

*45th Annual Report
2012-2013*

*Michigan
Law
Revision
Commission*

Term Members:

RICHARD D. MCLELLAN,
Chairperson

ANTHONY DEREZINSKI,
Vice Chairperson

GEORGE E. WARD

WILLIAM C. WHITBECK

Legislative Members:

SENATOR VINCENT GREGORY

SENATOR TONYA SCHUITMAKER

REPRESENTATIVE KURT HEISE

REPRESENTATIVE ANDREW KANDREVAS

REPRESENTATIVE TOM LEONARD

REPRESENTATIVE MARK MEADOWS

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JANE O. WILENSKY, *Executive Secretary*



Michigan
Law Revision Commission

FORTY-FIFTH ANNUAL REPORT
2012-2013

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REPRESENTATIVE MARK MEADOWS (2012)

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**This report may be downloaded from the Commission’s Internet website,
<http://council.legislature.mi.gov/mlrc.html>**

MICHIGAN LAW REVISION COMMISSION
FORTY-FIFTH ANNUAL REPORT TO THE LEGISLATURE
FOR CALENDAR YEARS 2012 AND 2013

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission hereby presents its forty-fifth 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 Chair of the Commission. The Vice Chair is elected by the Commission.

Membership

The legislative members of the Commission during 2012 and 2013 were Senator Vincent Gregory of Southfield; Senator Tonya Schuitmaker of Lawton; Representative Kurt Heise of Plymouth and Representative Mark Meadows of East Lansing served as House members in 2012 and Representative Andrew Kandreas of Southgate and Representative Tom Leonard of DeWitt served as the House members during 2013. 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, George E. Ward, and William C. Whitbeck. Mr. McLellan served as Chairperson and Mr. Derezinski served as Vice Chairperson. Jane O. Wilensky served as Executive Secretary. Brief biographies of the Commission members and staff are located at the end of this report.

The Commission's Work in 2012 and 2013

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 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 outside 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 2012 and 2013

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 2012 or 2013:

- (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) Immunity for Court-Appointed Psychologists, 2000 Annual Report, page 84.
- (4) Pre-Dispute, Contractual Venue Selection Clauses, 1998 Annual Report, page 203.
- (5) Uniform Unincorporated Nonprofit Associations Act, 1997 Annual Report, page 144.
- (6) Prison Mailbox Rule, 1997 Annual Report, page 137.
- (7) Uniform Conflict of Laws—Limitations Act, 1997 Annual Report, page 151.
- (8) E-Mail and the Freedom of Information Act, 1997 Annual Report, page 133.
- (9) Uniform Putative and Unknown Fathers Act, 1994 Annual Report, page 117.
- (10) Motorcycles and the No-Fault Insurance Act, 1993 Annual Report, page 131.
- (11) Tortfeasor Contribution under MCL 600.2925a(5), 1992 Annual Report, page 21.

- (12) International Commercial Arbitration, 1991 Annual Report, page 31.
- (13) Uniform Contribution Among Joint Tortfeasors Act, 1991 Annual Report, page 19.
- (14) Uniform Statutory Rule Against Perpetuities, 1990 Annual Report, page 41.
- (15) Standardization of Condemnation Powers Provisions, 1989 Annual Report, page 15.
- (16) Consolidated Receivership Statute, 1988 Annual Report, page 72.

Current Study Agenda

Topics on the current study agenda of the Commission are:

- (1) Review of issues regarding licensure of in-house international lawyers.
- (2) Review of Michigan laws affecting transparency in governmental operations.
- (3) Review of emergency preparedness laws.
- (4) Study of sentencing guidelines and justice reinvestment.

The Commission continues to operate with its sole staff member, the part-time Executive Secretary. The current Executive Secretary of the Commission is Jane O. Wilensky, who was responsible for the publication of this report. By using faculty members at several Michigan law schools as consultants and law students as researchers, the Commission has been able to operate on 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 Office of 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, Chairperson
Anthony Derezinski, Vice Chairperson
George E. Ward
William C. Whitbeck
Senator Vincent Gregory
Senator Tonya Schuitmaker
Representative Kurt Heise
Representative Andrew Kandrevas
Representative Tom Leonard
Representative Mark Meadows
John G. Strand

A RESOLUTION HONORING STATE REPRESENTATIVE KURT HEISE

A resolution to commend and thank the Honorable Kurt Heise for his service to the Michigan Law Revision Commission.

Whereas, it is with great respect for his professional and personal commitment to the State of Michigan that we thank and honor State Representative Kurt Heise for his commitment to public service and for his service on the Michigan Law Revision Commission. A member of the Michigan Law Revision Commission since 2011, it is most appropriate to express our gratitude as he completes his service as a member of the Law Revision Commission; and

Whereas, he graduated from the University of Michigan and received his law degree and Masters of Law in Labor Law from Wayne State University Law School; and

Whereas, he served as City Attorney in Dearborn Heights and the City of Woodhaven; was the Director of the Wayne County Department of Environment where he played a significant role in the development of the State Watershed Alliance Act, and was a member of the Blue Ribbon Commission for Lake St. Clair, and co-chair of the Michigan Groundwater Conservation Advisory Council; and practiced law in Plymouth Township; and

Whereas, he is a consultant for Wayne State University's Urban Watershed program, an Adjunct Professor at Wayne State University, and a lecturer at the University of Michigan-Dearborn; and

Whereas, he was elected to the Michigan House of Representatives in 2010 and served as Chair of the Criminal Justice Committee, and as a member of the Judiciary, Elections and Ethics, and Transportation Committees; and

Whereas, his extensive experiences enriched his understanding of the legislative process and made him a valued contributor to the Commission's work.

Now, therefore, be it resolved by the members of the Michigan Law Revision Commission, that we extend our sincere thanks and appreciation to Representative Heise for his contributions to the State of Michigan as a lawmaker and as a member of the Michigan Law Revision Commission for the past two years.

A RESOLUTION HONORING STATE REPRESENTATIVE MARK MEADOWS

A resolution to commend and thank the Honorable Mark Meadows for his service to the Michigan Law Revision Commission.

Whereas, it is with great respect for his professional and personal commitment to the State of Michigan that we thank and honor State Representative Mark Meadows for his commitment to public service and for his service to the Michigan Law Revision Commission. A member of the Michigan Law Revision Commission since 2007, it is most appropriate to express our gratitude as he completes his service as a lawmaker and a member of the Law Revision Commission; and

Whereas, he graduated from Western Michigan University and received his law degree from the Detroit College of Law, now Michigan State University College of Law; and

Whereas, he served the State of Michigan and the City of East Lansing with honor and distinction, including his appointment as an Assistant Attorney General in 1975, in which he represented various state agencies until his retirement in 2002 at which time he became a shareholder in the Willingham Cote, P.C. law firm; and his service on the East Lansing City Council from 1995 until 2006, including his election as Mayor of East Lansing in 1997, 1999, 2001 and 2003; and

Whereas, he was elected to the Michigan House of Representatives in 2006 and served as Assistant Leader of the House, and Chair of the Judiciary Committee, and as a member of the Great Lakes and Environment, and Urban Policy committees; and

Whereas Representative Meadows' extensive experiences enriched his understanding of the legislative process and made him a valued contributor to the Commission's work.

Now, therefore, be it resolved by the members of the Michigan Law Revision Commission, that we extend our sincere thanks and appreciation to Representative Meadows for his contributions to the State of Michigan as a lawmaker and as a member of the Michigan Law Revision Commission for the past five years.

MICHIGAN LAW REVISION COMMISSION
PROPOSED LEGISLATION TO ENHANCE LICENSURE OF
INTERNATIONAL CORPORATE LAWYERS IN MICHIGAN

Summary

Michigan's laws and court rules on the licensure of attorneys do not reflect the needs of international corporations headquartered in Michigan. There is a need to enhance Michigan as a headquarters location for fortune 1,000 and international corporations by adopting 21st century rules for bar admission for lawyers working in-house in corporations, including international lawyers licensed in countries other than the United States.

The Michigan Law Revision Commission ("Commission") recommends to the Michigan Legislature the adoption of amendments to Michigan law to encourage expansion of global law departments of major Michigan-based global corporations by:

- Eliminating the 3 of 5 years rule for institutional lawyers who have been practicing in-house in Michigan.
- Encourage, rather than discourage (as under present law), in-house lawyers to commit their professional careers to Michigan even if they leave in-house practice and enter private practice.
- Create a membership category for foreign lawyers working in institutional settings if they are part of an integrated corporate legal team.

The Present Challenge for Michigan-Based Global Corporations

Michigan has a declining, but still important, number of global corporations with headquarters in Michigan. Each of these corporations maintains an Office of General Counsel that provides corporate legal services on a global basis.

But Michigan's licensing law for attorneys creates significant personnel and compliance issues for corporations with significant in-house legal staffs.

Global corporations transfer executives, including in-house counsel, continually to meet the business and personnel needs of their companies. Many of the senior lawyers subject to transfer have years of high-level legal experience. Some of them may have been educated in foreign countries and are licensed to practice law in that country. Unfortunately, Michigan laws and rules regulating the practice of law create disincentives to companies in bringing lawyers to Michigan to serve the global needs of their employers. For example:

- Lawyers acting as in-house counsel but licensed in non-U.S. jurisdictions have no recognized professional status in Michigan.

- In-house counsels licensed in other states go through unnecessary burdens to get limited recognition of their professional status.
- An in-house counsel who successfully practices law in Michigan may be required to leave the state if he or she chooses to pursue his or her legal career in private practice.
- A Michigan lawyer having knowledge that another lawyer licensed in a foreign jurisdiction and serving as in-house counsel of a global corporation may be required to inform the Attorney Grievance Commission on the grounds that the lawyer has knowledge that the foreign in-house counsel has committed a significant violation of the Rules of Professional Conduct. In such situations, the very limited special certificates for certain foreign lawyers are not available.
[Compare/[opinions/ethics/numbered_opinions/CI-602.html](#) CI-602I]

Background Research and Consultation

In preparing this Proposal, the Commission has consulted with corporate general counsels, the leadership of the State Bar of Michigan, the Chief Justice of Michigan, the Executive Office of the Governor, the Chairs of the Michigan House and Senate Judiciary Committees, the Deans of Michigan Law Schools and the Michigan Economic Development Corporation (“MEDC”).

SBM Executive Director Janet Welch and then-Justice Maura Corrigan met with the Commission Chair to explore the issue of encouraging more international law and lawyers in Michigan.

The Commission has substantially benefited in its consideration of this matter by a Report to the Commission entitled “Modernizing Michigan’s Law Regulating Licensure of Foreign and Domestic Attorneys” submitted by Troy Cumings, of the Warner Norcross & Judd LLP firm.

SBM Judicial Crossroads Task Force

In 2009, the State Bar of Michigan created a “Judicial Crossroads Task Force.” The Task Force looked broadly at reforming Michigan’s judicial system and created a Business Impact Committee as one of its four committees.

In 2009, representatives of the Law Revision Commission made a presentation to the Business Impact Committee on the issue of international lawyer licensing. The Business Impact Committee’s Interim Report included the following:

The task of the Business Impact Committee is to ... determine whether there are **procedural or structural changes that** would improve the system... that, if implemented, would serve to improve the judiciary while **strengthening those businesses and, in turn, our state’s economy.**

In its final Report, the Task Force addressed the international lawyer issue, including the following:

Michigan's court system is not positioned to help the state compete in a global economy, attracting the confidence of international business and the trust of newcomers to the state.

Most states, including Michigan, have not comprehensively addressed the full potential for promoting national and international business development within their jurisdictions through modernization and streamlining of their attorney licensing rules. **The red tape for licensure needs to be reduced to allow easier entry for out-of-state and out-of-country attorneys with significant experience who are seeking to practice law in Michigan on behalf of their business employers.** (Emphasis supplied.)

The Report included the Findings of the Business Impact Committee, including:

Rules for Licensing Attorneys From Other States and Countries

3. Allow attorneys licensed to practice law in Michigan under a special certificate to change employers without significant additional paperwork. Implementation must also facilitate the issuance of special certificates to non-Michigan attorneys who transfer to Michigan to hold in-house positions, while preserving the character and fitness verification necessary. Alternatively, and more dramatically, broadly open admission to the Bar to any lawyer working in Michigan for a corporation, provided the lawyer is already properly licensed in any other state of the United States and so long as the lawyer's practice is limited to work as an attorney on behalf of his or her employer. There could also be consideration of a requirement that the attorney and the attorney's employer maintain an appropriate level of liability insurance.
4. Streamline the "special legal consultant" process and create a *pro hac vice* rule for lawyers licensed in countries other than the United States who are working for firms.

The Commission's legislative proposal for international lawyers is substantially consistent with the general proposal made by the SBM Task Force and the findings of the Business Impact Committee.

MCL §600.901.

The Commission's decision to propose changes in the law to enhance Michigan as a headquarters location for Fortune 1,000 and international corporations is within the scope of the Commission's jurisdiction to, inter alia:

(d) **Recommend changes in the law** [the commission] considers necessary in order to modify or eliminate antiquated and inequitable rules of law, and **bring the law of this state into harmony with modern conditions.**

MCL §4.1403(1)

“Practice of Law”

Michigan law does not have an explicit definition of the “practice of law.” Most of the legal development comes out of cases focusing on the unauthorized practice of law (“UPL”). But there is no question that an in-house legal counsel to a corporation is practicing law.

Licensing of Attorneys Is a Legislative Matter and a Proper Subject for the Commission

While the State Bar and the Michigan Supreme Court have the primary regulatory role with respect to the licensure of attorneys, the scope of that licensure is initially a matter of statute enacted by the Legislature. The law creating a licensing system for lawyers reads:

The state bar of Michigan is a public body corporate, the membership of which consists of all persons who are now and hereafter licensed to practice law in this state. The members of the state bar of Michigan are officers of the courts of this state, and have the exclusive right to designate themselves as “attorneys and counselors,” or “attorneys at law,” or “lawyers.” No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto.

Principles That Apply to the Practice of Law

In developing its proposal, the Commission recognizes that the following basic principles apply to the licensing and regulation of the practice of law in Michigan:

- The practice of law is a licensed profession.
- The admission to practice law in the United States is primarily a state matter, but federal recognition of admission to federal courts takes precedence over the state.
- In Michigan, the framework for licensure of attorneys is established by the legislature in statute.

- In Michigan, the admission of attorneys is administered by judicial branch agencies as part of Michigan’s one court of justice.
- The Legislature has made exceptions to the requirement to be licensed to practice law before certain administrative agencies, e.g., Tax Tribunal, Workers Compensation.

Policy Theory Underlying the Licensure for the Practice of Law

Historically, government-imposed licensure of work has been based on the theory that government licensure is necessary to protect the public. Licensure provides the basis for imposing standards and barriers, including:

- Education requirements, including continuing education and training.
- Testing and examination of candidates for licensure.
- Residency requirements.
- Government-established ethics requirements and professional rules.
- Government price fixing.
- Enforcement against persons not licensed.

While consumer protection is one rationale, the protection of the economic interests of licensed groups through barriers to limit supply and raise the market value of the licensed service frequently becomes the primary goal as the licensed group takes over the process.

In the licensing of lawyers, residency requirements historically served as a barrier to entry. But, over time, with the changes in the economy and the practice of law, these barriers made little sense and were largely removed. In addition, there has been an evolution from state only to state and national regulation of lawyers, including:

- Law schools are largely regulated and accredited by a national private organization (American Bar Association Committee on Law Schools), not the states.
- The Bar Exam is now primarily focused on a multi-state questionnaire with each state setting its own passing level.
- Federal regulation of lawyers is expanding under federal law, e.g., Sarbanes Oxley.
- NAFTA and other international agreements are beginning to focus on harmonizing professional regulation on an international basis.

Geographic Restrictions Are Outdated

Michigan’s lawyer licensing and the business of law has reflected that anachronism of most geographic restrictions:

- The Michigan Legislature repealed the residency restriction to be admitted to the State Bar. Previously, Michigan had a strange requirement that a candidate to be a lawyer had to be a resident of “a state,” not Michigan, but any state. This requirement was used to prevent the licensure of Canadians who received joint law degrees from Michigan-based law firms.
- A small portion of the Michigan bar participates in multi-jurisdictional law firms and a few have established foreign offices.

- Michigan-based national and global companies have facilities and operations throughout the nation and in foreign countries.
- Global companies headquartered in Michigan have a need for lawyers with skills and experience throughout the world.
- Some Michigan-based companies have outsourced significant commodity legal work to foreign lawyers working outside the state.

General Agreement on Trade In Services (GATS)

The General Agreement on Trade in Services (GATS) is a treaty of the World Trade Organization (WTO) that entered into force in January 1995 as a result of the Uruguay Round negotiations. The treaty was created to extend the multilateral trading system to service sector, in the same way the General Agreement on Tariffs and Trade (GATT) provides such a system for merchandise trade.

Historically, public services such as health care, postal services, education, professional services, etc., were not included in international trade agreements. Such services were traditionally classed as domestic activities, difficult to trade across borders. Some services, for example educational services, have been "exported" for as long as universities have been open to international students. Other services are rapidly globalizing, including accounting, consulting and law. Even medical care is now subject to globalization through "medical tourism."

Recent technical and regulatory changes in Europe and other jurisdictions have opened additional services to private commercial participation and reduced barriers to entry. The development of information technologies and the Internet have expanded the range of internationally tradeable service products to include a range of commercial activities such as distance learning, engineering, architecture, advertising and freight forwarding.

Under U.S. law, many services are regulated at the state rather than national level. While the overall goal of the GATS is to remove barriers to trade, the U.S. national government has not attempted to impose liberalization on any sector.

With respect to legal services, the Commission's proposal represents a very modest step in recognizing the global nature of legal services and the benefit of voluntarily implementing the principles of GATS in Michigan.

Unique Issues Facing Global Companies Headquartered in Michigan

- Headquarters staffs of global corporations manage business throughout the world.
- The supply chains of most manufacturers involve suppliers from many countries and require the ability to understand multiple legal systems.
- Good management practice requires frequent transfers of personnel from the field to headquarters, including lawyers. [For an example, read the now-outdated book "Why GM Matters."]

- Global transactions require lawyers with transnational experience. Federal securities, corporate transactions and complex litigation all require a mix of lawyer skills and experience.
- Global legal staffs include lawyers licensed in foreign jurisdictions that work in teams with U.S.-licensed lawyers.

State Interests in Including Corporate Legal Staffs Under State Licensure

- Insofar as licensure is in the public interest, Michigan should maximize the number of corporate lawyers under its regulatory scheme.
- It is in Michigan’s economic interest to have global companies maintain headquarters in Michigan including their global legal staffs.
- The State should encourage, not discourage, corporate lawyers to remain in this state to practice law if they leave in-house corporate practice.

Commission’s Proposed Changes in Michigan Law to Encourage Corporate Legal Staffs

- Eliminate 3 of 5 years rule for institutional lawyers who have been practicing in-house in Michigan.
- Encourage, rather than discourage (as under present law), in-house lawyers to commit their professional careers to Michigan even if they leave in-house practice and enter private practice.
- Create a membership category (optional) for foreign lawyers working in institutional settings if they are part of an integrated corporate legal team.
 - Recognize as member of the bar.
 - Practice within institutional setting only; private practice not permitted (except under Special Certificate of Qualification, see below)
 - Collect dues.
 - Subject to bar ethics.
 - Disclosure requirements on letterhead, business cards, opinions, etc.
 - Permit participation in State Bar committees.

Summary of Present Michigan Lawyer Requirements and Categories

Regular Member of the Bar

- Be 18 years old or older.
- Possess “good moral character.”
- Have completed, before entering law school, at least 60 semester hours or 90 quarter hours toward an undergraduate degree from an accredited school or while attending an accredited junior or community college.

- Have obtained a JD from a reputable and qualified law school incorporated within the U.S. or its territories and the school must require a certain number of years of study to graduate. [The State Board of Bar Examiners has delegated this determination to the American Bar Association Committee on Law Schools.]
- Pass the bar exam with a score as determined by the Board of Bar Examiners.

Admission Without Examination; In-House Counsel

- To be admitted without taking the bar exam, in-house counsel must meet the following qualifications:
 - Intend in good faith to maintain an office in this state for the practice of law.
 - Intend to practice law in Michigan, or to be a full-time instructor in a reputable and qualified Michigan law school.
 - Submit the National Conference of Bar Examiners' Request for Preparation of a Character Report along with other material required by the Board.
 - Have, after being licensed and for 3 of the 5 years preceding the application, actively practiced law as a principal business or occupation in a jurisdiction where admitted....
 - The Supreme Court may, for good cause, increase the 5-year period. But such action requires a successful lawyer, actively practicing the most sophisticated law in Michigan to petition the Supreme Court for permission to remain in Michigan and continue his or her practice in a private practice setting.

Special Legal Consultant

- A lawyer who is not licensed to practice law in the United States, its territories, or the District of Columbia, may be eligible for admission to the State Bar of Michigan as a “special legal consultant.”
- A person licensed to practice as a special legal consultant must maintain active membership in the State Bar of Michigan and must discharge the responsibilities of state bar membership and is authorized to render professional legal advice: (1) on the law of the foreign country where the legal consultant is admitted to practice.
- A person not licensed to practice law in the United States who serves as in-house counsel to a global corporation in Michigan is not eligible to be a special legal consultant because the lawyer does not limit his work to the law of the foreign country where the legal consultant is admitted to practice. In fact, such foreign lawyers may be involved in complex legal issues involving multiple jurisdictions.

State International Policy

The Commission's Proposal is consistent with a body of statutes that recognizes the importance of international matters to Michigan, including:

- In MCL §447.103 the legislature identified the International Commerce Division as “the focal point of the state for international activity” and tasked it to, in part:
 - (q) Coordinate state activities when appropriate...when the international interests of the state can thus be advanced.
- MCL §447.153 authorizes the state government:
 - (a) To assist, promote, encourage, develop, and advance economic prosperity and employment throughout this state by fostering the expansion of exports of goods and services to foreign purchasers.
- MCL §125.1204 establishes an economic expansion program to include the following activities:
 - (d) Recommendations to the governor and the legislature, for the study and improvement of conditions, and for the elimination of restrictions, trade barriers and burdens imposed by law or otherwise, which may adversely affect or retard the legitimate development and expansion of industry, commerce or agriculture.
- MCL §125.1893 recently created the Michigan supply chain management development commission to, *inter alia*:
 - (2) ...create a road map for attracting, supporting, marketing, and growing the international trade, supply chain, and logistics industries by advising on the development and coordination of state transportation and economic development policies. Based upon an inventory of industry needs and state strengths and an economic multiplier impact analysis, the commission shall study and design programs to provide incentives and otherwise support these growth industries through workforce development, tax incentives, recruitment, marketing, and other activities.
- MCL §247.902 creates a transportation economic development fund:
 - [F]or the purposes of enhancing this state's ability to compete in an international economy, serving as a catalyst for the economic growth of this state, and to improve the quality of life in the rural and urban areas of this state.

PROPOSED STATUTORY AMENDMENTS

600.947 Transnational corporate attorneys in institutional setting; admission to bar, qualifications; scope of practice.

Sec. 947.

- (1) A “TRANSNATIONAL CORPORATE ATTORNEY” IS AN ATTORNEY LICENSED UNDER THIS SECTION, 600.947.
- (2) A TRANSNATIONAL CORPORATE ATTORNEY MEANS AN ATTORNEY WHO IS DULY LICENSED TO PRACTICE LAW IN THE COURT OF LAST RESORT OF ANY OTHER STATE OR TERRITORY OF THE UNITED STATES OF AMERICA OR THE DISTRICT OF COLUMBIA, OR IN A FOREIGN COUNTRY, AND WHO IS PRACTICING IN A SINGLE INSTITUTIONAL SETTING AS COUNSEL TO AN “INSTITUTIONAL ORGANIZATION” AS DEFINED IN THIS SECTION, LOCATED IN THIS STATE, AND APPLIES FOR ADMISSION TO THE BAR OF THIS STATE FOR A TRANSNATIONAL CORPORATE ATTORNEY LICENSE WITHOUT EXAMINATION.
- (3) AN ATTORNEY APPLYING FOR A TRANSNATIONAL CORPORATE ATTORNEY LICENSE IS REQUIRED TO PROVE TO THE SATISFACTION OF THE BOARD OF LAW EXAMINERS THAT:
 - (a) HE OR SHE IS A MEMBER IN GOOD STANDING OF THE BAR OF SUCH OTHER STATE, TERRITORY OR THE DISTRICT OF COLUMBIA; OR IS A MEMBER IN GOOD STANDING OF A RECOGNIZED LEGAL PROFESSION IN A FOREIGN COUNTRY, THE MEMBERS OF WHICH ARE ADMITTED TO PRACTICE AS ATTORNEYS OR COUNSELORS AT LAW OR THE EQUIVALENT AND ARE SUBJECT TO EFFECTIVE REGULATION AND DISCIPLINE BY A DULY CONSTITUTED PROFESSIONAL BODY OR A PUBLIC AUTHORITY.
 - (b) HE OR SHE HAS THE QUALIFICATIONS AS TO MORAL CHARACTER, AGE, AND FITNESS AND ABILITY REQUIRED FOR ADMISSION TO THE BAR OF THIS STATE;
 - (c) HE OR SHE IS EMPLOYED BY AN “ INSTITUTIONAL ORGANIZATION” AS DEFINED IN SECTION (6), OR HAS AN AGREEMENT TO BE EMPLOYED IN MICHIGAN BY AN “INSTITUTIONAL ORGANIZATION”;

- (d) HE OR SHE AGREES TO BE SUBJECT TO THE RULES REGULATING MEMBERS OF THE STATE BAR OF MICHIGAN.
- (4) A TRANSNATIONAL CORPORATE ATTORNEY MAY PROVIDE LEGAL SERVICES TO THE INSTITUTIONAL ORGANIZATION, AND MAY APPEAR BEFORE A COURT OR TRIBUNAL AS COUNSEL FOR THE INSTITUTIONAL ORGANIZATION, OFFICERS, EMPLOYEES OR CONTRACTORS OF THE INSTITUTIONAL ORGANIZATION; PROVIDED, HOWEVER, THAT SUCH SERVICES SHALL BE LIMITED TO PRACTICE ONLY WITH RESPECT TO MATTERS RELEVANT TO THE INSTITUTIONAL ORGANIZATION EMPLOYING THE TRANSNATIONAL CORPORATE ATTORNEY.
- (5) EXCEPT FOR VOLUNTARY PRO BONO SERVICES PROVIDED IN ACCORDANCE WITH APPLICABLE RULES, A TRANSNATIONAL CORPORATE ATTORNEY SHALL NOT:
- (a) REPRESENT ANY PERSON OTHER THAN HIS OR HER EMPLOYER BEFORE A COURT OR TRIBUNAL IN THIS STATE;
 - (b) OFFER OR PROVIDE LEGAL SERVICES TO ANY PERSON OTHER THAN HIS OR HER EMPLOYER;
 - (c) UNDERTAKE TO PROVIDE LEGAL SERVICES TO ANY PERSON NOT OTHERWISE AUTHORIZED BY HIS OR HER EMPLOYER; OR
 - (d) HOLD HIMSELF OR HERSELF OUT TO BE AUTHORIZED TO PROVIDE LEGAL SERVICES OR ADVICE TO ANY PERSON NOT OTHERWISE AUTHORIZED BY HIS OR HER EMPLOYER.
- (6) “INSTITUTIONAL ORGANIZATION” MEANS A CORPORATION, NON-PROFIT CORPORATION, LIMITED LIABILITY COMPANY OR OTHER BUSINESS ENTITY WITH OFFICES LOCATED IN THIS STATE, TOGETHER WITH ITS RESPECTIVE PARENTS, SUBSIDIARIES, AND AFFILIATES, THAT IS NOT ITSELF ENGAGED IN THE PRACTICE OF LAW OR THE RENDERING OF LEGAL SERVICES OUTSIDE SUCH ORGANIZATION, WHETHER FOR A FEE OR OTHERWISE, AND DOES NOT CHARGE OR COLLECT A FEE FOR THE REPRESENTATION OR ADVICE OTHER THAN TO ENTITIES COMPRISING SUCH ORGANIZATION FOR THE ACTIVITIES OF THE TRANSNATIONAL CORPORATE ATTORNEY.

600.947a Transnational corporate attorneys not in institutional setting; admission to bar; qualifications

Sec. 947a. (1) ANY PERSON WHO HAS BEEN DULY LICENSED AS A TRANSNATIONAL CORPORATE ATTORNEY, AND HAS PRACTICED IN A SINGLE INSTITUTIONAL SETTING AS COUNSEL TO AN “INSTITUTIONAL ORGANIZATION” AS DEFINED IN SECTION 947, FOR A MINIMUM OF FIVE YEARS, AND IS NO LONGER PRACTICING AS COUNSEL TO THAT INSTITUTIONAL ORGANIZATION, MAY APPLY FOR ADMISSION TO THE BAR OF THIS STATE WITHOUT EXAMINATION, AND SHALL BE REQUIRED TO PROVE TO THE SATISFACTION OF THE BOARD OF LAW EXAMINERS THAT:

- (a) HE OR SHE IS A MEMBER IN GOOD STANDING OF THE BAR OF THIS STATE AND SUCH OTHER STATE OR TERRITORY OF THE UNITED STATES OF AMERICA, OR THE DISTRICT OF COLUMBIA, OR FOREIGN COUNTRY IN WHICH HE OR SHE MAY BE LICENSED;
- (b) HE OR SHE HAS THE QUALIFICATIONS AS TO MORAL CHARACTER, AND FITNESS AND ABILITY REQUIRED FOR ADMISSION TO THE BAR OF THIS STATE; AND
- (c) HE OR SHE INTENDS IN GOOD FAITH TO EITHER MAINTAIN AN OFFICE IN THIS STATE FOR THE PRACTICE OF LAW, AND TO PRACTICE ACTIVELY IN THIS STATE, OR TO ENGAGE IN THE TEACHING OF LAW AS A FULL-TIME INSTRUCTOR IN A REPUTABLE AND QUALIFIED LAW SCHOOL DULY INCORPORATED UNDER THE LAWS OF THIS STATE.

A CALL FOR MORE MICHIGAN SUNSHINE: UPDATING THE OPEN MEETINGS ACT

by Jack Dempsey

Keeping Michigan law current is, as a certain business magnate might say, “a good thing.” Periodically ridding the Michigan Compiled Laws of antiquated statutes is no doubt a good practice. At least as good is the practice of amending laws that have vital impact on our society in order to take advantage of technological evolution. It is high time, for example, to update the Michigan Open Meetings Act (“Act”).¹

According to legislative documents available via the internet,² the 1976³ law, as its popular name denotes, was designed to foster open government and transparent administrative processes in Michigan: “The basic intent of the Open Meetings Act is to strengthen the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings.”⁴ A closed government is, generally speaking, anathema to the proper functioning of a democracy:

The ideal of a democratic government is too often thwarted by bureaucratic secrecy and unresponsive officials. Citizens frequently find it difficult to discover what decisions are being made and what facts lie behind those decisions.⁵

“Accordingly,” says this web resource, the Act “protects [citizens’] right to know what’s going on in government by opening to full public view the processes by which elected and nonelected officials make decisions on your behalf.”⁶

The Act fits within a body of public policy frequently referred to as “sunshine” statutes. The Michigan Supreme Court initially referred to the Act as such in *In re “Sunshine Law” 1976 PA 267*, 400 Mich 660; 255 NW2d 635 (1977). The federal government must similarly follow the “Government in the Sunshine Act,” 5 U.S.C. § 552b, requiring (with certain exceptions) “every portion of every meeting of an agency” to be open to public observation.⁷ According to one internet website:

State sunshine laws are the laws in each state that govern public access to governmental records. These laws are sometimes known as open records laws or public records laws, and are also collectively referred to as FOIA laws, after the federal Freedom of Information Act.⁸

¹ MCL 15.261 et seq.

² The reader will note the irony in this reference.

³ America’s bicentennial year.

⁴ <http://www.legislature.mi.gov/documents/publications/OpenMtgsFreedom.pdf>, p. 21.

⁵ *Id.* at second unnumbered page.

⁶ *Id.*

⁷ 5 U.S.C 552b(b).

⁸ See http://sunshinereview.org/index.php/State_sunshine_laws. Records, of course, are but one aspect of this doctrine.

One web resource from Michigan echoes the description: “The designation was an attempt to characterize government under the statute as government operating in the sunshine of public scrutiny rather than the shadows of bureaucratic society.”⁹ The Act falls within this “sunshine” sphere.

The courts have interpreted Michigan’s Act to encompass certain advances in technology that increase the feasibility of public attendance and observation. As one example, a hearing or meeting that is conducted by use of teleconferencing over speaker phones where all interested persons (i.e., the public) are allowed to attend has been held to comply with the requirements of the Act. *Goode v DSS*, 143 Mich App 756, 373 N.W.2d 210 (1985), *lv den*. The *Goode* court actually lauded the use of such “modern” technology:

Persons who wish to attend the hearing are allowed to do so and may attend at either location. The conference call set-up actually increases the accessibility of the public to attend, as now more than one location is open to the public. 143 Mich App at 759-760

Increasing accessibility to government is, beyond dispute, one of the major public benefits associated with technological change that has revolutionized the communications world over the past decade or so. One need only consider how elected officials use such tools to reach voters to grasp how government, when it wants to, will take advantage of such changes.

Several provisions of the Act, however, suggest limitations on the rights of citizens to make use of current technology to observe or attend meetings:

1. Section 3 authorizes a person to “tape-record, to videotape, to broadcast live on radio, and to telecast live on television” the body’s proceedings
2. Section 4 requires public notice of meetings via posting at the body’s principal office (and other geographical locations) and that “[c]able television may also be utilized for purposes of posting public notice”
3. Section 5 permits meetings in a residential dwelling under certain circumstances, so long as notice is “published as a display advertisement in a newspaper of general circulation” in the locale of the meeting
4. Section 6 authorizes providing of notices “to any newspaper published in the state and to any radio and television station located in the state, free of charge”
5. Section 9 mandates availability of minutes of body meetings with a presumption that they will be in paper format: “Minutes are public records open to public inspection, and a public body shall make the minutes available at the address designated” for “posted public notices”

When first embodied in the Act and later amended, the language of these provisions was likely viewed as keeping pace with changes in communications technology. Videotaping an agency meeting would not have been possible in the first half of the 20th century, before the advent of personal video equipment. Cable television first became available in this country in the 1940s and more widespread after the 1960s. Yet, the minimal requirement of providing notice to newspapers, radio, and television outlets fails to reflect the current state of online accessibility.

⁹ http://www.mml.org/events/annual_convention/cv08/pdf/rules_procedure.pdf

Much else has happened since the beginning of the 21st century. A communications medium commonly called “the internet” has spread ubiquitously across all spectrums of life in these United States. Government has, to some extent, taken advantage of the “world wide web” to modernize its operations, conduct commerce, and provide information to the public about its dealings.

It is also an indisputable phenomenon that Generation X-ers and Millenials (those born after the 1950s) are more attuned to what is termed “social media.” They are completely comfortable with – even dependent upon – the sharing and dissemination of information by use of internet-based social interaction tools. Current vehicles such as Facebook, Linked-In, Twitter, YouTube, and Reddit have become part of the fabric of their daily lives. A function available to all web users known as “really simple syndication” (“RSS” for short) enables readers to subscribe to timely updates from favored websites or links and to aggregate information feeds from various websites into one centralized communiqué. Such a practice used to require clipping services; today, technology much more complex than a scissors is employed as such a tool – and with better results.

Video recording and broadcast, which once required expensive camera equipment and access to cable television, can now be accomplished with a cell phone and internet video services. Inexpensive videoconferencing software has made remote communication more effective than ever, eliminating the barrier of distance. And more governmental bodies now maintain websites, providing the public with accessible channels to get information about meetings subject to the Open Meetings Act. Amending the Act to take advantage of these modern technologies will increase accessibility to meetings at little or no cost to the public body, clearly serving the goals of the Act.

While the Act currently requires that public bodies make the minutes of their meetings available for public inspection, there is no requirement for their proceedings to be recorded in video or audio form. Despite this, some Michigan localities now provide online video recordings or live streaming of their public meetings. Three of Michigan’s 10 most populous municipalities (Lansing, Livonia, and Detroit) have made an effort to provide regular streams of their city council meetings.¹⁰ Both the Michigan House and Senate also provide regular streams of their proceedings.¹¹ These recordings make public meetings accessible to those who are unable to physically attend, clearly in keeping with the goals of the Act.

Aside from its passage in 1976, the Act has been altered on only a few occasions. In 2004, language was added to safeguard certain personally identifiable information that should not be

¹⁰ See City of Detroit, Watch Council Sessions, <<http://www.detroitmi.gov/CityCouncil/WatchCouncilSessions.aspx>> (accessed December 1, 2013); City of Lansing, City TV <<http://citytv.pegcentral.com/>> (accessed December 1, 2013); City of Livonia, Video Communications Center, <<http://www.ci.livonia.mi.us/Departments/CableLivoniaTelevision/VideoCommunicationsCenter.aspx>> (accessed December 1, 2013).

¹¹ See Michigan House of Representatives, House TV <<http://house.michigan.gov/htv.asp>> (accessed December 1, 2013); Michigan Senate, Senate TV <<http://www.senate.michigan.gov/default.html>> (accessed December 1, 2013).

disclosed under federal law¹² and, in 2001, the Act was amended to include certain municipal corporations within the definition of a public body.¹³ The most recent amendment was in 2012, requiring public bodies that maintain a regularly updated website for meeting agendas or minutes to post notice of rescheduled regular or special meetings on the public body’s website.¹⁴

It’s high time for Michigan to update its Open Meetings Act to make full use of webpages and other technology, opening the processes of Michigan governmental units and administrative agencies to full public view.¹⁵ For example, live internet streaming broadcasts could be required, updating the use of “cable TV.” Broadcasting by the public itself should also be permitted, as the practice could increase public participation and enhance the service provided by franchised radio and television stations to keep up with the State departments that administer laws passed by the Legislature.

Expanding the permissible uses of technology should cost public bodies nothing in terms of budgets and, if anything, may actually reduce costs. A further benefit of using new technology is the capability it provides for observation on a delayed basis, enabling the citizenry to become informed at a time of their own choosing. Imagine a Michigan where any citizen could hop onto the web and watch – live or later – an administrative hearing. Such a process would open up to the public the backroom processes by which so much policy is made in a way much more in keeping with the 1976 origin of the Act.

State government recently has sought to adopt a business approach in its delivery of products and services. This is likely a “good thing” – but it requires greater administrative openness via today’s (and tomorrow’s) communication tools – and ought to become a high priority.

¹² See 2004 PA 305, amending MCL 15.269(4).

¹³ See 2001 PA 38, amending MCL 15.262(a).

¹⁴ See 2012 PA 528, amending MCL 15.265(4).

¹⁵ It should also be of interest that the penalties for violation of the Act have not been touched since original passage nearly a quarter-century ago.

RECOMMENDATIONS

I. Recording Public Meetings Using Any Non-Disruptive Technology

A. Background and Recommendation

In 1976, the drafters of the Open Meetings Act included the right of people attending public meetings to make recordings using the state-of-the-art technology of that day: tape-recording, videotape, live radio broadcasts, and live telecasts. Tape recorders are now a thing of the past; recordings are more likely to be made on digital recorders, cameras, or phones. Video recordings can now be easily saved or broadcast through the Internet, including through “streaming” technology. Web companies like YouTube, Ustream, and Livestream have developed these technologies into a sophisticated market for video content. These websites combine the ability to stream a video feed to the web in real time and to save that video for later viewing. Amending the OMA to permit recording by any non-disruptive means will encourage greater openness and modernize the OMA for years to come.

B. Proposed Amendment

Recording by the public and OMA-covered public body 15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; recording, broadcasting, and telecasting proceedings; rules and regulations; exclusion from meeting; exemptions.

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to record or broadcast the proceedings of a public body at a public meeting by any means which does not disrupt the meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. A public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

II. Posting Notice on the Public Body’s Website

A. Recommendation

In addition to other methods, notice of public meetings must be posted on the public body’s website, and notices must contain the web address of the public body. See MCL 15.264.

B. Proposed Amendment

15.264 Public notice of meetings generally; contents; places of posting.

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if such exists, its email address if such exists, and its address.

b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. If the public body directly or indirectly maintains an official Internet presence, a public notice must also be posted on a portion of the website that is fully accessible to the public. Cable television may also be utilized for purposes of posting public notice.

III. Posting Minutes on the Public Body's Website

A. Recommendation

In addition to other methods, minutes of public meetings must be posted on the public body's website. See MCL 15.269.

B. Proposed Amendment

15.269 Minutes.

Sec. 9 ... (2) Minutes are public records open to public inspection, and a public body shall make the minutes available at the address designated on posted public notices pursuant to section 4. If the public body directly or indirectly maintains an official Internet presence, it shall also make its minutes available on a portion of the website that is fully accessible to the public. The public body shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying.

IV. Providing Documents to the Public on the Public Body's Website

A. Recommendation

Minutes of meetings, records that are the subject of agenda items, and copies of any documents that must be provided to the public would have to be posted on the public body's website, and may be provided electronically. See MCL 15.266; MCL 15.269(2).

V. Consider the Circumstances in Which a Public Meeting May Be Conducted Using New Technologies such as Videoconferencing, Teleconferencing, and Webcasting.

A. Recommendation

Modern technologies can enhance public access to open meetings and further the goals of the Open Meetings Act. It is time to clarify the circumstances in which a public body may conduct a meeting using new technologies such as videoconferencing, teleconferencing, and webcasting.

VI. Increase the Act's Penalty Provisions

A. Recommendation

The Act provides that a public official who intentionally violates the Act is guilty of a misdemeanor, punishable by a fine of not more than \$1,000. A public official convicted of violating the Act a second time in the same term is guilty of a misdemeanor and is subject to a fine of not more than \$2,000, imprisonment for not more than one year, or both. The penalty provisions have not been amended since the Act was passed. The impact of the penalty provisions is not as great as it should be. Accordingly, the penalties should be increased. See MCL 15.272.

SURVEY OF OTHER STATES' STATUTES

All fifty states have implemented some form of an open meetings act, though there is substantial variation among the provisions. A survey of some of these states, with a focus on the level to which each state: (i) requires public bodies to record and broadcast their activities; and (ii) permits the use of new technologies, including teleconferencing, may help assess the direction Michigan should take.

Recording and broadcasting activities.

Nearly all states permit citizens to record public meetings by any means that does not disturb the meeting.¹

And some states, such as New York, for example, require that all meetings subject to their open meetings act be video recorded and posted on state websites.²

Use of New Technologies, including Teleconferencing and Videoconferencing

Many states permit public bodies to “meet” using new technologies, but impose a variety of conditions and requirements on its use.

New York permits meetings to be conducted by videoconference.³ However, public bodies in New York may not act through videoconference unless a majority of the members are “gathered together in the presence of each other or through the use of videoconferencing,” and all of the body’s members are given notice of the meeting.⁴

Ohio⁵ and Indiana⁶ prohibit public body members from remotely participating in OMA-covered meetings except where statutorily permitted on an agency-by-agency basis. Minutes of

¹ See, e.g., New York Public Officers Law, Article 7 § 103(d)(1)-(2); *McVey v. Carthage Twp. Trs.*, 2005- Ohio- 2869, ¶ 14 (4th Dist.) (Ohio appellate court affirms that it is impermissible to wholly prohibit the video recording of meetings subject to the Ohio OMA); Indiana IC 5-14-1.5-3 Sec. 3(a); Wis. Stat. § 19.90 (requiring reasonable accommodations for anyone wishing to record a meeting); Kan. Stat. Ann. § 75-4318(e); Cal. Gov’t Code § 11124.1(a)-(c) (providing that “any person ... shall have the right to record the proceedings with an audio or video recorder ... no state body shall prohibit or otherwise restrict the broadcast of its open and public meetings); Florida Attorney General Opinion, AGO 91-28 (1991) <<http://myfloridalegal.com/ago.nsf/Opinions/F4352A5280A644D4852562A80052BD79>> (accessed December 1, 2013).

² See New York, Executive Order No 3 (Spitzer). <http://www.governor.ny.gov/archive/spitzer/executiveorders/eo_3.html> (accessed December 1, 2013). Governor Spitzer’s 2007 executive order mandating the video recording and posting of all meetings subject to the New York open meetings act.

³ See N.Y. Public Officers Law, Article 7 §§ 102(1), 103(c).

⁴ New York State Committee on Open Government, OML-AO-4744 <<http://docs.dos.ny.gov/coog/otext/o4744.html>> (accessed December 1, 2013).

⁵ See Ohio Sunshine Laws, An Open Government Resource Manual 2013 <<http://www.ohioattorneygeneral.gov/OhioAttorneyGeneral/files/31/316d7da7-cbb3-47ac-8dba-2bb9d5bb7ab6.pdf>> (accessed December 1, 2013), p. 84. Citing to OH R.C. 3316.05(K), which permits certain school district officials to participate in meetings remotely.

⁶ See IC 5-14-1.5-3.5.

public meetings must be made available for public inspection. Neither state requires video or audio recordings of such meetings.⁷

A large number of states permit teleconferencing, provided that the public is permitted to listen to all meeting participants. Wisconsin permits meetings to be conducted via teleconference provided that the public and media can readily monitor the meeting and provided that the public can attend the meeting at one or more of its locations.⁸ Minnesota permits teleconferencing, but also requires that “to the extent practical, [the public body] shall allow a person to monitor the meeting electronically from a remote location.”⁹ Kansas similarly permits teleconferencing, but requires that the public be provided with a means of listening to the discussion.¹⁰ California permits teleconferencing provided at least one member of the public body is present at the location specified in the meeting notice, and the public is permitted to view the teleconference from all locations used by the public body members.¹¹ Each of these states treats teleconference meetings in the same manner as traditional meetings for the purpose of voting and conducting business.

Tennessee permits teleconferencing only when a physical quorum is present at the meeting location or in cases of necessity.¹² If a physical quorum cannot be assembled and the public body must take a timely action before a physical quorum can be assembled, teleconferencing may be used.¹³ The public must be able to hear all meeting participants from the primary meeting location.¹⁴ Tennessee law also makes special provision for the use of text-based Internet forums as a means of communication between public body members.¹⁵ However, any such discussions must be made available to the public, archives must be kept for a minimum of one year, and these discussions may not act as a substitute for decision-making through traditional meetings.¹⁶

Thus, a substantial number of states have chosen to permit public bodies to perform their duties through teleconferencing. Various conditions have been imposed to ensure that the public retains access to these meetings, including permitting the public to appear at the main meeting location where the audio of remote meeting participants is broadcast and permitting the public to listen in via telephone or internet. While some states have evinced skepticism of teleconferencing and permit its use only by certain agencies or in cases of necessity, the trend is to permit the use of new technologies to conduct meetings.

⁷ See OH R.C. 121.22(C); IC 5-14-1.5-4.

⁸ See Wisconsin Attorney General Opinion, 69 Op. Att’y Gen. 143 (1980) <http://www.wisfoic.org/agopinions/FOIC%20OAG_69_143_lindner.pdf> (accessed December 1, 2013). The [opinion notes that](#) teleconferencing is disfavored because it makes public comment more difficult.

⁹ See Minn. Stat. Ann. § 13D.015

¹⁰ See State of Kansas, ATTORNEY GENERAL OPINION NO. 2011- 023

<<http://ksag.washburnlaw.edu/opinions/2011/2011-023.pdf>> (accessed December 1, 2013).

¹¹ See Cal. Gov’t Code § 11123.

¹² See Tenn. Code Ann. § 8-44-108.

¹³ Id.

¹⁴ See Tenn. Code Ann. § 8-44-108; § 8-44-109.

¹⁵ See Tenn. Code Ann. § 8-44-109.

¹⁶ See Tenn. Code Ann. § 8-44-111.

REPORT ON RECENT COURT DECISIONS IDENTIFYING STATUTES FOR LEGISLATIVE ACTION AND RECOMMENDATIONS TO THE LEGISLATURE

As part of its statutory charge to examine recent judicial decisions for the purpose of discovering defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission undertook a review of Michigan Supreme Court and Court of Appeals decisions issued from January 1, 2012 through December 31, 2013, urging legislative action. That review identified eight decisions for which the Commission makes no recommendation. The decisions examined by the Commission are:

1. *People v. Walker*, 491 Mich. 931; 813 N.W.2d 750 (2012).
2. *People v. Carp*, 298 Mich. App. 472; 828 N.W.2d 685 (2012).
3. *In re Certified Question from U.S. Dist. Court for W Michigan*, 493 Mich 70; 825 NW2d 566 (2012).
4. *In re Talh*, 302 Mich. App. 594; 840 N.W.2d 398 (2013).
5. *Price v. High Pointe Oil Co., Inc.*, 493 Mich. 238; 828 N.W.2d 660 (2013).
6. *Fisher Sand and Gravel Co. v. Neale A. Sweebe, Inc.*, 494 Mich. 543; 837 N.W.2d 244 (2013).
7. *People v. Hardy*, 494 Mich. 430; 835 N.W.2d 340 (2013).
8. *Titan Ins. Co. v. American Country Ins. Co.*, 495 Mich. 896; 838 N.W.2d 887 (2013).

1. Spousal Access to Email Accounts

A. Background

The Fraudulent Access to Computers, Computer Systems, and Computer Networks Act, MCL 752.795 *et seq.* prohibits a person from intentionally and without adequate authorization accessing (or causing access to be made to) a computer, computer program, computer system, or computer network to acquire, alter, damage, delete, or destroy property or otherwise use the service of a computer, computer program, computer system, or computer network.

In *People v. Walker*, No. 304593, 2011 WL 6786935 (Mich App December 27, 2011), the Court of Appeals held that defendant violated MCL 752.795 by accessing his wife's email account without her permission by guessing the password to the account, and using that access to give copies of messages to a third party.

The Supreme Court denied Defendant's application for leave to appeal. *People v. Walker*, 491 Mich. 931 (2012). Justice Markman, joined by Justice Young, concurred but wrote separately, stating that while the defendant's "alleged actions unquestionably fell within the range of conduct proscribed by MCL 752.795," he shared Justice Kelly's concern that the statute potentially covers an extremely broad range of conduct. Justice Markman thus urged the Legislature to consider whether it intends to criminalize the full range of conduct to which the statute potentially extends.

Justice Marilyn Kelly would grant leave to appeal, noting the significant criminal penalties carried by the statute, the broad range of arguably innocuous conduct that the statute criminalizes, and that the instant case could be the first time MCL 752.795 had been used to convict a defendant of accessing a spouse's email account without permission. Justice Kelly referenced the introduction of HB 4532 of 2011, which would legalize the defendant's conduct, and called on the Legislature to further consider the issue.

B. Question Presented

Should MCL 752.795 be amended to clarify the circumstances under which a person's unauthorized access of an email account is legally prohibited?

C. Recommendation

The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action. The Commission notes that HB 4532 was referred to committee and has not come to a vote by either the House or Senate.

2. Mandatory Life Imprisonment of Juvenile Offenders

A. Background

In 2012, the United States Supreme Court held that sentencing juvenile defendants to mandatory life imprisonment without the possibility of parole was a violation of the Eighth Amendment's prohibition on cruel and unusual punishment. *See Miller v. Alabama* 132 S. Ct. 2455 (2012). Judges and juries must consider mitigating circumstances, including the defendant's youth and the corresponding possibility of rehabilitation, before such a sentence is imposed.

In *People v. Carp*, 298 Mich App 472 (2012) the Michigan Court of Appeals held that *Miller* did not apply retroactively, and thus denied the appeal of a juvenile defendant for reconsideration of his life imprisonment. However, noting that Michigan's trial courts require guidance in order to ensure a consistent application of *Miller*, the court "urge[d] our Legislature to address with all possible expediency the issues encompassed by and resulting from *Miller* that necessitate the revision of our current statutory sentencing scheme for juveniles." *Id.* at 537. The plaintiff in *Carp* appealed to the Michigan Supreme Court, which granted the motion for leave to appeal. *People v. Carp*, 838 N.W.2d 873 (Mich. 2013).

B. Question Presented

How should Michigan's sentencing laws be amended to implement the *Miller* decision? Should it apply retroactively, and if so, by what means should it affect those already serving sentences and those who are eligible for parole?

C. Recommendation

The Commission notes that 2014 PA 22 was enacted, which modifies Michigan's sentencing laws in response to the *Miller* decision, and that the Michigan Supreme Court issued its ruling in this case on July 8, 2014.

3. Inheritance Rights of Children Conceived After the Intestate Death of a Biological Parent

A. Background

Under Michigan intestacy laws, the right to intestate inheritance vests at the time of a decedent's death. Modern fertilization techniques have introduced the possibility of saving sperm and eggs outside of the body for an extended period of time, such that a child can be conceived after the death of one or both biological parents.

In 2012, the Michigan Supreme Court answered a certified question from a federal district court asking whether, under Michigan's intestacy laws, MCL 700.2101 *et. seq.*, children conceived after their father's death are eligible to inherit Social Security survivor's benefits as the decedent's children. *In re Certified Question from U.S. Dist. Court for W Michigan*, 493 Mich 70 (2012). The Supreme Court held that a

claimant is not a surviving descendant (and thus has no claim to intestate inheritance) unless the claimant is alive at the time of the decedent's death. Accordingly, the Court found that the plaintiffs were not the decedent's children for the purpose of intestate succession, and thus could not inherit from the decedent.

Justice Marilyn Kelly concurred but wrote separately to state that she found the result "lamentable." Justice Kelly noted that while Michigan's intestacy law does not make provision for children conceived after the death of a parent, the Legislature does not appear to have considered this situation. Stating that the situation is likely to reoccur, Justice Kelly urged the Legislature to "keep our laws abreast of our times" and to specifically address the issue presented in the case.

B. Question Presented

Should the Legislature amend Michigan's intestacy laws to permit children, not yet conceived at the time of their parent's death, to claim inheritance from their intestate parent?

C. Recommendation

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

4. Child Support Rights and Obligations and Imprisonment

A. Background

Under MCL 710.51(6), the parental rights of a putative father can be terminated if, despite having the means to do so, that parent fails to provide regular and substantial support for the child, or fails to comply with a support order for a period of two or more years. *In re Talh*, a biological father acknowledged paternity on April 2, 2001. The father failed to comply with the terms of a child-support order, developing arrears of more than \$5,000 by June 2010. In May 2010, the father was convicted of unarmed robbery and sentenced to between 4 and 30 years' imprisonment. Because of his inability to pay, the support order was modified on June 9, 2010, reducing the payments to zero dollars per month.

The child's biological mother subsequently remarried, and on May 4, 2012, petitioned for the termination of the biological father's parental rights, and for stepparent adoption. The lower court found that the biological father had substantially complied with the terms of his support order for 23 months since the time of modification, which required no payments from him. Because the biological father had not failed to substantially comply with that order for two years or more immediately preceding the filing of the termination petition, the lower court found that his parental rights could not be terminated.

In a *per curiam* opinion, the Court of Appeals affirmed the decision of the lower court, but "urge[d] the Legislature to revisit MCL 710.51(6) to address a situation such as the present one. It seems ill-advised indeed for a person to fail to provide child support, accrue arrearages, and then fail to fall within the parameters of the statute because of criminal actions leading to his or her incarceration and a resultant modification (to zero) of an earlier child-support order."

B. Question Presented

Whether a parent who fails to comply with a child-support order, is later sentenced to a term of imprisonment, and who thereby is required to pay nothing towards the support of the child, should be considered to be in substantial compliance with the terms of that order for the purpose of terminating parental rights under MCL 710.51(6)?

C. Recommendation

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

5. Non-Economic Damages for Negligent Injury to Property

A. Background

Under Michigan common law, the measure of relief for property damage in tort is the replacement of the affected property or repair of the damage. In *Price v. High Pointe Oil Co., Inc.*, the Supreme Court heard an appeal involving a plaintiff who suffered damage to her home when several hundred gallons of fuel were negligently pumped into her basement, flooding the home and destroying her belongings. The circuit and appellate courts held that the plaintiff was permitted to recover non-economic damages, including emotional distress, that stemmed from the defendants' negligence.

The Court held that the remedy for injury to real property caused by negligence is the difference in the market value before and after the injury, or the cost of repairs. After reviewing a series of historical decisions, the court found that non-economic damages are not recoverable for the negligent destruction of real or personal property.

The Court then discussed whether, as the principal steward of the common law, it should alter the common law to permit the recovery of non-economic damages for negligently inflicted damage to property. The Court thus evaluated the merits of the current rule. It noted that subjective valuation of property is generally greater than market value; that non-economic damages are difficult to measure; that non-economic damages are subjective and would thus result in disparate recoveries; and that prohibiting non-economic recovery reduces uncertainty regarding the potential exposure faced by businesses that come into regular contact with real property. However, the Court concluded by noting that the common law may be improved, and stated that “[w]e therefore leave it to the Legislature, if it chooses to do so at some future time, to more carefully balance the benefits of the current rule with what that body might come to view as its shortcomings.”

B. Question Presented

Whether the common law rule that non-economic damages are not recoverable for negligent damage to property should be modified by statute?

C. Recommendation

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

6. Treatment of Claims Arising Out of Contractual Account Disputes

A. Background

Under Michigan contract law, claims arising out of contracts for the sale of goods must be brought within four years, MCL 440.2725(1), whereas claims arising out of non-goods contracts must be brought within six years, MCL 600.5807(8).

In *Fisher Sand and Gravel Co. v. Neale A. Sweebe, Inc.*, the Supreme Court held that regardless of the nature of the underlying contract, if contracting parties agree that a sum certain is due, either party may sue upon that independent promise. By establishing a “claim on an account stated,” the parties effectively create a separate contract. Claims arising out of this promise are subject to the six-year statute of limitations, even if the underlying contract was for the sale of goods.

The Court stated that the Michigan Legislature has treated these claims inconsistently, alternately including and excluding “open account claims” and “claims on an account” in statutory definitions without apparent justification. The Court added that “[t]o the extent the Legislature desires to clarify this area of the law, it might consider revisiting the statutory framework that corresponds with these collection actions.”

B. Question Presented

Should the Legislature amend those statutes applying to claims on an account stated and open account claims to eliminate inconsistent treatment of such claims?

C. Recommendation

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

7. Clarifying the Aggregated Physical Abuse Variable in the Sentencing Guidelines

A. Background

Michigan sentencing guidelines provide that a criminal defendant may be given an enhanced sentence if the defendant treated a victim with “sadism, torture, or excessive brutality, or conduct designed to substantially increase the fear and anxiety a victim suffered,” MCL 777.37(1)(a).

In *People v. Hardy*, the Court considered two consolidated cases appealing the application of this statute, in which both defendants argued that their conduct during robberies did not rise to the level necessary to trigger heightened sentencing under MCL 777.37(1)(a).

The Court held that in applying this statute, lower courts should determine the baseline level of fear and anxiety that a given crime would inflict. Courts should thus consider the severity of the crime, the elements of the offense, and the ways in which those elements can be satisfied. Next, the court should consider whether the defendant’s conduct went substantially beyond that baseline level.

Justice McCormack concurred with the decision but wrote separately “to encourage the Legislature to amend MCL 777.37, offense variable (OV) 7, to define, or more clearly articulate its intent in including, the language ‘conduct designed to substantially increase the fear and anxiety a victim suffered during the offense.’” Justice McCormack cited a “troubling” potential for subjectivity in lower court interpretations of the statute, particularly with regard to the words “conduct designed.”

B. Question Presented

Should the Legislature reevaluate the language of MCL 777.37(1)(a) to clarify the meaning of “conduct designed to substantially increase the fear and anxiety of a victim suffered during the offense”?

C. Recommendation

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

8. Claim Adjustment and Reimbursement Between Insurance Carriers Under No-Fault Insurance

A. Background

In *Titan Ins. Co. v. American Country Ins. Co.*, the Supreme Court denied leave to appeal from an unpublished Court of Appeals decision dealing with reimbursement between no-fault insurance carriers. Justice Markman concurred with this decision, but wrote separately to “highlight this case for the possible attention of the Legislature.”

In this case, a claimant was involved in two car crashes, each of which was assigned to the same insurance carrier by the Michigan Assigned Claims Facility. *See* 2013 WL 1223310. The claimant sued the plaintiff insurance carrier to acquire additional benefits, which resulted in two settlements. The first accident caused injury to the claimant, while the second accident did not. Despite this, the first accident claim was settled for \$10,000, and the second accident claim was settled for \$25,000. The plaintiff insurance carrier then sued the defendant insurance carrier under MCL 500.3172 of the Insurance Code for reimbursement of the second claim.

MCL 500.3172(1) provides that insurers who are assigned claims are entitled to reimbursement from defaulting insurers to the extent of their liability, and are entitled to adjust the value of claims. In his concurrence, Justice Markman noted that the law surrounding insurance reimbursement promotes a form of “gamesmanship.” An insurance carrier that knows it can recoup its expenses from another insurer is incentivized to adjust claims so that the greater portion of a claim can be recovered from the other insurance carrier, even if this adjustment does not correspond to the harm suffered by the claimant.

Justice Markman further stated that the law currently “leaves defendant[s] without any effective means of ensuring that its liability arose from the accident that the defendant is *obligated* to cover and not from other accidents that the defendant is *not* obligated to cover.”

B. Question Presented

Should the Legislature reconsider these provisions of the Insurance Code to prevent the unfairness between insurers that may result in circumstances such as those found in this case?

C. Recommendation

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

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 Chair 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.

McLellan is a practicing attorney and business consultant in Lansing, Michigan. In 2007, Mr. McLellan retired as a lawyer with the law firm of Dykema Gossett PLLC where he served as the Member-in-Charge of the firm's Lansing Office and as the leader of the firm's Government Policy Department.

He is a member of the Board of Directors of ITC Holdings (NYSE: ITC) and is an Independent Trustee of the JNL Series Trust, a \$50 billion variable annuity fund managed by the Jackson National Life Insurance Company. He also serves as Chairman of Africa Continental Holdings, LLC.

By appointment of the Supreme Court, Mr. McLellan served two terms as a Member of the Board of Commissioners of the State Bar of Michigan.

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

Following the 1990 Michigan elections, Mr. 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 was also 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 ten 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 a member of the Board of Trustees of Michigan State University Detroit 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 also serves as an adjunct professor in MSU's College of Communications Arts.

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 Oxford 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 the Crown America Life Insurance Company. He also served as Chairman of the Michigan Competitive Telecommunications Providers Association and as 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 a Councilmember of the Ann Arbor City Council to which he was elected in November of 2008. He is also an Instructor at The University of Michigan School of Education where he teaches courses in various aspects of Education Law. He is the former Director of Government Relations for the Michigan Association of School Boards from which he retired in 2008. He also previously served 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, served on the Committee of Visitors of the University of Michigan Law School, and was a member of the Council of the Center for the Education of Women in Ann Arbor. He also serves on the Foundation Board of the Hospice of 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 American Legion Department of Michigan, and the Vietnam Veterans of America.

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. Earlier in his career, he clerked for Justice Theodore Souris of the Michigan Supreme Court and for 20 years was in private civil practice in the City of Detroit. In 2001, Mr. Ward returned to private practice in Wayne County.

He is a graduate of the University of Detroit, and the University of Michigan Law School. He and his wife Margaret, parents of five adult children, live in Canton.

Mr. Ward is an Adjunct Professor at Michigan State College of Law and Wayne State University Law School, and a Lecturer II at University of Michigan – Dearborn (political science and criminal justice). He is Board Chair of Catholic Social Services of Wayne County; past President of the Incorporated Society of Irish American Lawyers; a former President of the Board of Control of Saginaw Valley State University; a former commissioner of the State Bar of Michigan; the former President of the Wayne County Home Rule Charter Commission; the former Executive Secretary of the 1971-1972 City of Detroit Charter Revision Commission; and a former member of the Board of Directors of Wayne Center.

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 J.D. 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, and 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.

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 reelected to six-year terms in 1998, 2004, and 2010. His current term expires January 1, 2017. 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 Chief Judge of the Michigan Court of Appeals three times and he served in that position from January 1, 2002 to December 31, 2007.

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.

Judge Whitbeck is the author of a work of fiction, *To Account for Murder*, a courtroom drama set in Michigan in 1945-1946.

VINCENT GREGORY

State Senator Vincent Gregory is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2011. In 2008, he was elected to State Representative for the 35th House District and currently is serving his first term as the State Senator for the 14th District. Senator Gregory is a member of the Senate Appropriations Committee and serves on the Appropriations Subcommittees of the Departments of Community Health, Human Services and State Police and Military Affairs. Senator Gregory also serves as the Minority Vice-Chair on the Senate Families, Seniors and Human Services Committee and as the Minority Vice-Chair on the Veterans, Military Affairs and Homeland Security Committee. Senator Gregory holds the positions of the Democratic Whip in the Senate Democratic Caucus and the 2nd Vice Chair of the Michigan Legislative Black Caucus.

In 1973, Senator Gregory joined the Wayne County Sheriff Department, where he attained the rank of Corporal and then Detective. After ten years with the Department, he ran for and was elected as Vice President of the Wayne County Sheriff's Local 502 SEIU, AFL-CIO. In 1993, he ran for President of the local and won that election, where he served as their President for the next seven years. In January 2003, Senator Gregory retired from Wayne County service.

In 1998, Senator Gregory ran successfully in a special election for Oakland County Commissioner of the 21st District. For the next ten years, he maintained that position. He served on numerous committees during his tenure with the Commission, which included General Government, Public Service, Planning and Building, Parks and Recreation, Vice Chair of the Airport Committee and the Democratic Commission Caucus, and Minority Vice Chair of the Finance and Personnel Committees.

Senator Gregory is married to his wife Yvonne and has six grown children (Lawrence, Troi, Vanessa, Vincent Jr., Cortney and Kristen). They also have six grandchildren (Lawrence "Jay", Kelsey, Elijah, Caiden, Eric and Caleb).

KURT HEISE

State Representative Kurt Heise is a legislative member of the Michigan Law Revision Commission and served on the Commission from January 2011 to December 2012. He was first elected in November 2010 to the Michigan House to represent residents in the City of Northville, Northville Township, the City of Plymouth, Plymouth Township, and the eastern area of Canton Township.

He graduated from Dearborn Public Schools and then attended the University of Michigan where he earned a bachelor's degree with distinction in 1988. He then earned a law degree and a Masters of Law in Labor Law from Wayne State University Law School.

Representative Heise began his career as a city attorney in Dearborn Heights and the City of Woodhaven, followed by serving as mayor's deputy in Dearborn Heights. From 2003 to 2009, he served as Director of the Wayne County Department of Environment where he played a significant role in the development of the State Watershed Alliance Act, was a member of the Blue Ribbon Commission for Lake St. Clair, and was appointed by the Speaker of the House to serve as co-chair of the Michigan Groundwater Conservation Advisory Council. He then returned to practicing law in Plymouth Township, working with Plymouth and Canton Township's legal departments, and he worked as an environmental and energy consultant. Representative Heise is also a consultant for Wayne State University's Urban Watershed program, is an Adjunct Professor at Wayne State University and frequent lecturer at the University of Michigan-Dearborn. He is a member of the State Bar of Michigan.

Representative Heise is a lifetime resident of Wayne County. He and his wife Catherine live in western Wayne County with their two children—Katie and Claire. He serves on the advisory board for his church, and volunteers for civic organizations including the Salvation Army and Plymouth Goodfellows.

ANDREW KANDREVAS

State Representative Kandrevas is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2013. He was first elected to the Michigan House in 2008.

Before becoming a State Representative, Representative Kandrevas served as Council President for the City of Southgate in addition to running his own law office. He also served on Southgate's Planning Commission prior to being elected to the City Council.

During his legal career, Representative Kandrevas worked as a member of the Wayne County Prosecutor's Office; assistant city attorney and prosecutor for the City of Lincoln Park; and staff attorney to Detroit City Councilwoman Sheila Cockrel. In 2006, he opened his own law office in the same Southgate building where his father, 28th District Court Judge James Kandrevas, had practiced law throughout Representative Kandrevas' childhood.

He graduated from Southgate Aquinas High School in 1993 and went on to receive his bachelor's degree in political science from the University of Michigan in 1997. He earned a degree from Wayne State University Law School in 2001.

Representative Kandrevas is a resident of Southgate, where he was raised and has lived much of his life. He is past-president of the Southgate Democratic Club and the Michigan Hellenic Bar Association and a member of the Southgate Kiwanis.

TOM LEONARD

State Representative Tom Leonard is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2013. He was first elected to serve the 93rd District in the Michigan House of Representatives in November 2012. The 93rd District encompasses Clinton County and portions of Gratiot County including the city of Ithaca and the townships of Sumner, Arcada, New Haven, North Shade, Newark, Fulton, Washington, North Star, Elba, Hamilton, Lafayette and Wheeler.

Representative Leonard graduated with a bachelor's degree in History and Spanish from the University of Michigan and then went on to earn his law degree at Michigan State University.

Prior to being a state representative, he served as an Assistant Attorney General for the State of Michigan and was a prosecutor for Genesee County, where he was assigned to the Special Crimes Division.

Representative Leonard is the former chair of the DeWitt Township Public Safety Committee and is an associate member of the Clinton County Farm Bureau. He is also an active member of the DeWitt Lion's Club and the St. John's Kiwanis Club.

Tom and his wife Jenell live in DeWitt Township.

MARK MEADOWS

State Representative Meadows is a legislative member of the Michigan Law Revision Commission and served on the Commission from January 2007 to December 2012. He was elected to the state House in 2006 and served as Assistant Leader of the House and served on the following Committees: (Chair) Judiciary; Great Lakes and Environment; and Urban Policy.

Representative Meadows earned an undergraduate degree at Western Michigan University and his law degree at Michigan State University, formerly Detroit College of Law.

Representative Meadows was appointed as an assistant attorney general in 1975 and was assigned to represent various state agencies until his retirement in 2002 at which time he became a shareholder in Willingham Cote' P.C. Representative Meadows was elected as Mayor of East Lansing in 1997 and re-elected in 1999, 2001 and 2003; his final term expired in November 2005. Representative Meadows also served as an East Lansing City Council member from 1995-2006.

Representative Meadows and his wife Pam are the parents of four adult children and the grandparents of four.

TONYA SCHUITMAKER

State Senator Tonya Schuitmaker is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2009. She was elected to the Michigan House in November 2004 and was elected to the Michigan Senate in November 2010, following three terms in the House of Representatives.

Ms. Schuitmaker is a 1986 graduate of Mattawan Consolidated Schools. She holds a B.A. in business from Michigan State University and graduated Cum Laude from the Detroit College of Law in 1993. Before being elected to the Michigan House, Ms. Schuitmaker was a partner in the law firm of Schuitmaker, Cooper and Schuitmaker. She began practicing law in 1993 and concentrated in family, estate, business and governmental law.

Senator Tonya Schuitmaker has made issues such as child protection, job growth and retention, the justice system, agriculture and tourism some of her top legislative priorities. In addition to her role as President Pro Tempore of the Michigan Senate, Senator Schuitmaker serves on the Appropriations Committee and is Chair of the Higher Education Subcommittee, Vice Chair of the Community Colleges, Capital Outlay and Judiciary Subcommittees. She also serves as Vice Chair of the Judiciary Committee and is a member of the Committee on Energy and Technology, and Committee on Health Policy.

Senator Schuitmaker has been actively involved in her community. She has served on the State of Michigan Board of Medicine and Intercare Community Health Network and on the Van Buren Community Mental Health Board. In addition to her involvement in health-care causes, Senator Schuitmaker serves as a member of the Van Buren County Community Corrections Advisory Board. Furthermore, she is involved in several organizations devoted to the arts and nature conservancy including the Kalamazoo Institute of the Arts, the Southwest Michigan Land Conservancy, and the Kalamazoo Nature Center. She is also a member of the Paw Paw Rotary, the Paw Paw Optimist Club, Daughters of the American Revolution, the Kalamazoo Bar Association and the Farm Bureau in addition to other local, state and national groups.

Senator Schuitmaker and her husband Steve live in Lawton with their two children, Jordan and Savina.

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, Legislative Corrections Ombudsman, Joint Committee on Administrative Rules (staff), Michigan Law Revision Commission, State Drug Treatment Court Advisory Committee, and the Michigan 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 to October 1993. He had previously served six terms as a state legislator beginning in 1981, serving in a leadership position and as Vice Chair 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 and his wife Cathy live in East Lansing, Michigan, and have two sons, Michael and Matthew.

JANE O. WILENSKY

Jane O. Wilensky was an Assistant Attorney General from 1984 until 2008, serving in the Finance and Development and Education and Social Services Divisions. From 1997 until 2008, she was the First Assistant in the Education and Social Services Division. Prior to her appointment as an Assistant Attorney General, she worked in the Office of Strategy and Forecasting in the Department of Commerce and the Office of Regulatory and Consumer Affairs in the Michigan Public Service Commission. She was a law clerk for the Hon. John W. Fitzgerald of the Michigan Supreme Court. In 2011, she was appointed Executive Secretary of the Commission.

Ms. Wilensky is a graduate of Boston University's School of Public Communications and received her J.D. *cum laude* from the Thomas M. Cooley Law School.