

*42nd Annual Report
2009*

*Michigan
Law
Revision
Commission*

Term Members:

RICHARD D. MCLELLAN,
Chairperson

ANTHONY DEREZINSKI,
Vice Chairperson

GEORGE E. WARD

WILLIAM C. WHITBECK

Legislative Members:

SENATOR RAYMOND BASHAM

SENATOR BRUCE PATTERSON

REPRESENTATIVE MARK MEADOWS

REPRESENTATIVE TONYA SCHUITMAKER

Ex Officio Member:

JOHN G. STRAND

Legislative Council Administrator

Boji Tower

4th Floor

124 West Allegan

P.O. Box 30036

Lansing, Michigan 48909-7536

GARY GULLIVER, *Executive Secretary*

*Michigan State University College of Law
Law College Building
East Lansing, Michigan 48824
Telephone (517) 432-6913*



Michigan
Law Revision Commission

FORTY-SECOND ANNUAL REPORT
2009

MICHIGAN LAW REVISION COMMISSION

Term Members:

RICHARD D. McLELLAN, *Chairperson*
ANTHONY DEREZINSKI, *Vice Chairperson*
GEORGE E. WARD
WILLIAM C. WHITBECK

Legislative Members:

SENATOR RAYMOND BASHAM
SENATOR BRUCE PATTERSON

REPRESENTATIVE MARK MEADOWS
REPRESENTATIVE TONYA SCHUITMAKER

Ex Officio Member:

JOHN G. STRAND
Legislative Council Administrator
4th Floor, Boji Tower
124 West Allegan
P.O. Box 30036
Lansing, Michigan 48909-7536

Executive Secretary:

GARY GULLIVER
Michigan State University College of Law
Law College Building
East Lansing, Michigan 48824

TABLE OF CONTENTS

Letter of Transmission from the Michigan Law Revision Commission to the Legislature	1
Recommendations to the Legislature:	
Federal Freedom of Information Law as a Model for Reform in the Michigan Law	4
A Report on Recent Court Decisions Identifying Statutes for Legislative Action and Recommendations to the Legislature.....	11
Prior Enactments Pursuant to Michigan Law Revision Commission Recommendations.....	14
Biographies of Commission Members and Staff.....	22

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

MICHIGAN LAW REVISION COMMISSION
FORTY-SECOND ANNUAL REPORT TO THE LEGISLATURE
FOR CALENDAR YEAR 2009

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission hereby presents its forty-second 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 2009 were Senator Raymond Basham of Taylor; Senator Bruce Patterson of Canton; Representative Mark Meadows of East Lansing; and Representative Tonya Schuitmaker of Lawton. 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. Gary B. Gulliver 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 2009

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 2010

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 2009:

- (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) Codification of economic development laws
- (2) Elimination of references to non-existent courts
- (3) Review if issues regarding licensure of in-house international lawyers
- (4) Review of Michigan laws affecting transparency in governmental operations
- (5) Survey of other states' laws regarding recusal of judges and campaign contributions
- (6) Constitutional issues regarding imposition of civil fines in lieu of criminal fines or imprisonment

The Commission continues to operate with its sole staff member, the part-time Executive Secretary, whose offices are at Michigan State University College of Law, East Lansing, Michigan 48824. The current Executive Secretary of the Commission is Gary Gulliver, who was responsible for the publication of this report. By using faculty members at 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 Raymond Basham
Senator Bruce Patterson
Representative Mark Meadows
Representative Tonya Schuitmaker
John G. Strand

FEDERAL FREEDOM OF INFORMATION LAW
AS A MODEL FOR REFORM OF MICHIGAN LAW

A Report to the Michigan Law Revision Commission

Submitted by Scott Shewcraft, Michigan State University College of Law

FEDERAL FREEDOM OF INFORMATION LAW
AS A MODEL FOR REFORM OF MICHIGAN LAW: A REPORT TO THE
MICHIGAN LAW REVISION COMMISSION

INTRODUCTION

Pursuant to its statutory charge to examine the statutes of the state for the purposes of discovering defects and anachronisms in the law and to recommend needed reform, MCL § 4.1403 (1) (c), the Michigan Law Revision Commission (“Commission”) in late 2008 commissioned Scott Shewcraft, a student at the Michigan State University College of Law, to examine changes in federal freedom of information law to determine the manner in which Michigan law could be amended to provide for greater transparency in regard to citizen access to governmental documents. This report is the result of that examination.

The report consists of three parts. The first briefly discusses the history of state and federal freedom of information law. The second part discusses recent changes to the federal law and agency implementation of those changes, highlighting aspects of the changes made statutorily or by executive order for which analogous state law amendments would be desirable. The last part specifically addresses the manner in which Michigan’s Freedom of Information Act (“Michigan FOIA”), 1976 PA 442, and certain other general acts could be updated to reflect technological advancements and to provide greater transparency at the state and local level.

I. HISTORY OF STATE AND FEDERAL FREEDOM OF INFORMATION LAW

An understanding of the social and political climate of the nation at the time the bulk of freedom of information acts were enacted is crucial to appreciating the goals and purposes of the legislative bodies in passing such laws, while subsequent amendments of the laws are illustrative of more contemporary conceptions of such statutes.

Professors Funk, Shapiro, and Weaver note that some requirements of public disclosures can be traced all the way back to the time of the adoption of the United States Constitution. William F. Funk, Sidney A. Shapiro & Russell L. Weaver, *Administrative Procedure and Practice: Problems and Cases* 648 (3d ed. 2006). For example, they note that clause 3 of section 5 of article I of the Constitution requires each house of the Congress to publish a journal of proceedings. *Id.* The essence of public disclosure law, they argue, is the tension between such affirmative requirements and the need for government secrecy. *Id.* at 649.

The legislative history of the federal Freedom of Information Act (“federal FOIA”), 5 U.S.C. § 552, “emphasized that American democratic political theory was the foundation for the statute.” Martin E. Halstuk & Bill F. Chamberlin, *The Freedom of Information Act 1966-2006: A Retrospective on the Rise of Privacy Protection Over the Public Interest in Knowing What the Government’s Up To*, 11 *Comm. L & Pol’y* 511, 512 (2006). Indeed, the legislative history contains the following condemnation of secret government: “[G]overnment by secrecy benefits no one. It injures the people it seeks to serve; it injures its own integrity and operation. It breeds mistrust, dampens the fervor of its citizens, and mocks their loyalty.” *Id.* (citing S. Rep. No. 89-813, at 10. Other commentators have identified the unique cultural divides and the rise of investigative journalism in the 1960s as a major force in the adoption of the federal FOIA. Funk et al., *supra* at 649. Although the federal FOIA was initially passed in 1966, the Watergate scandal brought about a strengthening of the public rights to disclosure in 1974. *Id.*

Both the federal FOIA and the Michigan FOIA are pro-disclosure statutes. See Department of Air Force v. Rose, 425 U.S. 352, 60-61 (1976) (“Congress therefore structured a revision whose basic purpose reflected ‘a general philosophy of full agency disclosure.’”). See also Herald Co., Inc. v. Eastern Michigan University Bd. of Regents, 475 Mich. 463, 489-90, 719 N.W.2d 19 (2006) (“This Court has consistently held that the FOIA is intended primarily as a prodisclosure statute.”). A recent opinion from a panel of the Michigan Court of Appeals clarifies the idea behind transparency in government, noting that “[a]s Justice Brandeis stated so many years ago, ‘Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.’” Practical Political Consulting, Inc. v. Secretary of State, ___ Mich. App. ___, ___ N.W.2d ___, 2010 WL 785809 (2010) (citing Louis D. Brandeis, Other People’s Money—and How the Bankers Use It, 92 (1914)). It comes as little surprise that an individual right to inspection of government records has been recognized by the state courts long before the enactment of the federal or state FOIA. See, e.g., Burton v. Tuite, 78 Mich. 363, 44 N.W. 282 (1889). In 1928, the Michigan Supreme Court granted a writ of mandamus to compel the auditor general to open the financial books to a newspaper investigating whether funds were misappropriated, saying:

If there be any rule of the English common law that denies the public the right of access to public records, it is repugnant to the spirit of our democratic institutions. Ours is a government of the people. Every citizen rules.

Nowack v. Auditor General, 243 Mich. 200, 203, 219 N.W. 749 (1928).

It is particularly powerful to observe that the Nowack court, in making the statement above, rests its decision on a common law notion of public ownership of public records. In 1976, the Michigan Legislature codified this longstanding commitment to government transparency in adopting its sunshine laws: the Michigan FOIA and the Open Meetings Act, 1976 PA 267.

Despite enormous advancements in the technology of information retention and dissemination, the Michigan sunshine laws, however, have remained largely unchanged. Additionally, the Enhanced Access to Public Records Act, 1996 PA 462, appears to run somewhat contrary to the spirit of the Michigan FOIA, allowing enhanced electronic access to public records at the discretion of the public body and imposing an additional fee for such access. Conversely, the United States Department of Justice Office of Information Privacy has recognized the importance of keeping transparency statutes on pace with technological innovation “when it wrote in 1990 that no development in the history of the [FOIA] has held as much potential for shaping its contours, even the very future of its implementation, as that of new technology.” Michael L. Van Cise, Note: The Georgia Open Records Law Electronic Signature Exception: The Intersection of Privacy, Technology, and Open Records, 12 J. Intell. Prop. L. 567, 587 (2005) (citing Fred H. Cate et al., The Right to Privacy and the Public’s Right to Know: The “Central Purpose” of the Freedom of Information Act, 46 Admin. L. Rev. 41, 66) (modification in Van Cise).

The federal government has taken measures in the past fourteen years to modernize the FOIA practices of federal agencies, and many of the measures adopted at the federal level, if adopted by Michigan law, would increase compliance at the state level, resulting in the informed citizenry that sunshine laws, such as the Michigan FOIA, seek to empower. M.C.L. 15.231(2).

II. EVOLUTION OF FEDERAL FREEDOM OF INFORMATION LAW AND AGENCY IMPLEMENTATION OF MANDATES

This part will generally discuss significant federal FOIA amendments and executive orders, followed by more specific discussions of some of those amendments and orders. It will end with a discussion of the manner in which certain federal agencies are complying with those amendments and orders.

The first significant federal FOIA amendment to be discussed, Electronic Freedom of Information Act Amendments of 1996 (“EFOIA”), directed federal agencies to increase their use of the Internet and other electronic means in granting access to federal documents. Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Pub. L. No. 104-231, 110 Stat. 3048 (1996) (codified at scattered portions of 5 U.S.C. § 552). Additionally, the EFOIA modified the existing agency reporting requirements. Prior to the EFOIA, agencies were required to file an annual report on FOIA activities with the Speaker of the House and the President of the Senate. The EFOIA, however, designated the Attorney General of the United States as the recipient of those reports. Additionally, it required more specific statistical data to be included in the reports.

Federal agencies have been slow to reach full compliance with the EFOIA. A 2001 GAO report examining compliance with the EFOIA found that most major agencies studied had not yet made available on the web the documents required to be made so available by the EFOIA. United States General Accounting Office, Information Management: Progress in Implementing the 1996 Electronic Freedom of Information Act Amendments, G.A.O.-01-378 (March 16, 2001) (reporting the information of a Dec. 19, 2000, briefing to members of Congress) (available at <http://www.gao.gov/new.items/d01378.pdf>). Further, in 2002, the GAO, while noting that the same agencies had improved their compliance with the EFOIA, found that many agencies were still not in full compliance. United States General Accounting Office, Information Management: Update on Implementation of the 1996 Electronic Freedom of Information Act Amendments, G.A.O.-02-493 (Aug. 30, 2002) (reporting on agency progress implementing EFOIA to various members of Congress) (available at <http://www.gao.gov/new.items/d02493.pdf>).

Perhaps as result of those findings, President Bush, in 2005, issued Executive Order 13392 (“the Order”), Improving Agency Disclosure of Information, Exec. Order No. 13,392, 70 Fed. Reg. 75,373 (Dec. 14, 2005), requiring increased federal agency document disclosure over the Internet. The Order was intended to “improve service and performance, thereby strengthening compliance with the FOIA, and . . . help avoid disputes and litigation.” Id. at § 1(d). The Order mandated that the focus of agency FOIA policy be “citizen-centered” and results-oriented. Id. at § 1(b)-(c). The Order was intended to jumpstart the process of making federal documents available on the Internet, and it was seemingly successful. United States Government Accountability Office, Information Management: Agencies Are Making Progress in Reducing Backlog, but Additional Guidance Is Needed, G.A.O.-08-344 (March 14, 2008) (“Following the emphasis on backlog reduction in Executive Order 13392 and agency improvement plans, many agencies have shown progress in decreasing their backlogs of overdue requests as of September 2007.”) (available at <http://www.gao.gov/new.items/d08344.pdf>)

The reporting requirements were further enhanced by another amendment to the federal FOIA, the Openness Promotes Effectiveness in our National Government Act of 2007 (“the OPEN Government Act”), Public Law 110-175. Openness Promotes Effectiveness in our National Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524 (2007) (codified at scattered portions of 5 U.S.C. § 552). While most of the statistical information required to be maintained pursuant to the OPEN Government Act related to document disclosure is not relevant for purposes of this report, it suffices to note that the retention and release of statistical information is required by the Act. Finally, the OPEN Government Act requires agencies to “establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process.” Id. at § 7 (codified at 5 U.S.C. 552(a)(7)). Agencies are required to provide this number to the requester and to have a system by telephone or Internet that enables the requester to check the status of the request. Id.

For the purposes of this memorandum, the EFOIA and the Order are most important federal measures and together could serve as the basis for changes to Michigan freedom of information law. This is because most of the substantive improvements in federal agency FOIA compliance and most of the efficiencies to

be realized by electronic receipt and processing of requests and electronic dissemination of records stem from these two measures. The OPEN Government Act is most valuable for its procedural improvements, namely, the requirement that tracking numbers be assigned to requests.

A. EFOIA

The caption to the EFOIA reads, “An Act to amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide for public access to information in an electronic format, and for other purposes.” Relying on the increased use of computers in the conduct of government business and the storage of government records, Congress found, “Government . . . should use new technology to enhance public access to records and information.” Id. § 2(a). Electronic dissemination, according to Congress, would “foster democracy by ensuring public access to agency records and information.” Id. § 2(b)(1).

Importantly, the EFOIA required that records which had been requested and were deemed likely to be requested again be made readily available both in print and on by electronic means. Additionally, the index of agency records was required to be made available by computer telecommunications by December 31, 1999. Finally, records made after November 1, 1996, were required to be made available by Internet or “other electronic means” in the event the agency had not established an Internet presence within one year of creation. Id. § 4(5)-(7) (codified within 5 U.S.C. § 552(a)(2)).

The reporting requirement discussed previously also required the report be made available by Internet or other electronic means. Additionally, the Attorney General was required to make reports available by electronic means available in one place. Id. § 10 (codified at 5 U.S.C. § 552(e)(2)-(3)).

B. EXECUTIVE ORDER 13392

As noted previously, due to lagging implementation of the EFOIA Amendments, President Bush signed the Order directing the agencies to take certain steps in implementation. Notably, the Order outlines a hierarchy for FOIA administration within agencies. Exec. Order No. 13,392, § 2. While the hierarchy will likely not directly translate to Michigan’s public bodies, it is crucial to recognize the necessity of some internal mechanism ensuring updates are implemented. The theme of the Order’s hierarchy is to put ultimate responsibility for compliance on each agency’s Chief FOIA Officer. The Michigan analogue is a public body’s FOIA coordinator. The Order creates positions below the Chief FOIA Officer, as necessary given the size of the agency involved. This action, however, is probably best left to the discretion of each public body, with perhaps an exception for particularly large public bodies, e.g. the City of Detroit or Michigan State University, which could be required to establish more than a one-tiered system of implementation.

An important aspect of the Chief FOIA Officers’ duties under the Order is establishing a plan for implementing the existing EFOIA requirements. In addition, the Order pushes the EFOIA requirements further, out of the mid-1990s and into the 21st century. The plans are required to make the requesting process more streamlined and effective, in part by “increas[ing] reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA.” Exec. Order No. 13,392, § 3(b)(ii). The plan requirement is crucial to the success of an analogous updating of Michigan’s law. The Order required the plans to be created in consultation with the Attorney General and the Office of Management and Budget. Id. § 3(b)(i). Similarly, an effective system at the state level might make use of the Office of the Attorney General, which already has produced a number of advisory opinions on questions arising under the FOIA.

C. EXAMPLES OF FEDERAL AGENCY COMPLIANCE WITH THE NEW REQUIREMENTS

i. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION (OSHRC)

As a preliminary matter, the OSHRC rules regarding its FOIA processing explicitly include records in electronic format. Regulations Implementing the Freedom of Information Act, 29 C.F.R. 2201.4(d) (2008). The Michigan FOIA would better effect its pro-disclosure goals if it contained such general classifications of records. A broader definition in the Michigan FOIA would be more reflective of the technological evolution as to what constitutes a “record” of the government.

According to the rule, records requiring affirmative disclosure can be found on the OSHRC electronic reading room at its website. 29 C.F.R. § 2201.4(d). Additionally, pursuant to the EFOIA, the agency’s FOIA report is available online. *Id.* § 2201.10.

ii. FEDERAL COMMUNICATIONS COMMISSION (FCC)

The supplemental information to the FCC rule complying with the federal requirements explains that the FCC’S website “exstensive[ly] provid[es] the public with broad access to [the agency’s] records.” Public Information, the Inspection of Records, and Implementation of Freedom of Information Act Amendments, 74 Fed. Reg. 14,073, 14,074 March 30, 2009) (to be codified at 47 C.F.R. pt. 0). Additionally, the old rule was amended to include those records in electronic formation to reflect the current statutory definition of records. *Id.* at 14,076. The agency also specifically adopted the tracking number policy of the OPEN Government Act. *Id.* at 14,077. Importantly, the FCC has a mechanism for submission of requests by Internet on its website, telephone, or traditional means. *Id.* at 14,078 (to be codified at 47 C.F.R. § 0.441(a)).

iii. OFFICE OF GOVERNMENT ETHICS (OGE)

The OGE rule is similar to the others noted above. It requires an affirmative disclosure records available on its website. Freedom of Information Act Rules and Schedule of Fees for the Production of Public Financial Disclosure Reports, 5 C.F.R. § 2604.201(a)(2) (2009). It notably mandates that the agency’s FOIA report be posted online and that it include information in satisfaction of the requirements of the Order. *Id.* §§ 2604.601, .602(b). The OGE also specifically permits email requests. *Id.* § 2604.301(a).

III. CONCLUSIONS AND RECOMMENDATIONS

Revisiting Michigan freedom of information law is timely in two regards: first, amendments to bring it in line with modern technological developments are in order; second, multiple bills involving the FOIA have already been introduced in the Legislature, including a bill that seeks to broaden the definition of public body to include the Office of the Governor and Lt. Governor, both of which are currently exempted from disclosure requirements. H.B. No. 4613 (2009). The changes discussed within this report are consistent with the idea of the group of entities subject to the Michigan FOIA. (In implementing changes to Michigan law, it must be recognized that many Michigan statutory provisions affecting disclosure requirements are buried in larger, substantive statutes. For example, section 8 of the Youth Rehabilitation Services Act precludes disclosure of records of minor wards of the state. M.C.L. § 803.308. *See also, e.g.,* M.C.L. 207.511(b) (precluding disclosure of affidavits affixed to document related to the real estate transfer tax). Many such statutory provisions are similarly situated in general public acts governing public bodies, and, thus, specific amendments to those acts may be required. It is recommended that the current organizational scheme be retained, as it is more likely pertinent to practitioners in that specific area of law than to requesters of documents. Any requester who requests such records will be directed by

the appropriate public body to the statute precluding disclosure as is required by the Michigan FOIA. M.C.L. § 15.235(4)(a).)

It is the recommendation of this report to the Commission that the Michigan FOIA and related general law be amended to adopt some of the changes to the federal freedom of information law. Specifically, adopting the more inclusive definition of “records” found in the federal FOIA at the state level would increase the general level of transparency in government. Furthermore, amending Michigan law to require affirmative disclosures and requiring that at least some of the larger public bodies or those subject to more requests or more frequent litigation over denied requests make these affirmative disclosures via the Internet will bring down the general cost of administering the Michigan FOIA, streamline the process, and increase transparency in government.

Such amendments could, for instance:

1. Require each public body to publish a list of all of its public records that have been released to any person pursuant to the Michigan FOIA.
2. Require each public body to assign a tracking number to each request for a public record for which the public body has issued a notice of extension, with the public body then being required to provide an up-to-date status report on each such request by tracking number.
3. Require each state agency, which is also a public body, to annually report to the Governor on the following:
 - a. The number of requests for public records received by the state agency.
 - b. The number of written notices issued by the state agency denying a request for a public record, and, in writing, the reason for such denial.
 - c. The average number of days required for each of the following categories of responses to requests for public records to be issued:
 - i. Denying requests.
 - ii. Granting requests.
 - iii. Granting requests in part, while denying the requests in part.
4. Require each state agency, which is also a public body, to make available on the Internet all materials required to be published under section 11 of the Michigan FOIA.
5. Require each public body, to the extent practicable, to make available on the Internet all of its documents subject to the Michigan FOIA.

A 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 through December 31, 2009, urging legislative action. That review identified one decision for which the Commission recommends legislative action, two decisions for which the Commission recommends legislative review, and one decision for which the Commission recommends no action. The decisions examined by the Commission are:

Bearup v. Gen. Motors Corp., Nos. 272654, 272666, 2009 WL 249456 (Mich. Ct. App. Feb. 3, 2009)
U. S. Fid. Ins. & Guar. Co. v. Mich. Catastrophic Claims Ass’n, 773 N.W.2d 243 (Mich. 2009)
People v. Anderson, 765 N.W.2d 341 (Mich. Ct. App. 2009)
People v. Dowdy, 769 N.W.2d 648 (Mich. 2009)

I. Discovery Doctrine and Product Liability Actions

A. Background

In *Bearup v. Gen. Motors Corp.*, Nos. 272654, 272666, 2009 WL 249456, at *1 (Mich. Ct. App. Feb. 3, 2009), the Court of Appeals reversed the trial court’s decision granting Defendant Quaker Chemical’s motion for summary disposition in a product liability action. The Court of Appeals first agreed with the trial court’s decision rejecting the appellants’ argument that, due to the latent nature of their injuries, the statute of limitations should have been tolled under the common law discovery doctrine until they received their medical diagnoses. *Id.* at *1. The Court of Appeals based this part of its decision on *Trentadue v. Buckler Automatic Lawn Sprinkler Co.*, 479 Mich. 378 (2007)), under which the Court of Appeals found the Michigan Supreme Court to have “completely eliminated the common law discovery doctrine in Michigan.” *Id.* at *4. The Court of Appeals buttressed this part of its decision by extensively quoting from the *Trentadue* rationale, noting that the Legislature, in enacting the Revised Judicature (RJA), had created a “comprehensive and exclusive” “scheme,” under which the tolling of the period of limitations was limited to four specific causes of action, which did not include the cause of action at issue. *Id.* at 4-5 (quoting *Trentadue*, 479 Mich. at 388-392). The *Bearup* Court further held that “[b]ecause there is no common law discovery rule after *Trentadue*, and the [RJA] does not include a legislatively created discovery rule that applies to plaintiffs’ action, plaintiffs cannot invoke a the discovery doctrine to toll the running of the statute of limitations.” *Id.* at *5. Notwithstanding its holding, the Court of Appeals reserved the trial court’s grant of summary disposition, remanding the case for a determination, under the applicable statute of limitations, of the date each plaintiff’s claims accrued. *Id.* at *7. In regard to the first issue it had discussed, the Court of Appeals stated in a footnote that, “[i]n light of *Trentadue*, we would urge the Legislature to enact statutory discovery rules for product liability actions involving latent injuries and other cases in which a plaintiff suffers a latent injury or is otherwise unable to discover the existence of a cause of action.” *Id.* at *7, n.11.

B. Question Presented

Should state law be amended to provide statutory discovery rules for product liability actions involving latent injuries and other cases in which a plaintiff suffers a latent injury or is otherwise unable to discover the existence of a cause of action?

C. Recommendation

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

II. Disclosure of Contributions to Campaigns of Supreme Court Justices

A. Background

In *U. S. Fid. Ins. & Guar. Co. v. Mich. Catastrophic Claims Ass'n*, 773 N.W. 2d 243 (Mich. 2009), the Michigan Supreme Court denied a motion for the recusal of a Supreme Court Justice. On the related topic of disclosure of contribution to Justices' campaigns, Justice Weaver, concurring in the denial of the recusal motion, expressed her wish that "this Court, the Legislature, and/or the public will create disclosure rules that will ensure the protection of due process rights." *Id.* at 246 (Weaver, J., concurring).

B. Question Presented

Should the Legislature address the disclosure rules for contributions to campaigns of Supreme Court Justices?

C. Recommendation

The Commission does not recommend legislative action at this time, but notes that the Michigan Supreme Court, in MCR 2.003, has addressed the issues raised in the concurring opinion.

III. Elements of Crime of Torture

A. Background

In *People v. Anderson*, 765 N.W.2d 341 (Mich. Ct. App. 2009), the Michigan Supreme Court reviewed and denied an application for leave to appeal a judgment of the Michigan Court of Appeals, which interpreted MCL 750.85. That statutory provision penalizes the "inflict[ion of] great bodily injury or severe mental pain or suffering upon another person within his or her custody of physical control," if inflicted "with the intent to cause cruel or extreme physical or mental pain and suffering." MCL 750.85(1). "Custody or physical control" is defined as "the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority." MCL 750.85(2)(b).

According to Justice Corrigan, in dissent, "[t]he Court of Appeals interpreted the final clause of this definition to require a prosecutor to prove that the victim was confined *either* 'without that person's consent' *or* 'without lawful authority,' but not both." *Anderson*, 765 N.W.2d at 341 (Corrigan, J., dissenting) (emphasis added). Justice Corrigan noting the defendant's argument that "the statute's use of the word 'or' is ambiguous" and the prosecution's favoring of the result reached, while apparently "conced[ing] that the statute is difficult to interpret," "urge[d] the Legislature to provide guidance to the courts concerning the proper application of this relatively new statute, perhaps by reconsidering the statute's wording." *Id.*

B. Question Presented

Should MCL 750.85 be amended to clarify whether, in a prosecution for the crime of torture, the prosecutor must prove both a lack of consent and a lack of lawful authority?

C. Recommendation

The Commission recommends immediate legislative review of this issue.

IV. Failure of the Homeless to Register a Residence under the Sex Offenders Registration Act (SORA)

A. Background

In *People v. Dowdy*, 769 N.W.2d 648 (Mich. 2009), the Michigan Supreme Court, in lieu of granting leave to appeal an order of the Michigan Court of Appeals denying the appeal of a dismissal, remanded to the Michigan Court of Appeals a case in which the circuit court had dismissed charges against a homeless man for failure to comply with the reporting requirements of SORA, which include a requirement to register a residence. Justice Hathaway, in dissent, would have denied leave to appeal, but further, “urge[d] the Legislature to follow the lead of many other states in formulating a provision with which a homeless person who does not have a domicile or residence could readily comply.” *Id.* at 654.

B. Question Presented

Should the Legislature amend the Sex Offenders Registration Act regarding the requirement for sex offenders, including the homeless, to register a residence?

C. Recommendation

The Commission recommends the enactment of legislation clarifying the responsibilities of sex offenders who are homeless while continuing to provide mechanisms to monitor the whereabouts of such persons and notes that several bills addressing this issue have been introduced.

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 Interstate and International Judicial Procedures	1966, p. 36	138
Stockholder Action Without Meetings	1966, p. 25	178
Powers of Appointment	1966, p. 41	201
Dead Man's Statute	1966, p. 11	224
	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 Ann Arbor.

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 a member of the Board of Directors of Wayne County Catholic Social Services; past President of the Incorporated Society of Irish American Lawyers; a former 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 1971-72 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 JD. 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.

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

Governor John Engler appointed Judge Whitbeck to the Court of Appeals effective October 22, 1997, to a term ending January 1, 1999. Judge Whitbeck was reelected to six-year terms in 1998 and 2004 and his current term expires January 1, 2011. 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, 2001 to January 1, 2007.

Judge Whitbeck is the author of a work of fiction, *To Account for Murder*, a courtroom drama set in Michigan in 1945-46.

RAYMOND BASHAM

State Senator Raymond Basham is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2007. He was elected to the State Senate in 2002 and re-elected in 2006. He currently serves on the following Senate Committees: Local, Urban and State Affairs; Judiciary; Natural Resources and Environment Affairs (Minority Vice-Chair); Senior Citizens and Veterans Affairs; and Transportation (Minority Vice-Chair).

Elected State Representative in a special election in June 1997 and re-elected in 1998 and 2000, Mr. Basham served on the Taylor City Council from 1989 to 1997 and on the Taylor Planning Commission from 1993 to 1997. He has served in various other positions including being appointed Constable in 1985 and elected from 1987-1989, the Taylor Water Commission from 1984-1985, an Auxiliary Police Officer from 1979-1984, and a veteran of the U.S. Air Force having served from 1962-1966.

Mr. Basham was employed by Ford Motor Company for 30 years and was elected to serve in a variety of positions for United Auto Workers (UAW) Local 245. He has taken numerous courses in the humanities at Wayne State University, Western Michigan University, Schoolcraft College, and Wayne County Community College. His memberships include the Michigan Democratic Party, 15th District Democratic Organization, Democratic Club of Taylor, and the Wolverine Masonic Lodge (Past Master). He is also a former member of the U.S. Coast Guard Auxiliary.

Mr. Basham has lived in Taylor for the past 31 years. He and his wife Iva have two children, Brian and Tracy, and four grandchildren.

MARK MEADOWS

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

BRUCE PATTERSON

State Senator Patterson is in his second and final term in the Michigan Senate. His committees are: Energy Policy and Public Utilities, Chairman; Health Policy, Member; Natural Resources and Environmental Affairs, Member; Judiciary, Member; Legislative Council; Uniform State Laws Commissioner.

As Senator for the 7th District, Mr. Patterson represents the City of Northville, Northville Township, City of Plymouth, Plymouth Township, Canton Township, Van Buren Township, City of Belleville, Sumpter Township, Huron Township, Brownstown Township, Cities of Flat Rock, Gibraltar and Rockwood, Woodhaven, Trenton, and Grosse Ile Township.

Mr. Patterson served in the Michigan House of Representatives from 1999 to 2002. During his first term in office, Mr. Patterson was the first freshman in the history of the Michigan Legislature to serve as Associate Speaker Pro Tempore. In his second term, he was elected the Majority Floor Leader by his House colleagues. While in the Michigan House of Representatives, Mr. Patterson chaired the Redistricting and Elections Committee, as well as the House Oversight and Operations Committee, and was a member of the Tax Policy Committee, the House Fiscal Agency Governing Board, Television and Oversight Committee, the Veterans Affairs Committees, and the Legislative Council.

Mr. Patterson served two terms as a member of the Wayne County Commission from 1995-1998. Prior to holding elective office, he was an administrator at Eastern Michigan University Administration from 1991-1994.

Before joining Eastern Michigan University, Mr. Patterson was in the private sector. For over twenty years, he had a law practice. It included various areas of practice such as estate and financial planning, contract and commercial code law, domestic law, corporate and banking law, and general litigation. Mr. Patterson rose from the position of associate attorney to vice-president and, ultimately, president of McCabe, Middleton & Patterson, P.C., with offices in Detroit, Southfield and Plymouth, Michigan.

As a native of Wayne County, Mr. Patterson was inducted into his community's Hall of Fame in 1992 in recognition of his community service. Mr. Patterson's community service and associations, past and present, have included the Huron Valley Visiting Nurses Fund Board, the American Arbitration Association, Minute Man Foundation founder (created to support Operation Desert Storm troops), Irish-American Lawyers, President of the Canton Economic Club (1991 and 1992), Board of Directors of the Educational Excellence Foundation for the Plymouth-Canton Public Schools (1989-1997), Board of Directors of the Community Foundation, Vice-President and General Counsel (inception-1996), Michigan Department of Transportation special committee for Mettetal Airport study (previous co-chair), Community Advisory Board of Directors of First of America Bank (now National City Bank), Wayne Out-County Mediation Service, various Chambers of Commerce including Northville, Plymouth, Canton, Belleville and Southern Wayne County Chamber of Commerce, Western Wayne County Salvation Army

capital campaign honorary chair, Senior Citizens Kitchen Band sponsor, and Schoolcraft College Foundation Board of Trustees - elected in 1994.

Mr. Patterson holds a Bachelor of Arts degree from Wayne State University (1969) and a Juris Doctorate from the Law School at Wayne State University (1972). He has been a member of the State Bar of Michigan since 1972, as well as a member of the American Bar Association, Detroit Bar Association, and Suburban Bar Association. He was enrolled as a Fellow in the State Bar Foundation of Michigan in recognition of his commitment to the profession and the people it serves.

As a devoted father and family man, Mr. Patterson is most proud of his wife Phyllis and their three children—son Justin and wife Jessie, granddaughter Tannis; daughter Denise, husband Tony; and daughter Lauren, husband Jeff.

TONYA SCHUITMAKER

State Representative 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 to represent the 80th district, which includes all of Van Buren County, Otsego and the townships of Otsego and Watson in Allegan County.

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.

Ms. Schuitmaker has served as president of the Van Buren County Republican Women and as Vice Chair for the 6th Congressional Republican District and the Van Buren County Republicans. She has also served on several occasions as a precinct delegate to the Republican state party convention.

Ms. 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, Ms. 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. Ms. 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, the Michigan Commission on Uniform State Laws, the Legislative Commission on Government Efficiency, and the Legislative Commission on Statutory Mandates.

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

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

GARY B. GULLIVER

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

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

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