of the June 24, 2009 Michigan Law Revision Commission meeting. The minutes were unanimously approved.

III. Michigan Economic Development Codification Project

Mr. Gulliver presented a status report of the activities regarding the Michigan Economic Development Codification Project. He, Representative Meadows, and members of Representative Meadow's staff met with the Legislative Service Bureau bill drafters and Professor Torielli was given direction to prepare final versions of the Articles she has worked on. She has since given a number of the Articles to the LSB bill drafter who has already drafted a couple of the articles and plans to bring forward some questions or points of importance for the Commission to have as the bill drafter continues his work. The Chair inquired if Representative Meadow's has taken the lead in making the bill requests. Representative Meadow's responded that the recommendation is to phase the requests so that the bill drafters are not overwhelmed given the size of the project. Mr. Gulliver then commented that the approach being used has been compared to the changes to the Natural Resources and Environmental Protection Act (NREPA) which was a very clean codification in terms of taking the original acts being repealed and replacing them with a part number. He believes our approach is a little bit closer to the Public Health Code wherein we have taken some parts of some acts and placed them in different parts of the Articles.

IV. State Appellate Court Decisions

Mr. Gulliver reviewed four court cases that urge legislative action and the Commission discussed each issue.

- In *Bearup v. General Motors Corporation*, which deals with product liability actions involving latent injuries, the Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action.
- In *U.S. Fid. Ins. & Guar. Co. v. Mich. Catastrophic Claims Ass'n.*, which deals with the disclosure rules for contributions to campaigns of Supreme Court Justices, the Commission does not recommend legislative action at this time taking note that the issue has been appropriately addressed by court rule. Senator Basham raised a question regarding the recusal of other judges and the disclosure of campaign relationships. Mr. Gulliver will look into this issue and survey other states on how they address this issue.
- In *People v. Anderson*, which deals with elements of the crime of torture, the Commission recommends immediate legislative review of this issue.

- In *People v. Dowdy*, which deals with the failure of the homeless to register a residence under the Sex Offenders Registration Act, the Commission recommends the enactment of legislation clarifying the responsibilities of sex offenders who are homeless while continuing to provide mechanisms to monitor the whereabouts of such persons.

V. Report on Transparency in Government

The report to the Michigan Law Revision Commission prepared by Scott Shewcraft was presented and discussed. The Commission accepts Mr. Shewcraft's report and intends to use it to address other aspects of the access to government issue. Mr. Gulliver will work with Mr. Shewcraft to revise the report into a publishable form.

VI. Potential New Projects

Debtor/Creditor Rights: Information regarding Michigan debtor-exemptions law submitted by Mr. Thomas Morris, Silverman & Morris, P.L.L.C., was presented and discussed. It was decided that the Commission does not have the capacity to review the issue at this time and that it would be more appropriate for the State Bar to look into and address the issues raised by Mr. Morris.

Anachronisms in State Law References to Certain Municipal Courts: Mr. Gulliver noted that there are still outdated references in statute to non-existent courts such as the Superior Court of Grand Rapids, the Recorders Court, the Common Pleas Court, Municipal Courts of Record, and the Justice Courts. Mr. Timmons offered additional information. The Chair suggested Mr. Gulliver and Mr. Timmons work together to bring forward their findings of outdated references to non-existent courts.

VII. MLRC Annual Report

The Chair reported that Mr. Gulliver will put the annual report together using the information that has been presented to the Commission and called for a vote to approve the Annual Report. **Mr. Ward moved, supported by Mr. Derezinski, to approve the 2009 Michigan Law Revision Commission Annual Report to be compiled into a final form by Mr. Gulliver. There were no objections and the motion passed unanimously.**

VIII. Other Business

Michigan's Participation in National Conference of Commissioners on Uniform State Law (NCCUSL): The Chair shared that only one of the nine members of the Michigan delegation to the National Conference of Commissioners on Uniform State Laws actually participates in their annual meeting. A discussion of Michigan's decrease in participation in meetings sponsored by national organizations followed. Because the Legislative Council act requires the review of the recommendations of the NCCUSL by the Law Revision Commission, the Chair asked that this issue be added as an item on the next meeting agenda.

International Law Licensure Issue: The Chair provided some background on the licensure of international lawyers and noted that he is working on getting something drafted to address this issue. He shared that Justice Corrigan has expressed an interest in this issue. If something is drafted, he hopes to invite Justice Corrigan to come before the Commission to present her perspective.

IX. Public Participation

The Chair asked if there were any public comments. Mr. Sean Bennett presented some issues that he hopes the Commission will consider for review. His statement is attached to these minutes. Mr. Bob Ciaffone offered comments on a Constitutional Convention.

X. Adjournment

Having no further business, Mr. McLellan moved, supported by Mr. Derezinski, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 2:00 p.m.

(Approved at the April 19, 2011 Michigan Law Revision Commission Meeting.)

Sean Bennett
734-239-3541
March 30, 2010

To: Michigan Law Revision Commission

Recommended Law Revisions

1. Government Immunities should be curtailed.
2. Official Immunities should be curtailed.
3. Official Misconduct Offense should be made statutory and include all public employees.
4. Mich. should enact a criminal civil rights statute.
5. Mich. should permit Punitive Damages.
6. Mich. Ethics Commission should broaden its coverage and include all Legislative Officials and employees.

Michigan should be a leader for the rule of law, not against it.

Govt. and Official immunities are inappropriate for Constitutional democracies. Note, *Owen v. City of Independence*, 445 US 622 at p. 651, 652. Officials should be insured or indemnified if necessary. The guilty official not the violated citizen needs to pay. Mich. should conform to the principle of Liberty and Justice for all, and not let the guilty official/employee who has betrayed his office and the public trust to get away with it. The injured citizen should not be left without compensation just because the employer is a government. Liability deters law-breaking. 91.1407(B) should be repealed.

The Scholarly Literature overwhelmingly supports curtailment of governmental immunity. The doctrine that the King can do no wrong" should have no place in Michigan law. Our Country was founded on the opposite belief. No person in Michigan should consider themselves so high as to be above the law. Those in public offices who break the laws need to know that they will be brought to justice. The Time is right to work on these issues

Thank you. Sincerely,

Sean Bennett