



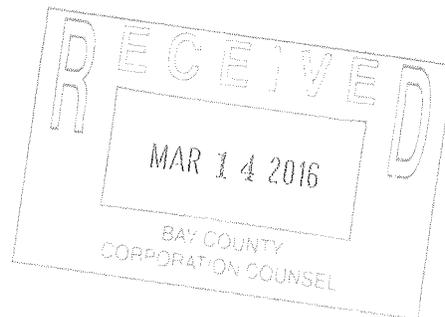
BOMMARITO LAW OFFICES, PLLC

180 E Washington Rd | PO Box 189 | Freeland, MI 48623

March 11, 2016

1346

Clerk of the Court
Michigan Court of Appeals
925 W. Ottawa Street
P.O. Box 30022
Lansing, Michigan 48909-7522



Re: Cynthia A. Luczak v Thomas L. Hickner, et al
Case No.: 331455

Dear Sir/Madam:

Enclosed herewith please find an original (1) and four (4) copies of the following which I would appreciate being filed on behalf of Defendants/Appellees in regards to the above-mentioned matter:

1. Defendants' Answer and Affirmative Defenses to Plaintiff's Complaint for Declaratory Relief, Writ of Mandamus, Injunctive Relief and Appointment of Counsel.
2. Defendants' Motion to Dismiss Pursuant to MCR 7.211(C)(2).
3. Defendants' Brief in Support of their Answer to Plaintiff's Complaint and Defendants' Motion to Dismiss.
4. Motion Fee - \$100.00.
5. Proof of Service.

If you have any questions regarding this matter, please contact me.

Best regards,



ALEXANDER D. BOMMARITO
e-mail: adb@freelandlaw.net

ADB/lb

Enclosures

cc: Joseph W. Colaianne
Attorney at Law
Defendants/Appellees

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CYNTHIA A. LUCZAK, BAY COUNTY
CLERK,

Plaintiff/Appellant,

Case No.: 331455

v.

THOMAS L. HICKNER, Bay County
Executive and BAY COUNTY BOARD OF
COMMISSIONERS,

Defendants/Appellees.

CLARK HILL, PLC
BY: MATTHEW T. SMITH (P46754)
JOSEPH W. COLAIANNE (P47404)
Attorneys for Plaintiff/Appellant
212 E. Grand River Ave.
Lansing, Michigan 48906
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BOMMARITO LAW OFFICES, PLLC
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**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S
COMPLAINT FOR DECLARATORY RELIEF, WRIT OF MANDAMUS, INJUNCTIVE
RELIEF AND APPOINTMENT OF COUNSEL**

NOW COME Defendants, THOMAS L. HICKNER, Bay County Executive and the BAY COUNTY BOARD OF COMMISSIONERS, by and through their attorney, ALEXANDER D. BOMMARITO, of BOMMARITO LAW OFFICES, PLLC, in answer to Plaintiff's Complaint, further state as follows:

GENERAL ALLEGATIONS

1. Admitted upon current information and belief.
2. No response required, statute speaks for itself.
3. No response required, statute speaks for itself.
4. No response required, statute speaks for itself.
5. No response required, statute speaks for itself.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
12. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
13. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
14. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
15. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

16. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
17. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
18. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
19. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
20. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
21. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
22. Admitted.
23. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
24. Defendants admit that there may have been changes in staffing and funding based upon the information provided by the department heads and cost centers within Bay County Government. Defendants deny that any other department or cost center has undergone any alternate means of obtaining funding or staffing than what was supposed to be followed by Plaintiff. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
25. Defendants admit that Plaintiff has made repeated requests for additional staffing/funding since 2011. Defendants deny that they have summarily denied requests to address Plaintiff's staffing levels. Defendants further aver that Plaintiff has not provided the required information and the proper procedure for increasing her funding or staffing. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

26. Admitted upon current information and belief.
27. Defendants admit that in September 2015, Plaintiff filed suit against these Defendants, among others. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
28. Defendants incorporate the Bay County Circuit Court Complaint in its entirety by reference thereto, as constituting the best evidence of the allegations and request for relief contained therein. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
29. Defendants incorporate the Bay County Circuit Court Complaint in its entirety by reference thereto, as constituting the best evidence of the allegations and request for relief contained therein. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
30. Admitted.
31. Defendants admit that Plaintiff requested two (2) additional full-time clerical employees for her 2016 budget. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
32. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
33. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
34. Admitted.
35. Admitted.
36. Defendants deny that the Board's decision to require the clerical position within the County Clerk's Office to be funded from fees collected from the Concealed Pistol License Fund is contrary to Act 372, MCL 28.425x. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

37. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
38. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
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46. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
47. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

48. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
49. No response required, the statute speaks for itself.
50. No response required, the statute speaks for itself.
51. Admitted upon current information and belief.
52. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
53. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
54. Defendants deny that there is an actual controversy presented by Plaintiff in her Complaint. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
55. Denied for the reason that said allegations are untrue.
56. Denied for the reason that said allegations are untrue.
57. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
58. Admitted upon current information and belief.
59. Admitted upon current information and belief.
60. Admitted upon current information and belief.
61. Admitted upon current information and belief.
62. Admitted upon current information and belief.
63. Admitted upon current information and belief.
64. Defendants admit that Bay County Corporation Counsel on July 7, 2015 indicated that she had not denied Plaintiff's request for retention of outside legal counsel, but indicated

she was trying to resolve the issues without litigation, indicating there was no conflict of interest. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

65. Admitted.

66. Admitted.

67. Denied for the reason that said allegations are untrue.

68. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

69. Denied for the reason that said allegations are untrue.

70. Denied for the reason that said allegations are untrue.

71. Denied for the reason that said allegations are untrue.

72. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

73. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

74. Admitted upon current information and belief.

75. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

76. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

77. Denied for the reason that said allegations are untrue.

78. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

- 79. Denied for the reason that said allegations are untrue.
- 80. Admitted.
- 81. Denied for the reason that said allegations are untrue.
- 82. Denied for the reason that said allegations are untrue.

WHEREFORE, Defendants request a judgment of no cause for action, together with costs and attorney fees to be assessed.

COUNT I
DECLARATORY RELIEF THAT DEFENDANTS HAVE UNLAWFULLY
UNDERFUNDED THE OFFICE OF THE COUNTY CLERK SUCH THAT
PLAINTIFF IS UNABLE TO FULFILL HER STATUTORY AND
CONSTITUTIONAL DUTIES

- 83. Defendants incorporate paragraphs 1 through 82 as if set forth word for word and paragraph by paragraph.
- 84. Admitted upon current information and belief.
- 85. Defendants admit that the County Executive has obligations not to divest the authority of the County Clerk. Defendants deny any action by the County Executive that would have divested or impaired the authority and powers of the County Clerk.
- 86. Defendants admit that the Bay County Board of Commissioners has a obligation not to divest the authority and powers of the County Clerk. Defendants deny that the Bay County Board of Commissioners has taken any action to divest the authority and powers of the County Clerk as alleged.
- 87. Denied for the reason that said allegations are untrue.
- 88. Denied for the reason that said allegations are untrue.
- 89. Denied for the reason that said allegations are untrue.
- 90. Denied for the reason that said allegations are untrue.
- 91. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

92. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

WHEREFORE, Defendants request a judgment of no cause for action, together with costs and attorney fees to be assessed.

COUNT II
DECLARATORY RELIEF THAT ALL FEES RECEIVED BY THE COURT CLERK
PURSUANT TO 1927 P.A. 372, AS AMENDED, SHALL BE UNDER THE
CONTROL OF AND EXPENDED AT THE CLERK'S DIRECTION FOR
PURPOSES ALLOWABLE UNDER THE ACT

93. Defendants incorporate paragraphs 1 through 92 as if set forth word for word and paragraph by paragraph.

94. No response required, the statute speaks for itself.

95. Denied for the reason that said allegations are untrue.

96. Defendants deny that Plaintiff should have control over the fees collected in accordance with Act 372. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

97. Denied for the reason that said allegations are untrue.

98. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

WHEREFORE, Defendants request a judgment of no cause for action, together with costs and attorney fees to be assessed.

COUNT III
WRIT OF MANDAMUS ORDERING COUNTY EXECUTIVE AND BOARD OF
COMMISSIONER TO ALLOCATE FORM EXISTING RESOURCES TO MEET
SERVICEABLE LEVEL

99. Defendants incorporate paragraphs 1 through 98 as if set forth word for word and paragraph by paragraph.

100. Denied for the reason that said allegations are untrue.

101. Denied for the reason that said allegations are untrue.

102. Denied for the reason that said allegations are untrue.

103. Denied for the reason that said allegations are untrue.

104. Denied for the reason that said allegations are untrue.

WHEREFORE, Defendants request a judgment of no cause for action, together with costs and attorney fees to be assessed.

COUNT IV
INJUNCTIVE RELIEF PREVENTING THE COUNTY EXECUTIVE AND BOARD OF
COMMISSIONERS FROM IMPAIRING THE OFFICE OF THE COUNTY
CLERK

105 Defendants incorporate paragraphs 1 through 104 as if set forth word for word and paragraph by paragraph.

106. Defendants deny that they have unlawfully underfunded her office as alleged. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

107. Denied for the reason that said allegations are untrue.

108. Defendants deny unlawfully underfunding Plaintiff's office as alleged. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

109. Defendants deny that the County policy concerning the retention of legal counsel infringes or impairs Plaintiff's inherent authority to retain legal counsel for challenging the serviceable level funding and a general appropriations act as alleged. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

WHEREFORE, Defendants request a judgment of no cause for action, together with costs and attorney fees to be assessed.

COUNT V
COMPLAINT FOR APPOINTMENT OF LEGAL COUNSEL
AND REIMBURSEMENT OF LEGAL FEES

110. Defendants incorporate paragraphs 1 through 109 as if set forth word for word and paragraph by paragraph.
111. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
112. Defendants deny that appointment and payment of independent counsel is necessary to define LUCZAK'S rights. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
113. Defendant deny any actions or inactions in not providing LUCZAK assistance or resources necessary to meet her statutory and constitutional duties such that her functions have been minimized in violation of Michigan law, as alleged. Defendants aver lack of knowledge sufficient to form a belief with respect to the remaining allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
114. Denied for the reason that said allegations are untrue.
115. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
116. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.
117. Defendants aver lack of knowledge sufficient to form a belief with respect to the allegations contained therein, neither admitting nor denying same, leaving Plaintiff to her proofs in support thereof.

WHEREFORE, Defendants request a judgment of no cause for action, together with costs and attorney fees to be assessed.

NEW MATTER AND AFFIRMATIVE DEFENSES

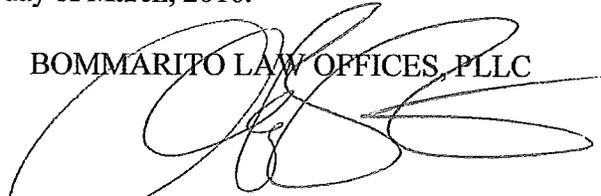
Assuming the facts and circumstances so warrant, upon the completion of discovery, Defendants may rely upon one or more of the following:

- A. That at all times material hereto, neither Defendant impaired or impeded any of the Plaintiff's constitutional or statutory duties.
- B. That Plaintiff may have failed to state a claim upon which relief can be granted.

- C. That except as to the amount of damages claimed there may exist no genuine issue as to any material fact, and Defendants may be entitled to judgment or partial judgment as a matter of law.
- D. Plaintiff's Complaint was filed contrary to MCR 7.206, and should therefore be dismissed.

Dated this 11th day of March, 2016.

BOMMARITO LAW OFFICES, PLLC



BY: ALEXANDER D. BOMMARITO
Attorney for Defendants/Appellees

BUSINESS ADDRESS:
180 E. Washington Road
P.O. Box 189
Freeland, Michigan 48623
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Facsimile: 855-573-5373
adb@freelandlaw.net

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CYNTHIA A. LUCZAK, BAY COUNTY
CLERK,

Plaintiff/Appellant,

Case No.: 331455

v.

THOMAS L. HICKNER, Bay County
Executive and BAY COUNTY BOARD OF
COMMISSIONERS,

Defendants/Appellees.

CLARK HILL, PLC

BY: MATTHEW T. SMITH (P46754)
JOSEPH W. COLAIANNE (P47404)

Attorneys for Plaintiff/Appellant

212 E. Grand River Ave.

Lansing, Michigan 48906

Telephone: 517-318-3100

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BOMMARITO LAW OFFICES, PLLC

BY: ALEXANDER D. BOMMARITO (P62704)

Attorney for Defendants/Appellees

180 E. Washington Road, P.O. Box 189

Freeland, Michigan 48623

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Facsimile: 855-573-5373

adb@freelandlaw.net

DEFENDANTS' MOTION TO DISMISS PURSUANT TO MCR 7.211(C)(2)

NOW COME Defendants, THOMAS L. HICKNER, Bay County Executive and BAY COUNTY BOARD OF COMMISSIONERS, by and through their attorney ALEXANDER D. BOMMARITO, of BOMMARITO LAW OFFICES, PLLC, and hereby files this, their Motion to Dismiss Pursuant to MCR 7.211(C)(2), stating as follows:

1. That Plaintiff's original action was filed with this Court on February 5, 2016.

2. That pursuant to agreement of the parties, the time by which Defendants were allowed to respond to the Complaint was provided as March 11, 2016.
3. That pursuant to MCR 7.206(D), original actions require the filing of a Complaint and a supporting Brief in order to commence an original action.
4. That although Plaintiff filed a Complaint with the Clerk of the Court of Appeals, no supporting Brief was filed.
5. That as Plaintiff has not filed a Brief pursuant to MCR 7.206(D), this original action should be dismissed as it has not been pursued in conformity with the Michigan Court Rules.
6. That, moreover, Plaintiff's Complaint should be dismissed as detailed further in the supporting Brief filed concurrently herewith.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Motion to Dismiss Pursuant to MCR 7.211(C)(2), together with costs and attorney fees to be assessed.

Dated this 11th day of March, 2016.

BOMMARITO LAW OFFICES, PLLC


BY: ALEXANDER D. BOMMARITO
Attorney for Defendants/Appellees

BUSINESS ADDRESS:
180 E. Washington Road
P.O. Box 189
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STATE OF MICHIGAN
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Facsimile: 855-573-5373
adb@freelandlaw.net

PROOF OF SERVICE

STATE OF MICHIGAN)

ss.

COUNTY OF SAGINAW)

ALEXANDER D. BOMMARITO, being first duly sworn, deposes and says that on the 11th day of March, 2016, he served a copy of the attached:

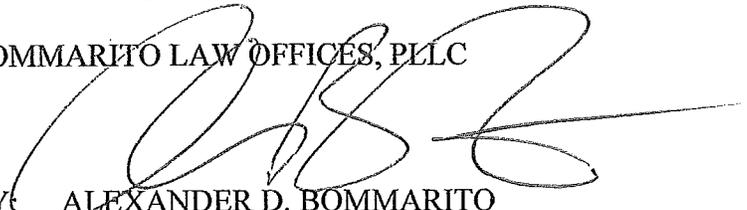
1. **DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF, WRIT OF MANDAMUS, INJUNCTIVE RELIEF AND APPOINTMENT OF COUNSEL.**
2. **DEFENDANTS' MOTION TO DISMISS PURSUANT TO MCR 7.211(C)(2).**
3. **DEFENDANTS' BRIEF IN SUPPORT OF THEIR ANSWER TO PLAINTIFF'S COMPLAINT AND DEFENDANTS' MOTION TO DISMISS.**

on the Attorneys of record by first class mail addressed to:

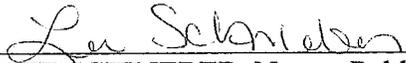
MATTHEW T. SMITH
JOSEPH W. COLAIANNE
Attorneys at Law
212 E. Grand River Ave.
Lansing, Michigan 48906

and depositing same in the United States Mail with postage prepaid.

BOMMARITO LAW OFFICES, PLLC


BY: ALEXANDER D. BOMMARITO
Attorney for Defendants/Appellees

Subscribed and sworn to before me, a Notary Public, the 11th day of March,
2016.


LEE SCHRIEBER, Notary Public
Saginaw County, Michigan
My Commission Expires: 06/25/2020

BUSINESS ADDRESS:
180 E. Washington Road, P.O. Box 189
Freeland, Michigan 48623
Telephone: 989-573-5300

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CYNTHIA A. LUCZAK, BAY COUNTY
CLERK,

Plaintiff/Appellant,

Case No.: 331455

v.

THOMAS L. HICKNER, Bay County
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Defendants/Appellees.

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**DEFENDANTS' BRIEF IN SUPPORT OF THEIR ANSWER TO PLAINTIFF'S
COMPLAINT AND DEFENDANTS' MOTION TO DISMISS**

PROOF OF SERVICE

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MCR 7.211(C)(2)(b).....	2

FACTS

CYNTHIA A. LUCZAK, Bay County Clerk (“MS. LUCZAK”) brought this action against THOMAS L. HICKNER, the Bay County Executive, and the BAY COUNTY BOARD OF COMMISSIONERS seeking a variety of forms of relief from this Court namely:

Count I – Declaratory Relief that Defendants have unlawfully underfunded the Office of the County Clerk such that Plaintiff is unable to fulfill her statutory and constitutional duties;

Count II – Declaratory Relief that all fees received by the County Clerk pursuant to 1927 P.A. 372, as amended shall be under the control of and expended at the Clerk’s direction for purposes allowable under the Act;

Count III – Writ of Mandamus ordering County Executive and Board of Commissioners to allocate from existing resources to meet serviceable level;

Count IV –Injunctive Relief preventing the County Executive and Board of Commissioners from impairing the Office of the County Clerk; and

Count V – Complaint for appointment of legal counsel and reimbursement of legal fees.

This is the second action filed by MS. LUCZAK against these Defendants, among others. The other action remains pending in the Bay County Circuit Court, albeit assigned to Judge Paul H. Chamberlain, Isabella County Circuit Court Judge. Attached as *Exhibit B* to Plaintiff’s current Complaint is her First Amended Complaint for Appointment of Counsel, Declaratory Relief, Writ of Mandamus and Injunctive Relief which was filed in the Bay County action. Attached as *Exhibit C* to Plaintiff’s present Complaint is Judge Chamberlain’s Opinion and Order on Defendants’ Consolidated Motion for Summary Disposition and Plaintiff’s Motion for Summary Disposition on Count I (appointment of counsel and payment of attorney fees). As the

Court can appreciate, Judge Chamberlain dismissed all but one of the counts, leaving only Plaintiff's claim regarding alleged interference between the 18th Circuit Court and the 18th Circuit Court Administrator, KIM MEAD, with her duties as the Clerk of the Circuit Court. As set forth below, Plaintiff's claims in her current Complaint pending before this Court should likewise be dismissed.

DISCUSSION

I. **Plaintiff's Complaint should be dismissed as it does not conform with the Michigan Court Rules.**

MCR 7.206(D) controls the filing of an original action. This rule requires the filing of a Complaint as well as a supporting Brief, Proof of Service and the entry fee. In this action, although Plaintiff filed her Complaint, Proof of Service and entry fee, no supporting Brief was filed.

Pursuant to MCR 7.211(C)(2), a Motion to Dismiss may be filed seeking to dismiss an action that was not filed or pursued in conformity with these rules. Based upon the Plaintiff's failure to file a Brief in conjunction with filing of her Complaint in her original action, this action should be dismissed pursuant to MCR 7.211(C)(2)(b).

II. **Defendants have not unlawfully underfunded the Office of the County Clerk.**

Declaratory relief is controlled by MCR 2.605 which provides:

(A) Power and/or Declaratory Judgment.

- (1) In a case of actual controversy within its jurisdiction, a Michigan Court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

An “actual controversy” exists under Michigan law when “a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve the plaintiff’s legal rights.” See *Citizens for Common Sense and Gov’t v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000); *Genesys Ctr, PLC v Comm’r of Financial & Ins. Services*, 246 Mich App 531, 544; 633 NW2d 834 (2001). “Generally, where the injury sought to be prevented is merely hypothetical, a case of actual controversy does not exist.” See *Id.* In *Lansing School Ass’n v Lansing Bd. of Ed*, 487 Mich 349 at 372 note 20 (2010), the Court stated that “[t]he essential requirement of the term ‘actual controversy’ under the [declaratory judgment] rule is that plaintiff ‘plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised’ ”. *Id.*, quoting *Associated Builders & Contractors*, 472 Mich 117 at 126 (2005), quoting *Shavers v Attorney General*, 402 Mich 554, 589; 276 NW2d 72 (1978).

Looking at Plaintiff’s Complaint and accompanying Affidavit, she has not plead facts which indicate an adverse interest necessitating the sharpening of issues raised. Rather, the injury sought to be prevented is merely hypothetical, conjured up within the mind of Plaintiff. Based upon a lack of an actual controversy, Plaintiff’s claim for declaratory relief should be dismissed.

As this Court is aware, one of the requirements for an Affidavit is that it is based upon personal knowledge. MCR 2.119(B). Contrary to this rule, in an attempt to create an actual controversy to satisfy the requirements of the declaratory judgment rule, Plaintiff has asserted within her Complaint and corresponding Affidavit many allegations that are made upon “information and belief.” Please see, for example paragraphs 17, 18, 22, 23, 38, 39, 41, 50, 51, 52, 53, 54, 55, 56 and 57. Her mere “beliefs” do not satisfy the Affidavit requirements, and

Plaintiff has not satisfied the actual controversy requirements required for a declaratory judgment.

Moreover, as set forth within the Affidavit of Defendant THOMAS L. HICKNER, the Defendants have not unlawfully underfunded the Plaintiff's office of County Clerk, but have acted in the best interest of Bay County, given the funds available. See Affidavit of THOMAS L. HICKNER, attached as *Exhibit 1*. As further set forth within MR. HICKNER'S Affidavit, prior to the Bay County Circuit Court lawsuit being filed by MS. LUCZAK, she had not provided the necessary information through the proper procedures to provide her with any additional funding or staffing, contrary to her claims. It was not until after the Bay County lawsuit was initiated and discovery responses provided, that MS. LUCZAK provided the necessary information, albeit in an alternative form, for the County Executive to make budgetary recommendations to the Board regarding her office.

Contrary to Plaintiff's claims, the Defendants have not unlawfully unfunded her office, but rather have acted in the best interest of the residents of Bay County. Plaintiff seeks complete autonomy and unlimited funding to be expended at her will, which is simply not allowed by law. As such, Count I of her Complaint should be dismissed.

III. Plaintiff does not have unlimited authority and discretion over the concealed pistol licensing fund.

As this Court is likely aware, the Michigan Legislature amended the concealed pistol license process and eliminated gun boards, while placing much of the responsibility for issuing concealed license pistol licenses to County Clerks. As part of this process, the amended MCL § 28.425x, creates a concealed pistol licensing fund, which states as follows:

- (1) Each county shall establish a concealed pistol licensing fund for the deposit of fees collected for the county clerk under this act. The county treasurer shall direct investment of the concealed pistol licensing fund and shall credit to the fund interest and earnings from fund investments.
- (2) Money credited to the county concealed pistol licensing fund shall be expended in compliance with the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, subject to an appropriation. Expenditures from the county concealed pistol licensing fund shall be used by the county clerk only for the cost of administering this act. Allowable expenditures include, but are not limited to, any of the following costs of the county clerk:
 - (a) Staffing requirements directly attributable to performing functions required under this act.
 - (b) Technology upgrades, including technology to take fingerprints by electronic means.
 - (c) Office supplies.
 - (d) Document storage and retrieval systems and system upgrades.

As set forth within MCL § 28.425x(2), the money credited to the County Concealed Pistol Licensing Fund is to be expended in compliance with the Uniform Budgeting and Accounting Act, MCL 141.421 to 141.440a. From a review of MCL 141.121 to MCL 141.440a, it is clear that the Concealed Pistol Licensing Fund monies are to be allocated through the ordinary budgeting process at the County level. To allow Plaintiff to arbitrarily expend these funds outside of the budget process outlined within the Uniform Budgeting and Accounting Act would violate said Act.

Plaintiff alleges that the legislature intended that the Clerk shall have control and expend the fees collected and deposited and the Concealed Pistol Licensing Fund consisted with the purposes set forth within MCL 28.425x. However, the language in the statute is clear and unambiguous that these funds are to be expended pursuant to the Uniform Budgeting and Accounting Act. Had the legislature sought to give unfettered discretion over spending the

Concealed Pistol Licensing Fund, it would have indicated such an intent in the statute itself. To the contrary, the legislature clearly set forth that the Concealed Pistol Licensing Fund is to be expended in compliance with the Uniform Budgeting and Accounting Act, contrary to Plaintiff's allegations.

As this Court is aware, the fundamental rule and primary goal of statutory construction is to effectuate the legislature's intent. To accomplish this task, Courts start by reviewing the text of the statute, and, if it is unambiguous, the statute is enforced as written because the legislature is presumed to have intended the meaning expressed. Whenever possible, every word of a statute should be given meaning, and no word should be treated as surplusage or made nugatory. *Apsey v Memorial Hospital*, 477 Mich 120; 730 NW2d 696 at 699 (2007), internal citations omitted. To follow Plaintiff's logic, in comparison to the clear and unambiguous language within MCL 28.425x, would make the statute's language indicating that the money credited to the County Concealed Pistol Licensing Fund shall be expended in compliance with the Uniform Budgeting and Accounting Act, MCL 141.421 to 141.440a, subject to an appropriation, completely nugatory. On this basis alone, Count II of Plaintiff's Complaint must be dismissed.

Moreover, as a practical matter, the County already subsidizes nearly \$6.00 for each concealed pistol license that Plaintiff processes in her office from the general fund, pursuant to information she has provided to the State. Attached as *Exhibit 2*, is a Legislative Analysis from the House Fiscal Agency regarding the expected changes in the County Concealed Weapons Licensing Boards. On page 14 of the Analysis, it denotes that Bay County supplemented \$5.77 for each concealed pistol license for the period of July 2012 through June 2013. The Court should note that the fee for the concealed pistol license has not changed with the change in the

law as of December 1, 2015. The only financial change in the law is that monies received go directly into the Concealed Pistol Licensing Fund, rather than the general fund. However, the County is already operating at a loss for each concealed pistol license, such that all the funds deposited into the Clerk's new Concealed Pistol Licensing Fund are already being used for concealed pistol license expenses, in excess of the fees recovered for the license. As such, Plaintiff's argument that she should have complete control over the funds within the Concealed Pistol Licensing Fund provided pursuant to MCL 28.425x is misplaced. Based upon the foregoing, Count II of Plaintiff's Complaint should be dismissed.

IV. Mandamus order requiring County Executive and County Board of Commissioners to fund the Office of County Clerk is improper.

In Count III of her Complaint, MS. LUCZAK seeks a writ of mandamus from this Court, ordering the County Executive and Board of Commissioner to allocate from existing resources to meet serviceable level. As this Court is aware:

“ [a] Writ of Mandamus is an extraordinary remedy and will only be issued where (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result’ ”. See *Sal-Mar Royal Village, LLC v Macomb Co Treasurer*, 301 Mich App 234, 237; 836 NW2d 236 (2013), quoting *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 284; 761 NW2d 210 (2008). This Court has defined a ministerial act as one for which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of judgment or discretion. If the act requested by the plaintiff involves judgment or an

exercise of discretion, a writ of mandamus is inappropriate. See *Hanlin v Saugatuck Twp*, 299 Mich App 233, 248; 829 NW2d 335 (2013).

As this Court can appreciate, budgeting for the County Clerk's Office is not simply ministerial, i.e., it is not simply a direct action without discretion that the Court should Order these Defendants to perform. As this Court has previously noted, the appropriation decisions of a county board are truly discretionary in nature. *Cahalan v Wayne County Board of Commissioners*, 93 Mich App 114, 123; 286 NW2d 62 (1979). Further, that the judiciary will not involve itself with the truly discretionary appropriation decisions of a County Board, unless the action taken is so capricious or arbitrary as to evidence a total failure to exercise discretion. See 93 Mich App at 123-124.

As set forth within the Affidavit of THOMAS L. HICKNER, his office prepares a proposed budget based upon information supposed to be provided by department heads and other cost centers, including the Bay County Clerk. The recommended budget is presented to the Bay County Commissioners for review, amendment and approval. During this process some requests are recommended to be included within the budget as approved by the Bay County Commissioners, while others are not depending on the need presented, as well as the funding required for the requested budget changes. The ultimate decision on approving the budget rests within the discretion of the members of the Bay County Board of Commissioners, and is not simply a ministerial task. (See Affidavit of THOMAS L. HICKNER, attached hereto as *Exhibit I*).

As this Court can appreciate, each department within every municipal unit would like each and every expenditure it seeks within its annual budget as it sees fit. Unfortunately, given

the nature of the overall financial situation of the State of Michigan, and in turn, each of the individual municipalities including Bay County, not each requested expenditure can be funded by the County or other municipalities. The Board must exercise its discretion based upon the annual budget proposed by the County Executive to fund each department, including Plaintiff's Office of the County Clerk. The Defendants have not utterly failed to fund Plaintiff's Office, but instead used their discretion in providing the funds to allow Plaintiff to operate at a serviceable level, and have not done so in an arbitrary or capricious manner. As this Court is aware, the words "arbitrary" and "capricious" have generally accepted meanings: Arbitrary is without adequate determining principle, fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances or significance, decisive but unreasoned. Capricious is to change suddenly; freakish; whimsical; humor some. See *Goolsby v Detroit*, 419 Mich 651, 678; 358 NW2d 856 (1984). Neither Plaintiff's allegations, nor her improper Affidavit, have established that Defendants have acted arbitrarily or capriciously in funding her office. To the contrary, the Defendants have acted in the best interest of Bay County while providing the appropriate level of funding, at a serviceable level, based upon the funds available in the County's budget. Based upon the discretion necessary in funding each of the department, including Plaintiff's office of County Clerk, mandamus should not be awarded in this action.

As this Court has indicated, a serviceable level of funding is the minimum budgetary appropriation at which statutorily mandated functions can be fulfilled. A serviceable level is not met when the failure to fund eliminates the function or creates an emergency immediately threatening the existence of the function. A serviceable level is not the optimal level. A function

funded at a serviceable level will be carried out in the barely adequate manner, but it will be carried out. A function funded below a serviceable level, however, will not be fulfilled as required by statute. See *Cahalan v Wayne County Board of Commissioners*, 93 Mich App 114, 123; 286 NW2d 62 at 67 (1979). Plaintiff's Complaint as well as her accompanying Affidavit, allege that certain of her duties have been carried out in a barely adequate manner, she has not established that these functions have not been maintained at a serviceable level. As such, Count III of Plaintiff's Complaint should be dismissed as mandamus is inappropriate in these circumstances.

V. The County Executive and Board of Commissioners have not impaired the Office of the County Clerk.

Within Count IV of her Complaint, Plaintiff seeks injunctive relief preventing the County Executive and Board of Commissioners from impairing her office. Plaintiff claims that the Defendants have unlawfully underfunded her office such that it impairs and threatens her ability to fulfill her statutory and constitutive duties and functions. As this Court is aware, the granting of injunctive relief is also an extraordinary remedy, and Courts normally will grant only when (1) justice requires it, (2) there is no adequate remedy at law, and (3) there exists a real and imminent danger of irreparable injury. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 106; 662 NW2d 387 (2003).

Factors to be considered in determining the propriety of issuing an injunction are:

- (a) The nature of the interest to be protected,
- (b) A relative adequacy to the plaintiff of an injunction and of other remedies,
- (c) Any unreasonable delay by the plaintiff in bringing suit,
- (d) Any related misconduct on the part of the plaintiff,
- (e) The relative hardship likely to result to defendant if an injunction is granted and to the plaintiff if it is denied,
- (f) The interest of third parties and of the public, and

(g) The practicability of framing an enforcing the order or judgment.

See *Id.*, citing *Kernen v Homestead Dev. Co.*, 232 Mich App 503, 514-515; 591 NW2d 369 (1998). A real and imminent danger of irreparable injury must exist to support a grant of injunctive relief. See *Id.* At the outset, Plaintiff's own Affidavit claims that her issues with the funding and staffing of her office have allegedly been ongoing since at least 2011. This clearly establishes that there is no real and imminent danger of any irreparable injury to support the grant of injunctive relief, as she requests. Additionally, her own misconduct in her relationship with the Board of Commissioners and the County Executive in refusing to provide requested information necessitates against the issuance of injunctive relief. At the outset, as set forth within the Affidavit of THOMAS L. HICKNER, Plaintiff failed to provide the required information on a timely basis to support her request for additional funding and/or staffing subsequent to budget cuts that occurred in 2011. In fact, Plaintiff did not provide sufficient information to support her staffing request until after she provided answers to discovery requests in the associated Bay County lawsuit. (See Affidavit of THOMAS L. HICKNER, attached hereto as *Exhibit 1*. Moreover, when the dispute intensified during the Summer of 2015, Defendants, through the Department of Corporations counsel, attempted to assist MS. LUCZAK by offering to obtain an independent outside consultant, at the County's expense, to compile and present information to the Board regarding the mandated functions of her office, that Plaintiff alleged she could not serviceably perform due to the alleged lack of staff or funding. Corporation counsel requested, and the Board of Commissioners approved, retaining independent expert consultant to conduct an analysis, with the assistance and cooperation of MS. LUCZAK, of the work flow in the County Clerk's Office and make a recommendation on the

necessary staff needs. MS. LUCZAK refused to work with a consultant or provide any information to the Board of Commissioners or the County Executive as to which of the functions mandated by statute or the Michigan constitution that she was unable to perform at a serviceable level. Further, aggravating the situation, when corporation counsel discussed the matter with Plaintiff's current counsel, she was advised that this information would not be provided unless and until Plaintiff's attorney fees were paid to the tune of \$25,000.00. (See Affidavit of corporation counsel, Amber L. Davis-Johnson, attached hereto as *Exhibit 3*).

Based upon Plaintiff's own inequitable conduct in failing to cooperate with the Defendants and provide the necessary information to evaluate her funding/staffing request, Plaintiff's claim for injunctive relief should be dismissed. As this Court has noted, it is a cardinal principle that equity will not aid a party in doing that which is not equitable. She who seeks equity must be prepared to do equity. *Republic Bank v Modular I, LLC*, 232 Mich App 444 at 449; 591 NW2d 335 (1999) citing *Goodenow v Curtis*, 33 Mich 505, 509 (1876).

VI. Plaintiff has not established any right to the appointment of legal counsel or the payment of her legal fees pursuant to Michigan law or Bay County Policy.

At the outset, Plaintiff's claim for the appointment of legal counsel and reimbursement of legal fees is not a legal cause of action.

Black's Law Dictionary defines "cause of action" as:

1. A group of operative facts, such as a harmful act, giving rise to one or more rights of action... .

A "right of action" is defined by Black's Law Dictionary as:

1. The right to bring a specific case to court.
2. A right that can be enforced by a legal action; a chose in action.

Simply compiling these allegations as a “count” with her Complaint does not create a justiciable cause of action.

In seeking the appointment of legal counsel and reimbursement of her legal fees, Plaintiff has not demonstrated that there is any right to appointment of legal counsel or legal fees pursuant to Michigan law or Bay County policy.

A. Plaintiff has not established any right to the appointment of legal counsel or any payment of her legal fees pursuant to Michigan law.

As this Court is aware, the general American rule is that attorney fees are not ordinarily recoverable unless a statute, court rule, or common law exception provides to the contrary. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).

There is no Michigan statute providing for an elected official bringing a lawsuit to be appointed legal counsel and for said counsel to be compensated by a municipality. The only statute even close to this situation is MCL 49.73, which requires the county to provide an attorney to represent an elected county official when the official is named as a defendant in a matter related to the performance of that individual’s official duties. There is no requirement under Michigan law, however, for the County to employ an attorney for that official when he or she is contemplating proceeding as a Plaintiff, as presented herein.

Michigan Courts have addressed this issue in limited circumstances and have allowed for the payment of attorney fees only upon a showing of an emergency or other exigency.

In *Wayne County Sheriff v Wayne County Board of Commissioners*, 196 Mich App 498; 494 NW2d 14 (1992), the plaintiff was seeking the appointment of legal counsel in a civil action where he was named as a defendant, not the county clerk acting as a plaintiff to bring a lawsuit against other county entities as in this case.

In *McKim v Green Oak Township*, 158 Mich App 200; 404 NW2d 658 (1987), there was an intra Township dispute over facilitating the Township's mail and bills, as well as maintaining the Township meeting minutes. The Township Clerk filed suit alleging that the Township's resolution regarding handling of the mail and restricting her ability to remove files to complete the meeting minutes impeded her ability to perform her statutory duties. On the issue of attorney fees, this Court reiterated as a general rule, attorney fees may be awarded only when authorized by statute or court rule. However, under certain circumstances, Appellate Courts had recognized an exception to the general rule when a public official incurred attorney fees in connection with asserting or defending the performance of his or her legal duties, citing *Smedley v City of Grand Haven*, 125 Mich 424; 84 NW 626 (1900), *Exeter Twp. Clerk v Exeter Twp. Bd.*, 108 Mich App 262; 310 NW2d 357 (1981), and *City of Warren v Dannis*, 136 Mich App 651; 351 NW2d 731 (1984), *lv. den.* 422 Mich 932 (1985). This Court noted that the decision to award attorney fees was discretionary in the Trial Court. However, the defendants had not provided the Court of Appeals with a transcript of the hearing at which the Trial Court ruled that the clerk was entitled to attorney fees and therefore it was impossible for the Court of Appeals to determine whether the Trial Court properly exercised its discretion in making the award. This Court determined that the Township Board had abandoned that issue on Appeal. See 158 Mich App 200 at 208. Thus, the Court of Appeals did not substantively rule that the plaintiff in *McKim* was entitled to attorney fees.

It is important for the Court to note that *McKim*, and the cases cited therein are distinguishable inasmuch as they deal with situations wherein the governmental official sought reimbursement for legal fees for lawsuits that were brought as a necessary function of their

governmental office duties. In this case, MS. LUCZAK seeks the appointment of legal counsel and payment of their fees, in an attempt for this Court to determine that her mandated duties in some way have been impaired, allegedly by not being provided with sufficient staffing/funding. This Court should not award such relief. Such a ruling would establish a detrimental precedent and subject municipalities to numerous lawsuits by its own elected officials brought on a variety of grounds, while also seeking payment of the attorney fees as well. This precedent would be incredibly detrimental to municipalities, would severely impact their ability to analyze, approve and apply any budget, and should not be set.

In *Smedley*, the Michigan Supreme Court dealt with an intra-city squabble involving the City Clerk and Mayor in the year of 1900 or before. The City Council of Grand Haven attempted to transfer City funds from one account to another by resolution and the Mayor prepared a veto. The City Clerk refused to file the veto, claiming it had been received too late to be effective. Mr. Smedley was the attorney employed to represent the City Mayor in all proceedings. The Supreme Court noted that in the City's charter, it required that if a debt was to be contracted against the City in any way, must come through the power of the common council. However, the Court noted that there were certain exceptions to this rule, such as where an emergency or exigency existed that may compel the Mayor to act without the sanction of the council in order to protect the rights of the City. The Court concluded that the only issue was whether any exigency existed in *Smedley*, which called upon the Mayor to act without reference to any formal action by the council. It concluded that it was a question for the jury to determine whether any exigency existed which warranted the Mayor in employing counsel under such circumstances. In comparison to the present case, there exists no such emergency requiring MS.

LUCZAK to retain counsel to seek a determination that her claimed limitations exist. Within her own pleadings, Plaintiff has admitted that these issues have existed since at least 2011, and as set forth above, Defendants have attempted to provide her with assistance in determining if such issues exist and the proper manner in resolving any issues. She has failed to cooperate in these attempts. Such failure should not be found to constitute an emergency supporting her ability to have counsel appointment and compensated on her behalf.

Likewise, in *Exeter Twp. Clerk v Exeter Twp. Bd.*, this Court determined where it is factually demonstrated that pressing necessity or emergency conditions warrant a municipal official in employing legal counsel in a matter of official public concern, and legal services are provided without consent of the governing body, the Courts may hold a municipal corporation liable for such legal services. 108 Mich App 262 at 269-270. In *Exeter*, the clerk needed legal counsel to aid her in certifying nominating petitions, which were required to be certified within three days. The Township's attorney refused to advise her without approval from the entire Township Board. Thus, in *Exeter*, an emergency situation existed which required the assistance of outside legal counsel. Those circumstances do not exist in the present case.

B. Plaintiff failed to comply with Bay County's Policy for retaining outside counsel.

Going further than Michigan law, Bay County has a policy which may provide for the retention of outside counsel for elected officials as plaintiffs. Attached as *Exhibit 4* are Bay County Civil Counsel Guidelines which potentially provide Bay County elected officials, as plaintiffs, with the opportunity to retain legal counsel at the County's expense and to file suit against another County Entity so long as the requesting official satisfies certain pre-requisites and follows the required procedures. These guidelines set forth the parameters wherein outside

counsel may be retained on behalf of an elected official, which is to be retained by corporation counsel, not the county official such as the County Clerk herein. These guidelines also provide for instances where County entities are adverse parties, as in the present case. As set forth within these guidelines, any request to corporation counsel for retention of outside counsel must:

- i. Be submitted in writing;
- ii. Be reasonable and necessary;
- iii. Explain the need to retain outside legal counsel;
- iv. Set forth the reasons why the Department cannot or may not handle the matter;
- v. Indicate that the County Entity has verified that there are sufficient funds available in the portion of the Department's budget allocated to retention of outside legal counsel and, if sufficient funds are not available in the Department's budget, that the County Entity requesting the retention has the funds or will have the funds to pay for the outside legal services and shall identify the account from which the outside legal services will be paid.

Absent compliance with the guidelines for retention of outside counsel, the County entity involved is not authorized to retain outside legal counsel at the County's expense.

Although MS. LUCZAK requested outside legal counsel be retained on her behalf for this matter in writing, it has not been determined or demonstrated that the retention of outside counsel in this matter was reasonable and necessary. Nor has MS. LUCZAK verified that there were funds in the corporation counsel's budget allocated to retain outside counsel, or whether the County Clerk's budget was going to pay for the retention of outside legal counsel.

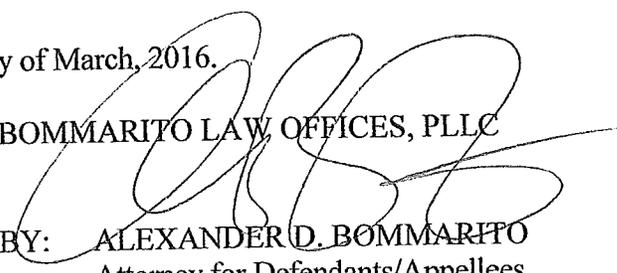
As this Court noted in *City of Warren v Dannis*, a public official who acts arbitrarily, completely without good faith in a dogmatic, unreasonable manner, clearly contrary to the dictates of his/her official responsibilities under statute, charter or ordinance, certainly should not be able to recover attorney fee reimbursement after he or she loses their lawsuit. See 136 Mich App 651 at 662; 357 NW2d 731 (1984). As set forth above, Plaintiff has clearly failed to comply

with the Bay County Policy for retaining outside counsel, and has not demonstrated any emergency or exigency that supports her request to retain outside counsel independently, without the approval of the Bay County Board of Commissioners and outside of the Bay County Policy for retaining said counsel. Based upon these circumstances, Plaintiff's unreasonable actions in bringing this lawsuit and requesting this Court to appoint legal counsel, at her choosing, and for same to be paid out of the County budget should not be rewarded as noted in *Dannis*.

CONCLUSION

Based upon the foregoing, Plaintiff, CYNTHIA LUCZAK, Bay County Clerk's Complaint should be dismissed on procedural grounds as it was not filed in conformity with the Michigan Court Rules. Moreover, substantively, she has failed within each of the Counts of her Complaint to demonstrate an actual controversy between the parties. Her claims for writ of mandamus, injunctive relief and appointment of counsel are not supported by the facts in this action or Michigan law. Accordingly, Defendants respectively request this Court deny the relief requested and dismiss Plaintiff's action with prejudice with, costs and attorney fees to be assessed.

Dated this 11th day of March, 2016.


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EXHIBIT 1

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CYNTHIA A. LUCZAK, BAY COUNTY
CLERK,

Plaintiff/Appellant,

Case No.: 331455

v.

THOMAS L. HICKNER, Bay County
Executive and BAY COUNTY BOARD OF
COMMISSIONERS,

Defendants/Appellees.

CLARK HILL, PLC

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JOSEPH W. COLAIANNE (P47404)

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AFFIDAVIT OF THOMAS L. HICKNER

STATE OF MICHIGAN)

ss.

COUNTY OF BAY)

I, THOMAS L. HICKNER, being first duly sworn, depose and say as follows:

1. That I serve as Bay County's elected County Executive and am a Defendant in this matter.

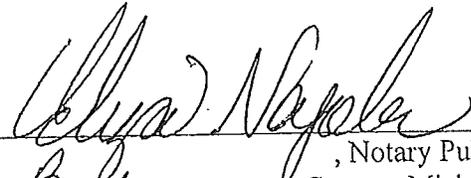
2. That this Affidavit is based upon my personal knowledge.
3. That if sworn as a witness, I can testify competently to the facts stated herein.
4. That Bay County is an Optional Unified form of County Government organized under Public Act 139 of 1979. As part of the annual budgeting process, Act 139 department heads and elected officials, including the Bay County Clerk, provide to the Finance Department budget information and service enhancement requests for additional funding and/or staffing requested for the upcoming annual budget.
5. That this budget information is to be provided by the department heads by a prescribed date generally in the second week of July, prior to the consideration of the proposed annual budget by me and the Bay County Board of Commissioners.
6. That after the budget information and service enhancement requests are provided by the department heads, they are reviewed and I make recommendations to the Bay County Board of Commissioners regarding the proposed budget request as well as any service enhancement requests for additional funding and/or staffing.
7. That based upon the information provided within the budget request, as well as the service enhancement requests, some requests are recommended, and others are not, depending on the need presented within the budget request or service enhancement requests; the funding required for the change as compared with the funding available within the County; and the supporting documentation or information provided by the department head or elected official requesting the increase. The County has requested that departments operate on a status quo budget since 2005 with budget decreases occurring beginning in 2008.
8. That before the Bay County Circuit Court lawsuit was filed by Cynthia Luczak, Bay County Case No.: 15-3583-AW, she did not follow the proper procedure in providing any adequate supporting budget information or the service enhancement requests when requesting additional personnel or funding.
9. It was not until after the Plaintiff provided responses to discovery requests served in the Bay County Circuit Court litigation, as well as additional amended service enhancement requests, provided at my request, that my office or the Board had sufficient information to evaluate her request for additional funding and staffing.
10. That the determination of funding and staffing is not purely ministerial as the ultimate decision for additional funding and staffing is left to the discretion of the Bay County Board of Commissioners, based upon the information provided and the funds available for the requests as provided within the Bay County budget.

Further, Affiant sayeth not.



THOMAS L. HICKNER

Subscribed and sworn to before me, a Notary Public, this 17th day of
March, 2016.



Bay, Notary Public
County, Michigan
My commission expires: 11/11/2020
Acting in the County of: Bay

EXHIBIT 2

Legislative Analysis



COUNTY CONCEALED WEAPONS LICENSING BOARDS: ELIMINATE & REVISE CPL PROCESS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 34 (Substitute H-1 as adopted by committee)
Senate Bill 35 (as passed by the Senate without amendment)
Sponsor: Sen. Mike Green
House Committee: Judiciary
Senate Committee: Judiciary

Complete to 2-24-15

REVISED HOUSE COMMITTEE SUMMARY:

Senate Bill 34 will amend the Handgun Licensing Law to:

- Abolish county concealed weapon licensing boards beginning December 1, 2015.
- Transfer the bulk of the duties of the county boards to county clerks and the MSP, with some duties going to the courts and sheriffs.
- Require a CPL to be issued to an eligible applicant.
- Require the MSP to verify an applicant's eligibility for a CPL.
- Revise the CPL process, including requiring an applicant to have a valid state-issued driver license or personal ID card.
- By December 1, 2018, require the MSP to create an online application process for CPL renewals.
- Provide civil immunity to clerks and law enforcement entities if a CPL holder later commits a crime or negligent act.
- Add criminal penalties for certain violations of the act and require, instead of allow, certain civil infractions to be imposed for violations.
- Allow an applicant for a CPL renewal to certify that he or she has completed educational and firing range requirements without requiring other verification.
- Revise initial and renewal CPL application fees.
- Revise the process to obtain an emergency CPL (formerly "temporary" license).
- Require each county to establish a concealed pistol licensing fund and to deposit funds collected under the act in the fund.
- Allow county clerks to take fingerprints of applicants.
- Repeal Sections 5m and 6a.

Senate Bill 35 will make technical revisions to the sentencing guidelines within the Code of Criminal Procedure to comport with changes made by SB 34 (MCL 777.11b). The bill is tie-barred to Senate Bill 34, meaning that Senate Bill 35 cannot take effect unless Senate Bill 34 is also enacted.

Senate Bill 34

The bill makes significant revisions to the Handgun Licensing Act, including eliminating the current process by which county concealed weapons licensing boards issue concealed

pistol licenses (CPLs) to eligible applicants as of November 30, 2015. Instead, the bill revises the CPL process to transfer most of the duties of the local boards to their respective county clerks and all investigatory duties to verify an applicant's eligibility to the MSP. Substantive changes include, but are not limited to, the following:

Definitions

For the purpose of the act, "*felony*" would not include a violation of a Michigan penal law that is expressly designated as a misdemeanor.

"*Retired police officer*" is currently defined to mean an individual who was certified under the Michigan Commission on Law Enforcement Standards as a police officer or law enforcement officer, and who retired in good standing from employment as an officer.

The bill would add that a retired police officer or law enforcement officer retired in good standing if he or she receives a pension or other retirement benefit for service as a police officer or law enforcement officer or actively maintained an MCOLES or equivalent state certification for 10 or more consecutive years.

County concealed weapon licensing boards eliminated

Beginning December 1, 2015, county concealed weapon licensing boards will be eliminated. Certain references to the boards contained throughout the act will be deleted or revised to refer to other entities, such as county clerks or the Department of State Police (MSP).

Each board must transfer all license applications and official documents in its possession to its county clerk no later than November 30, 2015. A license to carry a concealed pistol issued by the board prior to December 1, 2015, is valid and remains in effect until the license expires or as otherwise provided by law.

All pending applications would be considered to have a December 1, 2015, application date and would be processed by the county clerk. Applicants whose initial or renewal applications had been pending on December 1, 2015, could request a receipt that would serve as a concealed pistol license until a license or notice of disqualification were issued. No additional fee for receiving or processing an application previously submitted to the licensing board could be charged.

Responsibilities of county clerks

Under the bill, a county clerk would not make determinations regarding an applicant's eligibility to receive a CPL. The clerk's role would be administrative in nature. A county clerk would be responsible for:

- ❖ Storing and maintaining all records related to issuing a license or notice of statutory disqualification in that county.
- ❖ Issuing licenses to carry a concealed pistol.
- ❖ Issuing notices of statutory disqualification, notices of suspensions, and notices of revocations.

The bill would also allow county clerks to take fingerprints of applicants for a license or license renewal.

A county clerk must mail an initial CPL or renewal license by first-class mail in a sealed envelope. A replacement license could be issued in person for a replacement fee (\$10) or delivered by first-class mail upon request by the licensee.

Department of State Police

Beginning December 1, 2015, the MSP would verify certain eligibility requirements through LEIN and the National Instant Criminal Background Check System and report any statutory disqualifications of an applicant to the county clerk (e.g., to see if the applicant is the subject of a court order for involuntary treatment of a mental illness); currently, county sheriffs perform this function.

The database maintained by the MSP regarding individuals who apply for a CPL would have to include, in addition to current requirements, the individual's state-issued driver license and personal ID card number, whether the individual was issued a notice of statutory disqualification and a statement of the reasons for that disqualification, and the status of the individual's application or license.

The bill would require the annual report required of the MSP to be filed with the Secretary of the Senate and the Clerk of the House of Representatives by January 1 of each year and would revise criteria required to be included in the report as follows:

- ❖ Report the number of statutorily disqualified applicants and categories for statutory disqualifications rather than the number of CPLs denied and categories for denial.
- ❖ Report the number of CPLs suspended and the categories, in addition to those revoked.
- ❖ Eliminate provisions regarding the number of charges of state civil infractions of the act or charges of criminal violations, and instead require the total number of licensees found responsible for a civil violation of the act, the total number of civil violations categorized by offense, the total number of individuals licensed to carry a concealed pistol convicted of a crime, and the total number of those criminal convictions categorized by offense.
- ❖ Report the total amount of revenue the MSP received under the act.
- ❖ Report the actual costs incurred per initial and renewal license by the MSP under the act, itemized by each statutory section of the act.
- ❖ Include a list of expenditures made by the MSP from money received under the act, regardless of purpose.
- ❖ Report the actual costs incurred per permit for each county clerk.

Applying for a CPL

Current provisions would be amended to reflect the elimination of the county boards and transference of duties to the county clerks or MSP. Beginning December 1, 2015, applications for a CPL would be made to the county clerk in the county in which the applicant resides.

Only one CPL application per calendar year could be filed, and a completed application would expire one year from the date of application. To be complete, an applicant must submit all the required information and fees and have fingerprints taken. The application would be considered withdrawn if the applicant did not have fingerprints taken within 45 days of filing the application.

The county clerk must issue the applicant a receipt for the application at the time of submission. The receipt must contain the applicant's name, state-issued driver license or personal ID card number, date and time the receipt was issued, amount paid, name of issuing county, impression of the county seal, and the statement, "*This receipt was issued for the purpose of applying for a concealed pistol license and for obtaining fingerprints related to that application. This receipt does not authorize an individual to carry a concealed pistol in this state.*"

The bill would require the Secretary of State to make a digitized photograph taken of the applicant for a driver license or state ID available to the MSP for use under the act. The MSP would have to provide the applicant's photograph from the SOS to the county clerk for use on the CPL. Beginning December 1, 2015, if an applicant does not have a digitized photograph on file with the Secretary of State, a passport-quality photograph of the applicant must be provided at the time of application.

The bill would also revise the information required by applicants to be included in certain statements on the CPL application form. For example, beginning December 1, 2015, the applicant must authorize the MSP to access any record needed to perform the verification of eligibility.

A county clerk could not require a CPL applicant to submit any other additional forms, documents, letters, or other evidence of eligibility except as listed in Section 5b(1) or otherwise provided in the act.

Beginning December 1, 2015, if the applicant holds a valid CPL issued by another state at the time Michigan residency is established, the county clerk must waive the six-month waiting period and the applicant could apply at the time residency in Michigan is established.

Fees

Beginning December 1, 2015, initial application and license fees would be reduced from \$105 to \$100, and no other charge, fee, cost, or assessment (unless specifically authorized in the act) could be added.

Currently, \$41 of the application/license fee goes to a county's general fund with \$26 of that going to the county clerk and \$15 to the county sheriff, with the balance of the fee being forwarded to the state treasurer to be credited to the MSP.

Instead, until November 30, 2015, \$15 would be credited to the county sheriff and \$26 to the county Concealed Pistol Licensing Fund. As of December 1, 2015, the bill will direct that \$26 of each fee be deposited into the county's Concealed Pistol Licensing Fund with the balance going to the state treasurer to be credited to the MSP.

Currently, an applicant for a renewal license must pay an application and licensing fee of \$105 plus an additional fee of \$7.00. Beginning December 1, 2015, an applicant for a renewal license must pay an application and licensing fee of \$115, payable to the county. No other charge, fee, cost, or assessment, including any local charge, fee, cost, or assessment, would be required of the applicant except as specifically authorized in the act.

The county treasurer would have to deposit \$36 of each renewal fee to the county concealed pistol licensing fund and forward the balance to the state treasurer for deposit in the general fund to the credit of the MSP.

A county clerk could charge up to \$1.00 for making a copy of the application for an applicant or licensee.

Revisions regarding issuance of a CPL

A county clerk, instead of the county board, would be required to issue and send a license to an applicant eligible to carry a concealed weapon upon determination that all of the listed circumstances exist.

Among many circumstances that would disqualify an applicant, listed circumstances require an applicant to not have been convicted of certain misdemeanor violations in the eight years or the three years preceding applying for a CPL. The bill would add that the applicant could not have a pending charge for any of those violations in Michigan or elsewhere at the time the application is made. In addition, an applicant must not have a diagnosed mental illness at the time of application for a CPL. Under the bill, this listed circumstance would disqualify an applicant if the applicant has filed a statement with the application (a required element of the application process) that the applicant does not have a diagnosis of mental illness that includes an assessment that the individual presents a danger to himself or herself or to another at the time application is made, regardless of whether he or she is receiving treatment for that illness.

When a CPL is issued, the county clerk must indicate on the license if the individual is exempt from the prohibitions against carrying a concealed pistol in no carry zones if the applicant provides acceptable proof of qualifying for that exemption. The bill adds a definition for what would constitute acceptable proof for the categories of individuals who qualify for the exemption (for instance, a retired police officer).

The bill also makes numerous revisions that are editorial or technical in nature.

Further, county clerks, MSP, county sheriffs, local police agencies, and other entities that maintain fingerprinting capability must provide reasonable access to fingerprinting services during normal business hours as necessary to comply with the act's requirements if such services are provided. An applicant who has had classifiable fingerprints taken under Section 5a(4), which pertains to an emergency CPL, would not need additional fingerprints taken under this provision. If an individual's fingerprints are not classifiable, the MSP would have to take the individual's fingerprints again—at no charge— or provide for the comparisons with state and national fingerprint databases to be conducted through alternative means.

At the time fingerprints are taken, the entity must issue a receipt to the applicant that contains all of the following:

- ❖ Name of the applicant.
- ❖ Date and time the receipt is issued.
- ❖ Amount paid.
- ❖ Name of the entity providing the fingerprint services.

- ❖ The applicant's state-issued driver license or personal ID card number.
- ❖ A statement that says, among other things, the receipt was issued for the purpose of applying for a concealed pistol license, and, if a license or statutory disqualification is not issued within 45 days, the receipt will serve as a CPL when carried with an official state-issued ID or driver license. The receipt will be a valid CPL until a license or notice of disqualification is issued by the county clerk. The receipt would not exempt the individual from complying with all applicable laws for the purchase of firearms.

Within five business days of completing the verification process, MSP must send the county clerk a list of an applicant's statutory disqualifications. A county clerk could not issue a CPL until after receiving the report from by the MSP.

Temporary (emergency) licenses

The bill would revise the process regarding obtaining an emergency CPL (formerly, a "temporary license"). A county clerk would be required to issue an emergency CPL to an applicant who had obtained a PPO against an individual for domestic violence or stalking or to an applicant if a county sheriff determined by clear and convincing evidence (rather than by probable cause) to believe the safety of the applicant or a member of the applicant's family or household is endangered by the inability to immediately obtain a CPL.

"Clear and convincing evidence" would include, but not be limited to, an application for a PPO, police reports and other law enforcement records, or written, audio, or visual evidence of threats to the applicant or member of the family or household.

The bill would prohibit issuance of an emergency license by a county clerk to an applicant who obtained a PPO but does not meet certain requirements based on a LEIN check conducted by MSP. A county sheriff could only issue a determination under this provision to an applicant meeting certain eligibility requirements based on a LEIN check and only after the sheriff had taken the individual's fingerprints.

Within 10 business days of applying for an emergency license, the applicant must complete a pistol training course and apply for a CPL. A county sheriff could charge up to \$15 for running the LEIN check and taking the fingerprints and a county clerk could charge up to \$10 for printing the emergency license. An emergency license would be valid for 45 days or until a CPL or notice of statutory disqualification were issued. The emergency license would indicate if the individual were allowed to carry the concealed pistol in a no carry zone. No more than one emergency CPL could be issued in any five-year period.

If a notice of statutory disqualification is issued to the applicant, the applicant must immediately surrender the emergency license to the county clerk by mail or in person if the emergency license has not expired. Failure to do so would be a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500.

Beginning December 1, 2015, the county clerk would have to waive the six-month residency requirement if the applicant is a petitioner for a PPO order regarding domestic violence or stalking or if the county sheriff determined by clear and convincing evidence

that the applicant's (or a family or household member's) safety was endangered if unable to immediately obtain a CPL.

Renewal licenses

A renewal license would be valid in the same manner as for the initial license. Beginning December 1, 2015, a county clerk must notify a licensee that the license was about to expire and may be renewed as provided in the act. The notification must be sent to the last known address of the licensee as shown on the records of the clerk. It must be sent in a sealed envelope by first-class mail not less than three months or more than six months before the current license's expiration date. An applicant is eligible for a renewal if the license is not expired, or expired within a one-year period before the date of application.

Beginning December 1, 2018, the MSP must provide a system for an applicant to submit an application for renewal online or by first-class mail. The renewal application fee of \$115 would be made payable to the state. The state treasurer would forward \$36 to the appropriate county treasurer for deposit to that county's concealed pistol licensing fund with the balance deposited in the state's General Fund and credited to the MSP. The MSP would notify the appropriate clerk of applications it received.

The MSP would have to complete the verification process and the county clerk would have to issue a renewal license or a notice of statutory disqualification within 30 days (shortened from 60 days) after the application was received. The receipt would have to include the applicant's state-issued driver license or personal ID card number and a statement that it could serve as a CPL when carried with the expired license and would be valid until a license or notice of statutory disqualification is issued.

Until November 30, 2018, a member of the U.S. armed forces, reserves, or the Michigan National Guard who is on orders to a duty station outside the state could submit an application for renewal by first-class mail, with the required fee, a notarized application, and the licensee's orders to report to an out-state duty station in a form required by the county clerk. The clerk would have to mail a receipt by first-class mail.

Beginning on the date the MSP provides the online renewal application process, the MSP must provide an applicant a digital receipt or a receipt by first-class mail, if requested, and a receipt by first-class mail if the application had been submitted to the MSP by mail.

If an individual applies for a renewal license before the expiration of the license, the expiration date of the current license would be extended until the renewal license or notice of statutory disqualification is issued; currently it is extended by only 180 days.

The clerk must notify the MSP after receiving a renewal application and the MSP must immediately enter into LEIN that an application has been submitted and the renewal is pending.

Renewal applications require the applicant to certify that the applicant has completed at least three hours' review of the required training and at least one hour of firing range time in the six months immediately preceding the renewal application. Beginning December 1,

2015, the bill would specify that the educational and firing range requirements are met if the applicant certifies on the renewal application form that the requirements have been met. An applicant could not otherwise be required to verify the statements made under this provision and shall not be required to obtain a certificate or undergo training other than as required by this provision.

County Concealed Pistol Licensing Fund

Each county would have to establish a Concealed Pistol Licensing Fund for the deposit of fees collected by its county clerk. The county treasurer would direct investment of the fund and credit to the fund interest and earnings. Expenditures would have to comply with the Uniform Budgeting and Accounting Act and funds used only for the cost of administering the act. Allowable expenditures would include, but not be limited to, staffing requirements directly attributable to performing functions required under the act; technology upgrades, including those required to take fingerprints by electronic means; office supplies; and document storage and retrieval systems and system upgrades.

All revenue collected by county clerks under the act would have to be deposited into the county's concealed pistol licensing fund.

Restoration of right to carry concealed weapon

Currently, a person prohibited from possessing, using, transporting, selling, carrying, shipping, or distributing a firearm or ammunition because of the commission of a felony may apply to the county concealed weapons licensing board for restoration of those rights; the bill would instead require a person to apply to the circuit court in the county in which the person resides.

CPL holder responsibilities

- ❖ A licensee may notify a county clerk that he or she has moved to a different county within the state in order to receive renewal notifications.
- ❖ A licensee may voluntarily surrender the license without explanation; MSP shall enter that information into LEIN along with the date the license was surrendered. The county clerk must retain a surrendered license as an official record for one year.
- ❖ A licensee must carry his or her state-issued driver license or personal ID card along with the CPL and the concealed pistol.

Civil immunity

A county clerk, county sheriff, county prosecuting attorney, police department, or MSP would not be liable for civil damages as a result of issuing a CPL to an individual who later commits a crime or a negligent act.

CPL/requirements for the physical license

Beginning October 1, 2015, the license would have to be made of plastic laminated paper or hard plastic. No additional fee could be charged for the license unless allowed under the act. A fee of not more than \$10 could be charged for an optional hard plastic license only if the county clerk also provides the option of obtaining a plastic laminated paper license at no charge.

In addition to current requirements, the license would have to include:

- ❖ The licensee's state-issued driver license or personal ID card number.
- ❖ The premises on which carrying a CPL is prohibited under Section 5o.
- ❖ The peace officer disclosure required under Section 5f (informing the officer the licensee is carrying a CPL or personal Taser).
- ❖ An indication whether the license is a duplicate or an emergency license (if an emergency license, it must include that it does not exempt the individual from complying with all applicable laws for the purchase of firearms).

Neither the MSP nor a county clerk could require a licensee's signature to appear on a CPL.

Appeals

An applicant may appeal to the circuit court a statutory disqualification or failure to be issued a receipt complying with the receipt requirements issued when fingerprints are taken. If a court determined the disqualification, failure to provide a proper receipt, or failure to issue a license was arbitrary and capricious (in addition to being erroneous, as is currently the case), the court would have to order the clerk to issue a license or receipt.

If the action was clearly erroneous, the court could also refund any filing fees, according to the degree of responsibility of that entity. If arbitrary and capricious, the court must order the county clerk, entity taking the fingerprints, or the state to pay the applicant's actual costs and actual attorney fees in appealing the action, based on the degree of responsibility of the clerk, fingerprint entity, or state. Currently, an appeal of a license denial by a board found to be arbitrary and capricious requires the court to order the state to pay 1/3 and the county to pay 2/3 of the actual costs and attorney fees of the applicant in appealing the denial.

Violations of act

Currently, when carrying a concealed pistol or personal Taser, failure to carry the CPL, failure to show the CPL to a peace officer, or failure to disclose to an officer the fact that the individual is carrying a concealed pistol or personal Taser, is a state civil infraction that can result in a fine as well as suspension or revocation of the CPL. The bill would apply the fine also to failure to carry the state-issued driver license or personal ID card along with the CPL and require (instead of being discretionary) a fine of \$100 to be imposed as specified if the person was found to be responsible for the civil infraction.

The peace officer must notify the MSP of that civil infraction. The MSP must then notify the county clerk who issued the CPL. The clerk must suspend or revoke the license and notify the licensee of the suspension or revocation by first-class mail. The MSP must immediately enter the suspension or revocation into LEIN.

The act prohibits a licensee from carrying a concealed pistol or personal Taser while under the influence of alcohol and/or a controlled substance or while having a prohibited bodily alcohol content of .10 grams or more. Instead of requiring a court to permanently revoke the person's license, the bill would instead require the court to order the county clerk to revoke the license (but not permanently). The clerk must notify MSP of the revocation for entry into LEIN.

If the person had a bodily alcohol content of .08 or more but less than .10 grams, the license must be ordered suspended for three years instead of allowing the court to revoke it for three years. A bodily alcohol level of more than .02 but less than .08 grams would result in a one-year suspension instead of a one-year revocation and the person would be fined \$100. (These penalties would be in addition to applicable criminal penalties.)

Refusal to take a chemical test would result in a six-month license suspension and responsibility for a state civil infraction and a fine of \$100. A peace officer must notify the MSP to enter the suspension into LEIN.

"Under the influence of alcoholic liquor or a controlled substance" would mean that the individual's ability to properly handle a pistol or to exercise clear judgment regarding the use of that pistol was substantially and materially affected by the consumption of alcoholic liquor or a controlled substance.

Failure to surrender a suspended or revoked license would be a misdemeanor punishable by not more than 93 days and/or a fine of not more than \$500.

Suspensions or revocations

A court could order a county clerk who issued a CPL to suspend, revoke, or reinstate that license as provided in the act. A suspended or revoked license must be retained by the clerk as an official record for one year after the license's expiration, unless it is reinstated or a new license issued. The county clerk must notify the MSP of suspended or revoked licenses for entry into LEIN.

Notice of a suspension or revocation must include the statutory reason (provided to the clerk by the court), the source of the record supporting that determination, the length of the suspension or revocation, and the process for reinstating the license when the suspension ends or for reapplying for a license that was revoked, correcting errors in the record, or appealing the suspension or revocation. If the individual is acquitted of the charge leading to the suspension, or the charge dismissed, the court must notify the county clerk who shall automatically reinstate the license if the license is not expired and the individual is otherwise qualified to receive a CPL license, as verified by MSP. A clerk could not charge a reinstatement fee for a suspension.

The act specifies that a license cannot be revoked except upon written complaint and an opportunity for a hearing. The bill would apply to this suspensions, as well.

A suspension would have to be stated in terms of years, months, or days, or until the final disposition of the charge and must state the date the suspension will end, if applicable. A licensee would have to promptly surrender the license to the county clerk after being notified that the license had been revoked or suspended.

Upon expiration of the suspension period, the applicant may apply for a renewal license. The clerk would have to issue a receipt to the applicant that stated that the receipt was issued for the purpose of applying for a renewal of a concealed pistol license following a period of suspension or revocation, but does not authorize the person to carry a concealed pistol in the state.

If the suspension or revocation was because the applicant was a subject of a PPO restricting the ability to carry or purchase a firearm, and the license had been surrendered by the licensee, upon expiration of the order and notification to the county clerk, the county clerk would have to automatically reinstate the license if it is not expired and the MSP has completed the verification process. A fee could not be charged for the reinstatement.

Pistol training

The required training or safety program for eligibility for a CPL must be provided within five years preceding the date of application for a CPL. A certificate of completion must, after December 1, 2015, contain the instructor's name and address, and telephone number if available and the name and telephone number of the state agency or state or national firearms training organization that has certified the individual as an instructor, his or her instructor certification number, if any, and the expiration date of the certification; this would have to be printed on the certification or provided in a separate document.

The instructor could be certified by another state in addition to this state or a national firearms training organization as is currently required. A county clerk could not require any other certification or require an instructor to register with the county or county clerk.

A training certificate that does not meet state requirements applicable at the time of issuance could otherwise meet the act's requirements if the applicant provides information that reasonably demonstrates that the certificate or the training meets applicable requirements.

Compilation of firearms laws by LSB

Currently, the Legislative Service Bureau must compile the Michigan firearms laws that apply to carrying a concealed pistol and provide copies to each county board for distribution. The bill would require the compilation to be provided to the MSP in an electronic format. The MSP must then provide a copy to each county clerk. MSP must also provide forms to appeal a notice of statutory disqualification, or suspension or revocation of a license. The compilation of the firearms laws and appeal forms would be provided by electronic format.

The county clerk would have to distribute the compilation and forms at no charge to CPL applicants at the time the application is submitted and require the applicant to sign a written acknowledgement of the receipt of those documents.

Concealed pistol application kits

Under the bill, kits would be available only at the offices of county clerks, during normal business hours, and other provisions would be amended to apply only to county clerks. The Department of State Police (MSP) would now provide the application kits to county clerks in electronic format.

Repealers

The bill would repeal Section 6a (MCL 28.426a) which permits concealed weapon licensing boards to issue a license to certain businesses that deal with or transport large sums of money (e.g., banks, railways) to equip its premises or vehicles with gas ejecting devices for the purpose of protecting the premises or vehicles from criminal assaults.

The bill would also repeal Section 5m (28.425m) which requires certain actions by county prosecutors when a CPL holder is charged and/or convicted of a criminal offense.

Effective Dates

Senate Bill 34: Sections 5b, 5l, and 5x of the bill take effect 90 days after enactment. Sections 5m and 6a will be repealed 90 days after the bill is enacted. The remaining sections take effect December 1, 2015.

Senate Bill 35 would take effect 90 days after enactment.

MCL 28.421 et al.

FISCAL IMPACT:

Senate Bill 34 (H-1), as reported from committee, would have a fiscal impact on the Department of State Police (MSP) and counties to the extent that SB 34 (H-1) significantly adjusts the fees associated with concealed pistol licenses (CPL) and substantially alters the roles and responsibilities of the MSP and counties as they pertain to the application for and issuance of CPLs; redirecting the revenue generated by fees and shifting the expenditures from county sheriffs' offices to the MSP.

Increase CPL Fees

Under current law, \$64 of the \$105 fee for both initial and renewal CPL applications is credited to the MSP while \$26 is credited to county clerks and \$15 to county sheriffs' offices. SB 34 (H-1) would reduce the initial CPL application fee by \$5 to \$100, of which \$74 would be credited to the MSP and \$26 to the counties' Concealed Pistol Licensing Funds, and raise the renewal CPL application fee by \$10 to \$115, of which \$79 would be credited to the MSP and \$36 to the counties' Concealed Pistol Licensing Funds.

Department of State Police

The MSP would continue to be responsible for many duties pertaining to fingerprint checks, database maintenance, recordkeeping, and information distribution related to CPL applicants and holders. Under SB 34 (H-1), the MSP would also be responsible for investigating CPL applicants, currently performed by county sheriffs' offices (sheriffs), evaluating CPL applications, currently performed by county concealed weapons licensing boards (CWLBB), distributing digitized photographs obtained from the Department of State to county clerks, and developing and providing a postal process and an online system for CPL application by 12/01/2018.

Currently, revenue generated from the \$64 of the CPL application fee is deposited into the Criminal Justice Information System Services (CJIS) Fees fund and is comingled with revenues from other fees. Multiplying the average number of initial and renewal CPL applications per annum between July 1, 2008 and June 30, 2013 (92,197) with the CPL

application fee allocated to the MSP (\$64), results in \$5.9 million in revenue per annum over the five year period.¹

Direct and indirect expenditures related to MSP's current CPL responsibilities are not separately classified within the state accounting system. Thus, it is not possible to independently ascertain the purposes of expenditures from revenue generated by CPL application fees. However, according to the MSP, revenue from each CPL application fee is expended as follows: \$30 for MSP fingerprint check, \$14.50 for FBI fingerprint check, and \$19.50 for MSP recordkeeping, administrative, and information technology support costs and departmental overhead.

The MSP estimates that the administrative and investigative responsibilities under SB 34 (H-1) would require an additional 13.0 FTEs and approximately \$1.3 million per annum in additional funding. Due to the lack of sufficient classification detail related to the CJIC Fees fund within the state's account system, it is not possible to assess whether current revenue specifically generated by the CPL application fees is adequate to support the \$1.3 million in additional estimated costs.² Yet, the MSP has indicated that the adjustments to initial and renewal application fee amounts and distribution would support the estimated administrative and investigative costs engendered by SB 34 (H-1).

Local Units of Government

County Clerks' Offices

County clerks' offices (clerks) would continue to receive \$26 of each CPL application fee but would be statutorily responsible for many of the administrative responsibilities currently vested in CWLBs as well as some additional administrative duties. However, clerks currently act as the clerks for CWLBs and are likely performing many of the administrative functions of the CWLBs that would be vested with clerks under SB 34 (H-1).

County Sheriffs' Offices

Sheriffs' currently receive \$15 of each CPL application and are potentially subsequently remunerated (out of the \$26 allocated to clerks) for their costs to provide CPL applications, serve on CWLBs, take fingerprints, and perform name-based background checks. Under

¹ Data pertaining to annual CPL applications classified by initial and renewal applications was not available at the time this analysis was performed. Such parsed data is required to estimate the fiscal impact of the differentiation and adjustment to CPL application fees under SB 34 (H-1).

² Prior to FY 2011-12 significant amounts (ranging from \$1,000 to \$1.2 million per annum, totaling \$6.7 million since FY 1994-95) of unexpended and unencumbered revenue within the CJIC Fees fund year lapsed into the General Fund at the close of each fiscal year. However, since FY 2011-12 and projected through FY 2017-18, significant expenditures have been or are projected to be made from the from the CJIC Fees fund for the improvement and enhancement of several information technology systems utilized by the MSP (i.e., \$3.4 million related to the Automated Incident Capture System (AICS) was approved in FY 2011-12 and is estimated for completion during FY 2014-15; \$3.8 related to the Dashboard, electronic Automated Incident Capture System (eAICS), Statewide Network of Agency Photos (SNAP), and the Criminal History Records Internet Subscription Service (CHRISS) was approved in FY 2012-13 and is estimated for completion during FY 2016-17; and \$7.7 million related to the Automated Fingerprint Identification System (AFIS) and the Criminal History Records Internet Subscription Service (CHRISS) was approved in FY 2013-14 and is estimated for completion during FY 2017-18.)

SB 34 (H-1), the CPL application fee would be reduced by \$15 and sheriffs would no longer receive \$15 from the CPL application fee, nor would sheriffs be responsible for any of the above duties. However, sheriffs would be able to charge a \$15 fee for taking fingerprints as would the MSP, clerks, and local law enforcement agencies.

County Prosecutors' Offices

County prosecutors' offices (prosecutors) are currently able to serve on CWLB, presenting evidence and providing notification pertaining to CPL applicants and holders, and are potentially subsequently remunerated (out of the \$26 allocated to clerks) for their costs of performing these duties. Under SB 34 (H-1), prosecutors would no longer have any statutory responsibilities pertaining to the application for and the evaluation and issuance of CPLs.

BACKGROUND INFORMATION:

According to survey data collected by MSP from counties for the period from July 2012 through June 2013 and exhibited in the table below, the expenditures incurred by counties in performing their responsibilities related to the application for and the evaluation and issuance of CPLs varies widely and does not appear to be correlated with county population. However, assuming the accuracy of the survey data, the aggregate amounts (i.e., weighted averages for the per CPL data) seem to indicate that the current fees were nearly sufficient for the "average" county to perform their responsibilities during the reporting period.

**County CPL Fiscal Data
07/01/12-06/30/13**

County	Number of CPLs	Revenue (\$41/CPL)	Expenditures	Net Income (Loss)	Expenditure per CPL	Net Income (Loss) per CPL
Alcona	283	\$11,603	\$13,813	(\$2,210)	\$48.81	(\$7.81)
Alger	NA	NA	NA	NA	NA	NA
Allegan	NA	NA	NA	NA	\$39.05	\$1.95
Alpena	519	\$21,279	\$19,937	\$1,342	\$38.41	\$2.59
Antrim	318	\$13,038	\$20,492	(\$7,454)	\$64.44	(\$23.44)
Arenac	138	\$5,658	\$8,359	(\$2,701)	\$60.57	(\$19.57)
Baraga	NA	NA	NA	NA	NA	NA
Barry	1,012	\$41,492	\$20,512	\$20,980	\$20.27	\$20.73
Bay	1,428	\$58,548	\$66,792	(\$8,244)	\$46.77	(\$5.77)
Benzie	133	\$5,453	\$1,367	\$4,086	\$10.28	\$30.72
Berrien	1,537	\$63,017	\$69,174	(\$6,157)	\$45.01	(\$4.01)
Branch	454	\$18,614	\$44,737	(\$26,123)	\$98.54	(\$57.54)
Calhoun	NA	NA	NA	NA	\$70.63	(\$29.63)
Cass	702	\$28,782	\$27,753	\$1,029	\$39.53	\$1.47
Charlevoix	283	\$11,603	\$18,477	(\$6,874)	\$65.29	(\$24.29)
Cheboygan	467	\$19,147	\$20,842	(\$1,695)	\$44.63	(\$3.63)
Chippewa	433	\$17,753	\$22,823	(\$5,070)	\$52.71	(\$11.71)
Clare	NA	NA	NA	NA	NA	NA
Clinton	1,419	\$58,179	\$56,418	\$1,761	\$39.76	\$1.24

Crawford	206	\$8,446	\$8,515	(\$69)	\$41.34	(\$0.34)
Delta	537	\$22,017	\$24,692	(\$2,675)	\$45.98	(\$4.98)
Dickinson	312	\$12,792	\$16,619	(\$3,827)	\$53.27	(\$12.27)
Eaton	1,765	\$72,365	\$63,386	\$8,979	\$35.91	\$5.09
Emmet	NA	NA	NA	NA	\$213.78	(\$172.78)
Genesee	6,441	\$264,081	\$170,482	\$93,599	\$26.47	\$14.53
Gladwin	479	\$19,639	\$14,532	\$5,107	\$30.34	\$10.66
Gogebic	145	\$5,945	\$2,831	\$3,114	\$19.52	\$21.48
Grand Traverse	1,254	\$51,414	\$41,660	\$9,754	\$33.22	\$7.78
Gratiot	620	\$25,420	\$8,395	\$17,025	\$13.54	\$27.46
Hillsdale	711	\$29,151	\$13,671	\$15,480	\$19.23	\$21.77
Houghton	285	\$11,685	\$10,038	\$1,647	\$35.22	\$5.78
Huron	389	\$15,949	\$8,951	\$6,998	\$23.01	\$17.99
Ingham	2,489	\$102,049	\$192,350	(\$90,301)	\$77.28	(\$36.28)
Ionia	925	\$37,925	\$13,679	\$24,246	\$14.79	\$26.21
Iosco	NA	NA	NA	NA	\$22.04	\$18.96
Iron	210	\$8,610	\$7,829	\$781	\$37.28	\$3.72
Isabella	NA	NA	NA	NA	\$163.00	(\$122.00)
Jackson	2,037	\$83,517	\$93,074	(\$9,557)	\$45.69	(\$4.69)
Kalamazoo	NA	NA	NA	NA	NA	NA
Kalkaska	269	\$11,029	\$7,791	\$3,238	\$28.96	\$12.04
Kent	4,530	\$185,730	\$176,531	\$9,199	\$38.97	\$2.03
Keweenaw	34	\$1,394	\$2,296	(\$902)	\$67.53	(\$26.53)
Lake	216	\$8,856	\$37,684	(\$28,828)	\$174.46	(\$133.46)
Lapeer	1,755	\$71,955	\$97,634	(\$25,679)	\$55.63	(\$14.63)
Leelanau	199	\$8,159	\$10,378	(\$2,219)	\$52.15	(\$11.15)
Lenawee	NA	NA	NA	NA	\$34.95	\$6.05
Livingston	3,302	\$135,382	\$127,579	\$7,803	\$38.64	\$2.36
Luce	120	\$4,920	\$6,088	(\$1,168)	\$50.73	(\$9.73)
Mackinac	185	\$7,585	\$18,124	(\$10,539)	\$97.97	(\$56.97)
Macomb	NA	NA	NA	NA	NA	NA
Manistee	255	\$10,455	\$13,459	(\$3,004)	\$52.78	(\$11.78)
Marquette	1,099	\$45,059	\$3,561	\$41,498	\$3.24	\$37.76
Mason	441	\$18,081	\$19,146	(\$1,065)	\$43.42	(\$2.42)
Mecosta	622	\$25,502	\$15,961	\$9,541	\$25.66	\$15.34
Menominee	264	\$10,824	\$17,429	(\$6,605)	\$66.02	(\$25.02)
Midland	1,183	\$48,503	\$122,398	(\$73,895)	\$103.46	(\$62.46)
Missaukee	231	\$9,471	\$3,830	\$5,641	\$16.58	\$24.42
Monroe	2,648	\$108,568	\$109,176	(\$608)	\$41.23	(\$0.23)
Montcalm	634	\$25,994	\$67,997	(\$42,003)	\$107.25	(\$66.25)
Montmorency	189	\$7,749	\$8,936	(\$1,187)	\$47.28	(\$6.28)
Muskegon	2,055	\$84,255	\$52,338	\$31,917	\$25.47	\$15.53
Newaygo	768	\$31,488	\$64,852	(\$33,364)	\$84.44	(\$43.44)
Oakland	16,668	\$683,388	\$546,274	\$137,114	\$32.77	\$8.23
Oceana	NA	NA	NA	NA	\$60.65	(\$19.65)
Ogemaw	351	\$14,391	\$18,288	(\$3,897)	\$52.10	(\$11.10)
Ontonagon	99	\$4,059	\$428	\$3,631	\$4.32	\$36.68
Osceola	405	\$16,605	\$25,973	(\$9,368)	\$64.13	(\$23.13)
Oscoda	133	\$5,453	\$5,487	(\$34)	\$41.26	(\$0.26)
Otsego	353	\$14,473	\$3,127	\$11,346	\$8.86	\$32.14
Ottawa	2,753	\$112,873	\$121,251	(\$8,378)	\$44.04	(\$3.04)
Presque Isle	225	\$9,225	\$13,353	(\$4,128)	\$59.35	(\$18.35)

Roscommon	348	\$14,268	\$6,071	\$8,197	\$17.45	\$23.55
Saginaw	2,565	\$105,165	\$122,960	(\$17,795)	\$47.94	(\$6.94)
St. Clair	2,608	\$106,928	\$115,697	(\$8,769)	\$44.36	(\$3.36)
St. Joseph	840	\$34,440	\$36,018	(\$1,578)	\$42.88	(\$1.88)
Sanilac	545	\$22,345	\$40,870	(\$18,525)	\$74.99	(\$33.99)
Schoolcraft	136	\$5,576	\$6,332	(\$756)	\$46.56	(\$5.56)
Shiawassee	1,432	\$58,712	\$61,099	(\$2,387)	\$42.67	(\$1.67)
Tuscola	940	\$38,540	\$21,886	\$16,654	\$23.28	\$17.72
Van Buren	971	\$39,811	\$41,798	(\$1,987)	\$43.05	(\$2.05)
Washtenaw	3,124	\$128,084	\$118,773	\$9,311	\$38.02	\$2.98
Wayne	23,763	\$974,283	\$1,096,389	(\$122,106)	\$46.14	(\$5.14)
Wexford	454	\$18,614	\$9,989	\$8,625	\$22.00	\$19.00
AGGREGATE						
(All Counties Submitting Detailed Data)	107,643	\$4,413,363	\$4,497,454	(\$84,091)	\$41.78	(\$0.78)

SOURCE: Annual survey form distributed by MSP to the 83 county clerks' offices for the reporting period from 07/01/12 to 06/30/13.

NOTE: Some counties did not provide any data, while other counties provided only partial data; either omitting unidentified related costs borne by relevant entities or aggregate amounts which cannot be imputed *ex post*.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Paul Holland

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

EXHIBIT 3

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CYNTHIA A. LUCZAK, BAY COUNTY
CLERK,

Plaintiff/Appellant,

Case No.: 331455

v.

THOMAS L. HICKNER, Bay County
Executive and BAY COUNTY BOARD OF
COMMISSIONERS,

Defendants/Appellees.

CLARK HILL, PLC

BY: MATTHEW T. SMITH (P46754)
JOSEPH W. COLAIANNE (P47404)

Attorneys for Plaintiff/Appellant

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Lansing, Michigan 48906

Telephone: 517-318-3100

Facsimile: 517-318-3099

JColaianne@ClarkHill.com

BOMMARITO LAW OFFICES, PLLC

BY: ALEXANDER D. BOMMARITO (P62704)

Attorney for Defendants/Appellees

180 E. Washington Road, P.O. Box 189

Freeland, Michigan 48623

Telephone: 989-573-5300

Facsimile: 855-573-5373

adb@freelandlaw.net

AFFIDAVIT OF AMBER L. DAVIS-JOHNSON

STATE OF MICHIGAN)

ss.

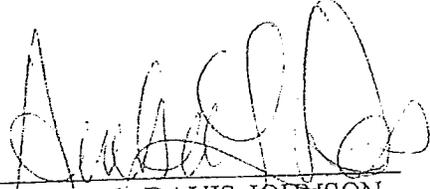
COUNTY OF BAY)

I, AMBER L. DAVIS-JOHNSON, being first duly sworn, depose and say as follows:

1. That I am Corporation Counsel for Bay County, Michigan, and make this Affidavit in that capacity.

2. That this Affidavit is based upon my personal knowledge.
3. That if sworn as a witness, I can testify competently to the facts stated herein.
4. That as Corporation Counsel, I attempted to assist the County Clerk by offering to retain an independent outside consultant, at the County's expense, to compile and present information to the Board regarding mandated functions of the County Clerk's Office to determine what functions may have needed to be supplemented through additional staff or funding. I suggested the retention of an independent consultant due to the allegations the Clerk made in her initial letter to me dated June 8, 2015 wherein she requested the appointment of outside legal counsel to "investigate discriminatory behavior perpetrated against my official position and the Bay County Clerk's office by the Bay County Board of Commissioners."
5. That I requested, and the Board of Commissioners approved, the retention of an outside independent expert consultant to conduct an analysis, with the assistance and cooperation of MS. LUCZAK, of the work flow in the County Clerk's Office, and make a recommendation on necessary staffing or other funding needs.
6. That despite repeated requests, CYNTHIA LUCZAK refused to work with the consultant or provide any information to the Board of Commissioners or the County Executive as to which of the functions as mandated by statute or the Michigan constitution her office was unable to perform at a serviceable level.
7. That prior to the filing of the companion Bay County Circuit Court lawsuit, I had discussions with the attorney for MS. LUCZAK, and was advised that the requested information regarding what mandated functions the County Clerk's Office was unable to perform at a serviceable level would not be provided until Bay County paid MS. LUCZAK's attorney fees in the amount of approximately \$20,000 to \$25,000.00.
8. That it was not until after the Bay County Circuit Court lawsuit was filed, and discovery requests were responded to, that MS. LUCZAK provided the requested information in any fashion such that the County Executive could make any recommendations to the County Board of Commissioners regarding staffing in the Bay County Clerk's Office.
9. That based upon the information provided, the County Executive made a recommendation of one (1) additional staff person for the County Clerk's Office, and that recommendation was approved by the Board of Commissioners for the 2016 budget year.

Further, Affiant sayeth not.


AMBER L. DAVIS-JOHNSON

Subscribed and sworn to before me, a Notary Public, this 10th day of
March, 2016.

Debra A. Russell
Debra A. Russell, Notary Public
Bay County, Michigan
My commission expires: 10-4-2021
Acting in the County of: Bay

EXHIBIT 4

**CIVIL COUNSEL GUIDELINES
BAY COUNTY, MICHIGAN**

1. The Department of Corporation Counsel:

The Bay County Department of Corporation Counsel (the "Department") was created on April 10, 1979 pursuant to Bay County Board of Commissioners' Resolution No. 79074, as authorized by MCL 45,563(e). The director of the Department is the Corporation Counsel. Additional attorneys hired to provide legal services in the Department shall be designated Assistant Corporation Counsel. Corporation Counsel and Assistant Corporation Counsel shall be attorneys licensed to practice law in the State of Michigan.

2. Powers and Duties of the Department:

A. Except as otherwise provided by law or this Policy, the Department shall, in all matters related to County business;

1. Perform all civil law functions for the County;
2. Provide property acquisition services for the County as provided by law;
3. Represent the County in all civil actions in which the County is a party; and
4. Represent County elected officials in any civil action in which:
 - i. the County elected official is named as a Defendant; and
 - ii. the subject matter involves official acts or duties of the office of the County elected official.

Corporation Counsel shall make the legal determination as to whether any such civil action involves an official act or duty of that County elected official's office that would necessitate representation by the Department, outside legal counsel, or would not necessitate representation. These services shall not be performed on behalf of any component unit of the County or individuals appointed to those component units' boards unless otherwise mandated by law or agreed upon in writing between the duly authorized representative of the component unit with authority to bind that unit and the County Executive, subject to the approval of the Board of Commissioners.

B. The Department is authorized to retain outside legal services on behalf of and in representation of the County, the County Commission, the County Executive and all County elected officials or individuals appointed to a County elected official's position, County Entities, employees, departments, divisions, officers, agencies and instrumentalities and their directors, trustees, officers and employees in matters in which he, she or it is involved as the result of any official act or duty of office.

C. The provision of legal services and representation as set forth in this Policy shall be within the limits provided by Michigan Law and the Michigan Rules of Professional Conduct.

3. Retention of Outside Counsel:

A. No County Entity other than the Department is authorized to retain outside legal counsel. A County Entity may submit to Corporation Counsel a written request to retain outside legal counsel. Any written request must comply with section 3.B. of this Policy. A request for retention of outside legal counsel shall not be approved unless the request complies with section 3.B. Corporation Counsel shall evaluate the request and, after consultation with the County Entity, either:

- (i) approve the request and arrange for retention of outside legal counsel within the scope and limits determined by Corporation Counsel to be necessary and appropriate for each matter; or
- (ii) reject the request, providing a written notice to the County Entity explaining the basis of the rejection. If the rejection of the request is based solely upon lack of funding, the rejection must so state and the County Entity may request an appropriate budget adjustment to adequately cover the cost of the retention.

B. Any request to Corporation Counsel for retention of outside counsel must:

- (i) Be submitted in writing;
- (ii) Be reasonable and necessary;
- (iii) Explain the need to retain outside legal counsel;
- (iv) Set forth the reasons why the Department cannot or may not handle the matter;
- (v) Indicate that the County Entity has verified that there are sufficient funds available in the portion of the Department's budget allocated to retention of outside legal counsel and, if sufficient funds are not available in the Department's budget, that the County Entity requesting the retention has the funds or will have the funds to pay for the outside legal services and shall identify the account from which the outside legal services will be paid.

- C. Unless otherwise specified in this Policy, no elected or appointed County official, County Entity, employee, department, division, officer, agency or instrumentality or their directors, trustees, officers or employees is authorized to retain outside legal counsel.
- D. Notwithstanding any provision of this Policy to the contrary, outside legal counsel shall not be retained and a contract for legal services shall not be awarded unless the retention is in compliance with the County's Purchasing Policy.
- E. The Department shall not provide legal services to, retain outside legal counsel for or on behalf of an individual who is a Defendant in a criminal matter.

4. County Entities As Adverse Parties:

The Department represents the County as an organization and is responsible for directing all legal affairs for the County. Litigation between separate County Entities constitutes a conflict of interest for the Department. In the event that two County Entities are to be adverse parties in litigation, the Department shall in good faith (after receiving input from and conferring with each adverse County entity) select and retain independent legal counsel on behalf of each County Entity, subject to the following procedures, parameters and limitations:

- A. The plaintiff County Entity must notify the Department prior to instituting legal action and must follow the procedure set forth in section B.(i)-(ii) for the Department to retain outside counsel on its behalf. No attorney fees incurred prior to retention of an attorney by the Department on plaintiff County entity's behalf shall be paid with County funds absent a showing that:
 - (1) There existed an unavoidable, emergency need to retain counsel prior to complying with the requirements of these Guidelines; and
 - (2) The failure to utilize outside counsel before approval and retention by the Department of an attorney for the plaintiff County Entity would have resulted in immediate and irreparable injury or damage to the plaintiff County Entity.
- B. The Department reserves the right, prior to retaining outside counsel for a plaintiff County Entity, to obtain an independent legal opinion from outside counsel as to whether there exists a non-frivolous, legal basis to proceed with legal action against the defendant County Entity. In the event that the independent outside counsel opines that there is no non-frivolous, legal basis to proceed with legal action, Corporation Counsel, in his or her discretion, may decline to retain outside legal counsel for the plaintiff County Entity or may retain such counsel only upon a reservation of rights pending a legal determination of the County's responsibility to retain outside counsel. Should the Department decline to retain outside counsel, no

County funds shall be used to pay for outside legal services until ordered to do so by a court of competent jurisdiction.

- C. The Department shall immediately retain outside counsel on behalf of a defendant County Entity upon notification that it has been served with legal process by a plaintiff County Entity.
- D. The County shall be responsible for the payment of only those legal fees incurred that the Court or administrative agency/tribunal presiding over the dispute between the County entities determines were: (1) necessary; (2) reasonable; and (3) the responsibility of the County under Michigan or federal law.
- E. The County Entities agree in any litigation to request the Court or administrative agency/tribunal make the fee determinations referenced in paragraph III.D. and agree to stipulate to the Department's permissive intervention in the action on behalf of the County for the limited purpose of addressing the County's responsibility for payment of any necessary and reasonable costs and attorney fees incurred by either County Entity.
- F. In the event any action filed by a plaintiff County Entity is adjudicated as frivolous by the presiding Court or administrative agency/tribunal the Department reserves the right to seek reimbursement from any plaintiff County entity of attorney fees advanced by the County.
- G. In the event any action filed by a plaintiff County Entity results in a finding of liability as a result of an intentional tort by the defendant County Entity, the Department reserves the right to seek reimbursement from that defendant County Entity of attorney fees advanced by the County.
- H. The Department shall maintain its duty to the County throughout the course of any litigation between County Entities to oversee the litigation without advocating for either side in order to ensure that each County Entity is adequately represented and that the representation is efficiently handled.
- I. At no time and in no way under these Guidelines is the County obligated to retain or pay for the attorney of a current or former County employee who is sues the County for any adverse employment action.

5. Adherence To This Policy Required:

This Policy shall be strictly enforced. The retention of outside legal counsel contrary to the express provisions of this Policy is prohibited. No funds may be paid by the County to satisfy any claim for services rendered by outside legal counsel unless the requirements of this Policy have been followed.

6. Definitions:

For purposes of this Policy, all words and phrases herein not defined in this section or elsewhere in the Policy shall be construed and understood according to the common and approved usage of the English language. Specific terms listed below shall have the following meanings, unless provided otherwise in this Policy:

The County means the County of Bay.

Component unit of the County means, collectively, all component units, blended component units and discretely presented component units contained within Bay County's Financial Statement which include the Bay County building authority, the Bay County road commission, the Bay County economic development corporation, the Bay County library system, the Bay County department of water and sewer, any distinct Bay County drainage districts, the bay area narcotics enforcement team and the Bay County landbank.

County Commission means, collectively, the individuals elected and/or appointed and currently serving as commissioners of the legislative branch of the County of Bay.

County elected official means an individual who was either elected in a county-wide election or lawfully appointed to that position and who is currently serving as either the county clerk, prosecuting attorney, register of deeds, sheriff, treasurer, county executive, drain commissioner, the judges of the Bay County district, probate and circuit courts or an individual currently serving in any other elected office as defined in MCL 49.73.

County Entity means any and all county elected officials, all currently serving county commissioners, all officials elected in district-wide, as opposed to county-wide elections, the county commission, any and all boards established in whole or in part by Bay County pursuant to any federal or state statutes or by county ordinance, any and all employee retirement, pension and/or benefits systems, all departments, divisions, officers, agencies and instrumentalities and their individual directors, trustees, officers and employees.

County Executive means the individual elected and currently serving as the chief executive officer of the County of Bay.

Defendant County Entity means a county entity that has been served with legal process by another county entity in a state or federal court or administrative tribunal.

Legal action means a legal cause of action in a state or federal court or administrative tribunal. Legal action for purposes of this policy specifically excludes worker's compensation and unemployment agency disputes as well as any matters involving alleged ULPs or labor and employment matters subject to any collective bargaining agreement of which any county entity is a signatory party.

Legal process means service of any summons, complaint or legal papers regarding a legal action brought by a plaintiff county entity.

Outside legal counsel means counsel other than the department of corporation counsel.

Plaintiff County Entity means a county entity that has or intends to imminently file a legal cause of action against another county entity in a state or federal court or administrative tribunal.

The Department means the Bay County department of corporation counsel and its individual members which includes corporation counsel and assistant corporation counsel.

This Policy means these Civil Counsel Guidelines.