

KATHERINE C. KERWIN

██████████ Grosse Pointe Park, MI 48230
██████████
████████████████████

WORK EXPERIENCE

State of Michigan Department of Attorney General

02/13/17 - Present

Detroit, MI

Assistant Attorney General

- Section Head Attorney over state court litigation for the Collections Division. Manages, trains, and leads a group of diverse attorneys in substantive case work and employment matters.
- Managed the collection of millions of dollars for the State by representing the State in significant legal issues. Protects the State from monetary liability in various lawsuits.
- Represents various State departments at meetings, hearings, and legal proceedings in state and federal court. Synthesizes and communicates complex legal issues for state employees and non-attorneys.
- Advocates for the State by maintaining expertise on important regulations, laws, decisions, and other precedents affecting the State. Drafts legal opinions, memoranda, and advice.
- Highly skilled in all aspects of litigation, including pre-litigation research and subpoenas, filing complaints, defending lawsuits, discovery, expert witness, depositions, drafting motions, evidentiary hearings, significant negotiations, and appeals.
- Serves as the Assistant Freedom of Information Act coordinator, reviewing, responding, and defending requests under the Freedom of Information Act.

The Law Office of Carr and Associates

11/13/09 - 02/12/17

Mt. Clemens, MI

Partner

- Represented businesses and individuals in various legal matters including litigation, contract negotiation and drafting, construction lien foreclosure, bankruptcy, and insurance claims.
- Managed and executed all aspects of litigation, including pre-litigation research and negotiation, filing a complaint, taking depositions, discovery, motions, trial, appeals, and post-judgment collections.
- Provided legal advice and representation to diverse business and individuals on issues such as contract drafting and negotiation, business organization, pre-litigation negotiation, and settlements.
- Managed hiring and employment issues for the firm.

VOLUNTEER EXPERIENCE

League of Women Voters

2020 - Present

The League of Women Voters is a nonpartisan political organization that empowers voters and defends democracy by encouraging the informed and active participation of citizens in government. We oppose partisan and racial gerrymandering that strips rights away from voters and influence public policy through education and advocacy. We work to uphold the Voting Rights Act of 1965.

Junior League of Detroit

2008 - Present

State Public Affairs Committee of the Michigan State Council

2020 - Present

Nonpartisan committee that meets regularly with community and state leaders to advocate on behalf of those who do not have a voice. Educates members and the public on important issues involving human trafficking and child foster care. Educates members on the legislative process in Michigan.

Secretary of the Board of Directors

2014 - 2016

Organized board meetings, maintained and distributed meeting minutes. Implemented parliamentary procedure established by Robert's Rules of Order for meetings. Advised board of directors on pertinent governance matters and ensured compliance. Updated and revised bylaws. Monitored general membership meetings for compliance with applicable rules and procedure.

EDUCATION

University of Detroit Mercy School of Law

05/03/09

Detroit, Michigan

Juris Doctor

University of Michigan

12/13/05

Ann Arbor, Michigan

Bachelor of Arts

ADMISSION

State Bar of Michigan

11/13/09

P-73070

KATHERINE C. KERWIN

[REDACTED] Grosse Pointe Park, MI 48230
[REDACTED]
[REDACTED]

October 26, 2020

Michigan Independent Citizens Redistricting Commission
Michigan Department of State
PO Box 30318
Lansing, MI 48909

Re: General Counsel Position

Dear Commission:

Thank you for the opportunity to apply for the general counsel position with the Michigan Independent Citizens Redistricting Commission. You are carrying out a mission that I believe is extremely important. If chosen as the general counsel, I will do everything in my power to support the Commission and its goals.

I currently serve as the Assistant Attorney General for the State of Michigan. As such, I work on significant legal issues that have great impact on our state and community. Recently, I was chosen to advise Governor Whitmer's office on legal and law enforcement issues arising from her executive orders, as well as responding to questions and concerns from citizens and local governments.

As you can see from my responses to the supplemental questions and my resume, I have extensive experience in leadership, litigation, delivering written and oral legal advice, personnel issues, contracts, and knowledge of the Commission's requirements under the Open Meetings Act and Voting Rights Act of 1965. My experience comes from many years of legal practice in the public and private sector, as well as volunteer experience with the Junior League of Detroit and League of Women Voters.

As a servant leader who works with a diverse and talented group of people, my focus is on finding solutions to problems through positive leadership and collaboration with a team.

When I educate and communicate with staff, I am known for taking complex legal principles and synthesizing them into concepts that are easy for non-lawyers to understand. I believe that there is no legal question that cannot be answered, and I am always ready to come up with a creative solution to a problem.

Looking at my resume you will see that I meet and exceed the clear requirements for the general counsel position. However, what you cannot see from my resume is my deep personal commitment to fairness and equity under the law, with an insistence on integrity in all my encounters. I have practiced in state and federal courts across the State of Michigan and have cultivated a reputation of integrity, trustworthiness, and excellence in practice.

If chosen to be the general counsel of the Commission, it will be my goal to lead and protect the Commission and its commissioners from liability and to ensure that they achieve their mission to meet the requirements of Article IV Sec. 6 of the Michigan Constitution. I look forward to the opportunity to meet in person and further discuss my qualifications. Thank you for your time and consideration.

Sincerely,

[REDACTED]
Katherine C. Kerwin

**Michigan Independent Citizens Redistricting Commission
Application for General Counsel
Katherine C. Kerwin**

Supplemental Questions

1. Are you an active member of the state bar of Michigan, in good standing?

Yes. I was licensed in 2009 and my P number is 73070.

2. How many years of experience do you have in the practice of law?

- 10 or more years

3. How many years of experience do you have working in the public sector and/or Michigan state government?

- 1-4 years

4. Describe your leadership approach and explain how you have implemented this approach in your current/previous position(s).

My leadership approach is servant leadership. Being a servant leader may seem like a contradiction, but it is one of the most effective leadership approaches when leading a team. As a servant leader, I give the members of my team what they need to succeed and put the needs of others before my own to end up at the best outcome for the project.

In my current position as an Assistant Attorney General and head of state court litigation, I supervise a diverse group of talented attorneys and work with non-attorney staff. As a servant leader, I learn what my team wants to accomplish, and what they need to accomplish it. For example, an attorney may come to me with a legal question. I will share the right laws and examples to guide the attorney toward arriving at the right answer and assist whenever I am needed. When she achieves her excellent outcome, I have fulfilled my duty as a servant leader.

I will do the same as the general counsel of the Commission. By establishing a good working relationship with the members of the commission, members will learn that they can come to me with any question and I will give them everything they need to succeed and make sure the commission is in compliance with the law. In addition, I will take a proactive approach to ensure compliance with the Michigan Constitution, Voting Rights Act, and Opening Meetings Act by stepping in when needed and delivering oral or written legal advice. I would be honored to serve the commission in this capacity.

5. Do you have experience with the Open Meetings Act and parliamentary procedure established by Robert's Rules of Order for meetings?

I served on the Board of Directors of the Junior League of Detroit as the recording secretary. As such, I was tasked with implementing and following Robert's Rules of Order for meetings. I also trained the incoming secretary in Robert's Rules of Order. I am very comfortable implementing and following Robert's Rules of Order.

The Junior League of Detroit is a non-profit, private organization and, therefore, the meetings are not subject to the Open Meetings Act. However, I have studied the Open Meetings Act extensively and have a very good working knowledge of the act. I am ready to advise the Commission on its requirements and duties under the Open Meetings Act to ensure that the Commission can achieve its ultimate goal of fairly redistricting the State, and protect it from any liability.

6. How many years of experience do you have advising public boards, commissions or governing bodies?

- 1-4 years. My experience comes from my time representing the State of Michigan and its various departments.

7. Describe your experience with litigation and/or managing litigation counsel.

I have extensive litigation experience in both state and federal court. I have independently handled hundreds of cases from start to finish, from pre-litigation investigation through trial. I have experience with cross examining expert witnesses, taking depositions, and I have strong legal research and writing skills that help me achieve excellent outcomes in court. My litigation style is to always be prepared far in advance and tackle problems early on in a case. I have practiced in state courts in counties across the State of Michigan, federal courts across the country, and the Michigan Supreme Court. I am a respectfully aggressive, highly prepared litigator and I have cultivated an excellent reputation among judges and legal colleagues across the state.

As an Assistant Attorney General who represents various State departments, I do not typically manage litigation counsel. However, I have been hired as outside counsel in the past, so I understand the importance of supporting the litigation counsel by providing as much information as I can. Even more important, the general counsel for the Commission must work within a litigation budget and make sure that the litigation counsel is accomplishing her goals while staying within the budget. As an experienced litigator, I know what work is required in a case and how long that work should take. I would require a commitment to strong communication and transparency from any outside litigation counsel that the Commission hired.

8. Do you have experience with the implementation and/or enforcement of federal redistricting law, including the Voting Rights Act of 1965?

I joined the League of Women Voters in 2020 because I value nonpartisan education to voters, which is particularly valuable for the upcoming election this year. In addition, the League of Women Voters was an instrumental organization in getting the constitutional amendment on the ballot in 2018 to make citizens, not legislators or special interest groups, responsible for drawing district lines.

I have substantial knowledge of the Voting Rights Act of 1965 through my involvement with the League of Women Voters and personal research. I support the spirit and letter of the Voting Rights Act and hope to have the opportunity to achieve its intended outcome as general counsel of the Commission.

9. Provide a writing sample (i.e. sample memorandum)

I am providing two writing samples. The first is a memorandum that I drafted as part of my application for the general counsel position to show how I may deliver legal advice to the Commission. The memorandum is dated October 6, 2020, several days after the Michigan Supreme Court held most of Governor Whitmer's Executive Orders to be unconstitutional. The memorandum answers the question of whether the Commission may hold virtual meetings in light of Governor Whitmer's Executive Order 2020-154 being set aside by the Michigan Supreme Court.

The second sample is a brief that shows my expertise and clarity in legal research and writing.

MICHIGAN CITIZENS REDISTRICTING COMMISSION

MEMORANDUM

October 6, 2020

TO: Michigan Citizens Redistricting Commission Members

FROM: Katherine C. Kerwin
General Counsel

RE: Michigan Citizens Redistricting Commission's Compliance with the Open Meetings Act During the COVID-19 Pandemic

With the Michigan Supreme Court's recent opinion holding Governor Whitmer's Executive Order 2020-154, "Alternative means to conduct government business during the COVID-19 pandemic," to be unconstitutional, you have asked for legal advice regarding the following question: **May the Michigan Citizen Redistricting Commission hold its next meeting via video or phone conference?**

Conclusion/Recommendation:

Executive Order 2020-154 modified the Open Meetings Act ("OMA")¹ to allow meetings of public bodies to be held electronically. On October 2, 2020, the Michigan Supreme Court issued an opinion holding Executive Order 2020-154, among others, to be unconstitutional. Accordingly, it is recommended that the Michigan Citizens Redistricting Commission ("Commission") either reschedule its next meeting, or hold the meeting in person.

Rule:

The OMA generally requires that a meeting of a public body be held in a physical place available to the general public and requires the physical presence of members of a public body.

Analysis:

In the midst of the COVID-19 pandemic, Governor Whitmer issued Executive Order 2020-154, which suspended the strict requirements of section 3 of the OMA and allowed public bodies to meet electronically via video or phone conference. The Commission met virtually via Zoom for meetings held through October 1, 2020.

On October 2, 2020, the Michigan Supreme Court issued an opinion that held Executive Order 2020-154, among others, to be unconstitutional. On October 12, 2020, the Michigan Supreme Court denied Governor Whitmer's request to extend the executive orders related to the COVID-19 pandemic for 28 days. As such, the OMA, as written, is the current law that governs the Commission's meetings.

Accordingly, it is my recommendation to the Commission that the next meeting may not be held virtually. Instead, the meeting should be rescheduled to a later date or held in person, in compliance with the OMA. If the meeting is held in person, members and guests should practice social distancing and wear masks, in compliance with orders from the Michigan Department of Health and Human Services.

Legislative Forecast:

On October 5, 2020, Senate Bill 1108 and House Bill were introduced to amend the OMA to allow for virtual meetings to take place and suspending other requirements, if specific circumstances are met. We

¹1976 PA 267, as amended, MCL 15.261 to 15.271

will monitor the process of the amendment. It is anticipated that the bills will be expeditiously approved. If the bills are approved, the Commission's next meeting after the date approval may be scheduled virtually.

Conclusion:

The Michigan Citizens Redistricting Commission should reschedule its next meeting or hold the meeting in person in compliance with the OMA.

KCK

**Michigan Independent Citizens Redistricting Commission
General Counsel
Katherine C. Kerwin
Writing Sample**

**BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION OF
AUGUST 23, 2018 FINAL ORDER OF THE COURT AND
REQUEST FOR STAY PENDING APPEAL**

[This section omitted in the writing sample.]

Background

This action was commenced to recover the cost to the State of Michigan of the incarceration of Defendant Prisoner Austin M. Blair, #976581, pursuant to the *State Correctional Facility Reimbursement Act* (SCFRA), MCL 800.401 *et seq.*, as amended. The Plaintiff filed a Complaint and Motion to Show Cause against Prisoner Blair on May 25, 2018 alleging that assets in the approximate amount of \$17,692.82 in Prisoner Blair's prison account were assets as defined in the SCFRA and are therefore subject to the claim of the State Treasurer for reimbursement to the State for Prisoner Blair's cost of care.

The State appeared for a hearing on July 23, 2018. Prisoner Blair did not appear for the hearing. At the hearing, the State argued it was entitled to the full 90% of the assets in Prisoner Blair's account pursuant to MCL 800.403. The State further argued that Prisoner Blair had no moral or legal obligations that may entitle to him to a defense under SCFRA, pursuant to MCL 800.404(5). Prisoner Blair has no spouse, minor children, or other dependents.

Although Prisoner Blair did not file a formal answer to State Treasurer's complaint or appear for a hearing, he did send a letter to the court and a copy to

counsel for State Treasurer. Prisoner Blair did not argue that he had any moral or legal obligations to a spouse, minor children, or other dependents. The letter gave a background of his childhood, his hope for a better future, and the fact that he would like to keep some of the funds held in his prison account to use when he is released from prison. The letter did not indicate that the funds held in Prisoner Blair's prison account were needed for a moral or legal obligation to provide for dependents.

At the July 23, 2018 hearing, the court adjourned the matter to hold another hearing where Prisoner Blair could appear by phone to raise his defenses. On August 23, 2018, Plaintiff appeared for the adjourned hearing. Prisoner Blair appeared by telephone, and a phone conference was held in Judge Druzinski's chambers. Unfortunately, there is no record of the phone conference. During the phone conference, Judge Druzinski gave Prisoner Blair the opportunity to present his defenses to the SCFRA. Prisoner Blair stated that he did not have any children or a spouse. He further stated that his mother would not be able to support him once he was released from prison because she was moving to another state, and his aunt and uncle would not be able to support him because they had their own children. He further stated that he was taking college courses while at the prison, he had received a Pell Grant and intended to attend Mott Community College upon his release from prison, and that he had a job lined up at his uncle's business.

The court took the matter under advisement and later issued an order awarding the State Treasurer \$5,000.00 out of the \$17,692.82 being held in Prisoner Blair's prison account.

Legal Argument

The SCFRA provides no exemption or defense that allows an inmate to avoid the SCFRA to keep assets for his own use once released from prison. The only exemption or defense is if the inmate has a moral or legal obligation to provide for a dependent, pursuant to MCL 800.404(5). MCL 800.404(5) states:

At the hearing on the complaint and order and before entering any order on behalf of the state against the defendant, the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, or other dependents and any moral obligation to support dependents to whom the defendant is providing or has in fact provided support.

Prisoner Blair's general argument that he needed the funds being held in his prison account to use when he was released from prison does not meet the requirements of MCL 800.404(5).

If an inmate raises the issue of support obligations, the court *must* take such obligations into consideration before entering an order. *State Treasurer v Downer*, 199 Mich App 477, 448 (1993). SCFRA requires a court to "consider" a prisoner's moral and legal obligations to support dependents, but not to consider the prisoner's obligations to pay creditors. It further does not allow the prisoner the opportunity to choose to pay these support obligations instead of or before his statutory obligation to reimburse the State for his cost of care. *State Treasurer v Sheko*, 218 Mich App 185, 189 (1996). However, Prisoner Blair did not argue that he has any moral or legal obligations to support dependents. It appears that the court considered other obligations of Prisoner Blair, which is not provided for by the SCFRA and in

contravention of *State Treasurer v Sheko*, in awarding the State less than 90% of the asset.

The Court of Appeals considered a similar issue in *State Treasurer v Chauncey*, 2016 Mich App LEXIS 1377, an unpublished opinion, attached hereto at Exhibit A. While the case is not binding, the facts are similar, and the Court of Appeals considered binding case law in making its decision.

In *Chauncey*, an inmate received funds from a life insurance policy where he was the sole beneficiary of his deceased grandmother's insurance policy. The inmate argued that his grandmother had intended for him to split the inheritance three ways between him and his sisters, asking the court to consider this a legal moral obligation that defendant had in regards to the life insurance proceeds. The court awarded 90% of the life insurance policy to the State and 10% to the inmate.

The inmate filed a motion for reconsideration of the order, arguing that the insurance proceeds should be split three ways between him and his sisters, the order was improper because he did not appear for the hearing, and the court did not consider written letters from his mother and sisters before issuing the final order. The trial court granted the motion for reconsideration and ordered a hearing regarding the insurance proceeds. After the hearing, the trial court stated that it was "going to exercise its discretion and its equitable powers and order that the policy...be split three ways." *Id at 5*. The court entered an order accordingly. The State appealed.

The Court of Appeals agreed with the State's argument that a defendant may not elect to pay family members before reimbursing the State and, because his sisters

are not dependents, the inmate cannot claim a moral or legal obligation to his sisters that would usurp the state's entitlement to his assets under the SCFRA. *Id at 8*. The Court of Appeals further agreed with the State that the trial court erred by exercising its equitable and discretionary powers to award defendant's sisters a share in the life insurance proceeds. *Id at 9*.

The ruling of the Court of Appeals is applicable to the instant case. In the same way that the inmate in *Chauncey* argued that he needed to use the insurance proceeds to support his sisters, Prisoner Blair argued that he needed to use the funds in his prison account to care for himself. The court exercised its discretion and equitable powers to award the State only \$5,000.00 and \$12,692.82 to Prisoner Blair.

Under the SCFRA and applicable case law, the only defenses to SCFRA that a court may consider are a moral or legal obligation of a prisoner to support dependents, pursuant to MCL 800.404(5). Although the court has discretion in determining the percentage to award the State in a SCFRA action, that discretion is limited pursuant to MCL 800.404(5) to considering the legal and/or moral obligation of the prisoner to provide support to a spouse, minor child, or other dependent for whom the inmate has in fact provided support.

Prisoner Blair does not have any moral or legal obligations to support dependents, and his argument that he needs the funds in his prison account to use when he is released from prison does not meet the requirement of MCL 800.404(5). Therefore, the State Treasurer is entitled to 90% of the asset, pursuant to MCL 800.403(3). The court's ruling is contrary to the SCFRA and applicable case law,

which constitutes palpable error. Therefore, the State is entitled to reconsideration of the August 23, 2018 Final Order.

The State is currently providing for all of Prisoner Blair's while he is incarcerated. It is estimated that Prisoner Blair's cost of care at his earliest release date from the Department of Corrections of March 14, 2021 will be \$194,280.00 and his cost of care at his maximum release date of October 14, 2025 will be \$374,980.00.

Request for Stay

Plaintiff requests a stay pending appeal and a stay pending the outcome of this Motion for Reconsideration. Pursuant to MCR 2.614(A):

Except as provided in this rule, execution may not issue on a judgment and proceedings may not be taken for its enforcement until 21 days after a final judgment (as defined in MCR 7.202[6]) is entered in the case. If a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from judgment is filed and served within 21 days after entry of the judgment or within further time the trial court has allowed for good cause during that 21-day period, execution may not issue on the judgment and proceedings may not be taken for its enforcement until the expiration of 21 days after the entry of the order deciding the motion, unless otherwise ordered by the court on motion for good cause. Nothing in this rule prohibits the court from enjoining the transfer or disposition of property during the 21-day period.

The August 23, 2018 Final Order is a final judgment as defined in MCR 7.202(6). Accordingly, a stay is in effect. Plaintiff requests that Prisoner Blair's prison account remain frozen to protect the asset, until further order of the court. Plaintiff requests a continued stay pending appeal.

Wherefore, the State request that this Court reconsider its Order of August 23, 2018 and award the State 90% of the assets in Prisoner Blair's prison account pursuant to the State Correctional Facility Reimbursement Act.

