

final minutes

Michigan Law Revision Commission Meeting

Tuesday, October 31, 2006
Capitol Room ▪ Law Offices of Dykema Gossett
201 Townsend Street, Suite 900
Lansing, Michigan
11:30 a.m.

Members Present:

Richard McLellan, Chair
Anthony Derezinski, Vice-Chair
Senator Hansen Clarke
George Ward
Judge William Whitbeck
John Strand

Members Absent:

Representative Stephen Adamini
Senator Michael Bishop
Representative Edward Gaffney

Others Present:

Jake Allen, Dykema Gossett
Professor Julie Clement
Jeff Cuthbertson (via conference call)
Gary Gulliver, MLRC Executive Secretary
Susan Cavanagh, Legislative Council Administrator's Office
John Lindstrom, Gongwer News
Bruce Timmons, House Republican Staff
Professor Gina Torielli (via conference call)
Janet Welch, State Bar of Michigan

I. Convening of Meeting

Chairperson McLellan called the meeting to order at 11:40 a.m. The clerk took the roll as each member introduced themselves. A quorum was present and all absent members were excused.

II. Approval of Minutes

The Chair asked for a motion to approve the minutes of the last meeting. No corrections or amendments were offered. **Mr. Derezinski moved, supported by Mr. Strand, to adopt the minutes of the February 27, 2006 Michigan Law Revision Commission meeting. The minutes were unanimously adopted.**

III. Economic Development Laws Project

The Chair provided some background on the genesis of the project which began when Representative Bill Huizenga asked the Commission to take a look at the economic development laws and consider drafting an Economic Development Code. Chairperson McLellan explained that a group led by Professor Gina Torielli has been working on this project with the goal to submit a draft Michigan Economic Development Code by the end of the year that can be reviewed by the Commission and potentially shared with legislators for introduction. He then called on Professor Torielli who proceeded to provide an explanation of a matrix that was prepared to capture all of the statutes that have economic development as a primary purpose. She noted that there are some areas like agriculture that have not been included on the matrix as they have focused primarily on those areas the state has traditionally used as levers to accelerate economic development such as tax incentives, bonding, import/export processes, and tourism promotion. A discussion of the issue followed. Commissioner Ward requested a copy of the matrix be sent to him and Professor Torielli suggested that we hold off until a final version of the matrix is prepared in the next week or so. She also noted that a more manageable matrix will be included in the report and verified that a draft code and report is scheduled for completion by December 1. The Chair stated that he envisions this to be a Commission report rather than a report to the Commission and he hopes to make it part of the annual report.

IV. Michigan Civil Rights Initiative Project

Executive Secretary Gary Gulliver reported that Professor Julie Clement prepared a draft report regarding the laws that would be affected if the Michigan Civil Rights Initiative is adopted. Professor Clement highlighted the report and prefaced her comments by noting that her expertise is in research and writing and not constitutional law. She concluded that the Legislature would have some work to do if the Civil Rights initiative passes. Chairperson McLellan distributed a document that explained why this project is within the scope of the Michigan Law Revision Commission's powers and identified potential action that could be taken by the Commission. He also provided a second document that explained what the MCRI will do. The Chair thanked Professor Clement for her assistance and encouraged Commission members to read her report. The discussion concluded with a conversation regarding the Commission's role in reviewing the issue and drafting language for legislative consideration.

V. Michigan Emergency Preparedness laws Project

The Executive Secretary directed the Commissioners' attention to a report prepared by one of his law students that pulls together some of the acts that deal with terrorism and emergency preparedness. Mr. Gulliver noted that while this is just a preliminary list, the project is on-going and the goal is to include it in the annual report.

VI. Michigan Burial, Embalming, and Interment Laws Project

The Executive Secretary then presented the Report on Michigan Laws Regulating Burials, Cremations, and Cemeteries prepared by Professor Christopher Trudeau. He commented that this project is also in the beginning stages and asked the Commissioners to review the report and direct any comments to his attention.

VII. Appellate Court Decisions Urging Legislative Action

Mr. Gulliver shared a report that listed appellate court decisions that urge legislative action. He pointed out that the list is not comprehensive, but does show some of the types of issues where the courts have requested legislative guidance or action.

VIII. Additional Proposed Projects

Timely Filing of Medical Malpractice Actions - Judge Whitbeck presented some background information on a case involving the timely filing of medical malpractice actions (*Waltz v Wyse*). He explained the report he prepared is an attempt to illustrate what the problem is and suggested this might be an area the Commission may want to take a look at. Chairperson McLellan inquired if Judge Whitbeck thought it would be valuable for the Commission to include an articulation of the problem in the Commission's report and indicate that the Commission has set up a work plan to come up with recommendations. Judge Whitbeck thought that it would be useful. The Executive Secretary asked for advice on how involved he should be since he has contractually worked on this issue for other sources. The Chair indicated that he and Mr. Gulliver can get together to talk about whether this precludes him, but nevertheless it should not affect whether the issue is included in the Commission report. After further discussion, Bruce Timmons agreed there is merit for clarification, but cautioned there may be some groups opposed to making any changes. Chairperson McLellan stated it is his view that bringing the issue to the Legislature's attention is appropriate since the Commission has a duty to look for defects in the law.

No Fault and the Kreiner Decision - Judge Whitbeck continued with a Report on No Fault and the Kreiner Decision. He noted that the Commission may not want to take a position on this subject, but he felt it might be helpful for the Commission take a scholarly look at the issue because it takes up so much judicial time. Chairperson McLellan agreed that would be a legitimate reason for the Commission to point out there is a disproportionate number of these kinds of issues before the courts.

National Commission on Uniform State Laws - Mr. Gulliver introduced Janet Welch of the State Bar who reported that Michigan is one of only two states that are behind in paying the dues owed to the

National Commission on Uniform State Laws. She urged the Commission to recommend that the Legislature appropriate funds to pay the dues owed and to pay for the expenses of members to attend Commission activities. She added that they are following the uniform laws that have been enacted and sending the laws that should be enacted to the appropriate sections for review. Mr. Strand provided some background on the payment of national dues and pointed out that the appropriation to the national dues is a separate line item.

Ideas to Strengthen Legislative Function – Chairperson McLellan presented an idea for the need to strengthen legislative function relative to the executive branch. He offered four areas for the Commission to consider taking the lead on: 1) the broad area of legislative oversight, 2) the ability to acquire and maintain confidential records, 3) the role of the Legislature in litigation, and 4) the need to structure institutional memory on the policy side.

IV. Public Participation

The Chair asked for public participation. There was none.

V. Next Meeting

The Chair announced that the next meeting will be scheduled sometime during the second week of December and asked the clerk to find an acceptable date.

VI. Adjournment

Having no further business, Mr. McLellan moved, supported by Mr. Ward, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 1:40 p.m.

(Approved at the August 23, 2007 MLRC meeting.)