

# Final Minutes

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## Michigan Law Revision Commission Meeting

Thursday, October 18, 2012 ▪ 11:30 a.m.  
Legislative Council Conference Room ▪ 3 Boji Tower  
124 W. Allegan ▪ Lansing, Michigan

### Members Present:

Richard McLellan, Chair  
Tony Derezinski, Vice-Chair  
John Strand  
George Ward  
Judge William Whitbeck

### Members Absent and Excused:

Senator Vincent Gregory  
Representative Kurt Heise  
Representative Mark Meadows  
Senator Tonya Schuitmaker

### Others Present:

Sean Bennett  
Susan Cavanagh  
Bob Ciaffone  
Cliff Flood  
Matt Mora  
Bruce Timmons  
Jane Wilensky, MLRC Executive Secretary

### I. Convening of Meeting

Chairperson McLellan called the meeting to order at 11:45 a.m.

### II. Roll Call

The clerk took the roll as the members of the Commission and the audience introduced themselves. A quorum was present and absent members were excused.

### III. Approval of June 21, 2012 Meeting Minutes

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

**Mr. Strand moved, supported by Mr. Derezinski, to adopt the minutes of the June 21, 2012 Michigan Law Revision Commission meeting. The minutes were unanimously approved.**

### IV. Update on Pending Projects

The Chair called on Ms. Wilensky for a report on the Commission's pending projects.

#### a. International Law Licensure

Ms. Wilensky noted that the consensus after the last discussion was that members supported the idea of international law licensure, but wanted legislation drafted that carried out the issues and recommendations included in a report drafted by the Chair. She proceeded with an overview of the report and proposed language (which are attached to these minutes). A discussion followed. The Chair requested the changes discussed at today's meeting be incorporated into the proposed language and that this draft be sent to Senator Schuitmaker so that a request for a blueback can be submitted to the Legislative Service Bureau.

#### b. Open Meetings Act Update

The Chair called on Ms. Wilensky to provide an overview of the issue paper prepared on the subject of updating the Open Meetings Act (attached to these minutes). Ms. Wilensky reported that the 2003 MLRC report recommended changes to clarify the circumstances under which a public meeting could be conducted using new technologies, but the Act has not been amended. A discussion of the issues identified in the paper followed. Ms. Wilensky will invite Mr. Jack Dempsey and a representative from the Attorney General's office to come to a future meeting to join in on the discussion of this issue.

### V. Annual Report

#### **Report on the 2011 State Appellate Court Decisions in which Legislative Action was Urged**

The Chair directed the discussion of this agenda item be delayed until the next meeting. There was no objection.

**VI. Other Business**

Judge Whitbeck brought forward a recent U.S. Supreme Court decision, *Miller v Alabama*, in which the Court held that a minor could not be sentenced to life without parole for a homicide offense unless certain determinations were made to justify the harsh sentence. Michigan has a large number of juveniles currently serving mandatory life imprisonment sentences without parole. One case, *People v Carp*, was argued in the Michigan Court of Appeals this week. The U.S. Supreme Court decision presents an issue for Michigan statutes and may require a legislative remedy. He suggested the Commission call on someone like Bruce Timmons to come up with a way to amend the statutes and press for the needed changes. A discussion followed.

**VII. MLRC Meeting Schedule**

The following dates were announced for MLRC meetings in 2013: February 21, June 20, and October 17.

**VIII. Public Comment**

The Chair asked if there were any public comments. Mr. Bob Ciaffone commented it would be helpful if the Michigan Law Revision Commission consider reviewing the Michigan Gaming Control Board's decision to place a moratorium on issuing any charity gaming supplier licenses after January 7, 2011. The Chair responded that this is not something the Commission is likely to address.

Mr. Sean Bennett offered a statement regarding protecting the public from psychotropic drugs and comments regarding governmental immunity. The Chair explained that the Commission has limited resources and is unlikely to review this issue.

Mr. Bruce Timmons alerted the Commission to recent action taken on legislation that addresses two of the issues raised in the Commission's recent court decisions report—the rights of biological fathers and electronic recording of custodial interrogations.

**IX. Adjournment**

The Chair noted that the next meeting is tentatively scheduled for February 21, 2013. **Having no further business, the Chair adjourned the meeting at 2:00 p.m.**

*(Minutes approved at the February 21, 2013 MLRC meeting.)*

## UPDATING THE OPEN MEETINGS ACT

In 2003, the Michigan Law Revision Commission issued a report concerning the possible ways that technology could be used by state government to make government operations more efficient, more accessible to the public and more cost effective. The report focused on the Open Meetings Act (OMA), and reviewed the range of new telecommunication technologies available. Believing that agencies would be reluctant to invest in technological changes without the assurance that implementing procedures would not run afoul of the OMA, the Commission recommended that the Legislature amend the OMA to revise the definition of “meeting” in MCL 15.262(b) and the meeting requirements in MCL 15.263(1) to clarify the circumstances under which a public meeting could be conducted using technology.

While technologies have continued to advance in the intervening years, the OMA has not been amended to reflect the increased availability of various technologies. To assist the Commission as it considers this subject, a list of issues gleaned from the Open Meetings laws of others states and proposed recommendations to the Legislature follow.

### I. ISSUES

#### 1. **Posting notice of public meetings on a public body’s website.**

This can be mandatory or permissive. Some state’s statutes provide that in addition to other methods, notice of a meeting shall be provided by posting on the website of the public body. Others provide that when a public body has the ability to do so, notice of the time and place of a meeting shall also be conspicuously posted on the public body’s website. The statute may also expressly state that the notice is supplemental to and not a substitute for the minimum public notice required.

Related to the posting of the notice, the statute may provide that in addition to traditional methods, the public can request electronic notification of meetings.

Some states have a centralized public notice website for all units of state and local government.

#### 2. **Meetings held by video conference, teleconference, or other electronic means.**

States address this issue in various ways. Some define the term “meeting” to include the use of teleconferencing for attendance and participation by members of the public body, and provide that if the public body uses video conferencing to conduct its meetings, the public must be able to attend, listen and observe the proceedings at any site at which a member participates.

Meetings may be held by video conferencing, telephone conference or other electronic means, provided that (1) reasonable arrangements are made to accommodate the public’s right to attend the meeting; (2) the meeting is recorded; and (3) all votes are taken by roll call.

Some statutes provide that only agencies with statewide jurisdiction may use video or teleconferencing for meetings. Some permit meetings using these technologies only under limited circumstances, such as emergencies that involve public safety or the preservation of private property. If a meeting is held by video conference, there may be additional requirements for notice, record-keeping and two-way communication between meeting locations.

In addition to the public's right to photograph or broadcast meetings, some states have added the right to webcast, or record and/or transmit by audio or video means.

The term "broadcast" may include the transmission of signals by cable. Public bodies are authorized to adopt procedures governing the location of equipment used to photograph, broadcast or webcast proceedings. If videoconferencing is used to conduct the meeting, the public notice for the meeting may have to let the public know that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

**Quorum** - The use of teleconferencing or video conferencing can impact the quorum requirements for a public meeting. Some statutes provide that a quorum may be reached by members attending the meeting in person or electronically. Others provide that a quorum must be physically present at one location before other members may attend the meeting by other means.

### **3. Providing records on public agency's website.**

Records that are the subject of agenda items that must be made available to the public may have to be posted on the public body's website. The requirement may be limited to agencies that maintain a regularly and routinely updated website and utilize a high speed internet connection, or when practicable. Additionally, some states require public bodies that have internet websites to post minutes of meetings on line.

### **4. New Technologies**

New technologies, including microblogs such as Twitter, social media websites such as Facebook, email, text messaging and instant messaging, present significant challenges for state legislatures. Although these technologies may facilitate efficient communication among members, these technologies may not be used to avoid public deliberation. Depending on the facts, electronic communications could be construed as a meeting and/or deliberations leading to a decision by the public body.

In the Michigan Open Meetings Act Handbook, Attorney General Bill Schuette states that e-mail, texting, or other forms of electronic communications among members of a board or commission during the course of an open meeting that constitutes deliberations toward decision-making or actual decisions violates the OMA, since it is in effect a "closed" session. Electronic communication that cannot be heard by the public attending an open meeting is contrary to the purpose of the OMA, which is to promote openness in government. The Handbook states that the use of email to distribute handouts, agenda items, statistical information during an open

meeting should be allowable under the OMA, especially when copies of the documents or information are also made available to the public before or during the meeting.

## **II. RECOMMENDATIONS**

1. Amend the Open Meetings Act to clarify the circumstances under which a public meeting may be conducted using technology, including videoconferencing and teleconferencing. MCL 15.262(b); MCL 15.263.
2. Amend the Open Meetings Act to provide that public notices contain the web address of the public body, and that in addition to other methods, notice of public meetings must be posted on the public body's website. MCL 15.264; MCL 15.265.
3. Amend the Open Meetings Act to provide that copies of any documents that must be provided to the public may be provided electronically. MCL 15.266.
4. Amend the Open Meetings Act to provide that in addition to other methods, minutes of meetings must be posted on the public body's website. MCL 15.269.