

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN
JUDICIAL DISTRICT
16TH JUDICIAL CIRCUIT
COUNTY PROBATE

SUMMONS AND COMPLAINT 2017-002261-CZ

CASE NO.

2017-002261-CZ

Court telephone no.

586-469-5120

Court address

40 N. MAIN STREET, MT CLEMENS, MI. 48043

Plaintiff's name(s), address(es), and telephone no(s).
KAREN SPRANGER

Plaintiff's attorney, bar no., address, and telephone no.
Frank A. Cusumano, Jr. P42781
16188 Jenny Drive
Macomb, MI. 48042
T(586) 453-4084 F:586-722-2072 cusumanolaw@gmail.com

Defendant's name(s), address(es), and telephone no(s).

MACOMB COUNTY

Macomb County Administration Building
1 S. Main St.
Mt. Clemens, MI. 48043-2306

KATHRYN A. VIVIANO

2017 JUN 22 AM 11:25

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state) (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued

JUN 22 2017 -- SEP 8 12017

This summons expires

Court clerk

Karen A. Spranger

*This summons is invalid unless served on or before its expiration date.
This document must be sealed by the seal of the court.

COMPLAINT

Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

Family Division Cases

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
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The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
2017-1704-CZ	KATHRYN VIVIANO	P- 60219

VENUE

Plaintiff(s) residence (include city, township, or village) Warren, Michigan	Defendant(s) residence (include city, township, or village) Mt. Clemens
Place where action arose or business conducted Mt. Clemens, MI.	

06/21/2017

Date

Frank A. Cusumano P42781
Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

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STATE OF MICHIGAN JUDICIAL DISTRICT 16TH JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT 2017-002261-CZ	CASE NO. 2017-002261-CZ
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Court address
40 N. MAIN STREET, MT CLEMENS, MI. 48043

Court telephone no.
586-469-5120

Plaintiff's name(s), address(es), and telephone no(s). KAREN SPRANGER
Plaintiff's attorney, bar no., address, and telephone no. Frank A. Cusumano, Jr. P42781 16188 Jenny Drive Macomb, MI. 48042 T(586) 453-4084 F:586-722-2072 cusumanolaw@gmail.com

Defendant's name(s), address(es), and telephone no(s). MACOMB COUNTY EXECUTIVE <i>KATHRYN A. VIVIANO</i> Macomb County Administration Building 1 S. Main St. Mt. Clemens, MI. 48043-2306

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Issued JUN 22 2017	This summons expires SEP 8 12 00 PM '17	Court clerk <i>Karen A. Spranger</i>
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Place where action arose or business conducted Mt. Clemens, MI.	

06/21/2017
Date

Frank A. Cusumano Jr.
Signature of attorney/plaintiff

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Court address
40 N. MAIN STREET, MT CLEMENS, MI. 48043

586-469-5120

Plaintiff's name(s), address(es), and telephone no(s). KAREN SPRANGER
Plaintiff's attorney, bar no., address, and telephone no. Frank A. Cusumano, Jr. P42781 16188 Jenny Drive Macomb, MI. 48042 T(586) 453-4084 F:586-722-2072 cusumanolaw@gmail.com

Defendant's name(s), address(es), and telephone no(s). MACOMB COUNTY BOARD OF ETHICS <i>KATHRYN A. VIVIANO</i> Macomb County Administration Building 1 S. Main St. Mt. Clemens, MI. 48043-2306

2017 JUN 22 11:25

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JUN 22 2017	SEP 1 2017	<i>Karen A. Spranger</i>

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06/21/2017
Date

Frank A. Cusumano Jr P42781
Signature of attorney/plaintiff

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Court telephone no.
586-469-5120

Plaintiff's name(s), address(es), and telephone no(s).
 KAREN SPRANGER

v
 Defendant's name(s), address(es), and telephone no(s).
 MACOMB COUNTY BOARD OF COMMISSIONERS
 KATHRYN A. VIVIANO
 Macomb County Administration Building
 1 S. Main St.
 Mt. Clemens, MI. 48043-2306

Plaintiff's attorney, bar no., address, and telephone no.
 Frank A. Cusumano, Jr. P42781
 16188 Jenny Drive
 Macomb, MI. 48042
 T(586) 453-4084 F:586-722-2072 cusumanolaw@gmail.com

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Defendant's name(s), address(es), and telephone no(s). MARK HACKEL, in his official capacity as Macomb County Executive
KATHRYN A. VIVIANO
Macomb County Administration Building 1 S. Main St. Mt. Clemens, MI. 48043-2306

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Frank A. Cusumano Jr
Signature of attorney/plaintiff

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

2017-002261-CZ

KAREN SPRANGER, individually and
in her official capacity as Macomb County Clerk
and Register of Deeds, and
Plaintiff,

Case No. 2017- -CZ
Hon.

KATHRYN A. VIVIANO

-vs-

MACOMB COUNTY,
MACOMB COUNTY BOARD COMMISSIONERS,
MARK HACKEL, in his official capacity as Macomb County Executive,
MACOMB COUNTY EXECUTIVE, and
MACOMB COUNTY BOARD OF ETHICS,
Defendants.

FILED
2017 JUN 22 AM 11:28
CLERK OF COURT
MACOMB COUNTY

COMPLAINT FOR DECLARATORY JUDGMENT, MANDAMUS, AND INJUNCTIVE RELIEF

THE PARTIES

1. Plaintiff, Karen A. Spranger (SPRANGER) is a resident of the County of Macomb, State of Michigan and is the County-Wide Elected Official known as the County Clerk and Register of Deeds (CLERK/ROD), a combined single office, as provided under Michigan law.
2. Defendant, Macomb County (MACOMB COUNTY) is a Michigan county and government unit body corporate under MCL 45.501 et seq., the Michigan Constitution, and the CHARTER.
3. The Macomb County Executive is a County-Wide Elected Official under the CHARTER and has authority over all department heads of MACOMB COUNTY except the other County-Wide Elected Officials, including the CLERK/ROD.

4. Mark Hackel, is the elected Macomb County Executive, said office being commonly known as the Office of County Executive (OCE).
5. The Macomb County Board of Commissioners (BOC) is a subdivision of MACOMB COUNTY, and its legislative body under the CHARTER at Article IV.
6. Macomb County Board of Ethics (BOE) is a public body under Michigan Open Meetings Act, MCL 15.261 et seq., and a public body under Michigan Freedom of Information Act, MCL 15.231 et seq., and is a subdivision of MACOMB COUNTY under the CHARTER at Article II.

VENUE AND JURISDICTION

7. This cause of action arose in whole or part from transaction or occurrences in the County of Macomb, State of Michigan.
8. Jurisdiction of this Court is vested by virtue of the equitable relief sought, including mandamus, declaratory judgment, and injunctive relief under MCL 600.601 and 605.

GENERAL ALLEGATIONS

9. This case arises from actions taken, and ongoing actions, by the MACOMB COUNTY defendants alleged more fully hereinafter, through the OCE, its appointees, and/or their department heads and deputies, and the BOC before and since the assumption of office by SPRANGER as CLERK/ROD.
10. SPRANGER as CLERK/ROD seeks to protect or seek authority to implement the rights, powers, and duties of the CLERK/ROD office and to clarify or enforce the rights, powers, and duties of the office. CHARTER §6.6.5.

COUNT I

**DECLARATORY JUDGMENT TO INVALIDATE THE WEAPON FREE ZONE AS TO FIREARMS;
REQUEST FOR MANDAMUS; REQUEST FOR INJUNCTION AGAINST ENFORCEMENT OF THE
MACOMB COUNTY FIREARM BAN AT 1 S. MAIN, MOUNT CLEMENS, AND 120 N. MAIN
STREET AS THE RULES, POLICY OR REGULATION IS PRE-EMPTED BY MCL 123.1102.**

11. Plaintiffs reallege each allegation in the preceding paragraphs as though alleged in this Court.

12. This lawsuit challenges and seeks declaratory judgement invalidating, mandamus, and a permanent injunction against the enforcement restrictions and regulations on the possession and carrying of firearms unlawfully imposed and enforced at the MACOMB COUNTY offices located at 1 S. Main Street (the "Administration Building"), and 120 N. Main Street, Mt. Clemens, Michigan (the "Talmer Building").

13. The Administration Building and the Talmer Building do not implicate judicial "courtroom, office, or other space used for official court business or by judicial employees;" and any policy, rule or regulation as to firearms by local government, as defined by statute, is preempted by MCL 123.1102.

14. On or about October 24, 1996, the Macomb County Circuit Court entered ADM. ORD. 1997-01 which included an "Agreement Regarding Building Security" (the "Agreement") dated September 26, 1996. Exhibit A. ADM. ORD. 1997-01.

15. The ADM. ORD 1997-01 is captioned: "IN RE COURT SECURITY."

16. The Agreement stated, inter alia: "The County of Macomb and the Macomb County Circuit Court agree that it is in the best interests of justice and of citizens, employees and elected officials to establish a no weapons zone in the Macomb County Circuit Court building and the attached county building, which can only be implemented through a search of persons entering the building. Emphasis added. Agreement ¶ 1.

17. The Agreement states that weapons, including but not limited to firearms are defined by common usage. *Id.* ¶ 3.

18. Under the Agreement, "weapons" including pistols and firearms are prohibited in the Macomb County Circuit Court building and "adjacent county building." *Id.*

19. ADM ORD 1997-01 stated:

"[s]ince it is in the best interests of justice and of citizens, employees, and elected officials to establish a weapons free zone in the Macomb County Circuit Court building and the attached County building... pursuant to MCR 8.110.

IT IS ORDERED that weapons *** are prohibited in the Macomb County Circuit Court and the County Buildings located at 40 and 10 N. Main Street, Mt. Clemens, Michigan. Emphasis added.

20. By its explicit terms, the ADM ORD 1997-01 extends to non-judicial areas in MACOMB COUNTY government buildings, to wit: 10 S. Main Street.

21. ADM ORD 1997-01 does not cover or implicate the Administration Building or the Talmer Building.

22. The ADM. ORD. 1997-01 clearly sanctions non-compliance with the weapons free zone policy: "Any person who refuses to cooperate may be removed from the premises." *Id.*

¶ 3.

23. On March 27, 2001, the Michigan Supreme Court entered AO-2001-1 which stated, *inter alia*:

It is ordered that weapons are not permitted in any courtroom, office, or other space used for official court business or by judicial employees unless the chief judge or other person designated by the chief judge has given prior approval consistent with the court's written policy.

Exhibit B.

24. The Supreme Court AO-2001-1 does not proscribe firearms outside the scope of those specific judicial environs prescribed.

25. Upon information and belief, MACOMB COUNTY and the OCE has expanded the proscribed firearm ban even further to include not only 10 S. Main, but also the Administration Building at 1 S. Main St. and 120 N. Main Street under ADM. ORD 1997-01.

26. An actual controversy exists because the CLERK/ROD is charged with the management, supervision, and control of her elected office, including adherence to state law therein, and MACOMB COUNTY, pre-CHARTER and Post-CHARTER through the OCE has enacted and executed a "no weapon zone" policy over CLERK/ROD facilities.

27. The CLERK/ROD disputes that the "no weapon zone" policy is legal and enforceable as the Administration Building, which she frequents in her public office duties and the Talmer Building where one of her offices currently is located; both do not implicate judicial functions of the Macomb County Circuit Court or are occupied by Court employees.

28. MCL 123.1102 defines "Local unit of government" to mean "a city, village, township, or county." *Id.*

29. MCL 123.1102 provides:

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

30. Michigan Courts have ruled that, it was the "Legislature's 'clear policy choice [in MCL 123.1102] to remove from local units of government the authority to dictate where firearms may be taken,' *Mich. Coalition*, 256 Mich.App. at 414, 662 N.W.2d 864, demonstrates that the Legislature has occupied the field of firearm regulation that the library's weapons policy attempts to regulate: the possession of firearms. *Capital Area Dist. Library v. Michigan Open Carry, Inc.*, 298 Mich.App. 220, 239, 826 N.W.2d 736 (2012).
31. It is long settled law in Michigan that, "[i]n no uncertain terms, [MCL 123.1102] mandates that '[a] local unit of government shall not... enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ... except as otherwise provided by federal law or a law of this state.' (Emphasis supplied.) With the pronouncement in § 1102, the Legislature stripped local units of government of all authority to regulate firearms by ordinance or otherwise with respect to the areas enumerated in the statute... With the enactment of § 1102, the Legislature made a clear policy choice to remove from local units of government the authority to dictate where firearms may be taken. *Michigan Coalition for Responsible Gun Owners v. City of Ferndale*, 256 Mich.App. 401, 662 N.W.2d 864 (2003)
32. Despite MCL 123.1102, MACOMB COUNTY, in its Administration Building located at 1 S. Main Street, Mt. Clemens, Michigan maintains at least two (2) metal detectors, x-ray machines, and security personnel teams ("search stations") located at the first floor (street level) northwest entrance and the first-floor southeast entrance

vestibule/elevator lobby adjacent to the newly constructed parking structure, searches persons entering the building in order to "enforce" a "weapon-free zone," including a ban on the possession of firearms while visiting the building.

33. Despite MCL 123.1102, MACOMB COUNTY maintains at the Talmer Building one (1) search station at the main entrance of 120 N. Main Street, Mt. Clemens, Michigan which is dedicated to the search of persons entering the premises in order to enforce the firearms ban.
34. The purpose of the search stations is to enforce a "weapons free zone" rule, regulation and/or policy by MACOMB COUNTY, a local unit of government, in violation of MCL 123.1102, through or without authority under ADM ORD 1997-01 or other MACOMB COUNTY policy enforced, but currently unknown.
35. Regulation of firearms by local governments cannot be accomplished through an agreement with the judicial branch to extend judicial powers beyond those prescribed in the field by AO-2001-1.
36. On May 15, 2017, the CLERK/ROD facilities were moved by MACOMB COUNTY to 120 North Main Street, Mt. Clemens, MI. by the OCE.
37. SPRANGER requested that armed security be posted at 120 N. Main Street, to preserve, and protect any cash receipts and deposits at the ROD against robbery and to deter potential criminal activity.
38. SPRANGER's request was ignored by the OCE and, after repeated requests, she was finally told to, "find it in your own budget."

39. Upon belief and information representatives of unionized employees, UAW Local 412, then requested to the OCE that the ROD at 120 North Main Street be declared and enforced as a "no-weapons zone."
40. UAW Local 412 representatives, under the CHARTER, the collective bargaining agreements, local ordinance, or otherwise, to dictate regulation of the possession of firearms by the citizenry on MACOMB COUNTY premises simply because that union disagrees with the policy choices of the Michigan Legislature.
41. Customers of the CLERK/ROD are Michigan citizens and are legally entitled to carry their licensed and legal possessed firearms to protect themselves under the 2nd Amendment of the U.S. Constitution and the Michigan Constitution, Article 1, § 6, to defend themselves and their property.
42. The CLERK/ROD, her deputy, her private attorneys, and staff routinely visit, meet and occupy the public spaces for business purposes 120 N. Main Street.
43. The CLERK/ROD, her deputy, and staff routinely attend various meetings at Human Resource and Labor Relations, OCE, and the BOC located at 1 S. Main Street, Mt. Clemens, Michigan.
44. There is no "courtroom, office, or other space used for official court business or by judicial employees" at 120 N. Main Street, or at 1 S. Main Street.

WHEREFORE Plaintiffs respectfully request that this Honorable Court issue an Order of Declaratory Judgement that the premises at 1 S. Main Street, and 120 N. Main Street, Mt. Clemens, are not subject to the firearms ban; Issue an Injunction enjoining the further use of the search stations at 1 S. Main Street, and 120 N. Main Street, Mt. Clemens; and issue a writ of

mandamus that the Agreement between the Macomb County Circuit Court and MACOMB COUNTY be rescinded by the BOC effective immediately except as to those areas covered under AO-2001-1.

COUNT II

DECLARATORY JUDGMENT THAT THE \$30 FILING FEE ADOPTED UNDER PREVIOUS CLERK/ROD IN 2016 IS UNLAWFUL; AND REQUEST FOR INJUNCTION.

45. Plaintiffs reallege each allegation in the preceding paragraphs as though alleged in this Count.

46. The BOC adopted, as required by CHARTER and state law, a Budget (MACOMB COUNTY BUDGET) for fiscal year 2017.

47. On or about October 1, 2016 the Register of Deeds under the former Clerk/ROD, Carmella Sabaugh, raised the filing fee to \$30 per document filed with the MACOMB COUNTY Register of Deeds.

48. Upon information and belief, the BOC never voted on an ordinance to raise the fees charged by the Register of Deeds, instead relying on the interpretation of the former CLERK/ROD of MCL 600.2567(1)(a).

49. The current CLERK/ROD, SPRANGER, upon review of the pertinent statute, MCL 600.2567, has concluded that the \$30 fee was arbitrarily and capriciously imposed by the former Register of Deeds, and in violation of the plain language of the statute.

50. Upon belief and information, the statutory restrictions pursuant to MCL 600.2567 have been deliberately ignored in order to unlawfully increase revenue for MACOMB COUNTY.

51. MCL 600.2567 states, inter alia:

- (1) Except as provided in subsection (3), a register of deeds is entitled to the following fees, which are not taxable as costs except as indicated:
 - (a) For entering and recording a document, regardless of the number of pages, \$30.00 , which includes the fee required to be collected under section 2567a [\$4.00 remonumentation fund fee]. In addition to remitting a portion of the fee to satisfy section 2567a, the register of deeds shall deposit \$5.00 of the total fee collected for each recording into the automation fund established under section 2568

- (3) ***A charter county shall not impose a fee that is greater than the cost of the service for which the fee is charged.*** (Emphasis added).

52. MCL 600.2567(3) requires that MACOMB COUNTY, a charter county, know what the “cost of service” is to set the subject filing fee.

53. SPRANGER has concluded, in her official capacity, that because MACOMB COUNTY is a “charter county,” the filing fee charged cannot exceed the “cost of service.”

54. “Cost of service” is not defined by the statute.

55. Upon information and belief, the \$30 fee imposed since October 2, 2016 exceeds the “cost of service” at the Macomb County Register of Deeds.

56. The 2017-2018 MACOMB COUNTY BUDGET approved by the BOC establishes and certifies that the Register of Deeds currently maintains and is expected to continue to maintain operating revenues in excess of its operating expenses (the “cost of service”), thus generating a “profit” for the County in violation of MCL 600.2567.

57. Search of the public record by Plaintiff has failed to produce evidence that the former CLERK/ROD, the BOC, or any department under the OCE has ever done an audit, study, or survey of costs to determine the “cost of service.”

58. Upon belief and information, the former CLERK/ROD never determined the "cost of service" and unilaterally increased the service fee per document to \$30 under the erroneous belief that she was entitled to do so under MCL 600.2567(1)(a) which Plaintiff asserts is in violation on MCL 600.2567(3).
59. The continued charging of the \$30 per document has resulted in overcharges to CLERK/ROD customers in amounts in excess of the cost of service.
60. The setting of the \$30 fee by MACOMB COUNTY, a charter county, was arbitrary and capricious and without support as to the true "cost of service."
61. According to the 2017 Macomb County Gneral Fund Revenue Budget adopted by the BOC, the 2016 Amended General Fund Revenue Budget called for revenue of \$2,252,000. MACOMB COUNTY BUDGET at Appendix C-4.
62. The adopted 2017 Register of Deeds General Revenue Budget is \$3,342,000, an increase of \$1,090,000 over fiscal year 2016.
63. The MACOMB COUNTY BUDGET indicates no increase in personnel at the Register of Deeds. MACOMB COUNTY BUDGET at A-20.
64. The MACOMB COUNTY BUDGET calls for overall MACOMB COUNTY expenditures in 2017 at the Register of Deeds of \$ 1,915,789. MACOMB COUNTY BUDGET at C-7.
65. Upon belief and information, the BOC and MACOMB COUNTY is in willful violation of MCL 600.2567(3) because to do so generates increased operating revenue for the county and turns the ROD into a profit center (an revenue less expense net of \$1,426,211) which violates the MCL 600.2567(3) "cost of service" restriction.

66. SPRANGER seeks declaratory judgment to rescind the \$30 fee instituted under the former CLERK/ROD, reinstate the previous \$14 fee per first page fee and other fee structure present before the October 1, 2016 increase, until such time as the "cost of service" can be legally ascertained, certified, and fixed by the CLERK/ROD for 2017-2018 fiscal year or the BOC passes an Ordinance in accordance with MCL 600.2567 (3).
67. The BOC has acquiesced and tacitly approved, through 2017-2018 budget resolutions, the unlawful increase to \$30 fee, in effect turning the Register of Deeds and the \$30 fee into a profit center for MACOMB COUNTY, in violation of MCL 600.2567(3), and at the unlawful expense of customers of the Register of Deeds, including but not limited to hundreds of homeowner and condominium associations and their members located in Macomb County.
68. Wayne County Register of Deeds, in a charter county, did not raise its filing fee to the \$30, and instead set the fee at \$15.
69. The continued charging of the \$30 is in violation of MCL 600.2567(3) and exposes the Register of Deeds and MACOMB COUNTY to legal action by CLERK/ROD consumers, including a possible class action lawsuit by those paying the unlawfully increased fee.
70. The \$30 Filing Fee Adopted Under Previous Clerk in 2016 is unlawful and cannot continue to be collected until such time as the "cost of service" is determined because it violated MCL 600.2567(3).

WHEREFORE, Plaintiffs request an Order of Declaratory Judgment that the current fee of \$30 was unlawfully increased without the "cost of service" being determined by MACOMB

COUNTY, a writ of mandamus reinstating the previous filing fee structure; and an Injunction against collection of the \$30 fee until further Order of the Court.

COUNT III

DECLARATORY JUDGMENT AND REQUEST FOR INJUNCTION THE BOARD OF COMMISSIONERS' ADOPTION OF ORDINANCE 2017-211.

71. Plaintiffs reallege each allegation in the preceding paragraphs as though alleged in this Count.
72. Upon belief and information, before the election of SPRANGER the votes at BOC meetings were recorded and tabulated by the CLERK or her designated representative, if present.
73. Upon belief and information, before the election of SPRANGER the CLERK could be present and records the minutes of votes at BOC meetings were recorded and tabulated by the CLERK or her designated representative, if present.
74. The prior CLERK on January 30, 2014, published on the internet, as a page on the CLERK's official website that, "[t]he Macomb County Clerk's Office, under the leadership of the Macomb County Clerk, is the official Clerk for the Macomb County Board of Commissioners. Full Board Meeting Minutes and Agendas are recorded and maintained by the Macomb County Clerk's Office." <http://clerk.macombgov.org/Clerk-BoardOfCommissionersFullBoard-AgendasMinutesNotices2014b> (accessed 06/11/2017).
75. The BOC agendas and minutes are also accessible to the public at the CLERK website at <http://clerk.macombgov.org/Clerk-BOCFullBoard-AgendasMinutesNotices2017> (accessed 06/11/2017).

76. The BOC website which purports to make the agendas and minutes available freezes up and bogs down with never ending "loading" GIF.

<http://macombcomi.boardsync.com/Web/site.aspx> (accessed 06/11/2017).

77. On January 10, 2017, in accordance with the power granted under the CHARTER at § 4.3 the BOC adopted its Rules of Procedure (New 2017 Rules) under Ordinance 2017-18.

Exhibit C.

78. Charter at § 4.3 states, inter alia:

At the first meeting of each new term, the Commission shall elect a chairperson and its other officers and establish its rules of procedure...

79. The CHARTER states that the CLERK's "powers and duties of the department are those provided by law for county clerks and register of Deeds." CHARTER §6.3.1.

80. The CHARTER provides that the CLERK "department shall maintain central records of the County as provided by law or ordinance. The county clerk, with the assistance of the Executive, shall preserve and keep all records and materials of the first and any future Charter Commission, including but not limited to, all audio and video recordings of the Charter Commission and its subcommittees. CHARTER § 6.3.2.

81. The BOC, and the OCE through corporation counsel, has denied the CLERK the right to attend closed sessions of the BOC, despite her clear role in keeping the minutes of such closed session meetings.

82. MCL 15.267(3) states, inter alia:

A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the

- public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13.
83. On or about January 26, 2017 by way of Resolution 2017-211, Exhibit C, and in direct response to protests by SPRANGER, the BOC in violation of the CHARTER adopted amended Rules of Procedure (Amended 2017 Rules).
84. The New Rules 2017 acknowledged that the "Clerk shall perform required duties related to the Board as required by law,"
85. New Rules 2017, R. 18 A, and then diminished or eliminated those duties in other rules and sub-paragraphs.
86. The New Rules 2017 and the Amended New Rules 2017, as adopted, infringed upon the statutory duties of the CLERK as prescribed in MCL 46.4, including:
- A. Unlawfully amending the Rules of Procedure on January 26, 2017 after the first meeting of the BOC, January 10, 2017, in violation of the CHARTER which states that the rules of procedure shall be established at the first meeting. CHARTER § 4.3.
 - B. Changing Rule 18 to strip the CLERK of her BOC minute keeping function for the "full board" and duties under the Rules of Procedure.
 - C. Changing Rule 19 under the Amended New Rules 2017 to read that "closed session minutes shall be produced by Board personnel designated by the Board" and "a copy" of the closed session minutes be kept "under seal" when no such requirement exists under the Open Meetings Act, the Michigan statutes, or the CHARTER.
87. MCL 46.4 states that it is the duty of the Clerk, not a Board designee, "To record all the proceedings of such board in a book provided for that purpose."

88. Corporation Counsel and the BOC has advised SPRANGER that she is not allowed to attend the closed sessions of the BOC, and therefore cannot "record" the minutes.
89. The New Rules 2017 included a voting procedure at R. 15 that the voting be by electronic means, R 15 (1), and that "votes will be automatically posted on the Board's presentation screens." *Id.*
90. R. 15 eliminated the role of the CLERK in this required function under MCL 46.4.
91. R 15 continues that, after the electronic voting ends, "the Chairman declares the voting ended and asks for a tally." *Id.*
92. "Posted" is not defined under the New Rules 2017.
93. The Amended New Rules 2017 include that the BOC electronic board system, "which when properly linked to meeting agenda materials, will produce a rough draft of minutes." R. 18 B.
94. R. 18 B continues that, [b]oard personnel shall make that draft [the electronic voting system] of minute of the Full Board meetings available to the Clerk who shall use them in performing the Clerk's duties under sub-rule 18 C." Emphasis added. *Id.*
95. Stated otherwise, the Board voted under the Amended New Rules 2017 to have a non-CLERK employee of the BOC create "meeting agenda materials;" it then calls for rough draft minutes to be automatically generated from those materials.
96. R, 18 B. violates MCL 46.4 which states that it is the duty of the CLERK to "record all the proceedings of such board in a book provided for that purpose," and "make regular entries of all their resolutions and decisions upon all questions."

97. MCL 46.4 is clear and unambiguous: it is the CLERK's duty to record the BOC proceedings, not a BOC employee indirectly through the "electronic Board/Sync system" and pro forma approval by the BOC.
98. MCL 46.4 provides for an independent elected official, the CLERK, to keep the record of the BOC; the Amended New Rules seek to evade the subvert that statutory mandate.
99. Amended New Rules, R. 18 B, violates MCL 46.4 in that it states the CLERK "shall use them [the Board/Sync draft minutes] in performing the Clerk's duties under sub-rule 18 C."
100. SPRANGER protested not being allowed to attend BOC closed sessions to keep the closed session minutes as a derogation of her statutory role at the BOC Meetings and the mandated procedures for her official duties under MCL 465.4 and the Open Meetings Act, MCL 15.261 et seq. (the OMA).
101. MCL 46.4 preempts local rules and regulation as MCL 46.4 is meant to encompass the entire field.
102. MCL 15.267 is meant to occupy the entire field as to the Clerk's role in closed session and her keeping of the closed session minutes.
103. SPRANGER, through independent legal counsel, requested negotiations to arrive at an intergovernmental agreement to reconcile the dispute Amended New Rules 2017.
104. SPRANGER had no objection to the voluntary use of the draft Board/Sync minutes by her, however, disputed that their use was mandatory, or that the BOC had authority to mandate the CLERK's procedures for the recording of the BOC minutes for all decisions, all resolutions, and all proceedings.

105. SPRANGER objected to Amended New Rule 19 which stated that the "Board Staff shall provide a copy of the proposed minutes to the Clerk prior to the agenda deadline and that "[c]losed session minutes shall be produced by Board personnel designated by the Board and a copy maintained by the Clerk, under seal as required by the Open Meetings Act."

106. The OMA does not require that the minutes of closed session be kept under seal.

107. MCL 15.267 of the OMA requires only that:

A separate set of minutes shall be taken *by the clerk* or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

108. There is no "designated secretary" of the BOC, only the CLERK under the CHARTER § 6.3.1.

109. SPRANGER does not dispute that ultimately the BOC votes to approve or disapprove the minutes of its meetings as required under the OMA at § 9 (MCL 15.269); her dispute is over the preparation of the CLERK's proposed minutes and, in the case of the closed session minutes, her ability to perform the CLERK's duty at the same time as being excluded.

110. The BOC, through Chairman Smith, rejected the CLERK's request for discussion, negotiation, and an intergovernmental agreement to resolve the issues.

WHEREFORE, Plaintiff SPRANGER requests an Order of Declaratory Judgment that the New Rules 2017 and the Amended New Rules 2017 R. 15, 18 and 19 be declared null and void to the extent that they conflict with the statutorily prescribed duties of the CLERK/ROD, and issue an

Injunction enjoining the BOC from mandating the preparation of minutes by the CLERK from Board/Sync materials, and issue a writ of mandamus that the CLERK be admitted to closed sessions of the BOC in order to record, and prepare minutes as required under MCL 46.4 and the OMA.

COUNT IV

DECLARATORY JUDGMENT THAT BOARD OF ETHICS COMPLAINT(S) BY FORMER CLERK/ROD DEPUTIES KARDACZ AND STAHL THAT REFERENCE HRLR POLICIES ARE NOT APPLICABLE TO A COUNTY-WIDE ELECTED OFFICIAL, AND ARE INVALID TO ESTABLISH AN ETHICS VIOLATION OR FOR ANY OTHER PURPOSE; DECLARATORY JUDGMENT THAT SPRANGER'S DUE PROCESS RIGHTS WERE VIOLATED BY THE BOE FAILING TO ADHERE TO THE RULES OF PROCEDURE AT § 2.5 F; AND DECLARATORY JUDGMENT THAT CORPORATION COUNSEL'S OPINIONS ARE NON-BINDING AS TO COUNTY-WIDE ELECTED OFFICIALS UNDER THE CHARTER AND INJUNCTIVE RELIEF.

111. Plaintiffs reallege each allegation in the preceding paragraphs as though alleged in this Count.
112. The CHARTER contains provision for a Board of Ethics and requires that the BOC enact an ethics ordinance.
113. The BOC enacted a The CHARTER requires that the Ethic Board have Rule of Procedure. CHARTER 2.5.1.
114. The Ethic Ordinance provides for civil penalties only to a respondent found in violation, but acts as a proverbial scarlet letter against the public servant and effectively brands him/her as unethical, dishonest and disreputable.
115. The BOE Rules of Procedures provide the respondent with the right to cross examine witnesses and call witnesses at §2.5 F.
116. On March 10, 2017 SPRANGER terminated her two "at will" statutory deputies, ERIN STAHL (STAHL), Deputy Register of Deeds and PAUL KARDASZ (KARDASZ).

117. On March 12, 2017 KARDASZ and STAHL filed Ethic Complaints with the BOE against SPRANGER, alleging violation by SPRANGER of the collective bargaining agreements.
118. No specific policy allegedly violated was identified nor was it pled that the collective bargaining agreements were "policies" of MACOMB COUNTY.
119. KARDASZ and STAHL alleged that SPRANGER had violated county hiring policies in deputizing two individuals, Jacqueline Ryan and Joseph Hunt
120. No specific county hiring policy was identified by KARDASZ or STAHL.
121. KARDASZ and STAHL alleged that SPRANGER had violated federal, state, and local employment "requirements" by deputizing the two individuals, Ryan and Hunt, as "non-employee" deputies
122. No specific federal, state and local employment "requirements" were identified by STAHL or KARDASZ.
123. KARDASZ and STAHL alleged that a county policy was violated by SPRANGER allowing access to county computers: "Another willful violation of Ordinance 2.1(e) was Clerk Spranger allowing access to the County IT network."
124. No specific IT county policy allegedly violated was identified by KARDASZ or STAHL.
125. KARDASZ and STAHL alleged that a county policy was violated by SPRANGER when she allegedly instructed the Chief Deputy Clerk (KARDASZ), Chief Deputy Register of Deeds (STAHL), the Administrative Secretary, and "others" to print information, to

“circumvent the restricted access” after the “County Executive instructed the County IT Department to restrict Clerk Spranger’s access to the network.”

126. No county policy allegedly circumvented was identified by KARDASZ or STAHL.
127. KARDASZ and STAHL alleged that a county policy was violated by SPRANGER in that she allowed “non-employees” into restricted areas, including “behind closed doors of the Clerk’s Office, after typical scheduled hours of operations ... and when Chief Deputy Kardasz suggested he should call to have Ms. Ryan removed.”
128. No county policy or county restriction policies were identified by STAHL or KARDASZ.
129. On April 19, 2017 SPRANGER was not allowed to cross examine or call witnesses related to the testimony of KARDASZ at the BOE meeting.
130. On May 17, 2017 (STAHL’s BOE hearing date) SPRANGER’s counsel specifically attempted to call MACOMB COUNTY corporation counsel John Schapka, then present to identify the alleged violated policies and the BOE Chair denied the request.
131. On May 17, 2017, SPRANGER’s counsel specifically attempted to cross-examine STAHL after her testimony and the BOE Chari denied the request.
132. The allegations of access to the county network by the “non-employees” Hunt and Ryan were false and made up by opponents to the CLERK, access was impossible since the former CLERK’s computer was basically a shell without basic software and network access ability.
133. Ryan testified, under oath, at the BOE hearing on April 19, 2017 that the allegation that she accessed the county IT network was false and did not happen.

134. In response to the Ethics Complaints, SPRANGER filed objections, including that the Rules of Procedure had not been updated, were obsolete, and that under the Macomb County Ethics Ordinance SPRANGER was entitled to due process under the rules.

135. SPRANGER requested a bill of particulars as to which exact county policies she violated, when the violation took place, and witnesses to support the allegations.

136. SPRANGER, in her objections, also cited to the "Introduction and Scope" document of Human Resources and Labor Relations (HRLR), a department under the OCE, which states:

"The County Clerk-Register of Deeds, [and] statutorily mandated deputies, ... are not subject to HR Policies."

137. HRLR "Introduction and Scope" then announces that:

The employees of the above named Elected Officials are subject to the provisions of these HR Policies. The Elected Officials are obligated to abide by, and enforce, the provisions of these HR Policies as they relate to the employees under their jurisdiction.

138. There is no authority under the CHARTER whereby any HRLR policy, created and approve internally at the OCE, can dictate that the HRLR policy itself, published by HRLR, "obligates" the Elected Official to abide by, and enforce provisions of the HRLR policies.

139. While it would make common sense from a single management perspective, the CHARTER simply does not give this broad power to HRLR to create a choke point in the hiring process in departments run by County-Wide Elected Officials, and in this case the CLERK/ROD.

140. Neither the former CLERK/ROD or the present CLERK/ROD explicitly or implicitly approved or consented to the HRLR policies, and conflicts have developed between the

current CLERK/ROD with HRLR culling the applicant pool to suit its view of how the CLERK/ROD Office should be staffed and by whom.

141. Under the interpretation of the HRLR under the OCE, the only difference between a County-Wide Elected Official and a department head under OCE, is that the County Executive cannot fire the County-wide Elected Official.
142. Under the interpretation of the OCE, the HRLR has authority to pre-screen and eliminate applicants that HRLR considers unqualified from the total pool of applicants and then set that narrowed applicant pool of five (5) for interviews by the County-Wide Elected Official and HRLR personnel present and scoring the interviewed applicant.
143. HRLR personnel have low scored the interview applicants which SPRANGER has verbally engaged and expressed interest in as potential employees, diluted the CLERK/ROD vote, and then left the CLERK/ROD with a take it or leave it proposition: hire the HRLR selected applicant or leave the position vacant.
144. HRLR has then worked in concert with the unionized staff to entertain, and validate, demands made by existing unionized employees that they have rights not found in the collective bargaining agreements to job placement preference.
145. The right to "administer" the collective bargaining agreement does not give authority to HRLR or Corporation Counsel to interpret the collective bargaining agreements, or insert terms not found therein, in a manner adverse to the County-Wide Elected Official's plain reading of the agreements and her management of the department.
146. The CHARTER simply does not give this power to HRLR or Corporation Counsel.

147. Under the CHARTER's interpretation by SPRANGER, the County-Wide Elected Official has the right to access all potential hire applicants, HRLR has no authority to screen qualified from unqualified applicants from the total pool, and the Elected Official has the final hiring authority irrespective of HRLR's scoring and opinion which is advisory and not binding in the hiring process.
148. The CHARTER by not giving the hiring power to HRLR, is reserved to the County-Wide Elected Official and cannot be directly or indirectly controlled by HRLR.
149. Under the CHARTER's interpretation by SPRANGER, the CLERK/ROD is a co-equal branch with the other county departments, including HRLR, with the management authority to hire, fire and discipline employees under her as carve out, by the CHARTER, and subject to the collective bargaining agreements which reserve the rights of management to the "employer."
150. SPRANGER is the ultimate "employer" of the workers in the CLERK/ROD on issues of terms and conditions of employment under the CHARTER.
151. The CHARTER states the limited role of HRLR related to the employees and prospective employees of the any County-Wide Elected Official, including the CLERK/ROD in the hiring and culling of the applicant pool:

Section 7.3 Human Resources and Labor Relations

- 7.3.1** The department of Human Resources and Labor Relations is created. The department of Human Resources and Labor Relations shall:
- (a) Formulate and direct the County's overall human resource program;
 - (b) Negotiate all labor and employee relations matters on behalf of the County;
 - (c) Administer collective bargaining agreements of the County;
 - (d) Establish employment specifications and protocols for County Employees not covered by civil service; and
 - (e) Assist the civil service commission.

152. Any authority except that of HRLR Policy regarding "Employment Relationships" was amended the day SPRANGER took office, January 3, 2017.

153. The HRLR "Employment Relationship" Policy, as amended (01/03/2017), now reads:

Authority to enter into, modify or amend an employment agreement and related terms of employment is vested exclusively with Human Resources and Labor Relations pursuant to the County Charter and to certain Elected Officials under State law.

154. The CHARTER simply does not give this power to HRLR.

155. The OCE simply announced that this role and power was "vested exclusively... pursuant to the CHARTER" but the CHARTER does not say this.

156. The HRLR "Disciplinary Action" states:

Any Elected Official/Department Head contemplating disciplinary action involving a written reprimand, suspension without pay and/or discharge shall involve Human Resources and Labor Relations in such deliberation.

157. The CHARTER simply does not give this power to HRLR.

158. HRLR is not authorized to issue interpretations of the collective bargaining agreements, and whether positions are unionized or not unionized.

159. The CHARTER does not give authority to HRLR to eliminate or cull applicants, directly or through software programs, without the express approval of the department head.

160. HRLR, through Karen Bathanti and Susan Bruzesse, has culled applicants seeking employment to the CLERK/ROD in order to purposely undermine and slow the filling of vacant positions with qualified workers due to personal animosity with SPRANGER.

161. HRLR has change open non-union positions to unionized positions after SPRANGER's election, but before she took office, including the position of Administrative Coordinator in the CLERK's Office.
162. Based on the composition of certain supervisory staff; it has apparently been a longstanding policy of HRLR to first consider county employee relatives, friends, and displaced politicians of county government for positions in the CLERK/ROD Office.
163. The CHARTER simply does not give this power to HRLR.

COUNT V

CORPORATION COUNSELS' INVESTIGATIONS, FINDINGS, RULINGS AND CONCLUSIONS OF LAW RELATED TO IT POLICY VIOLATIONS IN THE JANUARY 12, 2017 MEMO ARE BASELESS, ERRONEOUS AND DESIGNED TO FRUSTRATE, CONFOUND AND STYMY THE CLERK/RO-DECLARATORY JUDGMENT AND INJUNCTION AGAINST FURTHER INTERFERENCE WITHOUT DUE PROCESS AND COURT ORDER.

164. Plaintiffs reallege each allegation in the preceding paragraphs as though alleged in this Count.
165. Macomb County Corporation Counsel made, without an investigation, findings of fact and conclusions of law based on allegations that SPRANGER had violated county policies in a memo dated January 12, 2017 (January 12, 2017 Memo).
166. On the Frank Beckman radio program broadcast on March 13, 2017, County Executive Mark Hackel stated that the Clerk had allowed access to "vital records and HIPPA records" of county employees.
167. Hackel went on to characterize the dispute between the parties as the CLERK/ROD as her attempt to "fire employees" and "hire her own family and friends."

168. Hackel's statements were inaccurate, grossly mischaracterized the dispute, and did not give appropriate attention to the scope and breadth of the issues SPRANGER has made under the CHARTER.

169. Corporation Counsel maintains to date that he can, at any time and without cause in fact or legal authority under the CHARTER, order the CLERK's IT resources terminated based on unsubstantiated rumor, innuendo, and gossip and his unilateral determination that county policy has been violated.

170. Corporation Counsel, despite repeated requests by SPRANGER and her attorney, has failed to identify exactly what county policies had allegedly been violated that related to the termination of the CLERK's access to the county computerized network.

171. Upon belief and information, there is no county policy for what SPRANGER allegedly did or did not do between January 3, 2017 and March 12, 2017 to justify or support the unilateral termination of IT access.

172. The OCE demanded that unless SPRANGER signed a document printed off the internet by the OCE, her IT "privileges" would not be restored.

173. Inspection of the putative "IT policy" document SPRANGER was asked to sign revealed that it did not contain an relevant IT policy of the county and further that nothing in the document suggested that it was a policy, or when applying the facts to what the document pertained, that SPRANGER had violated it.

174. Upon belief and information Corporation Counsel scrambled to find any policy even remotely supportive of the alleged IT policy violations to justify the unilateral action take to terminate SPRANGER's IT access, after the fact.

175. When pressed to produce the actual IT policies violated, Corporation Counsel procured and sent the inapposite documents which either did not apply or were irrelevant to the allegations against SPRANGER.
176. The KARDASZ and STAHL BOE Complaints and the resulting violations were based, in whole or part, on the January 12, 2017 Memo which was based on corporation counsel's non-existent investigation and willfully erroneous application of inapposite IT policies.
177. On April 19, 2017, the BOE ruled that SPRANGER was "in violation of Enrolled Ethics Ordinance 2016-03, sections 2.1 B and 2.1 E."
178. The BOE April 19, 2017 minutes do not indicate, nor was it disclosed at the BOE hearing by the BOE exactly what SPRANGER did, factually, that violated a county policy or what that county policy was.
179. On May 17, 2017, at the STAHL hearing before the BOE, SPRANGER's counsel requested an opportunity to cross examine Corporation Counsel about his putative investigation, findings, and conclusions in the January 12, 2017 Memo.
180. The Chair of the BOE denied respondent SPRANGER's her rights under the BOE Rule of Procedure.
181. The CHARTER does not give any authority to the BOE to ignore and violate its own Rules of Procedure and, in fact, the Ethics Ordinance requires the Rules of Procedure to be followed.

182. The CHARTER does not give any authority to Corporation Counsel to render opinions, make findings of fact or conclusions of law which are binding on a County-Wide Elected Official.
183. The CHARTER does not give Corporation Counsel the right, authority or responsibility to order the termination of any privileges of a County-Wide Elected Official, either directly or as a representative of the OCE, including access to IT resources.
184. There is no authority under the CHARTER for HRLR to promulgate policies which are binding on a county-wide elected official's management, supervision, organization, and control over his or her office.
185. The CLERK/ROD asserts that she has the sole and vested authority as the County-Wide Elected Official to act under "management rights" of the collective bargaining agreements as "Employer:"

Article 22 of the UAW Local 412 contract states:

A. The Employer retains and shall have the sole and exclusive right and authority to manage and operate its affairs, including all of its operations and activities; to decide the number of employees; to establish the overall operation, policies and procedures of the Employer; to assign employees to shifts in order to adequately staff shifts with appropriate personnel; to schedule the shifts of all employees; to direct its working force of employees; to determine the methods, procedures and services to be provided; to comply with P.A. 390, as amended, known as the State's Emergency Management Act and the County's Emergency Management resolution as well as all related plans, policies and procedures covered by these statutes. All of such rights are vested exclusively in the Employer.

B. The Employer, in addition to the rights set forth in Section A above, shall have the right to hire, promote, demote, assign, transfer, suspend, discipline, discharge, layoff, recall; to establish schedules of work for employees; to establish work rules and rules of conduct, and to fix and determine penalties for the violation of such rules; to maintain discipline and efficiency among the employees, provided that such rights shall

not be exercised by the Employer in violation of any of the express terms and provisions of this Agreement.

C. The Employer retains and shall have the sole and exclusive right to administer, without limitation, implied or otherwise, all matters not specifically and expressly covered by the provisions of Paragraph A and B of this Article, or excepted by the provisions of any other Article of this Agreement.

Article 23 of the UAW Local 889 states:

A. The Employer retains and shall have the sole and exclusive right and authority to manage and operate its affairs, including all of its operations and activities; to decide the number of employees; to establish the overall operation, policies and procedures of the Employer; to assign employees to shifts in order to adequately staff shifts with appropriate personnel; to schedule the shifts of all employees; to direct its working force of employees; to determine the methods, procedures and services to be provided; to comply with P.A. 390, as amended, known as the State's Emergency Management Act and the County's Emergency Management resolution as well as all related plans, policies and procedures covered by these statutes. All of such rights are vested exclusively in the Employer.

B. The Employer, in addition to the rights set forth in Section A above, shall have the right to hire, promote, demote, assign, transfer, suspend, discipline, discharge, layoff, recall; to establish schedules of work for employees; to establish work rules and rules of conduct, and to fix and determine penalties for the violation of such rules; to maintain discipline and efficiency among the employees, provided that such rights shall not be exercised by the Employer in violation of any of the express terms and provisions of this Agreement.

C. The Employer retains and shall have the sole and exclusive right to administer, without limitation, implied or otherwise, all matters not specifically and expressly covered by the provisions of Paragraph A and B of this Article, or excepted by the provisions of any other Article of this Agreement.

D. The Employer retains and shall have the sole and exclusive right and authority to convert vacant full time positions to part time during the term of this Agreement, not to exceed:

- a. Animal Shelter - 1 position
- b. Specialized Offices - 8 positions
- c. MCCA - 3 positions
- d. Probate Court/Corporation Counsel - 2 positions

186. The CLERK/ROD and HRLR, Corporation Counsel and OCE disagree on this fundamental tenet.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant declaratory judgment that SPRANGER was not, as a matter of law, in violation of any MACOMB COUNTY IT Policy, or in violation of "hiring policies," and "state, federal or local" law, regulation or policy, and that the BOE decision to the contrary is null and void for want of a factual basis and on the basis that SPRANGER was deprived of basic due process in the April 19, 2017 proceeding. SPRANGER seeks declaratory judgment that SPRNEGER is not bound under Michigan Law to HRLR Policies under the CHARTER and may, consistent with obligations under the collective bargaining agreements, exercise her rights under the "management rights" under the same. SPRNAGER seeks an injunction enjoining the defendants from any further unilateral activities which effect of slowing, crippling, or impeding the operation, management, supervision, or control of her office related to IT access, supplies, materials or other necessary tools without petition to this court and decision by this court; unless the parties agree in writing to waive such requirement.

COUNT VI

CORPORATION COUNSELS' OPINION DATED MARCH 28, 2017 RELATED TO THE CLERK/ROD APPOINTMENT OF CHIEF DEPUTY CLERK DENISE GREINER – DECLARATORY JUDGMENT AND INJUNCTION.

187. Plaintiffs reallege each allegation in the preceding paragraphs as though alleged in this Count.

188. On or about March 7, 2017, SPRANGER submitted a proposed the person named Denise Greiner as her Chief Deputy under MCL 50.63 to Chief Judge James Biernat.

189. On or about March 28, 2017, Corporation Counsel sent to Chief Judge Biernat a memo (March 28, 2017 Memo) which indicated that because Griener was a retiree, "a current County retiree may not be reemployed by the County, whether by appointment of otherwise, in a full time capacity." Exhibit D.
190. The March 28, 2017 Memo concluded that, based on Corporation Counsel's analysis, Greiner could not be the Chief Deputy Clerk.
191. On April 13, 2017, independent counsel for SPRANGER filed a response memo which argued that the conclusion of corporation counsel was invalid and rendered nugatory and/or surplusage the terms of MCL 46.12, adopted by reference in the Macomb County Employee Retirement System (MCERS) § 51 under the Ordinance 2015-05. Exhibit E.
192. A copy of the April 13, 2017 Response Memo was provided to MACOMB COUNTY corporation counsel who did not respond or provide challenges to the analysis therein.
193. Chief Judge Biernat declined to confirm the appointment of Greiner and adopted the legal reasoning in the March 28, 2017 Memo that MCERS barred Greiner from working full-time as an employee for the county and thus as the Chief Deputy Clerk.
194. The March 28, 2017 Memo is legally incorrect in its analysis and the implications drawn from the wording of MCERS and MCL 46.12a(28) is inapposite to the issue of whether Greiner can be approved as the Chief Deputy of the Clerk.
195. That issue, whether Greiner can be employed by MACOMB COUNTY is between the CLERK/ROD and MACOMB COUNTY and does not involve the Chief Judge.

196. Upon information and belief the March 28, 2017 Memo it was designed with the intent to frustrate, confound, and stymie the CLERK/ROD in her appointment of the CLERK/ROD, to undermine her authority to manage her department, and to create obstacles and hurdles which require legal counsel and court action to correct.

197. On April 26, 2017 Judge Biernat declined to approve Greiner as Chief Deputy Clerk because, "I have reviewed and considered the responses provided to me by your counsel attorney Frank A. Cusumano, Jr. However, although you have presented an opposing argument, I am unable to approve the appointment of Ms. Greiner, based on her inability to perform the necessary requirements of the position in a full time capacity." Exhibit F – Letter from Chief Judge Biernat dated April 26, 2017.

198. There is no precedent for the Chief Judge of the judicial branch of Government to seek opinion of corporation counsel relative to approval or declination of an appointee under MCL 50.63.

199. An actual controversy exists in that SPRANGER has never withdrawn the appointment of Greiner for the Chief Deputy Clerk appointment.

200. SPRANGER has a legal interest in the confirmation of Greiner as her Chief Deputy.

201. This lawsuit is about on basic tenet, "who is the Boss of the CLERK/ROD?"

WHEREFORE, Plaintiff SPRANGER requests that this Court enter a declaratory judgment that MCERS does not bar the Greiner from appointment to the Chief Deputy Clerk position and enjoin further erroneous opinions of corporation counsel which affect the management, supervision, and control of the CLERK/ROD Office, including related to the appointment of the

Chief Deputy Clerk, unless submitted as a formal lawsuit to establish the rights of the departments under CHARTER § 6.6.5.

COUNT VII

DECLARATORY JUDGMENT AND INJUNCTION - THE RIGHT OF THE CLERK/ROD TO HAVE INDEPENDENT COUNSEL PRESENT AT UNION GRIEVANCE PROCEEDINGS AND ALL MEETINGS WITH OCE DEPARTMENTS IF THE CLERK/ROD SO ELECTS.

202. Plaintiffs reallege each allegation in the preceding paragraphs as though alleged in this Count.

203. SPRANGER has been the subject of grievances under the collective bargaining agreement with supervisory workers of UAW Local 412, unit 75.

204. SPRANGER requested counsel from corporation counsel to render legal advice to her in her official capacity as CLERK/ROD.

205. Corporation counsel assigned assistant corporation counsel to render legal advice to the CLERK/ROD.

206. The assistant corporation counsel assigned, and in fact, all assistant corporation counsel attorney at MACOMB COUNTY, are themselves members of UAW Local 412.

207. At no time did corporation counsel or the assistant corporation counsel disclose to SPRANGER any conflict of interests under the Michigan Rules of Professional Conduct between the OCE and its sub-departments and the CLERK/ROD related to scope of powers and authority under the CHARTER.

208. At no time did corporation counsel or the assistant corporation counsel advise SPRANGER that she should seek independent legal counsel due to possible conflicts of

interest between the interest of the CLERK/ROD and the UAW Local 412 and their workers.

209. Interpretation of the UAW Local 412 collective bargaining agreement is germane to many issues disputed by the CLERK/ROD, and the assistant corporation counsels, all of them, are under the same master agreement and CLERK/ORD supervisors.

210. Corporation counsel and assistant corporation counsels have all, uniformly, advised SPRANGER that the UAW 412 union is always right under each and every circumstance which SPRANGER has had disputes.

211. Corporation counsel and assistant corporation counsels have all, uniformly, advised SPRANGER that that the HRLR and the other OCE controlled department heads are always right under each circumstance which SPRANGER she has had disputes.

212. Corporation counsel and assistant corporation counsels have neglected or refused to be involved in the unfair labor practice disputes brought by UAW Local 412, as though the CLERK/ROD was an independent entity, which is clearly prohibited by the CHARTER: "These departments are part of County government and do not exist as separate or independent entities except as provided by law." CHARTER 6.6.2.

213. Corporation counsel and assistant corporation counsels have all, uniformly, advised SPRANGER that that the HRLR and the other OCE controlled department heads are always right under each circumstance which SPRANGER she has had disputes.

214. Corporation counsel and assistant corporation counsels have all, uniformly advised SPRANGER, directly or indirectly, that she does not have control over her office's personnel, that she is not the managing employer of the CLERK/ROD workers,

and that all of her official management decisions as CLERK/ROD as to the hiring, firing and employee discipline must be explicitly approved by HRLR, corporation counsel, or the OCE under the CHARTER, Article VII.

215. Review by independent counsel indicates that the CHARTER is not clear on any of these blanket assertions, that there are meritorious claims of overreach by the OCE and its controlled department and that, at minimum, the matters needed to be resolved by inter-governmental agreement or Court determination.

216. SPRANGER sought independent counsel, and petitioned the BOC to transfer \$15,000 from a budgeted "special projects" for retention of outside and independent (non-UAW Local 412) legal counsel.

217. The BOC denied the SPRANGER request for independent counsel's retainer.

218. The CLERK/ROD has since paid independent counsel from her own pocket or incurred debt pursuing the interests of the County-Wide Elected Office of CLERK/ROD.

219. The reasonable legal fees and costs anticipated to be incurred due to the refusal of the Defendants to negotiate agreements on the issues, is expected to exceed the gross wages of the CLERK/ROD.

220. SPRANGER engaged independent counsel, Frank A. Cusumano, Jr., to represent the CLERK/ROD in matters related to her official duties.

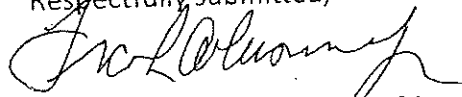
221. SPRANGER appeared with attorney Cusumano, at a step three (3) grievance meeting with HRLR director Eric Herppich and several other HRLR persons present.

222. The grievant, a member of the UAW Local 412 was not present.

223. Several union representatives waited in a conference room while SPRANGER, attorney Cusumano, and Register of Deeds Jackie Ryan were seated in the elevator vestibule.
224. Ultimately, SPRANGER was told by HRLR Director Herppich that the CLERK/ROD was not allowed not have independent counsel present at this or any grievance process.
225. No law or legal authority was cited except that "the attorney is not a party to the contract" and this "is the way we do things around here."
226. No statutory, common law or any other recognized exists for the exclusion of a licensed attorney from any government action where a party (in this case the CLERK/ROD) asserts representation through licensed legal counsel.
227. Due process rights are violated where a participant to governmental process is denied his or her retained counsel's representation.
228. Upon belief and information, if the attorney was the Chief Deputy Clerk then, the attorney as a "county employee," (the "county" being a "party" to the contract) would have been allowed to attend and participate in the meeting under the analysis asserted by assistant corporation counsel (a member of UAW Local 412) that was present to explain.
229. At various times Cusumano has been allowed to attend meetings, including meeting with the Chief Judge and his deputy, but never with HRLR and the grievance processes.

WHEREFORE, SPRANGER request a declaratory judgment and injunction that any other a licensed attorney hired by her, CLERK/ROD can attend any MACOMB COUNTY governmental meetings involving the CLERK/ROD in the grievance process if and when the CLERK/ROD so elects him/her to be present, including at all grievance meetings lodged against her related to her official duties at CLERK/ROD of MACOMB COUNTY.

Respectfully submitted,



Frank A. Cusumano, Jr. PA2781
Attorney for the Plaintiff

Date: June 21, 2017

EXHIBIT LIST

EXHIBIT A – ADMINISTRATIVE ORDER MACOMB COUNTY CIRCUIT COURT 1997-01

EXHIBIT B – SUPREME COURT AO-2001-1

EXHIBIT C – MACOMB COUNTY BOARD OF COMMISSIONERS RESOLUTION 2017-211

EXHIBIT D – SCHAPKA MEMO DATED 03/28/2017

EXHIBIT E – SPRANGER RESPONSE TO SCHAPKA MEMO DATED 04/13/2017

EXHIBIT F – LETTER DATED APRIL 26, 2017 TO KAREN SPRANGER FROM CJ JAMES BIERNAT, JR.

FILED
2017 JUN 22 AM 11:28
CLERK OF COURT
MACOMB COUNTY

FILED

2017 JUN 22 AM 11:28

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

IN RE COURT SECURITY

1997-01
Administrative Order 1996-1

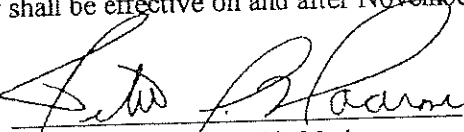
Since it is in the best interests of justice and of citizens, employees and elected officials to establish a no-weapons zone in the Macomb County Circuit Court building and the attached County building, which can only be implemented through a search of persons and objects entering the buildings, the Macomb County Circuit Court and Macomb County have entered into an agreement regarding building security dated September 26, 1996 which is attached to this order and adopted by reference. Therefore, in order to implement security, pursuant to the provisions of MCR 8.110;

IT IS ORDERED that weapons (other than those carried by authorized law enforcement personnel and authorized Macomb County personnel), dangerous objects and explosives are prohibited in the Macomb County Circuit Court and County buildings located at 40 and 10 N. Main, Mt. Clemens, Michigan. "Weapons, dangerous objects and explosives" include but are not limited to, firearms, edged weapons and explosives as those objects are defined by common usage.

IT IS FURTHER ORDERED that security personnel under the control of the Circuit Court may search the person and belongings of any and every person who wishes to enter the Macomb County Circuit Court building and the adjacent County building. Any person who refuses to cooperate may be removed from the buildings.

IT IS FURTHER ORDERED that the initial screening of individuals entering the buildings will be by metal detecting equipment and the X-ray screening of personal property. The intrusiveness of any additional search and the length of detention, if any, shall be based upon reasonable suspicion that a further search of the person or object to be searched will reveal a weapon or other dangerous object that could be used to harm or injure.

IT IS FURTHER ORDERED that this order shall be effective on and after November 1, 1996, until modified by the Court.


Peter J. Maceroni, Chief Judge

Dated: Oct. 24, 1996

AGREEMENT REGARDING BUILDING SECURITY

The County of Macomb and the Macomb County Circuit Court agree that it is in the best interests of justice and of citizens, employees and elected officials to establish a no-weapons zone in the Macomb County Circuit Court building and the attached County building, which can only be implemented through a search of persons and objects entering the buildings.

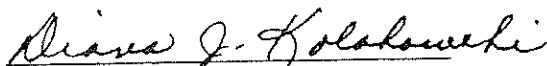
Therefore, Macomb County and the Macomb County Circuit Court agree to establish the following policy regarding weapons in the Macomb County Circuit Court building and the adjacent County building:

Weapons (other than those carried by authorized law enforcement personnel and authorized Macomb County personnel), dangerous objects and explosives are prohibited in the Macomb County Circuit Court and County buildings located at 40 and 10 N. Main, Mt. Clemens, Michigan. "Weapons, dangerous objects and explosives" include but are not limited to, firearms, edged weapons and explosives as those objects are defined by common usage.

Security personnel under the control of the Circuit Court may search the person and belongings of any and every person who wishes to enter the Macomb County Circuit Court building and the adjacent County building. Any person who refuses to cooperate may be removed from the buildings.

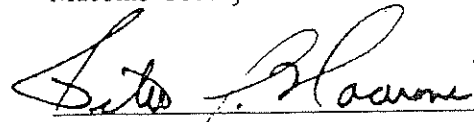
The initial screening of individuals entering the buildings will be by metal detecting equipment and the X-ray screening of personal property. The intrusiveness of any additional search and the length of detention, if any, shall be based upon reasonable suspicion that a further search of the person or object to be searched will reveal a weapon or other dangerous object that could be used to harm or injure.

Macomb County


Diana J. Kolakowski, Chairman

Dated: 9/26/96

Macomb County Circuit Court


Peter J. Maceroni, Chief Judge

Dated: 9/26/96

EXHIBIT B

AO No. 2001-1 — Security Policies for Court Facilities

[Entered March 27, 2001.]

It appearing that the orderly administration of justice would be best served by prompt action, the following order is given immediate effect. The Court invites public comment regarding the merits of the order. Comments may be submitted in writing or electronically to the Supreme Court Clerk by June 1, 2001. P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@jud.state.mi.us. When submitting a comment, please refer to File No. 01-15.

This matter will be considered by the Court at a public hearing to be held June 14, 2001, in Kalamazoo. Persons interested in addressing this issue at the hearing should notify the Clerk by June 12, 2001. Further information about the hearing will be posted on the Court's website, www.supremecourt.state.mi.us. When requesting time to speak at the hearing, please refer to File No. 01-15.

The issue of courthouse safety is important not only to the judicial employees of this state, but also to all those who are summoned to Michigan courtrooms or who visit for professional or personal reasons. Accordingly, the Supreme Court today issues the following declaration regarding the presence of weapons in court facilities.

It is ordered that weapons are not permitted in any courtroom, office, or other space used for official court business or by judicial employees unless the chief judge or other person designated by the chief judge has given prior approval consistent with the court's written policy.

Each court is directed to submit a written policy conforming with this order to the State Court Administrator for approval, as soon as is practicable. In developing a policy, courts are encouraged to collaborate with other entities in shared facilities and, where appropriate, to work with local funding units. Such a policy may be part of a general security program or it may be a separate plan.

EXHIBIT C

BOARD OF COMMISSIONERS
MACOMB COUNTY, MICHIGAN

RESOLUTION
No: 2017-211

RESOLUTION TO AMEND RULES 1, 8, 14, 15, 17, 18 AND 19 OF THE 2017-18
MACOMB COUNTY BOARD OF COMMISSIONERS RULES OF PROCEDURE

WHEREAS, Section 4.3 of the Home Rule Charter of Macomb County, Michigan, requires that the Commission establish its rules of procedure; and

WHEREAS, the Commission has implemented a new integrated, electronic Board/Sync system that when appropriately used obviates the need for most voice voting, creates a rough draft of minutes of Commission proceedings, and otherwise performs many clerical functions previously requiring more manual notetaking and transcription; and

WHEREAS, Commission staff has the most familiarity and ongoing inter-functionality with the Board/Sync system assuring the integration agendas and supporting information with the Board/Sync system prior to meetings, modifying them during the meetings, and producing draft minutes from the Board/Sync system after meetings.

NOW, THEREFORE, BE IT RESOLVED that:

1. Rules 1, 8, 14, 15, 17, 18, and 19 of the 2017-18 Macomb County Board of Commissioners Rules of Procedure (the "Board Rules") are amended as follows so that the Board Rules after that amendment will read as stated in Exhibit A:

Rule 1. Definitions.

A. The following definitions shall apply to terms used in these rules.

1. "Appeal to the Board." If a Commissioner believes her/his point of order or privilege has been ruled on unfairly by the chair, she/he may challenge the Chairperson and appeal to the Board. The Chairperson shall ask for a motion to uphold the Chairperson and the vote will be taken. The vote decides whether the action decided upon by the Chairperson is valid, or whether the Commissioner is correct.
2. "Board" means the Macomb County Board of Commissioners.
3. "Charter" means the Home Rule Charter of Macomb County, Michigan.
4. "Clerk" (capitalized) means the Macomb County Clerk or his/her designee, while "clerk" (lower case) means the Board staff member(s) designated by the Chairperson to perform the function or tasks as required within the rule.
5. "Commissioner" means a Commissioner of the Board.
6. "County" means Macomb County, Michigan.
7. "County Executive" means the person holding the office of Macomb County Executive.
8. "Full Board" means all of the Commissioners elected and serving.
9. "Open Meetings Act" means 1976 PA 267, as amended, MCL 15.261 - 275.
10. "Procedural Motion" means a motion that relates to how the meeting is conducted.
11. "Proclamation" means a resolution approved by the Board recognizing or acknowledging an individual, group or event.
12. "Quorum" means a majority of the Commissioners serving on the Board.
13. "Rules" means these rules of procedures of the Board.
14. "Substantive Motion" means a motion that relates to the purpose of the meeting, and that brings business before the Board.
15. "Tribute" means a written form of recognition or acknowledgement honoring a group or individual.

B. Other terms shall have the definitions, if any, provided in the Charter or in statutes related to counties.

Rule 8. Motions.

- A. The Board shall take action by way of motions. No motion may be acted upon until it has been duly supported or seconded by a Commissioner.
1. A Substantive Motion shall be reduced to writing, unless waived by the Chairperson.
 2. A Procedural Motion shall be reduced to writing if requested by the Chairperson.
 3. The Chairperson shall restate a motion or, if in writing, the motion shall be read aloud by the Clerk before being debated.
- B. Any Commissioner who wishes to make a motion or second a motion must first secure recognition by the Chairperson.
- C. Except where permission is otherwise granted by the Chairperson, discussion of a motion before the Board or other pending business shall be limited to Commissioners.
- D. Unless the agenda provides that it is just an item on which no action is to be taken, a motion must be before the Board in order to discuss an agenda item that has been presented by the Chairperson for consideration.
- E. No motion shall be adopted by the Board until stated by the Chairperson.
- F. Any motion may be withdrawn by the sponsor at any time before decision or amendment by the Board.
- G. The following motions will be in order:
1. To take action on a resolution or ordinance.
 2. To call the question. A motion to call the question shall require the affirmative vote of a two-third majority of Commissioners serving.
 3. To amend or modify a motion made to take action, but such amending motion will be disposed of before any other motion to amend or modify the original motion will be in order. Once approved by a majority vote of Commissioners serving, a motion to amend or modify a motion shall be combined with the original motion.
 4. To postpone action to another specified meeting or until occurrence of a condition or event.
 5. To refer or re-refer a matter to a Board committee.
 6. To postpone indefinitely. A motion to postpone indefinitely the further consideration of any motion or other matter shall require the affirmative vote of a majority of Commissioners serving and the vote upon such a motion shall not be reconsidered.
 7. To reconsider a vote (including a vote resulting in a tie) or other action that has been taken by the Board, but only if no action has been taken in reliance upon such vote or action.
 - a. Any Commissioner on the prevailing side on a vote or action may move for reconsideration of such vote or action at the same meeting the vote or action was made or at the next regular meeting of the Board, but at no other subsequent meeting.
 - b. No vote or other action shall be reconsidered more than once. A motion to reconsider shall require the affirmative vote of a majority of Commissioners serving.
 - c. When a motion to reconsider fails, it cannot be renewed.
 - d. This does not preclude the Board from again dealing with an issue, policy, decision or other action based upon significant new information unavailable to the Board when the decision or other action was initially taken.
 8. To go into closed session as permitted by and in accordance with the Open Meetings Act.
 9. To call a recess at the discretion of the Chairperson.
 10. To adjourn.
- H. With the exceptions of a (i) motion to table, (ii) motion to postpone, (iii) motion to adjourn, or (iv) to call the question, each of the motions listed above may be subject to discussion or debate by the Board.

Rule 14. Special Meetings.

- A. The Chairperson may call a special meeting. A special meeting of the Board may also be held when requested by at least one-third of Commissioners serving. The request shall be in writing, shall be addressed to the Clerk Board's chief of staff and shall specify the time, date, place and purpose of the meeting. Upon the call of the Chairperson or upon receipt of a request, the Clerk shall immediately give notice in the manner selected by each Commissioner.
- B. Dates and times of special meetings must be posted at least 18 hours before the meeting. The notice must be posted in a prominent and conspicuous place at both the Board's principal office and

on a portion of the Board's website. The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices for special meetings and accessible via a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those special meetings.

Rule 15. Voting.

A. Voting shall occur by one of the following two methods:

1. The normal procedure will be to electronically vote when the Chairperson calls for the vote using the Board's electronic voting devices and following the required steps. Votes will immediately automatically be posted on the Board's presentation screens. Votes can be changed in accordance with the required steps for use of the electronic voting devices until the Chairperson declares the voting ended and asks for the vote tally.

2. When the electronic voting devices are not available for use due to technical difficulties, a decision not to use them, or another reason, votes shall be by "yes" and "no" and will be taken by a show of hands, voice vote, or a roll call vote so that the vote of each Commissioner is recorded. No motion shall be valid unless approved at a meeting of the Board and a proper record is made of the vote. Any Commissioner may request that his/her vote be changed if such request is made prior to announcement of whether the vote passed or failed.

B. In accordance with the Open Meetings Act, each Commissioner's vote must be made in a public session in order to be counted. No votes of any kind, or polling to attempt to determine potential votes, will be allowed outside of public sessions or in closed sessions of the Board.

C. Following each vote, it shall be announced that the motion passed or failed, and if not a unanimous vote, the number voting "yes," the number voting "no," the Commissioners' last names of those voting "no," the number abstaining, and the Commissioners' last names of those abstaining shall be announced.

D. Abstentions are not counted as votes for or against a motion. Thus, when a specified number of affirmative votes is required by law or these Rules, and abstentions have been noted, the motion shall fail if the specified number of affirmative votes have not been cast. In situations in which there is a tie vote and the abstention represents the deciding vote, the motion shall fail for lack of a majority.

E. If a roll call vote is called, the Clerk shall call roll by Commissioners' last names only, as follows:

1. Attendance shall be called in alphabetical order according to Commissioner last names.
2. The calling of a roll on a motion shall begin with the Commissioner who made the motion. The Commissioner who seconded the motion shall be called to vote second on the motion. The Clerk shall proceed to call the roll in alphabetical order according to Commissioner last names, except the Vice-Chairperson shall be called to vote second-to-last and the Chairperson shall be called to vote last, unless the Vice-Chairperson made or seconded the motion. At the next meeting of the Board, the Clerk shall begin the alphabetical list with the second Commissioner on the alphabetical listing. Other Commissioners shall be called to vote according to the regular sequence on the alphabetical listing, except that the Commissioner who was called to vote first at the last meeting shall be called to vote immediately prior to the Vice-Chairperson at the next meeting.

F. After the first vote is given, no Commissioner shall be entitled to speak on the question, nor shall any motion be in order until such roll call is completed and the result declared.

Rule 17. Committees and Subcommittees.

A. The Board shall have the following standing committees, all of which shall be committees of the whole:

1. Government Operations.
2. Health ~~and~~ Human Services.
3. Justice ~~and~~ Public Safety.
4. Infrastructure/Economic Development.
5. Finance.
6. Audit (which shall meet on the request of the Board Chairperson or the Audit Committee Chairperson).

B. These Rules are the rules of procedure for all committees and subcommittees as applicable.

1. An item may be waived directly to the Board for review, evaluation and/or determination at the discretion of a committee chairperson.
 2. An item that has not been referred for consideration from a committee meeting may be added to an agenda for consideration at a Full Board meeting upon a 2/3 vote of Commissioners serving.
 3. An item may be added to a committee agenda at the time the committee is considering adopting the agenda upon a majority vote of members of the committee if the item is submitted in writing to all members of the committee before or at the time the motion to add the item to the agenda is made.
- C. The committee chairperson may appoint a subcommittee.
1. Each subcommittee of a committee is a part of that committee and subject to the authority and direction of that committee.
 2. Subcommittees shall not hold any meeting except upon authority of the standing committee chairperson.
 3. The Board Chairperson may be appointed to a subcommittee. If the Board Chairperson is not appointed to a subcommittee, the Board Chairperson shall be a non-voting *ex officio* member of that subcommittee.
- D. Each committee and subcommittee shall keep minutes of all committee and subcommittee committee actions and shall report, respectively, such actions to the Full Board or to the standing committee.
- E. The chairpersons of two or more committees may arrange for a joint meeting of their committees when, in their judgment, special circumstances would warrant such a joint meeting or the conducting of business of the Board will be better served.
- F. Committee chairpersons shall meet with the Board's staff at least 6 business days prior to a scheduled committee meeting to review the proposed agenda and any needed supporting materials. This does not prevent later changes to the agenda, but is intended to provide sufficient time to assemble agenda packets and transmit them to committee members and others on a timely basis.
- G. Committee chairpersons are encouraged to engage committee vice-chairpersons by appointing committee vice-chairpersons as subcommittee chairpersons when subcommittees are formed, by asking vice-chairpersons to chair some committee meetings, and by assigning to vice-chairpersons information gathering, communications, and reporting tasks when such tasks are needed for the work of the committee.

Rule 18. Duties of the Clerk.

- A. The Clerk ~~shall be the clerk to the Full Board. The Clerk shall perform all~~ duties related to the Board as required by law.
- B. The Board's electronic voting system, when properly linked to meeting agenda materials, will produce a rough draft of minutes. Board personnel shall make that draft of minutes of Full Board meetings available to the Clerk who shall use them in performing the Clerk's duties under sub-rule 18.C.
- C. The Clerk shall perform all required duties ~~ordinarily~~ pertaining to such office including, ~~but not limited to,~~ the following:
1. Recording ~~all~~ the proceedings of the Board in a book provided for that purpose.
 2. Making regular entries of all, including Board resolutions and decisions upon all questions.
 3. Recording the and, if requested by any Commissioner, the recorded vote of each Commissioner on any ordinance, resolution, ~~and~~ appointment or election of an office, or other question submitted to the Board.
 2. 4. Performing such other and further ~~Other~~ duties as the Board may, from time to time, require by resolution.
- D. The Clerk, or his/her duly appointed deputy, shall be present at ~~and keep the officially approved minutes for all~~ meetings of the Full Board. ~~In the Clerk's absence, the Chairperson, with the approval of the majority of Commissioners present and voting, shall appoint a clerk for that meeting until the Clerk arrives.~~

Rule 19. Minutes.

A. The Clerk shall ~~prepare minutes as provided in Rule 18 and other applicable Board Rules, and~~ as required by the Open Meetings Act and other applicable laws, record the minutes in the minute book as provided in Rule 18. A copy of the proposed minutes of each Board meeting shall be prepared and submitted ~~by the Clerk to the Board's chief of staff to the Board by the Board's staff.~~ The Board's staff shall provide a copy of the proposed minutes to the Clerk prior to the agenda deadline for the next full Board meeting (in an electronic format compatible with the Board's electronic voting and records system) ~~as.~~ The minutes shall be an agenda item for the next Full Board meeting ~~prior to agenda deadline for that meeting.~~ Closed session minutes shall be ~~kept~~ produced by Board personnel designated by the Board and a copy maintained by the Clerk under seal as required by the Open Meetings Act.

B. The Clerk shall keep all adopted resolutions and ordinances arranged in the order of their adoption.

2. All resolutions and parts of resolutions are, to the extent of any conflict with this resolution, rescinded.
3. This resolution shall have immediate effect.



BOB SMITH
Chair, Macomb County Commission


KAREN A. SPRANGER
Macomb County Clerk/Register of Deeds

EXHIBIT A
MACOMB COUNTY BOARD OF COMMISSIONERS
2017-18 RULES OF PROCEDURE
(As amended at the Full Board Meeting held March 16, 2017)

The Board of Commissioners and its meetings shall be governed by the following Rules of Procedure:

Rule 1. Definitions.

A. The following definitions shall apply to terms used in these rules.

1. "Appeal to the Board." If a Commissioner believes her/his point of order or privilege has been ruled on unfairly by the chair, she/he may challenge the Chairperson and appeal to the Board. The Chairperson shall ask for a motion to uphold the Chairperson and the vote will be taken. The vote decides whether the action decided upon by the Chairperson is valid, or whether the Commissioner is correct.
2. "Board" means the Macomb County Board of Commissioners.
3. "Charter" means the Home Rule Charter of Macomb County, Michigan.
4. "Clerk" (capitalized) means the Macomb County Clerk or his/her designee, while "clerk" (lower case) means the Board staff member(s) designated by the Chairperson to perform the function or tasks as required within the rule.
5. "Commissioner" means a Commissioner of the Board.
6. "County" means Macomb County, Michigan.
7. "County Executive" means the person holding the office of Macomb County Executive.
8. "Full Board" means all of the Commissioners elected and serving.
9. "Open Meetings Act" means 1976 PA 267, as amended, MCL 15.261 – 275.
10. "Procedural Motion" means a motion that relates to how the meeting is conducted.
11. "Proclamation" means a resolution approved by the Board recognizing or acknowledging an individual, group or event.
12. "Quorum" means a majority of the Commissioners serving on the Board.
13. "Rules" means these rules of procedures of the Board.
14. "Substantive Motion" means a motion that relates to the purpose of the meeting and that brings business before the Board.
15. "Tribute" means a written form of recognition or acknowledgement honoring a group or individual.

B. Other terms shall have the definitions, if any, provided in the Charter or in statutes related to counties.

Rule 2. Organizational Meeting and Election of Officers.

A. At its first meeting of each odd-numbered year:

1. The Board shall be called to order and a roll call taken by one of the following:

- a. If the Commissioner who served as the Chairperson of the Board during the immediately preceding Board term continues to serve as a Commissioner, that Commissioner shall call the meeting to order.
- b. If the Commissioner who served as Chairperson of the Board during the immediately preceding Board term is not serving as a Commissioner and the Commissioner who served as

the Vice Chairperson of the Board during the immediately preceding Board term continues to serve as a Commissioner, that Commissioner shall call the meeting to order.

c. If neither of the Commissioners who served as Chairperson or as Vice Chairperson of the Board during the immediately preceding Board term are serving as Commissioners and the Commissioner who served as Sergeant-at-Arms of the Board during the immediately preceding Board term continues to serve as a Commissioner, that Commissioner shall call the meeting to order.

d. If none of the Commissioners who served as Board officers during the immediately preceding Board term are serving as Commissioners, then the Commissioner who has longest continuous service as a Commissioner shall call the meeting to order.

2. If a Quorum is present, the first order of business shall be the election of a Chairperson. The elected Chairperson shall preside over all subsequent actions of the Board.

3. The next order of business shall be the election of a Vice-Chairperson and a Sergeant-at-Arms.

4. The next order of business shall be the adoption of a meeting schedule showing the dates, times and places of the Board's regular monthly meetings.

5. The next order of business shall be for the Board to adopt rules of procedure under which the Board shall operate.

B. At the first meeting in January of each even-numbered year, the first order of business shall be the election of a Vice-Chairperson and a Sergeant-at-Arms.

Rule 3. Terms of Office; Vacancies.

The Chairperson shall be elected to a two-year term and the Vice-Chairperson and the Sergeant-at-Arms shall be elected to a one-year term or until a successor, respectively, is elected. In the event of a vacancy in the office of Chairperson, Vice-Chairperson or Sergeant-at-Arms, the vacancy shall be filled at the next regular meeting of the Full Board by a majority vote of the Commissioners serving.

Rule 4. Removal of an Officer.

An officer may be removed from office upon the filing with the Chairperson of a petition signed by at least 7 Commissioners that states the reasons for removal and upon a 2/3 vote of Commissioners serving. The officer who is the subject of the petition shall be given a copy of the petition at least 7 days in advance of the meeting at which the proposed removal is on the meeting agenda. The Chairperson shall add the petition to the agenda for the next Full Board meeting, provided the 7 day notice can be given to the officer who is the subject of the petition.

Rule 5. Duties of Officers.

A. The Chairperson (or Vice-Chairperson in the absence of the Chairperson) shall:

1. Preside at all meetings of the Full Board. In the absence of both the Chairperson and Vice-Chairperson, the Commissioners present shall elect a Chairperson pro-tempore who will serve only for that meeting or for that part of the meeting in which the Chairperson and Vice-Chairperson are absent.

2. Introduce and present each agenda item, or introduce it and then designate the Clerk or Board staff member who will present the agenda item.

3. Enforce the Rules and conducting meetings in a manner that preserves order and decorum. Commissioners and others in attendance shall comply with the direction of the Chairperson.

4. Annually prepare, propose and present a budget for the Board to the Finance Committee.

5. Administer day-to-day activities of the Commission, including administering the budget for the Board.
- B. At any time, the Chairperson may submit the appointment of new members to, or the removal of members from, a committee, for the approval of the Board. All vacancies in membership, chairperson or vice-chairperson of committees shall be filled by appointment by the Chairperson, subject to the approval by a majority vote of Commissioners serving.
- C. The Sergeant-at-Arms shall attend the Full Board meetings to maintain order and decorum under the direction of the Chairperson and to ensure compliance with the requirements of a closed session.

Rule 6. Duties of Commissioners.

Each Commissioner shall be personally present at all Full Board and assigned committee meetings and shall vote on each question put, unless he/she has a direct personal or pecuniary interest in the question or unless otherwise legally or ethically required to abstain. If a Commissioner has such an interest or is otherwise legally or ethically required to abstain, the Commissioner shall disclose the interest or other reasons for abstention at the meeting. Each abstention shall be duly recorded in the minutes of the meeting. In the rare event that a Commissioner believes he/she has the right or obligation to abstain from voting, the Commissioner shall consult with the Chairperson and, if necessary, independent counsel. Participation in a meeting by electronic means, such as video conferencing or conference call, will not be counted as attendance and will not count toward a quorum.

Rule 7. Speaking.

- A. When a Commissioner desires to speak on any matter or issue before the Board, he/she shall first seek recognition to speak from the Chairperson. The Chairperson may speak to points of order and shall decide questions of order subject to an Appeal to the Board. When two or more Commissioners request to make a motion and/or address the Board at the same time, the Chairperson shall call on the Commissioner who the Chairperson believes was first to speak.
- B. When a Commissioner is about to speak in debate or present any matter to the Board, he/she shall respectfully address himself/herself to the Chairperson. He/she shall confine himself/herself to the question under debate and avoid debate or argument that calls into question the personality, integrity, or motives of another Commissioner.
- C. Free, open and orderly debate on issues confronting the Board as a legislative body may demand that a Commissioner be privileged to speak on a matter more than once. However, a Commissioner shall not be privileged to speak or hold the floor on a matter for more than 10 minutes or more than once (on the same question) until all other Commissioners present are first given the opportunity to be heard.

Rule 8. Motions.

- A. The Board shall take action by way of motions. No motion may be acted upon until it has been duly supported or seconded by a Commissioner.
1. A Substantive Motion shall be reduced to writing, unless waived by the Chairperson.
 2. A Procedural Motion shall be reduced to writing if requested by the Chairperson.
 3. The Chairperson shall restate a motion or, if in writing, the motion shall be read aloud by the clerk before being debated.
- B. Any Commissioner who wishes to make a motion or second a motion must first secure recognition by the Chairperson.
- C. Except where permission is otherwise granted by the Chairperson, discussion of a motion before the Board or other pending business shall be limited to Commissioners.

D. Unless the agenda provides that it is just an item on which no action is to be taken, a motion must be before the Board in order to discuss an agenda item that has been presented by the Chairperson for consideration.

E. No motion shall be adopted by the Board until stated by the Chairperson.

F. Any motion may be withdrawn by the sponsor at any time before decision or amendment by the Board.

G. The following motions will be in order:

1. To take action on a resolution or ordinance.

2. To call the question. A motion to call the question shall require the affirmative vote of a two-third majority of Commissioners serving.

3. To amend or modify a motion made to take action, but such amending motion will be disposed of before any other motion to amend or modify the original motion will be in order. Once approved by a majority vote of Commissioners serving, a motion to amend or modify a motion shall be combined with the original motion.

4. To postpone action to another specified meeting or until occurrence of a condition or event.

5. To refer or re-refer a matter to a Board committee.

6. To postpone indefinitely. A motion to postpone indefinitely the further consideration of any motion or other matter shall require the affirmative vote of a majority of Commissioners serving and the vote upon such a motion shall not be reconsidered.

7. To reconsider a vote (including a vote resulting in a tie) or other action that has been taken by the Board, but only if no action has been taken in reliance upon such vote or action.

a. Any Commissioner on the prevailing side on a vote or action may move for reconsideration of such vote or action at the same meeting the vote or action was made or at the next regular meeting of the Board, but at no other subsequent meeting.

b. No vote or other action shall be reconsidered more than once. A motion to reconsider shall require the affirmative vote of a majority of Commissioners serving.

c. When a motion to reconsider fails, it cannot be renewed.

d. This does not preclude the Board from again dealing with an issue, policy, decision or other action based upon significant new information unavailable to the Board when the decision or other action was initially taken.

8. To go into closed session as permitted by and in accordance with the Open Meetings Act.

9. To call a recess at the discretion of the Chairperson.

10. To adjourn.

H. With the exceptions of a (i) motion to table, (ii) motion to postpone, (iii) motion to adjourn, or (iv) to call the question, each of the motions listed above may be subject to discussion or debate by the Board.

Rule 9. Ordinances and Resolutions.

The Board shall act by ordinance if required by Charter or law, otherwise by resolution. All acts of the Board imposing a penalty shall be by ordinance. All resolutions and ordinances, and any amendments thereto if requested by the Chairperson, shall be reduced to writing prior to consideration by the Board.

Rule 10. Proclamations and Tributes.

A. Any Commissioner may sponsor a Proclamation and present such Proclamation for approval by the

Board. Each Commissioner may add his or her name as a co-sponsor only with the permission of the sponsor.

B. Any Commissioner may prepare and present a Tribute to honor a particular individual or group. A Tribute does not require approval of the Board.

Rule 11. Amendment/Suspension of Rules.

A. The Board may amend the Rules following recommendation from the Government Operations Committee and by a 2/3 vote of the Commissioners serving.

B. The Board may suspend the Rules temporarily by a vote of 2/3 of the Commissioners present, but such amendment or suspension shall not relieve the Board from complying with applicable law.

Rule 12. Meeting Notices.

A. Each Commissioner shall receive a notice of all meetings electronically unless otherwise designated in writing to the Chairperson.

B. The Chairperson shall prepare a proposed regular meeting agenda and provide notice of meetings, including the proposed agenda, which shall be delivered to Commissioners at least 5 calendar days prior to the regular meeting. The Chairperson shall have the discretion to add items to a meeting agenda at any time prior to the meeting. The notices shall specify the date and time of the meeting. Each Commissioner may waive the foregoing notice requirements.

C. The time required for notice of all meetings shall comply with the Open Meetings Act.

D. Notice of regular and special meetings shall be made available to the public by posting on the Board's website and as otherwise is necessary to comply with the Open Meetings Act.

Rule 13. Regular Meetings.

A. Regular meetings of the Board shall be held monthly on days as designated by the Board, as recommended by the Chairperson.

B. A notice of the regular meeting schedule, stating the dates, times, and places of the Board's regular meetings, shall be posted within 10 days after the first meeting of the Board in each calendar year.

Rule 14. Special Meetings.

A. The Chairperson may call a special meeting. A special meeting of the Board may also be held when requested by at least one-third of Commissioners serving. The request shall be in writing, shall be addressed to the Board's chief of staff and shall specify the time, date, place and purpose of the meeting. Upon the call of the Chairperson or upon receipt of a request, the clerk shall immediately give notice in the manner selected by each Commissioner.

B. Dates and times of special meetings must be posted at least 18 hours before the meeting. The notice must be posted in a prominent and conspicuous place at both the Board's principal office and on a portion of the Board's website. The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices for special meetings and accessible via a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those special meetings.

Rule 15. Voting.

A. Voting shall occur by one of the following two methods:

1. The normal procedure will be to electronically vote when the Chairperson calls for the vote using the Board's electronic voting devices and following the required steps. Votes will immediately automatically be posted on the Board's presentation screens. Votes can be changed in accordance with the required steps for use of the electronic voting devices until the Chairperson declares the voting ended and asks for the vote tally.
 2. When the electronic voting devices are not available for use due to technical difficulties, a decision not to use them, or another reason, votes shall be by "yes" and "no" and will be taken by a show of hands, voice vote, or a roll call vote so that the vote of each Commissioner is recorded. No motion shall be valid unless approved at a meeting of the Board and a proper record is made of the vote. Any Commissioner may request that his/her vote be changed if such request is made prior to announcement of whether the vote passed or failed.
- B. In accordance with the Open Meetings Act, each Commissioner's vote must be made in a public session in order to be counted. No votes of any kind, or polling to attempt to determine potential votes, will be allowed outside of public sessions or in closed sessions of the Board.
- C. Following each vote, it shall be announced that the motion passed or failed, and if not a unanimous vote, the number voting "yes," the number voting "no," the Commissioners' last names of those voting "no," the number abstaining, and the Commissioners' last names of those abstaining shall be announced.
- D. Abstentions are not counted as votes for or against a motion. Thus, when a specified number of affirmative votes is required by law or these Rules, and abstentions have been noted, the motion shall fail if the specified number of affirmative votes have not been cast. In situations in which there is a tie vote and the abstention represents the deciding vote, the motion shall fail for lack of a majority.
- E. If a roll call vote is called, the clerk shall call roll by Commissioners' lastnames only, as follows:
1. Attendance shall be called in alphabetical order according to Commissioner last names.
 2. The calling of a roll on a motion shall begin with the Commissioner who made the motion. The Commissioner who seconded the motion shall be called to vote second on the motion. The clerk shall proceed to call the roll in alphabetical order according to Commissioner last names, except the Vice-Chairperson shall be called to vote second-to-last and the Chairperson shall be called to vote last, unless the Vice-Chairperson made or seconded the motion. At the next meeting of the Board, the clerk shall begin the alphabetical list with the second Commissioner on the alphabetical listing. Other Commissioners shall be called to vote according to the regular sequence on the alphabetical listing, except that the Commissioner who was called to vote first at the last meeting shall be called to vote immediately prior to the Vice-Chairperson at the next meeting.
- F. After the first vote is given, no Commissioner shall be entitled to speak on the question, nor shall any motion be in order until such roll call is completed and the result declared.

Rule 16. Order of Business.

- A. The Order of Business of the Board at regular meetings shall be as follows:
1. Call to order.
 2. Pledge of allegiance.
 3. Attendance roll call.
 4. Invocation.
 5. Approval of agenda.
 6. Reading, correction and approval of minutes.
 7. Public participation (5 minutes maximum per speaker, or longer at the discretion of the Chairperson related only to issues contained on the agenda).
 8. Correspondence from Office of County Executive.

9. Reports from committees.

10. Proclamations.

11. New business.

12. Public participation (5 minutes maximum per speaker or longer at the discretion of the Chairperson).

13. Closed session.

14. Any action required after a closed session.

15. Adjournment.

B. By motion, the Board may approve an agenda in a different order when doing so is deemed by the Board to be necessary or appropriate to ensure the orderly flow of the meeting, in the interests to those attending the meeting, to accommodate those present to address particular issues, to accommodate the request of a Commissioner who needs to leave to attend to other business, or for other reasons stated.

C. Except when a different time is needed and provided for by motion as explained in the preceding paragraph, closed sessions should normally occur at the end of the meeting and, prior to entering into a closed session the Chairperson should state whether or not action is anticipated after the closed session.

Rule 17. Committees and Subcommittees.

A. The Board shall have the following standing committees, all of which shall be committees of the whole:

1. Government Operations.

2. Health and Human Services.

3. Justice and Public Safety.

4. Infrastructure/Economic Development.

5. Finance.

6. Audit (which shall meet on the request of the Board Chairperson or the Audit Committee Chairperson).

B. These Rules are the rules of procedure for all committees and subcommittees as applicable.

1. An item may be waived directly to the Board for review, evaluation and/or determination at the discretion of a committee chairperson.

2. An item that has not been referred for consideration from a committee meeting may be added to an agenda for consideration at a Full Board meeting upon a 2/3 vote of Commissioners serving.

3. An item may be added to a committee agenda at the time the committee is considering adopting the agenda upon a majority vote of members of the committee if the item is submitted in writing to all members of the committee before or at the time the motion to add the item to the agenda is made.

C. The committee chairperson may appoint a subcommittee.

1. Each subcommittee of a committee is a part of that committee and subject to the authority and direction of that committee.

2. Subcommittees shall not hold any meeting except upon authority of the standing committee chairperson.

3. The Board Chairperson may be appointed to a subcommittee. If the Board Chairperson is not appointed to a subcommittee, the Board Chairperson shall be a non-voting *ex officio* member of that subcommittee.

D. Each committee and subcommittee shall keep minutes of all committee and subcommittee committee actions and shall report, respectively, such actions to the Full Board or to the standing committee.

E. The chairpersons of two or more committees may arrange for a joint meeting of their committees when, in their judgment, special circumstances would warrant such a joint meeting or the conducting of business of the Board will be better served.

F. Committee chairpersons shall meet with the Board's staff at least 6 business days prior to a scheduled committee meeting to review the proposed agenda and any needed supporting materials. This does not prevent later changes to the agenda, but is intended to provide sufficient time to assemble agenda packets and transmit them to committee members and others on a timely basis.

G. Committee chairpersons are encouraged to engage committee vice-chairpersons by appointing committee vice-chairpersons as subcommittee chairpersons when subcommittees are formed, by asking vice-chairpersons to chair some committee meetings, and by assigning to vice-chairpersons information gathering, communications, and reporting tasks when such tasks are needed for the work of the committee.

Rule 18. Duties of the Clerk.

A. The Clerk shall perform duties related to the Board as required by law.

B. The Board's electronic voting system, when properly linked to meeting agenda materials, will produce a rough draft of minutes. Board personnel shall make that draft of minutes of Full Board meetings available to the Clerk who shall use them in performing the Clerk's duties under sub-rule 18.C.

C. The Clerk shall perform required duties pertaining to such office including the following:

1. Recording the proceedings of the Board in a book provided for that purpose, including Board resolutions and decisions upon all questions and, if requested by any Commissioner, the recorded vote of each Commissioner on any ordinance, resolution, appointment or election of an office, or other question submitted to the Board.

2. Other duties as the Board may, from time to time, require by resolution.

D. The Clerk, or his/her duly appointed deputy, shall be present at all meetings of the Full Board.

Rule 19. Minutes.

A. The Clerk shall, as required by the Open Meetings Act and other applicable laws, record the minutes in the minute book as provided in Rule 18. A copy of the proposed minutes of each Board meeting shall be prepared and submitted to the Board by the Board's staff. The Board's staff shall provide a copy of the proposed minutes to the Clerk prior to the agenda deadline for the next full Board meeting (in an electronic format compatible with the Board's electronic voting and records system). The minutes shall be an agenda item for the next Full Board meeting. Closed session minutes shall be produced by Board personnel designated by the Board and a copy maintained by the Clerk under seal as required by the Open Meetings Act.

B. The Clerk shall keep all adopted resolutions and ordinances arranged in the order of their adoption.

Rule 20. Workgroups.

A. The Chairperson may propose to the Board the appointment of informal *ad hoc* workgroups for purposes of advising the Board on policy issues. The proposal shall specify the purpose of the workgroup.

B. The Chairperson may appoint members of the workgroup, subject to the approval by a majority vote of Commissioners serving. Workgroup members may include Commissioners, County employees or others who are familiar with the applicable subject matter.

C. The workgroup shall report to the Board regarding any recommendations of the workgroup.

D. Meetings of workgroups shall comply with applicable requirements of the Open Meetings Act.

Rule 21. Public Participation.

A. Public attendance at a meeting shall be allowed as provided in the Open Meetings Act.

B. Comments by members of the audience shall be limited to the public participation times set aside on the agenda or any public hearing. Discussion will otherwise be limited to Commissioners and those upon which the Chairperson may direct questions or other interaction with respect to an agenda item.

C. The Chairperson shall have the discretion to curtail public comments that are repetitive and may limit public comments if they are so prolonged as to unduly interfere with the ability of the Board to address other items on the meeting's agenda.

D. Those attending the meeting who wish to speak, either during a public participation period or during a public hearing, shall be invited to do so for up to 5 minutes in accordance with the following:

1. Those wishing to speak will be asked to state their names and their address.

2. The Board shall accept written comments and copies of any submitted materials and will be distributed to all Commissioners.

3. Public comment time is to hear *from* the public. Therefore, responses usually will not occur. The Chairperson may decide a response is appropriate and may, in his/her discretion, respond on behalf of the Board, allow a Commissioner to respond, or direct Board staff or others who are present to respond.

4. Comments (i) are to be loud enough to be audible but not so loud as to be inappropriate for a meeting, (ii) must avoid coarse language or cursing, (iii) may not include personal attacks, (iv) may not be addressed to anyone other than the Board or the Chairperson, and (v) may involve a single speaker (except when the speaker requires assistance). Comments may not include demonstrations, or materials that, when used, could be hazardous or unduly disruptive to the meeting.

Rule 22. Board Appointments.

A complete, notarized application (provided by the Board Office or obtained from the Board Office website), including qualifications and biographical data, for an appointment that the Board has the authority to make shall be submitted to the Board Office at least one day before the meeting at which the Full Board or committee is scheduled to consider the appointment.

Rule 23. Notices and Correspondence from County Executive.

Any notices or correspondence required by the Charter to be given by the County Executive to the Board shall be addressed to the Chairperson and deemed received when delivered to the Chairperson and date-stamped by Board staff. The date of the stamp shall be the official date of receipt. The Chairperson shall refer the notices or correspondence to the appropriate committee chairperson or the Full Board, at the Chairperson's discretion.

Rule 24. Charter Timelines.

The Board shall follow all time limits imposed by the Charter as summarized on the attached table.

Rule 25. Expiration.

The Rules shall be in effect until replaced by the Board in the current session or succeeding session.

EXHIBIT D



Mark A. Hackel
County Executive


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MEMORANDUM

TO: Hon. James M. Biernat
Chief Judge, 16th Circuit Court

FROM: John Schapka, Corporation Counsel 

DATE: March 28, 2017

RE: County Retiree Appointment to Chief Deputy Clerk Position

This addresses questions regarding whether a current County retiree may be appointed to the position of Chief Deputy County Clerk.

Opinion: A current County retiree may not be re-employed by the County, whether by appointment or otherwise, in a full-time capacity. The Chief Deputy County Clerk position is a full time position, both in the practical sense and as defined by the County's HRLR Department. Accordingly, a retiree may not be appointed to that position.

Authority: Historically, the Macomb County Clerk's Office has had only two deputy clerks appointed pursuant to statute, one of whom is the Chief Deputy Clerk appointed pursuant to MCL 50.63. The statute provides:

Each county clerk shall appoint 1 or more deputies, to be approved by the circuit judge, 1 of whom shall be designated in the appointment as the successor of such clerk in case of vacancy from any cause...

While the statute places no greater restrictions on who may be appointed, that discretionary authority may be constrained by extrinsic factors including budgetary considerations and local ordinance.

At Section 16, the Macomb County Employees Retirement System Ordinance, Enrolled Ordinance No. 2016-06, provides:

The membership of the [Macomb County Employees Retirement System] shall consist of the following: (a) All employees who are either: (1) in a full-time position normally requiring 30 hours or more per week, or (2) in a part-time position normally requiring 1,000 hours or more per year, but less than 30 hours per week, except as provided in Subsection (d) of this section.

Hon. James M. Biernat
Chief Judge, 16th Circuit Court
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In turn, Sub-section (d) provides:

...the membership in the MCERS shall not include: (5) any person receiving a pension from the MCERS, [and] (6) any person whose appointment is to a position normally requiring less than 1,000 hours...

Accordingly, the Ordinance makes clear that all employees must be members of the retirement system. At the same time, it bars County retirees from membership. As a consequence, a County retiree is barred from employment in any position other than a sub-1,000 part-time position.

The Chief Deputy County Clerk's position is defined by the County's HRLR Department and budgeted by the County's Finance Department as a full-time position. Moreover, in a practical sense, the Chief Deputy Clerk's job requires full-time, if not more, hours. There is no known authority under which the Chief Deputy Clerk's position may be reduced or reclassified to a part-time position to avoid the limitation imposed by the Retirement Ordinance. Similarly, the Ordinance itself provides no authority under which a retiree may waive his or her pension as a means of accepting appointment to full-time County employment.

JAS/mla

EXHIBIT E

Ms. Greiner ran as a Democrat for the County-Wide Elected Office of Macomb County Clerk in the August 2016 primary. No attempt was made by the County to disqualify her as a candidate for the Office of County Clerk or reemployment as a "public servant" which also is a "retirant." Indirectly, that is exactly what the HR and Corporation Counsel legal position is presumed to entail. If, hypothetically, Greiner had been elected, Greiner was able to serve as Clerk and be a County Employee. As Chief Deputy Clerk, in the place and stead of the Clerk, she can serve as well for the Clerk's duties in the Clerk's absence. Elements of waiver and estoppel by the County HR and Corporation Counsel should be considered under the circumstances.

III. LAW

MCL 50.63¹, Exhibit A, gives the Clerk the authority to appoint deputies, including a Chief Deputy and successor, subject to approval by the Circuit Court Judge. There is no limitation or explicit qualification mentioned other than appointment by the Clerk. The Court is a check and balance, but that role by necessity must be restrained. It would presumably be able to assess qualities such as moral turpitude or criminal history, none of which is applicable to Greiner, but the legislature is silent as to what circumstances would prohibit an appointee from approval.

Charter § 10.6.2, Exhibit B, states:

No full-time employee who has retired from County service shall be re-employed in the same capacity, whether by contract or otherwise, within 1 year after the person's retirement benefit commences, unless:

- (a) An applicable collective bargaining agreement specifically allows for such return;
- (b) The individual returns pursuant to a deferred retirement option program contract; or
- (c) The Executive recommends and the Commission approves the re-employment.

Emphasis added.

Greiner has never served the People of Macomb County in the "same capacity." As a matter of law she has never been an appointed non-civil service/non-unionized Chief Deputy Clerk, or

¹ "Each county clerk shall appoint 1 or more deputies, to be approved by the circuit judge, 1 of whom shall be designated in the appointment as the successor of such clerk in case of vacancy from any cause, and may revoke such appointment at his pleasure, which appointment and revocation shall be in writing, under his hand, and filed in the office of the county treasurer, and the deputy or deputies, may perform the duties of such clerks." MCL 50.63.

had the authority to act in the place and stead of the Clerk in her absence. That "capacity" was filled by other Chief Deputy Clerks during Greiner's tenure in County government employment. Ironically, the very criticism of the previous Chief Deputy was his lack of experience. Now that the Clerk has appointed an experienced and eminently qualified appointee, HR and Corporate Counsel shifts the paradigm and seeks to bar the appointee by invoking inapposite clauses of the Charter, and MCERS provisions which do not apply to Greiner who has agreed to suspend her pension benefit under MCL 46.12a(28), Exhibit C, and Macomb County Ord. 2016-06, § 51. Exhibit D.

IV. MCL 46.12a(28) AND MCERS RETIREMENT ORDINANCE ENROLLED 2016-06 (12/08/2016) ARE INAPPOSITE.

The Macomb County Employee Retirement System (MCERS) under the Ordinance 2016-06 is inapposite to the issue of Greiner's confirmation by the Court because Greiner as a "retirant" can, and has, elected to suspend her MCERS pension payment benefit during her reemployment as Chief Deputy. Therefore, the one year rule at MCL 46.12a(28) which merely authorized county to enact such provisions in their ordinances, does not apply. It was adopted, by reference in Ord. 2016-06, § 51. Hence, the "full-time" versus "part-time" inquiry is inapplicable and moot under a § 51² analysis which clearly and unambiguously states that the "retirant may continue to receive pension benefits." Full-time or part-time is irrelevant to whether Greiner can be appointed and confirmed to serve as Chief Deputy where she is not seeking pension benefits during her period of reemployment.

MCERS discussion is included for the sake of a complete treatment of any issue related to the "full-time" status of Greiner as a "retirant" being re-employed by the County. issue and to avoid confusion. Neither § 51 of the MCL 46.12a(28)³, Exhibit C supra, gives the authority to the

² SECTION 51. REEMPLOYMENT AFTER RETIREMENT

A Retirant may continue to receive pension payments upon reemployment by the County provided the Retirant meets the eligibility requirements of the County Board of Commissioner Act, Public Act 46.12a of 1851, as amended (MCL § 46.12a), and is not eligible for membership in the MCERS.

The term "any 12 month period" for purposes of the 1,000 hour limitation provided in this section will be a calendar year.

Emphasis added. Macomb County Ord. 201606, § 51.

³ MCL 46.12a(28) states:

County Governments to adopt "a deferred retirement option plan (DROP) and may, with approval of the affected employee, pay the employee's retirement or pension benefit into the DROP program if (1) the reemployed retiree works less than 1,000 hours per 12-month period or the position is an elected or appointed position meeting the requirements of MCL 46.12a(b)(1)(B)-(D)." OAG 7122, Exhibit E.

V. CONCLUSION

Karen Spranger has exercised her authority under the Michigan statute and has appointed Denise Greiner as the Clerk's Chief Deputy under MCL 50.63. HR and Corporation Counsel have informally objected, the basis of which is not clear. The Clerk, through independent counsel, has thrown a broad net and searched for every possible objection to Greiner's confirmation by the Circuit Court and found all arguments under the Charter, the Statute, and the County Ordinance to be inapposite or specious.

"One of the following conditions applies to a retiree who is receiving a pension or retirement benefit from a plan under this section if the retiree becomes employed by a county that has established a plan under this section:

(a) Payment of the pension or retirement benefit to the retiree shall be suspended if the retiree is employed by the county from which the retiree retired and the retiree does not meet the requirements of subdivision (b) or (d). Suspension of the payment of the pension or retirement benefit shall become effective the first day of the calendar month that follows the sixtieth day after the retiree is employed by the county. Payment of the pension or retirement benefit shall resume on the first day of the calendar month that follows termination of the employment. Payment of the pension or retirement benefit shall be resumed without change in amount or conditions by reason of the employment. The retiree shall not be a member of the plan during the period of employment.

(b) Payment of the pension or retirement benefit to the retiree shall continue without change in amount or conditions by reason of employment by the county from which the retiree retired if all of the following requirements are met:

(i) The retiree meets 1 of the following requirements:

(A) For any retiree, is employed by the county for not more than 1,000 hours in any 12-month period.

(B) For a retiree who was not an elected or appointed county official at retirement, is elected or appointed as a county official for a term of office that begins after the retiree's retirement allowance effective date.

Emphasis added, MCL 46.12a(28).

Since Greiner has agreed to suspend her MCERS pension benefit, there is no issue. Obviously, the issue would only be salient to the inquiry if Greiner had not agreed, but even then, is a civil issue between Greiner and the County, not as a bar to her reemployment. The Court should confirm the appointment of Denise Greiner as Macomb County Clerk Chief Deputy effective immediately.

(END)

RESPONSE
BUREAU
MEMO

EXHIBIT A

**Revised Statutes of 1846 (EXCERPT)
COUNTY CLERK.**

50.63 County clerk; deputies, appointment.

Sec. 63. Each county clerk shall appoint 1 or more deputies, to be approved by the circuit judge, 1 of whom shall be designated in the appointment as the successor of such clerk in case of vacancy from any cause, and may revoke such appointment at his pleasure, which appointment and revocation shall be in writing, under his hand, and filed in the office of the county treasurer, and the deputy or deputies, may perform the duties of such clerks.

History: R.S. 1846, Ch. 14;—Am. 1850, Act 65, Imd. Eff. Mar. 5, 1850;—CL 1857, 404;—Am. 1861, Act 146, Eff. June 15, 1861;—Am. 1871, Act 69, Imd. Eff. Mar. 31, 1871;—CL 1871, 340;—Am. 1875, Act 109, Eff. Aug. 3, 1875;—How. 573;—CL 1897, 2572;—CL 1915, 2433;—CL 1929, 1314;—CL 1948, 50.63.

Compiler's note: This section as originally enacted was numbered section 64.

RESUME
BIENNALE
MEMO

EXHIBIT B

Section 10.6 Effect of Removal, Resignation, or Retirement

10.6.1 A person who has been removed from office pursuant to this Charter or state law, or who has resigned from office after a petition for recall has been filed with the County Clerk, or in anticipation of disciplinary action, or after a complaint or investigation has been received or undertaken by the Ethics Board, is not eligible to be elected or appointed to any County office for 2 years after such removal or resignation.

10.6.2 No full-time employee who has retired from County service shall be re-employed in the same capacity, whether by contract or otherwise, within 1 year after the person's retirement benefit commences, unless:

- (a) An applicable collective bargaining agreement specifically allows for such return;
- (b) The individual returns pursuant to a deferred retirement option program contract; or
- (c) The Executive recommends and the Commission approves the re-employment.

Section 10.7 Public Defender

The creation of an office of Public Defender is authorized.

Section 10.8 Additional Functions or Services

The County may perform any function or service, and establish or maintain any facilities, not prohibited by law which are necessary or beneficial to the public health, safety, and general welfare of the County. However, powers granted solely by this Charter may not be exercised by the County in a local unit of government which is exercising a similar power without the consent of the local legislative body.

Section 10.9 Economic Development

The County may create and implement economic development programs, including: (1) the provision of grants for capital development, job creation, and the retention of jobs and capital; (2) the granting of tax abatements; (3) the provision of other incentives for private development; and (4) the exercise of any other power provided by law. The County Executive shall administer economic development programs, in coordination with the Director of Planning and Economic Development, pursuant to an ordinance adopted by the Commission or as provided by law.

Section 10.10 Oath of Office

The Countywide Elected Officials and Commissioners shall take and subscribe to the oath as provided in Section 1 of Article 11 of the Constitution before entering upon the duties of office.

MEMORANDUM

Date: April 13, 2017

To: Chief Judge James Blernat, Jr.
From: Frank A. Cusumano, Jr. P42781 on behalf of Karen Spranger, Macomb County Clerk.
CC: Mark Hackel, Macomb County Executive
Mark Deldin, Macomb County Executive Deputy
John Schapka, Corporation Counsel Macomb County
Karen Bathanti, Department of Human Resources and Labor, Macomb County

RE: Appointment of Denise Greiner as Chief Deputy, Macomb County Clerk's Office

I. SUMMARY

Denise Greiner (Greiner) is not precluded by law from appointment to the Macomb County Chief Deputy Clerk position. The law is clear on this point. Greiner is qualified and experienced "retirant" from the Macomb County Clerk's Office and register of Deeds who has sought reemployment, by appointment, to the Chief Deputy Clerk position. Greiner's appointment has been properly submitted to the Circuit Court Judge by Macomb County Clerk, Karen Spranger (Clerk). Any issues informally raised by the County Human Resource Department and Corporation Counsel must be publicly disclosed and analyzed under Michigan law. It is not the role of the Court to decide whether a highly-qualified appointee can become a public employee, Chief Deputy Clerk. Selective interpretations of the Charter provisions § 10.6.2, and state statute (MCL 46.12a) incorporated by reference in Ord. 2016-06 by the Human Resources and Labor Department (HR) or Corporation Counsel are inapposite where Greiner never served in the "same capacity," and has elected to under MCERS to voluntarily suspend her MCERS pension benefit during her reemployment as a "retirant."

The Clerk, through independent counsel, submits this memorandum, but constitutional and legal rights accrue to Greiner as well, and should be considered in the Court's analysis

This memorandum addresses what Clerk Spranger has indicated are the concerns of the Court in the approval of the appointment of Greiner as Chief Deputy Clerk.

II. CHIEF DEPUTY CLERK APPOINTEE DENISE GREINER RESUME

For purposes of this memorandum, it is not contested that Greiner is experienced, capable, and competent in the Clerk's Office operations, procedures, and policies. Greiner worked in the Clerk's Office:

- Macomb County Clerk's Office Supervisor: Feb. 2013 – Sep. 2015 (2 years, 8 months);
- Chief Jury Clerk: Aug. 2003 – Apr. 2013 (9 years, 9 months);
- Clerk/Register of Deeds: Nov. 1999 – Aug. 2003 (3 years, 10 months);

RESPONSE
BENTON
MEMO.

EXHIBIT C

COUNTY BOARDS OF COMMISSIONERS (EXCERPT)
Act 156 of 1951

46.12a Insurance; pension or retirement plan; effect of collective bargaining agreement; reemployment of retirant; adjusted pension or retirement benefit; payment of benefits subject to eligible domestic relations order; effect of divorce from spouse named as retirant's survivor beneficiary on election of reduced retirement allowance; employee of credit union as member of plan; written policy.

Sec. 12a. (1) A county board of commissioners at a lawfully held meeting may do 1 or more of the following:

(a) Provide group life, health, accident and hospitalization, and disability coverage for a county employee, retired employee, or an employee of an office, board, or department of the county, including the board of county road commissioners, and a dependent of an employee, either with or without cost participation by the employee, and appropriate the necessary funds for the insurance. For a county with 100 employees or more, self-insure for health, accident and hospitalization, and group disability coverage for a county employee, retired employee, or an employee of an office, board, or department of the county, including the board of county road commissioners, and a dependent of an employee, either with or without cost participation by the employee, and appropriate the necessary funds.

(b) Adopt and establish a plan by which the county purchases or participates in the cost of an endowment policy or retirement annuity for a county employee or an employee of an office, board, or department of the county, including the board of county road commissioners, to provide monthly pension or retirement benefits for each employee 60 years of age or older in an amount not to exceed \$150.00 per month or 2% of the average monthly earnings of the employee for 5 years immediately before retirement times the years of service of the employee, whichever is the lesser sum. As an option, a county board of commissioners may adopt and establish a plan by which the county pays pension or retirement benefits to a county employee or an employee of an office, board, or department of the county, including the board of county road commissioners, who has been employed for not less than 25 years, or who is 60 years of age or older and has been employed for not less than 5 years, in monthly payments not to exceed 2.5% of the employee's highest average monthly compensation or earnings received from the county or county road fund for 5 years of service times the total number of years of service of the employee, including a fraction of a year, not to exceed 3/4 of the average final compensation of the employee. A plan may also pay early retirement benefits at 55 years of age or older to the extent of actuarially equivalent benefits not increasing the costs of the plan. Except as provided in subsection (27), endowment policies, retirement benefits, pensions, or annuity retirement benefits in excess of the amounts stipulated in this subdivision may be provided for by a plan of employee participation to cover the cost of the excess. If the employment or the pension or retirement benefits of an employee who participated in the cost of pension or retirement benefits are terminated before the employee receives pension or retirement benefits equal to the total amount of the employee's participation, the balance of the total participation shall be refunded to the employee at the time of termination, if living, or if deceased, to the employee's heir, estate, legal representative, or designated beneficiary as provided in the plan adopted and established by the county board of commissioners. If a terminated employee is subsequently rehired by the county, the employee may repay the amount of participation refunded to the employee upon the employee's termination, together with compound interest from the date of refund to the date of repayment at the rates provided in the plan. As conditions for repayment, the plan may require return to employment for a period not to exceed 3 years and may require that repayment be completed within a period of not less than 1 year following return to employment. A plan adopted for the payment of retirement benefits of a pension shall grant benefits to an employee eligible for pension or retirement benefits according to a uniform scale for all persons in the same general class or classification. An employee shall not be denied benefits by termination of his or her employment after the employee becomes eligible for benefits under the plan and this section. An endowment policy or annuity purchased pursuant to this section shall be purchased from an insurer authorized to write endowment policies or annuities in this state.

(2) In a plan adopted under this section, at least 60% of the total pension or retirement benefit granted to an employee from county funds shall consist of a percentage not to exceed 2.5% of the employee's average final compensation times the employee's years of service and shall be granted to each employee eligible for retirement under the plan uniformly and without restriction or limitation other than those prescribed in this section. As used in this section:

(a) "Average final compensation" means the annual average of the highest actual compensation received by a county employee, other than a county employee who is a judge of a municipal court of record subject to subsection (20) or a judge subject to subsection (23), during a period of 5 consecutive years of service

contained within the employee's 10 years of service immediately before the employee's retirement or a period of 5 years of service as specified in the plan. In a county that adopts a plan for granting longevity pay, the county board of commissioners may exclude this longevity pay from average final compensation for the purpose of computing the rate of employee contribution and the amount of benefits payable to an employee upon retirement.

(b) "Longevity pay" means increments of compensation payable at annual or semiannual intervals and based upon years of service to the county, exclusive of compensation provided for a given class of positions.

(3) A circuit court stenographer is eligible for membership in, and the benefits of, a pension or retirement benefit under a plan established pursuant to this section, or a social security plan established by the county or 1 of the counties that pays a portion of the compensation of a circuit court stenographer.

(4) If the employment of a county employee eligible to receive a pension or retirement benefit under a plan established pursuant to this section is terminated after the employee has completed 5 or more years of service in county employment, the employee shall receive the amount of pension or retirement benefit to which the employee's service would have entitled the employee under the plan established, if the employee waives the employee's right to a refund of the employee's total participation upon the termination of employment. The payment of pension or retirement benefits shall begin, as provided in the plan, after the employee would have become eligible for retirement under the plan had the employee's employment not been terminated, but not later than 90 days after the employee becomes 65 years of age. The payment of pension or retirement benefits shall not begin until the employee has applied for pension or retirement benefits in the manner prescribed in the plan established.

(5) A plan established under this section may provide for pension or retirement benefits for a county employee who becomes totally disabled for work in the county service from any cause, after not less than 10 years of county employment, to the extent of the limitations provided in this section. A plan may also provide for pension or retirement benefits to the extent of the limitations provided in this section or \$400.00 per month, whichever is the greater sum, for an employee who becomes totally disabled for work in the county service from causes that are the direct and proximate result of county employment, to continue for the duration of the disability or until the employee becomes eligible for retirement pursuant to other provisions of the plan authorized by this section. A plan may also provide for pension or retirement benefits, to the extent of the limitations provided in this section, for the actual dependents of a county employee who dies while still employed by the county after not less than 10 years of county employment, or who dies after leaving county employment with not less than the number of years of service required to vest in the plan but before becoming eligible to receive a pension or retirement benefit. A plan may also provide for pension or retirement benefits to the extent of the limitations provided in this section or \$400.00 per month, whichever is greater, for the actual dependents of a deceased county employee whose death is the direct and proximate result of county employment. The plan may provide that the period from the end of the deceased or disabled employee's period of service to the date that employee would have become eligible for retirement be used as service for the sole purpose of computing the amount of disability or death pension.

(6) As used in this section, "county employee" includes a bailiff of the district court in the thirty-sixth district who serves pursuant to section 8322 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8322, and a person who receives more than 50% of all compensation for personal services, rendered to governmental units, from a county fund or county road fund, except a person, other than a bailiff of the district court in the thirty-sixth district, engaged for special services on a contract or fee basis. Until December 31, 1979, a plan adopted under this section may include as a county employee a person on leave of absence from county employment who is not a member of another retirement system except as a retiree and who pays or arranges payment of contributions equal to the contributions that would have been required to be paid under the plan by both the county and the employee, based upon the compensation the employee would have received from the county, if the employee had not taken a leave of absence or a person who complies with the requirements of such a provision approved for inclusion in a plan by the county board of commissioners before January 1, 1976, who shall be considered to be a county employee during the period of compliance. A plan adopted under this section may exclude a person who is employed on a temporary basis and a person employed in a position normally requiring less than 1,000 hours, or some lesser specified number of hours, work per year. A bailiff serving in the district court in the thirty-sixth district is eligible to receive benefits under this section if a plan has been established by law by which the cost of benefits is payable from sources including charges on all legal instruments in which the service of process by a bailiff is required and earmarked by law for benefits, and contributions made by the city of Detroit and each bailiff pursuant to section 8322(6) of the revised judicature act of 1961, 1961 PA 236, MCL 600.8322. The plan shall include provisions by which a bailiff or former bailiff who served as bailiff as of January 1, 1967, may retire after 25 years of service regardless of age, with maximum benefits to be computed as follows: starting as of January 1, 1967, and each subsequent anniversary of January 1, 1967, until January 1, 1976, the maximum benefit shall be 1% of the employee's average final compensation for each year of service. After January 1, 1976, the maximum benefit shall be 1.5% of the employee's average final compensation for each year of service. The plan shall include provisions by which a bailiff or former bailiff who served as bailiff as of January 1, 1967, may retire after 25 years of service regardless of age, with maximum benefits to be computed as follows: starting as of January 1, 1967, and each subsequent anniversary of January 1, 1967, until January 1, 1976, the maximum benefit shall be 1% of the employee's average final compensation for each year of service. After January 1, 1976, the maximum benefit shall be 1.5% of the employee's average final compensation for each year of service.

1969, the average of any 5 years of earnings of the previous 10 years served in succession before retirement multiplied by 1.9% times the years of service; starting as of June 1, 1973, the average of any 5 years of earnings multiplied by 2% times the years of service. As used in this subsection, "earnings" means the salary and fees, other than mileage, received by a bailiff pursuant to section 8322(3) of the revised judiciary act of 1961, 1961 PA 236, MCL 600.8322. The plan shall include provisions by which health, accident, and hospitalization insurance premiums may be paid out of the earnings of this fund. These payments shall be made at the discretion of the pension board of trustees. A county that has a retirement fund for bailiffs under this section shall annually review the retirement fund and shall ensure that the fund is maintained in an actuarially sound condition. Copies of the actuarial reports shall be provided to the employer designated under section 8274(2) or (3) of the revised judiciary act of 1961, 1961 PA 236, MCL 600.8274, and to the state court administrator.

(7) An employee while receiving a pension or retirement benefit because of disability, pursuant to this section, may be considered as employed in the county service for the purpose of retirement under this section.

(8) A county employee who is included by law in another pension or retirement system by reason of the compensation the employee receives from the county may be excluded from a plan established under this section or included only to the extent of the difference between benefits granted under this section and the other pension or retirement system.

(9) The county board of commissioners, upon the request of a county employee, by not less than a 3/5 vote may credit that county employee with the amount of government service resulting from employment with the United States government, except military service, employment with a state, or employment with any of their political subdivisions under the following conditions:

(a) Employment by the county occurred within 15 years following the county employee's separation from service of the last unit of government by which the county employee was employed.

(b) Service rendered before the last break in service of more than 15 years shall not be credited.

(c) Service that is recognized for the purpose of a deferred retirement allowance under a retirement system or other employer-funded retirement benefit plan, except for a retirement benefit plan under the social security act, chapter 531, 49 Stat. 620, of the United States government, a state, or a political subdivision of a state shall not be credited if the county employee retired under a retirement system of the United States government, a state, or any of their political subdivisions or until the county employee irrevocably forfeits the right to the deferred retirement allowance.

(d) The county employee deposits in the plan established under this section an amount equal to the aggregate amount of contributions the county employee would have made had the service been acquired in the employ of the county, plus interest from the dates the contributions would have been made to the date of deposit, at rates determined by the county board of commissioners. If records are insufficient or unavailable to compute the exact amount of required deposit, the county board of commissioners may estimate the amount.

(e) The county employee has 8 or more years of credited service in county employment, has legal vesting in the county plan, and deposits in the county employees' retirement system an amount equal to the aggregate amount of contributions the employer would have made had the government service being credited under this section been acquired in the employ of the county.

(10) A plan adopted under this section may provide for annual or less frequent postretirement redetermination of a pension. The redetermined amount of pension shall be not greater than the amount of pension otherwise payable multiplied by the sum of 100% and the percentage the county board of commissioners determines appropriate for each full year, excluding a fraction of a year, in the period from the effective date of payments of the pension and the date as of which the redetermination is being made. The redetermined amount shall not be less than the amount of pension otherwise payable. A provision of this section that limits the amount of a pension shall not apply to the operation of this subsection redetermining the amount of a pension. As used in this subsection, "the amount of pension otherwise payable" means the amount of pension that would be payable without regard to this subsection. The application of a provision redetermining pension amounts may be restricted to pensions that have an effective date of payment either before or after a specified date.

(11) The cost of pension or retirement benefits for a county employee under this section may be paid from the same fund from which the employee receives compensation, and the county board of commissioners may appropriate the necessary funds to carry out the purposes of this section. If a county establishes a plan by which the county pays pension or retirement benefits to an employee pursuant to this section, the county, pursuant to provisions for pension or retirement benefits that are incorporated in the plan, shall establish and maintain reserves on an actuarial basis in the manner provided in this subsection sufficient to finance the pension and retirement and death benefit liabilities under the plan and sufficient to pay the pension and retirement and death benefits as they become due. A county that adopts a retirement plan under this section

and establishes reserves on an actuarial basis shall maintain the reserves as provided in this subsection. The reserves shall be determined by an actuarial valuation and established and maintained by yearly appropriations by the county and contributions by employees. The reserves shall be established, maintained, and funded to cover the pension and other benefits provided for in the plan in the same manner and within the same limits as to time as is provided for Benefit Program B in the municipal employees retirement system described in former section 14 of the municipal employees retirement act of 1984, 1984 PA 427. These reserves are trust funds and shall not be used for any other purpose than the payment of pension, retirement, and other benefits and refunds of employee contributions pursuant to the plan established in a county. An employee's contributions shall be kept and accumulated in a separate fund and used only for the payment of annuities and refunds to employees. This subsection does not apply to a county that adopted a retirement plan under this section and did not establish reserves on an actuarial basis before October 11, 1947.

(12) If a county establishes a plan for the payment of pension and retirement benefits to its employees pursuant to this section, the county board of commissioners may provide for a board of trustees to administer the plan and for the manner of election or appointment of the members of the board of trustees. The county board of commissioners may grant authority to the board of trustees to fully administer and operate the plan and to deposit, invest, and reinvest the funds and reserves of the plan within the limitations prescribed by the county board of commissioners in the plan. The county board of commissioners may authorize the investment of funds of a county retirement plan established under this section in anything in which the funds of the state employees' retirement system or the funds of the municipal employees retirement system may be invested, pursuant to the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, and the municipal employees retirement act of 1984, 1984 PA 427, MCL 38.1501 to 38.1555. A county retirement plan established under this section may provide for financing, funding, and the payment of benefits in the same manner and to the same extent as is provided for in the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, and the municipal employees retirement act of 1984, 1984 PA 427, MCL 38.1501 to 38.1555, may provide for and require contributions by county employees, and may permit additional employee contributions on a voluntary basis.

(13) Upon the approval of the county board of commissioners, a member who entered the armed service of the United States before June 1, 1980 or who entered the armed service of the United States on or after June 1, 1980 during a time of war or emergency condition as described in section 1 of 1965 PA 190, MCL 35.61, may elect to receive credited service for not more than 5 years of active military service. Credit for military service shall be given upon request and payment to the retirement system of an amount equal to 5% of the member's full-time or equated full-time annual compensation for the year in which payment is made multiplied by the number of years, and fraction of a year, of credited service that the member elects to purchase up to the maximum. Service shall not be credited if the service is or would be credited under any other federal, state, or local publicly supported retirement system, except for service that is or would be credited under the federal government for services in the reserve. Service shall not be credited under this subsection until the member has the number of years of credited service needed to vest under the plan. Only completed years and months of armed service shall be credited under this subsection.

(14) A member who enters or entered any armed service of the United States may purchase credited service for periods of continuous active duty lasting 30 days or more, subject to the following conditions:

(a) The county board of commissioners authorizes the purchase of credited service under this subsection by an affirmative vote of a majority of the members of the county board of commissioners. The county board of commissioners shall establish a written policy to implement the provisions of this subsection in order to provide uniform application of this subsection to all members of the plan.

(b) The member has at least the number of years of credited service needed to vest under the plan, not including any credited service purchased under this subsection and subsection (13).

(c) The member pays the plan 5% of the member's annual compensation multiplied by the period of credited service being purchased. As used in this subdivision, "annual compensation" means the aggregate amount of compensation paid the member during the 4 most recent calendar quarters for each of which the member was credited 3/12 of a year of credited service.

(d) Fractional months of armed service shall not be recognized for the purposes of this subsection.

(e) Armed service credited a member under subsection (13) shall not be the basis of credited service under this section.

(f) Armed service credited a member under this subsection shall not exceed either 5 years or the difference between 5 years and the armed service credited the member under subsection (13).

(g) Credited service shall not be granted for periods of armed service that are or could be used for obtaining or increasing a benefit from another retirement system, except for service that is or would be credited under the federal government for services in the reserve.

(15) As used in this subsection, "transitional public employment program" means a public service employment program in the area of environmental quality, health care, education, public safety, crime prevention and control, prison rehabilitation, transportation, recreation, maintenance of parks, streets, and other public facilities, solid waste removal, pollution control, housing and neighborhood improvements, rural development, conservation, beautification, veterans' outreach, or any other area of human betterment and community improvement as part of a program of comprehensive manpower services authorized, undertaken, and financed pursuant to the former comprehensive employment and training act of 1973, Public Law 93-203. A person participating in a transitional public employment program shall not be eligible for membership in a retirement system or pension plan established under this section. If the person later becomes a member of a retirement system or pension plan established under this section within 12 months after the date of termination as a participant in a transitional public employment program, service credit shall be given for employment in the transitional public employment program for purposes of determining a retirement allowance upon the payment by the person and the person's employer under the transitional public employment program from funds provided under the former comprehensive employment and training act of 1973, Public Law 93-203, as funds permit, to the retirement system of the contributions, plus regular interest, the person and the employer would have paid had the employment been rendered in a position covered by this section. During the person's employment in the transitional public employment program, the person's employer shall provide an opportunity by payroll deduction for the person to make his or her employee contribution to the applicable pension system. To provide for the eventual payment of the employer's contribution, the person's employer shall during this same period place in reserve a reasonable but not necessarily an actuarially determined amount equal to the contributions that the employer would have paid to the retirement system for those employees in the transitional public employment program as if they were members under this section, but only for that number of employees that the employer determined would transfer from the transitional public employment program into positions covered by this section. If the funds provided under the former comprehensive employment and training act of 1973, Public Law 93-203, are insufficient, the remainder of the employer contributions shall be paid by the person's current employer.

(16) Subsection (15) does not exclude the participant in a transitional public employment program from the accident, disability, or other benefits available to members of the retirement system covered by this section.

(17) If a probate judge who is a member of a plan established under this section contributes for 20 years or more, the county board of commissioners may allow the probate judge to cease further contributions.

(18) An employee of the circuit court in the third judicial circuit, the common pleas court of the city of Detroit, or the recorder's court of the city of Detroit who became an employee of the state judicial council on September 1, 1981, and who was 44 years of age or older as of that date, and who will have accumulated 25 or more years of service credit by September 1, 1987, shall continue to be eligible for membership in, and the benefits of, a pension or retirement benefit plan established pursuant to this section in the same manner as the employee was eligible before September 1, 1981. A person who was an employee of the circuit court in the third judicial circuit, the common pleas court of the city of Detroit, or the recorder's court of the city of Detroit on August 31, 1981, who last entered county employment before November 2, 1956, who became an employee of the state judicial council on September 1, 1981, and who accumulated not less than 24 years of service credit by August 31, 1981, shall continue to be eligible for membership in, and the benefits of, a pension or retirement benefit plan established pursuant to this section in the same manner as the employee was eligible before September 1, 1981. An election to continue to be a member of a pension or retirement benefit plan established pursuant to this section as authorized by section 594(2) of the revised judiciary act of 1961, 1961 PA 236, MCL 600.594, as that section read on February 8, 1985, or former section 36(2) of 1919 PA 369, is not effective unless the employee has made the election in the manner prescribed by those sections and has made the payments required by those sections.

(19) A plan adopted under this section may provide that an employee of the circuit court in the third judicial circuit, the common pleas court of the city of Detroit, or the recorder's court of the city of Detroit who is a member of the Wayne county employees' retirement system on August 31, 1981, who becomes an employee of the state judicial council and a member of the state employees' retirement system on September 1, 1981, receive a benefit based on the annual average of the highest actual compensation received by the employee during a period of 5 years of county or state service.

(20) Beginning September 1, 1981, for determining the retirement benefit for a county employee who is a judge of a municipal court of record pursuant to subsection (2), "average final compensation" means the annual average of the highest actual compensation received by the judge as additional salary pursuant to former section 13(2) of 1919 PA 369, or section 9932(3) of the revised judiciary act of 1961, 1961 PA 236, MCL 600.9932, during a period of 5 years of service as specified in the plan. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(21) Beginning September 1, 1981, for each county employee who is a judge of a municipal court of record, or of the circuit or district court, the sum of the average final compensation determined for that county employee pursuant to this section and the final salary determined for that county employee as a member of the state of Michigan judges' retirement system created by former 1951 PA 198, or as a member of the Michigan judges' retirement system created by the judges' retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, shall not exceed the employee's total annual judicial salary payable from all sources at the time of his or her retirement. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(22) Beginning September 1, 1981, for each county employee who is a judge of the probate court, the sum of the average final compensation calculated for that employee pursuant to this section and the final salary calculated for that employee as a member of the state of Michigan probate judges' retirement system created by former 1954 PA 165 or as a member of the Michigan judges' retirement system created by the judges' retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, shall not exceed the employee's total annual judicial salary payable from all sources at the time of his or her retirement. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(23) Beginning September 1, 1981, for determining a retirement benefit pursuant to subsection (2) for a county employee who is a judge who receives an annuity pursuant to section 14(5) of former 1951 PA 198 or pursuant to section 503(2)(c) of the judges' retirement act of 1992, 1992 PA 234, MCL 38.2503, "average final compensation" means the difference between the judge's total annual salary payable from all sources on August 31, 1981, and the judge's state base salary payable on August 31, 1981. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(24) Beginning January 1, 1983, the sum of the final salary determined for each county employee who is a judge of the probate court used as the basis for determining the judge's retirement allowance as a member of a retirement system established pursuant to this section and the salary or compensation figure used as the basis for determining the judge's retirement allowance as a member of the state of Michigan judges' retirement system created by former 1951 PA 198 or as a member of the Michigan judges' retirement system created by the judges' retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, shall not exceed the judge's total annual salary payable from all sources at the time of his or her retirement. This subsection shall not be construed to diminish or impair an accrued financial benefit.

(25) The county board of commissioners, upon the request of a county employee, by not less than a 3/5 vote may credit that county employee with the amount of membership service that the county employee was previously credited with by the retirement system established under this section under the following conditions:

(a) The membership service previously credited to the county employee was service rendered for the same county.

(b) Service that is recognized for the purpose of a deferred retirement allowance under a retirement system or other employer-funded retirement benefit plan, except for a retirement benefit plan under the social security act, chapter 531, 49 Stat. 620, of the United States government, a state, or a political subdivision of a state shall not be credited if the county employee retired under a retirement system of the United States government, a state, or any of their political subdivisions or until the county employee irrevocably forfeits the right to the deferred retirement allowance.

(c) The county employee deposits in the plan established under this section an amount equal to the aggregate amount of contributions the county employee made at the time of the previous membership service plus interest from the date of withdrawal of the accumulated contributions to the date of deposit, at rates determined by the county board of commissioners. If records are insufficient or unavailable to compute the exact amount of required deposit, the county board of commissioners may estimate the amount.

(d) The county employee deposits in the county employees' retirement system an amount equal to the aggregate amount of contributions the employer made at the time of the previous membership service plus interest from the date of separation to the date of deposit, at rates determined by the county board of commissioners.

(26) A person participating in a program described in this subsection is not eligible for membership in a retirement system or pension plan established under this section. In addition, that person shall not receive service credit for the employment described in this subsection even though the person subsequently becomes or has been a member of the retirement system. This subsection applies to all of the following:

(a) A person, not regularly employed by the county, who is employed by the county through participation in a program established pursuant to the job training partnership act, Public Law 97-308, 96 Stat. 1322.

(b) A person, not regularly employed by the county, who is employed by the county through participation in a program established pursuant to the Michigan opportunity and skills training program, first established under sections 12 to 23 of 1983 PA 259.

(c) A person, not regularly employed by the county, who is employed by the county through participation in a program established pursuant to the Michigan community service corps program, first established under sections 25 to 35 of 1983 PA 259 and sections 148 to 160 of 1984 PA 246.

(d) A person, not regularly employed by the county, who is hired by the county to administer a program described in subdivision (a), (b), or (c).

(27) If a county enters into a collective bargaining agreement pursuant to 1947 PA 336, MCL 423.201 to 423.217, that provides for retirement benefits that are in excess of the retirement benefits otherwise authorized to be provided under this section for employees of the county who are covered by a plan under this section, then the county board of commissioners may amend or adopt a plan under this section to provide those benefits to employees who are members of the bargaining unit covered by the agreement, and may, after December 31, 1987, amend or adopt a plan under this section to provide those benefits to other employees of the county.

(28) One of the following conditions applies to a retiree who is receiving a pension or retirement benefit from a plan under this section if the retiree becomes employed by a county that has established a plan under this section:

(a) Payment of the pension or retirement benefit to the retiree shall be suspended if the retiree is employed by the county from which the retiree retired and the retiree does not meet the requirements of subdivision (b) or (d). Suspension of the payment of the pension or retirement benefit shall become effective the first day of the calendar month that follows the sixtieth day after the retiree is employed by the county. Payment of the pension or retirement benefit shall resume on the first day of the calendar month that follows termination of the employment. Payment of the pension or retirement benefit shall be resumed without change in amount or conditions by reason of the employment. The retiree shall not be a member of the plan during the period of employment.

(b) Payment of the pension or retirement benefit to the retiree shall continue without change in amount or conditions by reason of employment by the county from which the retiree retired if all of the following requirements are met:

(i) The retiree meets 1 of the following requirements:

(A) For any retiree, is employed by the county for not more than 1,000 hours in any 12-month period.

(B) For a retiree who was not an elected or appointed county official at retirement, is elected or appointed as a county official for a term of office that begins after the retiree's retirement allowance effective date.

(C) For a retiree who was an elected or appointed county official at retirement, is elected or appointed as a county official to a different office from which the retiree retired for a term of office that begins after the retiree's retirement allowance effective date.

(D) For a retiree who was an elected or appointed county official at retirement, is elected or appointed as a county official to the same office from which the retiree retired for a term of office that begins 2 years or more after the retiree's retirement allowance effective date.

(ii) The retiree is not eligible for any benefits from the county other than those required by law or otherwise provided to the retiree by virtue of his or her being a retiree.

(iii) The retiree is not a member of the plan during the period of reemployment, does not receive additional retirement credits during the period of reemployment, and does not receive any increase in pension or retirement benefits because of the employment under this subdivision.

(c) Payment of the pension or retirement benefit to the retiree shall continue without change in amount or conditions by reason of the employment if the retiree becomes employed by a county other than the county from which the retiree retired. For the purposes of membership and potential benefit entitlement under the plan of the other county, the retiree shall be considered in the same manner as an individual with no previous record of employment by that county.

(d) Payment of the pension or retirement benefit to the retiree shall continue without change in amount or conditions by reason of employment by the county from which the retiree retired if the retiree was an employee of the state judicial council on September 30, 1996, and becomes a county-paid employee of the recorder's court of the city of Detroit or the third judicial circuit of the circuit court on October 1, 1996.

(29) A county may increase the percentage of the highest average monthly compensation or earnings that was used to calculate the pension or retirement benefit under subsection (1)(b) of a person receiving a pension or retirement benefit under this section on the date the county increases the percentage of compensation or earnings. The county shall recalculate the pension or retirement benefit using the increased percentage of compensation or earnings. The person receiving the pension or retirement benefit is eligible to receive an adjusted pension or retirement benefit based upon the recalculation effective the first day of the month following the date the county increases the percentage of compensation or earnings under this subsection.

(30) The payment of pension or retirement benefits under a plan established pursuant to this section is

Rendered Friday, March 17, 2017

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Michigan Compiled Laws Complete Through PA 683 of 2016

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subject to an eligible domestic relations order under the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

(31) If a county retirement plan established under this section provides an optional form of payment of a retirement allowance and if a retiree receiving a reduced retirement allowance under that plan is divorced from the spouse who had been named the retiree's survivor beneficiary, the election of a reduced retirement allowance form of payment shall be considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court dated after July 18, 1991 provides that the election of a reduced retirement allowance form of payment is to be considered void by the retirement system and the retiree provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a reduced retirement allowance form of payment is considered void by the retirement system under this subsection, the retiree's retirement allowance shall revert to a straight life retirement allowance, including postretirement adjustments, if any, subject to an award or order of the court. The retirement allowance shall revert to a straight life retirement allowance under this subsection effective the first of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on July 18, 1991. This subsection does not require the retirement system to distribute or pay retirement assets on behalf of a retiree in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(32) If a county board of commissioners of a county that has a population of more than 400,000 but less than 800,000 has an employee credit union organized under the credit union act or former 1925 PA 285, the county board of commissioners may include as a member of a plan under this section a past or present employee of the credit union, if that past or present employee has 5 or more years of service credit with that credit union on or before June 30, 1990.

(33) The county board of commissioners shall establish a written policy to implement the provisions of this section in order to provide uniform application of this section to all members of the plan.

History: Add. 1943, Act 249, Imd. Eff. Apr. 23, 1943;—Am. 1945, Act 68, Imd. Eff. Apr. 6, 1945;—Am. 1947, Act 111, Eff. Oct. 11, 1947;—CL 1948, 46.12a;—Am. 1949, Act 201, Eff. Sept. 23, 1949;—Am. 1951, Act 95, Eff. Sept. 28, 1951;—Am. 1953, Act 205, Eff. Oct. 2, 1953;—Am. 1954, Act 149, Eff. Aug. 13, 1954;—Am. 1955, Act 69, Eff. Oct. 14, 1955;—Am. 1957, Act 280, Eff. Sept. 27, 1957;—Am. 1962, Act 173, Eff. Mar. 28, 1963;—Am. 1963, Act 151, Eff. Sept. 6, 1963;—Am. 1964, Act 165, Imd. Eff. May 19, 1964;—Am. 1966, Act 231, Imd. Eff. July 11, 1966;—Am. 1967, Act 222, Eff. Nov. 2, 1967;—Am. 1969, Act 262, Imd. Eff. Aug. 11, 1969;—Am. 1972, Act 373, Eff. Mar. 30, 1973;—Am. 1975, Act 182, Imd. Eff. July 29, 1975;—Am. 1975, Act 240, Imd. Eff. Sept. 2, 1975;—Am. 1976, Act 181, Imd. Eff. July 1, 1976;—Am. 1978, Act 24, Imd. Eff. Feb. 21, 1978;—Am. 1978, Act 425, Imd. Eff. Sept. 30, 1978;—Am. 1980, Act 439, Imd. Eff. Jan. 15, 1981;—Am. 1981, Act 9, Eff. Sept. 1, 1981;—Am. 1982, Act 507, Imd. Eff. Dec. 31, 1982;—Am. 1984, Act 177, Imd. Eff. July 3, 1984;—Am. 1984, Act 395, Imd. Eff. Dec. 28, 1984;—Am. 1988, Act 93, Imd. Eff. Apr. 6, 1988;—Am. 1988, Act 499, Imd. Eff. Dec. 29, 1988;—Am. 1990, Act 70, Imd. Eff. Apr. 30, 1990;—Am. 1990, Act 123, Imd. Eff. June 26, 1990;—Am. 1990, Act 176, Imd. Eff. July 2, 1990;—Am. 1990, Act 178, Imd. Eff. July 2, 1990;—Am. 1991, Act 26, Imd. Eff. May 24, 1991;—Am. 1991, Act 49, Imd. Eff. June 27, 1991;—Am. 1991, Act 84, Imd. Eff. July 18, 1991;—Am. 1991, Act 195, Imd. Eff. Dec. 30, 1991;—Am. 1996, Act 221, Eff. Aug. 15, 1996;—Am. 1996, Act 390, Imd. Eff. Sept. 30, 1996;—Am. 1998, Act 502, Imd. Eff. Jan. 5, 1999;—Am. 2002, Act 730, Imd. Eff. Dec. 30, 2002;—Am. 2003, Act 219, Imd. Eff. Dec. 2, 2003.

Compiler's note: Act 249 of 1943 was presented to the governor on Apr. 12, 1943, at 2:15 p.m., and became law without his approval upon the expiration of 10 days, Sundays excepted, after presentation.

RESPONSE
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EXHIBIT D

be fined in accordance with the law, plus costs of prosecution, or sentenced to ~~ninety days~~ imprisonment, or both, in the discretion of the Court.

SECTION 47. VESTING UPON MCERS TERMINATION

Members shall be one hundred percent vested in their accrued benefit, to the extent funded, upon the termination of the MCERS or upon a complete discontinuation of contributions to the MCERS. Notwithstanding anything in the MCERS Ordinance to the contrary, after the satisfaction of all liabilities with respect to Members, Vested Former Members and Retirants upon termination of the MCERS Ordinance, the County reserves the right to recover any balance of assets remaining in the MCERS in accordance with law.

SECTION 48. RESERVED

SECTION 49. EXCLUSIVE BENEFIT OF MEMBERS

Diversion of any portion of the MCERS corpus or income for any purpose other than the exclusive benefit of Members, Retirants or beneficiaries is prohibited.

SECTION 50. DENIAL OF BENEFIT CLAIM; APPEAL.

A benefit claimant shall be notified in writing, within thirty (30) days of the Board's denial of a claim for benefits. The notification shall contain the basis for the denial. The benefit claimant may appeal the denial and request a hearing before the Board. The appeal shall be in writing and filed with the MCERS within ninety (90) days of the date of the notification of denial. The request for appeal shall contain a statement of the claimant's reasons for believing the denial to be improper. The Board shall schedule a hearing of the appeal within sixty (60) days of receipt of the request to appeal.

SECTION 51. REEMPLOYMENT AFTER RETIREMENT

A Retirant may continue to receive pension payments upon reemployment by the County provided the Retirant meets the eligibility requirements of the County Board of Commissioner Act, Public Act 46.12a of 1951, as amended (MCL § 46.12a), and is not eligible for membership in the MCERS.

The term "any 12 month period" for purposes of the 1,000 hour limitation provided in this section will be a calendar year.

SECTION 52. RECIPROCAL RETIREMENT ACT

The provisions of the Reciprocal Retirement Act, Public Act 88 of 1961, as amended (MCL § 38.1101et seq.), were adopted by the Macomb County Employees Retirement System on December 9, 1964.

SECTION 53. APPLICABILITY OF PROVISIONS TO UNION AND TO NON-UNION EMPLOYEES AND ELECTED OFFICIALS

(a) All of the provisions of the MCERS Ordinance as stated are applicable to all County employees as well as to the elected officials of the County. For those Members represented by a

RESPONSE
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EXHIBIT E

The following opinion is presented on-line for informational use only and does not replace the official version. (Mich Dept of Attorney General Web Site - www.ag.state.mi.us)

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

COUNTY:

Payment of pension benefits to reemployed retirees
via a deferred retirement option plan (DROP)

RETIREMENT AND PENSIONS:

Consistent with MCL 46.12a(28), a county may adopt a deferred retirement option plan (DROP) and may, with approval of the affected employee, pay the employee's retirement or pension benefit into the DROP program if (1) the reemployed retiree works less than 1,000 hours per 12-month period or the position is an elected or appointed position meeting the requirements of MCL 46.12a(b)(1)(B)-(D); (2) the employee is not eligible for any employee benefits other than those required by law or those provided by virtue of being a retiree; and (3) the employee is not a member of the county's retirement plan and does not receive additional retirement credits during the period of reemployment.

Opinion No. 7122

January 14, 2003

Honorable Alan Sanborn
State Senator
The Capitol
Lansing, Michigan 48913

You have asked whether, consistent with MCL 46.12a(28), a county may adopt a "deferred retirement option plan" (DROP) for retired county employees who become reemployed by the county.

Information supplied with your request indicates that Macomb County is considering adopting a DROP arrangement whereby any county employee eligible to draw a full retirement benefit could elect to participate in the DROP.¹ While Macomb County has not finalized the terms of its DROP proposal, under the typical DROP arrangements described in the materials supplied to this office, a DROP participant could continue in county service for up to five years. The employee would earn his or her position's usual salary during the continued service, but would no longer contribute to, and would not earn service credit for, the county pension plan. The employee's retirement allowance would be calculated as of the DROP election date and, during the employee's continued county service, a percentage (up to 100%) of the allowance would be paid monthly into a DROP account established for the employee. The DROP account would earn interest at a fixed rate.

The employee would not have access to the DROP account until he or she finally leaves county service. At that time, the DROP account money could be (1) paid out in a lump sum, (2) rolled over into an IRA or 401(k) account, (3) converted into monthly payments to supplement the employee's "frozen" retirement allowance, or (4) drawn out depending on the employee's financial needs and applicable DROP distribution rules.²

A county has only those powers granted to it by the Constitution or the Legislature. *Alan v Wayne County*, 388 Mich 210, 245; 200 NW2d 628 (1972). A county may not adopt a pension plan that contravenes state law and, in particular, MCL 46.12a. *Gray v Wayne County*, 148 Mich App 247; 384 NW2d 141, *lv den* 426 Mich 872 (1986). Thus, for example, a county may not implement a "20 and out" program when MCL 46.12a specifies that employees must have 25 years of service or attain age 60 with at least 5 years of service to retire with full benefits. *Gray, supra*.³

The authority of a county to provide pension benefits for county employees is set forth in the county pension plan act, MCL 46.12a. Nothing in that act precludes a county, with the consent of the affected employees, from establishing a DROP system for payment of otherwise lawful pension or retirement benefits to retired county employees who become reemployed by the county. The act does, however, impose limitations on the authority of the county to make continued retirement or pension benefit payments to those employees irrespective of whether a DROP program has been adopted. MCL 46.12a(28)⁴ provides in pertinent part:

(28) One of the following conditions applies to a retiree who is receiving a pension or retirement

benefit from a plan under this section if the retiree becomes employed by a county that has established a plan under this section;

(a) Payment of the pension or retirement benefit to the retiree shall be suspended if the retiree is employed by the county from which the retiree retired and the retiree does not meet the requirements of subdivision (b) or (d).

Subdivision (2b)(d), MCL 46.12a(28)(d), deals with certain employees of the state (judicial council) and, thus, is not germane to your question. Subdivision (2b)(b), MCL 46.12a(28)(b), is germane. It provides:

(b) Payment of the pension or retirement benefit to the retiree shall continue without change in amount or conditions by reason of employment by the county from which the retiree retired if all of the following requirements are met:

(i) The retiree meets 1 of the following requirements:

(A) For any retiree, is employed by the county for not more than 1,000 hours in any 12-month period.

(B) For a retiree who was not an elected or appointed county official at retirement, is elected or appointed as a county official for a term of office that begins after the retiree's retirement allowance effective date.

(C) For a retiree who was an elected or appointed county official at retirement, is elected or appointed as a county official to a different office from which the retiree retired for a term of office that begins after the retiree's retirement allowance effective date.

(D) For a retiree who was an elected or appointed county official at retirement, is elected or appointed as a county official to the same office from which the retiree retired for a term of office that begins 2 years or more after the retiree's retirement allowance effective date.

(ii) The retiree is not eligible for any benefits from the county other than those required by law or otherwise provided to the retiree by virtue of his or her being a retiree.

(iii) The retiree is not a member of the plan during the period of reemployment, does not receive additional retirement credits during the period of reemployment, and does not receive any increase in pension or retirement benefits because of the employment under this subdivision.

"MAY BE PAID"

By its plain terms, MCL 46.12a(28) mandates that, if a retired county employee is reemployed by the county, the employee's pension or retirement benefit may continue to be paid only if each of three specific conditions is met. First, pursuant to subsection (b)(i), unless the position is one of the qualifying elected or appointed positions, the reemployed retiree must work less than 1,000 hours per 12-month period. Second, pursuant to subsection (b)(ii), the employee must not be eligible for any employee benefits other than those required by law⁵ or those provided by virtue of his or her being a retiree.⁶ Finally, under subsection (b)(iii), the employee may not be a member of the county's retirement plan and may not receive additional retirement credits during the period of reemployment. Unless each of these conditions is met, payment of the employee's pension or retirement benefit "shall be suspended."

It is my opinion, therefore, that consistent with MCL 46.12a(28), a county may adopt a deferred retirement option plan (DROP) and may, with approval of the affected employee, pay the employee's retirement or pension benefit into the DROP program if (1) the reemployed retiree works less than 1,000 hours per 12-month period or the position is an elected or appointed position meeting the requirements of MCL 46.12a(b)(i)(B)-(D); (2) the employee is not eligible for any employee benefits other than those required by

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EXHIBIT F

law or those provided by virtue of being a retiree, and (3) the employee is not a member of the county's retirement plan and does not receive additional retirement credits during the period of reemployment.

MIKE COX
Attorney General

¹The employee would have to be, for example, at least age 55 with 25 years of service. MCL 46.12a(1)(b).

²While not precedential, the Internal Revenue Service has ruled favorably on the federal tax treatment of certain lump sum distributions from a DRCP account. Private Letter Ruling 200219042.

³Because your letter makes no reference to any collective bargaining agreement, this opinion does not address what impact, if any, a collective bargaining agreement might have on the question. 1988 PA 499 amended MCL 46.12a to authorize counties to enter into collective bargaining agreements that provide "retirement benefits that are in excess of the retirement benefits otherwise authorized to be provided under this section." See MCL 46.12a(27). Thus, a county could agree to calculate an employee's final average compensation based upon his or her three highest consecutive years of compensation, rather than the five years mandated by MCL 46.12a(2)(a), if part of a collective bargaining agreement reached under the Public Employment Relations Act, MCL 423.201 *et seq.*, *Macomb County Professional Deputies Assn v Macomb County*, 182 Mich App 724; 452 NW2d 902 (1990).

⁴Your request letter refers to MCL 46.12a(29). Subsequent to your request, the Legislature enacted 2002 PA 730 which amended MCL 46.12a to remove the requirement for a county pension plan committee. This caused a renumbering of MCL 46.12a's subsections, so the operative subsection here is now MCL 46.12a(28) rather than (29).

⁵Among employee benefits "required by law" are worker's compensation coverage pursuant to MCL 418.101 *et seq.* and, for applicable employees, overtime compensation under MCL 408.384a.

⁶A county pension plan may provide group life, health, accident and hospitalization coverage to retirees. MCL 46.12a(1)(a). Retiree insurance benefits often differ from active employee insurance benefits. For example, health, accident, and hospitalization benefits for retirees are commonly coordinated with Medicare coverage. Group life coverage, if provided for retirees, is often less extensive than that provided active employees.

<http://opinion.datafiles/2000s/op10197.htm>

State of Michigan, Department of Attorney General

Last Updated 11/10/2008 16:48:34



16th Judicial Circuit Court
Macomb County

Circuit Judges:
JAMES M. BIERNAT, JR., *Chief Judge*
MATTHEW S. SWITALSKI, *Chief Judge Pro Tem*
MARK S. SWITALSKI
EDWARD A. SERVITTO, JR.
RICHARD L. CARETTI
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TRACEY A. YOKICH
KATHRYN A. VIVIANO
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RACHEL RANCILIO

Clerk of the Court
KAREN SPRANGER

Court Administrator
KYLE BOVENSCHEN

April 26, 2017

Ms. Karen Spranger
Court Clerk/Register of Deeds
40 N. Main Street - 1st Floor
Mt. Clemens, MI 48043

Dear Ms. Spranger:

I have reviewed the resume and met with your proposed appointee for the Chief Deputy Court Clerk, Ms. Denise Greiner. Due to Ms. Greiner's status as a retiree of Macomb County, I requested an opinion from Corporation Counsel regarding her ability to be re-employed full-time with the County. Corporation Counsel concluded Ms. Greiner, as a retiree, is not permitted to be re-employed in a full-time capacity based on the Macomb County Employees Retirement System Ordinance.

I have reviewed and considered the responses provided to me by your counsel, Mr. Frank A. Cusumano. However, although you have presented an opposing argument, I am unable to approve the appointment of Ms. Greiner based on her inability to perform the necessary requirements of the position in a full-time capacity.

I am willing to consider other proposed appointees. Please provide me any resumes you deem appropriate. Additionally please contact me with any questions or concerns.

[Signature]
James M. Biernat, Jr., Chief Judge
16th Judicial Circuit Court
40 N. Main Street
Mt. Clemens, MI 48043