

# final minutes

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**Michigan Law Revision Commission Meeting**  
Thursday, February 16, 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  
Judge William Whitbeck  
John Strand  
George Ward

**Members Absent and Excused:**

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

**Others Present:**

Susan Cavanagh, Office of the Legislative Council Administrator  
Bob Ciaffone  
Cliff Flood, State Bar of Michigan  
Jane Wilensky, MLRC Executive Secretary

**I. Convening of Meeting and Roll Call**

Chairperson McLellan called the meeting to order at 11:47 a.m. 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.

**II. Approval of December 7, 2011 Meeting 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. Ward, to adopt the minutes of the December 7, 2011 Michigan Law Revision Commission meeting. The minutes were unanimously approved.**

**III. Update on Pending Projects**

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

**a. Michigan Law Revision Commission Fellowship Program**

Ms. Wilensky reported that two students from the University of Michigan Law School have been hired to assist the Commission. Sean Stiff has been hired to update two Commission reports—the Governor's Power to Remove Public Officials and Emergency Preparedness. Madeline Thoman has been hired to review 2011 court decisions.

Ms. Wilensky added that she continues to explore other opportunities to find students to assist the Commission. The possibility of using private funds to pay for resources to work on a Commission project was raised and discussed. The Chair then shared an example of a potential project that the Commission could take on if it had more resources. The issue, raised by Representative Ellen Cogen Lipton, deals with immunity statutes and gross negligence. A discussion followed.

**b. International Corporate Lawyer Licensure**

The Chair began with a history of how the international corporate lawyer licensure issue was brought to his attention and why he suggests the Commission consider issuing a report that summarizes the issue and encourages the licensure of international corporate lawyers in Michigan. A discussion followed. Additional detailed information is attached to these minutes.

**c. National Commission on Uniform State Laws**

The Chair provided a history of the request, initiated by Kieran Marion of the National Commission on Uniform State Laws and raised at the last Commission meeting, to combine the Michigan Law Revision Commission with the Michigan Commission on Uniform State laws. Two proposed language drafts were submitted by Mr. Marion and are attached to these minutes. After a robust discussion, it was decided that the Chair will report to Mr. Marion that the Commission has reviewed his request, but has decided to not take the lead on this issue.

**IV. Comments from Commissioners**

The Chair asked for comments from the Commissioners. Mr. Derezinski raised the subject of the review of ethics laws and asked if the Commission had ever issued a report on ethics. The Chair recalled that the Commission did issue a report in the past, but it was very deep. The Chair then shared the ethics-related issues he felt are legitimate for the Commission to review including the Open Meetings Act, the Freedom of Information Act, and the removal of officials.

He noted that the Commission does not have the capacity to conduct a more comprehensive review of this complex issue.

There were no further comments from the Commissioners.

**V. Public Comment**

The Chair asked if there were any public comments. Mr. Bob Ciaffone offered comments regarding the international law licensure issue and sees no problem with licensing international counselors.

**VI. Adjournment**

**Having no further business, the Chair adjourned the meeting at 1:32 p.m.**

*(Minutes approved at the June 21, 2012 MLRC meeting.)*



## MICHIGAN LAW REVISION COMMISSION

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Presentation to Business Impact Committee; SBM Judicial Crossroads Task Force  
Corporate Counsel Michigan Bar Admission

April 7, 2009

### Introduction

Business Impact Committee's Interim Report:

The task of the Business Impact Committee is to review the ways in which Michigan's court system serves the business community and to determine whether there are procedural or structural changes that would improve the system. Specifically...to propose to the Judicial Crossroads Task Force... structural reforms that, if implemented, would serve to improve the judiciary while **strengthening those businesses and, in turn, our state's economy.**

### Michigan Law Revision Commission

The Legislative Council Act:

MCL 4.1403 (1) The Michigan law revision commission shall do each of the following:

- (a) Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.
- (b) Receive and consider proposed changes in the law recommended by the American law institute, the national conference of commissioners on uniform state laws, a **bar association**, or other learned bodies.
- (c) Receive and consider suggestions from justices, judges, legislators, public officials, lawyers, and the public generally as to defects and anachronisms in the law.
- (d) **Recommend changes in the law** it 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.**

Licensing of attorneys is initially a legislative matter:

MCL 600.901 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.

The Commission is addressing proposed changes in the law 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.

## **“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”).

## **Principles to Apply**

- Practice of law is a licensed profession.
- Framework for licensure is established by the Legislature in statute.
- The admission is administered by judicial agencies as part of Michigan’s one court of justice.
- Admission to practice is primarily a state matter but federal recognition of admission to federal courts take precedence over the state.
- The Legislature may make exceptions to the requirement to be licensed to practice before administrative agencies, e.g., Tax Tribunal, Workers Compensation.

## **Theory Underlying the Licensure for the Practice of Law**

- Protection of the public.
- Licensure provides the basis for imposing standards:
  - Education
  - Examination
  - Ethics and professional rules
  - Enforcement against persons not licensed
- Protect economic interests of state’s lawyers
  - Barriers to entry raise cost of legal services
  - UPL rules keep out persons without sufficient training and education
  - Previous residency rules kept out nonresidents

## **Evolution from State only to State/National Regulation of Lawyers**

- Law schools are regulated by a national private organization, 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**

- The Michigan Legislature repealed the residency restriction to be admitted to the State Bar.
- A small portion of the Michigan bar participates in multi-jurisdictional law firms.
- 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.

## **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 requires 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.

## 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 Bar committees.

## Summary of Lawyer Requirements and Categories

- 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.
- Pass the bar exam.
- Admission Without Examination; lawyers to practice in an institutional setting. To be admitted without taking the bar exam, the lawyers 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 to 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, would 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.

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

NOVEMBER 2011

[DRAFT OF 10/21/11 2:25 PM]

## Contents

### 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 this countries. 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](/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 Janet Welch and then-Justice (now Department of Human Resources Director) 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.

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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

1. 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.

2. 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 take 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, has 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. The ABA is a voluntary private organization that includes approximately \_\_\_% of licensed attorneys in its membership.]
- 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 to 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.

LRC – WORKING DRAFT 1

**4.1401 Michigan law revision AND UNIFORM LAWS commission; creation; appointment, qualifications, and terms of members; vacancy; designation of chairperson; continuation of members appointed under former law.**

Sec. 401.

(1) The Michigan law revision **AND UNIFORM LAW** commission is created. The commission shall consist of the following:

**(A) TWELVE MEMBERS APPOINTED AS FOLLOWS:**

~~(a)~~ **(i)** ~~Four~~ **SEVEN** members appointed by the council. Members appointed under this subdivision shall not be members of the legislature. **AT LEAST FIVE MEMBERS APPOINTED UNDER THIS SUBSECTION SHALL BE ATTORNEYS ADMITTED TO PRACTICE IN THE COURTS OF THIS STATE.**

~~(b)~~ **(ii)** Two members appointed by the majority leader of the senate, 1 from the minority party.

~~(c)~~ **(iii)** Two members appointed by the speaker of the house, 1 from the minority party.

~~(d)~~ **(iv)** The director of the bureau or his or her designee, as an ex officio member.

**(B) [THREE][FOUR] MEMBERS WHO SHALL BE ATTORNEYS ADMITTED TO PRACTICE IN THE COURTS OF THIS STATE, DESIGNATED AS UNIFORM LAW COMMISSIONERS, APPOINTED AS FOLLOWS:**

**(i) ONE MEMBER APPOINTED BY THE GOVERNOR.**

**(ii) THE EXECUTIVE DIRECTOR OF THE STATE BAR OF MICHIGAN OR HIS OR HER DESIGNEE.**

**(iii) THE CHIEF JUSTICE OF MICHIGAN OR HIS OR HER DESIGNEE.**

**[(iv) ONE MEMBER APPOINTED BY THE SECRETARY OF STATE.]**

**(C) ANY MEMBER APPOINTED UNDER SUBSECTION 1(A) WHO IS AN ATTORNEY MAY ALSO BE DESIGNATED AS AN ADDITIONAL UNIFORM LAW COMMISSIONER BY THE CHAIRPERSON OF THE COMMISSION.**

~~(2)~~**(A)** ~~The members first appointed by the council shall be appointed for such terms that the term of 1 member will expire on each succeeding December 31. The term of a member thereafter appointed by the council, except to fill a vacancy occurring otherwise than by expiration of term, shall be 4 years from the expiration of the term of his or her predecessor~~ **OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER.** A vacancy in the office of a member appointed by the council occurring otherwise than by expiration of term, shall be filled by the council for the remainder of the unexpired term. **SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT AND FOR THE BALANCE OF THE UNEXPIRED TERM.**

**(B) THE MEMBERS OF THE MICHIGAN COMMISSION ON UNIFORM STATE LAWS APPOINTED UNDER FORMER SECTION 301(1)(A) OF 1986 PA 268 SHALL CONTINUE IN OFFICE UNDER SUBSECTION (1)(A)(1) OF THIS SECTION UNTIL SUCCESSORS ARE APPOINTED. MEMBERS OF THE MICHIGAN COMMISSION ON UNIFORM STATE LAWS APPOINTED UNDER FORMER SECTION 301(1)(B) AND (C)**

**OF 1986 PA 268 SHALL CONTINUE IN OFFICE AS ADDITIONAL UNIFORM LAWS COMMISSIONERS UNTIL JANUARY 1, 2013. MEMBERS APPOINTED UNDER FORMER SECTION 301 OF 1986 PA 268 MAY BE REAPPOINTED TO THE MICHIGAN LAW REVISION AND UNIFORM LAWS COMMISSION UNDER THIS SECTION.**

(3) ~~The council shall designate 1 of the members appointed by the council as chairperson of the commission. At least 3 members appointed by the council shall be attorneys admitted to practice in the courts of this state.~~ **THE MEMBERS OF THE COMMISSION SHALL ELECT ONE MEMBER TO SERVE AS CHAIRPERSON OF THE COMMISSION.**

(4) ~~The 3 members of the commission appointed by the council under former Act No. 412 of the Public Acts of 1965 shall continue in office for the duration of the terms of office for which they were appointed and with the members appointed under subsection (1)(b) and (c), the director of the bureau or his or her designee, and the additional member appointed by the council under subsection (1)(a) shall constitute the Michigan law revision commission. Members shall be appointed by the council under subsection (1)(a) to replace the 3 members appointed by the council under former Act No. 412 of the Public Acts of 1965 only as the terms of those members expire. Members appointed by the council under former Act No. 412 of the Public Acts of 1965 may be appointed to the commission by the council under this section.~~

**4.1402 ~~Salaries and expenses of members AND PARTICIPATION; appointment, duties, and compensation of employees.~~**

Sec. 402.

(A) ~~Each member of the commission, other than the ex-officio member, may receive an annual salary as established by the council. All members may be reimbursed their actual and necessary expenses incurred in the performance of their official duties. The commission may appoint such employees as may be needed, prescribe their duties, and fix their compensation within the amount appropriated for the commission~~ **FOR THAT PURPOSE.**

**(B) THE EXPENSES OF PARTICIPATION IN THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS BY THE COMMISSION MAY BE PAID FROM APPROPRIATIONS MADE TO THE COUNCIL, [OR FROM APPROPRIATIONS MADE TO] THE GOVERNOR, [THE SECRETARY OF STATE,] OR THE JUDICIARY, FOR THAT PURPOSE [, AS AUTHORIZED UNDER SECTION 5 OF ARTICLE III OF THE STATE CONSTITUTION OF 1963].**

**4.1403 Duties of commission; availability of writings to public.**

Sec. 403.

(1) The Michigan law revision **AND UNIFORM LAWS** commission shall do each of the following:

(a) Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American law institute, the national conference of commissioners on uniform state laws, a bar association, or other learned bodies.

(c) Receive and consider suggestions from justices, judges, legislators, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend changes in the law it 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.

(e) Encourage the faculty and students of the law schools of this state to participate in the work of the commission.

(f) Cooperate with law revision commissions of other states and Canadian provinces.

**(G) MEET, CONFER, AND COOPERATE WITH COMMISSIONERS ON UNIFORM STATE LAWS OF OTHER STATES TO BRING ABOUT UNIFORMITY OF STATE LAWS, AND DESIGNATE ONE OR MORE MEMBERS TO PARTICIPATE IN THE ANNUAL MEETING OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.**

~~(g)~~ **(H)** Report its findings and recommendations to the council and annually, before January 2 of each year, to the legislature. If the commission considers it advisable, it shall accompany the commission's report with proposed bills to implement the recommendations.

(2) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, ~~Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws~~ **1976 PA 442, MCL 15.231 TO 15.246.**

**ENACTING SECTION 1. SECTION 301 OF THE LEGISLATIVE COUNCIL ACT, 1986 PA 268, MCL 4.1301, IS REPEALED.**

**ENACTING SECTION 2. [EFFECTIVE DATE?]**

**4.1401 Michigan law revision AND UNIFORM LAWS commission; creation; appointment, qualifications, and terms of members; vacancy; designation of chairperson; continuation of members appointed under former law.**

Sec. 401.

(1) The Michigan law revision **AND UNIFORM LAW** commission is created. The commission shall consist of the following:

**(A) NINE MEMBERS APPOINTED AS FOLLOWS:**

~~(a)~~ **(i)** Four members appointed by the council. Members appointed under this subdivision shall not be members of the legislature. **AT LEAST THREE MEMBERS APPOINTED UNDER THIS SUBSECTION SHALL BE ATTORNEYS ADMITTED TO PRACTICE IN THE COURTS OF THIS STATE.**

~~(b)~~ **(ii)** Two members appointed by the majority leader of the senate, 1 from the minority party.

~~(c)~~ **(iii)** Two members appointed by the speaker of the house, 1 from the minority party.

~~(d)~~ **(iv)** The director of the bureau or his or her designee, as an ex officio member.

**(B) THE FOLLOWING MEMBERS, WHO SHALL BE ATTORNEYS ADMITTED TO PRACTICE IN THE COURTS OF THIS STATE, DESIGNATED AS UNIFORM LAW COMMISSIONERS:**

**(i) ONE MEMBER APPOINTED BY THE GOVERNOR.**

**(ii) THE EXECUTIVE DIRECTOR OF THE STATE BAR OF MICHIGAN OR HIS OR HER DESIGNEE.**

**(iii) THE CHIEF JUSTICE OF MICHIGAN OR HIS OR HER DESIGNEE.**

**[(iv) ONE MEMBER APPOINTED BY THE SECRETARY OF STATE.]**

**[[iv]][v] ANY MEMBER OF THE MICHIGAN COMMISSION ON UNIFORM STATE LAWS APPOINTED UNDER FORMER SECTION 301(1)(A) OF 1986 PA 268 AND SERVING AS OF THE EFFECTIVE DATE OF THIS AMENDATORY ACT, FOR A TERM EXPIRING ON DECEMBER 31, 2014.**

**(C) ANY MEMBER APPOINTED UNDER SUBSECTION 1(A) WHO IS AN ATTORNEY MAY ALSO BE DESIGNATED AS AN ADDITIONAL UNIFORM LAW COMMISSIONER BY THE CHAIRPERSON OF THE COMMISSION.**

**(D) ANY MEMBER OF THE MICHIGAN LAW REVISION AND UNIFORM LAWS COMMISSION, OR ITS PREDECESSORS, WHO IS QUALIFIED AND ELECTED AS A LIFE MEMBER OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS PURSUANT TO THE RULES OF THAT BODY, OR WHO HAS SERVED AS A UNIFORM LAW COMMISSIONER UNDER FORMER SECTION 301 OF 1986 PA 268, UNDER THIS SECTION, OR BOTH FOR A COMBINED PERIOD OF AT LEAST 10 YEARS, MAY CONTINUE TO SERVE THE COMMISSION IN THE CAPACITY OF AN ADDITIONAL UNIFORM LAW COMMISSIONER.**

~~(2)(A) The members first appointed by the council shall be appointed for such terms that the term of 1 member will expire on each succeeding December 31. The term of a member thereafter appointed by the council, except to fill a vacancy occurring otherwise than by expiration of term, shall be 4 years from the expiration of the term of his or her predecessor~~ **OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER.** A vacancy in the office of a member appointed by the council occurring otherwise than by expiration of term, shall be filled by the council for the remainder of the unexpired term. **SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT AND FOR THE BALANCE OF THE UNEXPIRED TERM.**

**(B) MEMBERS OF THE MICHIGAN COMMISSION ON UNIFORM STATE LAWS APPOINTED UNDER FORMER SECTION 301(1)(B) AND (C) OF 1986 PA 268 SHALL CONTINUE IN OFFICE AS ADDITIONAL UNIFORM LAWS COMMISSIONERS FOR A TERM EXPIRING ON DECEMBER 31, 2012. MEMBERS APPOINTED UNDER FORMER SECTION 301 OF 1986 PA 268 MAY BE REAPPOINTED TO THE MICHIGAN LAW REVISION AND UNIFORM LAWS COMMISSION UNDER THIS SECTION.**

~~(3) The council shall designate 1 of the members appointed by the council as chairperson of the commission. At least 3 members appointed by the council shall be attorneys admitted to practice in the courts of this state.~~ **THE MEMBERS OF THE COMMISSION SHALL ELECT ONE MEMBER TO SERVE AS CHAIRPERSON OF THE COMMISSION.**

~~(4) The 3 members of the commission appointed by the council under former Act No. 412 of the Public Acts of 1965 shall continue in office for the duration of the terms of office for which they were appointed and with the members appointed under subsection (1)(b) and (c), the director of the bureau or his or her designee, and the additional member appointed by the council under subsection (1)(a) shall constitute the Michigan law revision commission. Members shall be appointed by the council under subsection (1)(a) to replace the 3 members appointed by the council under former Act No. 412 of the Public Acts of 1965 only as the terms of those members expire. Members appointed by the council under former Act No. 412 of the Public Acts of 1965 may be appointed to the commission by the council under this section.~~

**4.1402 Salaries and expenses of members AND PARTICIPATION; appointment, duties, and compensation of employees.**

Sec. 402.

~~(A) Each member of the commission, other than the ex officio member, may receive an annual salary as established by the council. All members may be reimbursed their actual and necessary expenses incurred in the performance of their official duties. The commission may appoint such employees as may be needed, prescribe their duties, and fix their compensation within the amount appropriated for the commission~~ **FOR THAT PURPOSE.**

**(B) THE EXPENSES OF PARTICIPATION IN THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS BY THE COMMISSION MAY BE PAID FROM APPROPRIATIONS MADE TO THE COUNCIL, [OR FROM APPROPRIATIONS MADE TO] THE GOVERNOR, [THE SECRETARY OF STATE,] OR THE JUDICIARY, FOR THAT PURPOSE [, AS AUTHORIZED UNDER SECTION 5 OF ARTICLE III OF THE STATE CONSTITUTION OF 1963].**

#### **4.1403 Duties of commission; availability of writings to public.**

Sec. 403.

(1) The Michigan law revision **AND UNIFORM LAWS** commission shall do each of the following:

(a) Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American law institute, the national conference of commissioners on uniform state laws, a bar association, or other learned bodies.

(c) Receive and consider suggestions from justices, judges, legislators, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend changes in the law it 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.

(e) Encourage the faculty and students of the law schools of this state to participate in the work of the commission.

(f) Cooperate with law revision commissions of other states and Canadian provinces.

**(G) MEET, CONFER, AND COOPERATE WITH COMMISSIONERS ON UNIFORM STATE LAWS OF OTHER STATES TO BRING ABOUT UNIFORMITY OF STATE LAWS, AND DESIGNATE ONE OR MORE MEMBERS TO PARTICIPATE IN THE ANNUAL MEETING OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.**

~~(g)~~ **(H)** Report its findings and recommendations to the council and annually, before January 2 of each year, to the legislature. If the commission considers it advisable, it shall accompany the commission's report with proposed bills to implement the recommendations.

(2) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, ~~Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws~~ **1976 PA 442, MCL 15.231 TO 15.246.**

**ENACTING SECTION 1. SECTION 301 OF THE LEGISLATIVE COUNCIL ACT, 1986 PA 268, MCL 4.1301, IS REPEALED.**

**ENACTING SECTION 2. [EFFECTIVE DATE?]**