

Indigent Meeting certain standards of poverty, thereby qualifying a criminal defendant for representation by a public defender.

Inferior court Courts of limited jurisdiction.

In forma pauperis In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty.

Information A formal accusation by a prosecutor that the defendant committed a crime. An information is an alternative to an indictment as a means of charging a criminal.

Injunction An order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury.

Instructions Judge's directions to the jury before it begins to deliberate the questions it must answer. Jury instructions include information about law governing the case.

Interlocutory Refers to orders and decrees of a court pronounced during the course of a case; not a final ruling.

Interrogatories Written questions asked by one party of an opposing party, who must answer them in writing under oath; a discovery device in a lawsuit.

Intervention A proceeding in a lawsuit in which a third person is permitted by the court to make him or herself a party.

Issue A disputed point in a disagreement between parties in a lawsuit.

J

Jail A place of incarceration, administered by the county where it is located, where defendants convicted of crimes and sentenced to one year or less are held. In cases involving serious criminal charges where the court denies bail, a defendant may also be held in jail pending trial. Not to be confused with prison. (See Prison)

Joint tenancy A form of legal co-ownership of property (also known as survivorship). At the death of one co-owner, the surviving co-owner becomes sole owner of the property.

Judge A public official who presides in a court of law and decides legal questions. In bench trials, a judge may also make findings of fact. (See also Bench trial) In Michigan, judges preside in the trial courts and Michigan Court of Appeals, but a judge of the Michigan Supreme Court is referred to as "Justice." (See Justice)

Judgment The final disposition of a lawsuit.

Judgment notwithstanding the verdict A judge's decision to rule in a case contrary to the jury's verdict.

Judicial review The authority of a court to review the official actions of other branches of government. Also, the authority to declare unconstitutional the actions of other branches.

Jurisdiction The court's power, right or authority to apply the law in a given case. A court's authority to hear cases, which depends on the type of case and/or whether the parties or the actions in question are connected to the county where the court is located.

Jury A certain number of persons, usually selected from lists of registered voters or licensed drivers, and sworn to inquire of certain matters of fact, and declare the truth upon evidence laid before them during a trial.

Jury panel A list of prospective jurors to serve in a particular court, or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those the clerk selects by lot.

Justiciable claim A claim that is capable of being resolved in the courts.

Justice (title) The title used to refer to the judicial officials who serve on the Michigan Supreme Court. Also used for members of many, but not all, supreme courts of other states and the United States Supreme Court.

Juvenile code The set of laws governing juvenile delinquency proceedings, designated proceedings, and child protective proceedings. See MCL 712A.1 et seq.

Juvenile court Court specifically established to hear cases concerning minors. Since Jan. 1, 1998, these cases are heard in the family division of circuit court.

Juvenile delinquency proceedings Proceedings in the family division of circuit court regarding a minor under age 17 who has 1) committed an offense that would be a crime if committed by an adult; 2) deserted his or her home, 3) been absent from school, 4) repeatedly violated school rules, or 5) disobeyed the reasonable and lawful commands of his/her parents.

K

Kidnapping The felony of knowingly restraining another person with the intent to do one of more of the following: a) hold the person for ransom or reward; b) use the person as a shield or hostage; c) engage in criminal sexual penetration or contact with the person; d) take the person outside the state, or e) hold the person in involuntary servitude. Kidnapping is punishable by

imprisonment for life or any terms of years or a fine of not more than \$50,000, or both. See MCL 750.349. (Also see Unlawful imprisonment)

Killebrew plea A plea which allows a defendant in a criminal case to enter a conditional guilty plea. The plea can be withdrawn if the judge's sentence falls outside sentencing terms negotiated by the prosecutor and defense. See *People v Killebrew*, 416 Mich 189 (1992). (Also see Cobbs Plea)

L

Larceny Stealing; the unlawful taking and carrying away of property belonging to another, with the intent to keep it from the owner.

Lawsuit A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

Leading question A question that instructs a witness how to answer or suggests which answer is desired. These questions are usually prohibited on direct examination.

LEIN Acronym for Law Enforcement Information Network. LEIN, a computerized network used by law enforcement agencies, contains information on active arrest warrants, active PPOs, pre-trial release conditions, driving records, automobile registrations, felony and high misdemeanor convictions, etc.

Liable Legally responsible.

Libel Published words or pictures that falsely and maliciously defame a person, that is, injure his or her reputation. Libel is published defamation; slander is spoken.

Lien A legal claim against another person's property as security for a debt. A lien does not convey ownership of the property, but gives the lienholder a right to have his or her debt satisfied out of the proceeds of the property if the debt is not otherwise paid.

Limitation (statute of) A certain time allowed by statute in which litigation must be brought.

Liquidated damages A form of money payment in an amount specified in advance by a contract or agreement as the sum to be paid if terms were violated.

Litigant Individual bringing a lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

Litigation A case, controversy, or lawsuit.

Living trust A trust set up and in effect during the lifetime of the grantor. Also called inter vivos trust.

Lock-up A municipal holding facility where defendants arrested for crimes may be held temporarily. (See Jail, Prison)

Long-arm statute State laws that give a court jurisdiction to try civil cases in which persons from other states have been sued. Long-arm statutes are commonly employed to allow a local court to exercise jurisdiction over out-of-state motorists who cause automobile accidents within the state.

M

Magistrate Judicial officers who assist judges. Magistrates are not elected; they are appointed by the chief judge of the court where they serve. (Also see Referee)

Majority opinion A written decision by a majority of the appellate judges considering the case, in which the judges announce the court's ruling and the legal basis for the decision. (Also see Concurring opinion, dissenting opinion/dissent)

Malice The intent to commit a wrongful act without just cause or excuse; evil intent, motive, or purpose.

Mandate A judicial command directing the proper officer to enforce a judgment, sentence, or decree.

Manslaughter The unlawful killing of another without premeditation, either voluntary — upon a sudden impulse, for example, a quarrel erupts into a fistfight in which one of the participants is killed; or involuntary — during the commission of an unlawful act not ordinarily expected to result in great bodily harm, or during the commission of a lawful act without proper caution, for example, driving an automobile at excessive speed resulting in a fatal collision. A felony punishable by up to 15 years in prison and/or \$7,500 fine.

Mediation A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.

Memoranda of law Formal written arguments in support of a motion filed in a case.

Mens rea In a criminal case, the state of mind that the prosecution must prove the defendant had in committing the crime; criminal intent. Some crimes require proof of “specific intent,” for example, in a larceny case, the prosecutor must prove the defendant's intent to steal. Other “general intent” crimes do not require such proof.

Merits Issues of legal substance at stake in a case, as opposed to procedural considerations.

Michigan Compiled Laws (MCL) Volumes containing the official version of Michigan statute enacted by the state Legislature. MCLs are published by the Legislative Service Bureau. The acronym “MCL” is used with Michigan statutory cites, e.g., MCL 750.349.

Michigan Compiled Laws Annotated (MCLA) Volumes containing the text of Michigan statutes, plus brief references to applicable case law and legal commentary. MCLs are published by the West Publishing Company.

Michigan Court Rules (MCR) Rules adopted by the Michigan Supreme Court to govern procedures in all state courts.

Michigan Rules of Evidence (MRE) The rules adopted by the Michigan Supreme Court to govern admission of evidence in state courts.

Michigan Rules of Professional Conduct (MRPC) The rules adopted by the Michigan Supreme Court to govern attorney ethics.

Minor A child or youth under the legal age of majority.

Miranda warning The warning police must give suspects regarding their constitutional right to remain silent and their right to an attorney. See *Miranda v Arizona*, [384 U.S. 436](#) (1966).

Misdemeanor Less serious criminal offense usually punishable by a sentence of one year or less. Exception: a “high court” misdemeanor (e.g., resisting/obstructing a police officer) can carry up to two years in prison. While handled procedurally like a felony, a high court misdemeanor is not a felony.

Mistrial An erroneous or invalid trial; a trial that cannot stand in law because of lack of jurisdiction, incorrect procedure with respect to jury selection, or disregard of some other fundamental requisite; an invalid trial because of the jury’s inability to reach a verdict.

Motion to dismiss A formal request for the court to dismiss a complaint because of insufficiency of evidence or because the law does not recognize the injury or harm claimed.

Motive In a criminal case, the defendant’s reason(s) for committing the offense.

Municipal courts A court whose territorial authority is confined to a city or community.

Murder In Michigan, all murder is either in the first or second degree.

- **First degree murder** Felony. Either premeditated (the defendant intended to kill and had time to considered the pros and cons in advance) or felony murder (murder committed in the course of another felony). Mandatory life in prison; no parole. MCL 750.316.
- **Second degree murder** Felony. Causing death while intending to kill or do great bodily harm, or causing death while knowingly creating a very high risk of death or great bodily harm. Life in prison or any term of years. MCL 750.317.
- **Open murder** Michigan law does not require a prosecutor to choose between first or second degree murder when issuing a complaint or at trial. A prosecutor may charged a defendant with “open murder,” and the jury may determine the appropriate degree based on the evidence.

N

Negligence Failure to exercise ordinary care. “Gross negligence,” a more serious degree of negligence, is the failure to exercise care in a way that shows reckless disregard or willful regard for the safety of others.

No contest plea A plea in which the facts supporting the elements of the crime come from a source other than the defendant’s own words in court (e.g., from police reports, witness statements, photographs, recordings, etc.). Has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

Nolle prosequi Latin, meaning, “Unwilling to prosecute.” Form filed by a prosecutor to dismiss the prosecution of a particular defendant.

Nolo contendere Latin, meaning, “I will not contest it.” A no contest plea. (Also see No contest plea)

O

Objection The act of taking exception to some statement or procedure in trial. Used to call the court’s attention to improper evidence or procedure.

Objection overruled A judge’s rejection of an objection as invalid.

Objection sustained Support or agree with an objection. Used by the judge to indicate agreement with an objection.

Of counsel A phrase commonly applied to counsel employed to assist in the preparation or management of the case, but who is not the principal attorney of record.

Offense A crime or ordinance violation. For minors, any act that violates provisions of the Juvenile Code (MCL 712A.1 et seq.) and places the minor in the juvenile court's jurisdiction.

Offer An act of willingness to enter into a purchase agreement that justifies to another person an understanding that his assent to that purchase agreement is invited and will establish a contract.

180-day rule A rule that allows people detained in county jails for 180 days while awaiting trial on felony charges to be released on their own recognizance, if the delay has not been caused by the accused or the accused's attorney. Also, a rule that requires all pending charges against a state prison inmate to be brought to trial in 180 days, or be dismissed with prejudice.

Opinion A written explanation of a decision of a trial court or of the decision of a majority of judges of an appellate court. At the appellate level, a dissenting opinion disagrees with the majority opinion because of the reasoning and/or principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. (Also see Concurring opinion, Dissenting opinion/dissent, Majority)

Option A contract that gives the holder a right or option to buy or sell specified property, such as stock or real estate, at a fixed price for a limited period of time.

Oral argument An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

Order A command from the court directing or forbidding an action.

Ordinance A local law or regulation enacted by the governing body of a municipality or county.

Original jurisdiction A court's authority to hear a case in the first instance.

OUIL Acronym for Operating Under the Influence of Intoxicating Liquor. The offense of operating a motor vehicle on a public road, parking lot or other place open to the general public while being significantly or substantially affected by intoxicating liquor, controlled substances, or both; see MCL 257.625.

- **1st offense** Misdemeanor; punishable by up to 90 days, \$500 fines, community service, six points assessed on driver's record, mandatory six-month license suspension.
- **2nd offense** Misdemeanor; punishable by up to one year, \$1,000 fines, community service six points assessed on driver's record, mandatory one-year license revocation.
- **3rd offense** Felony; punishable by one to five years in prison; fines; six points; license revocation.

Overrule A judge’s decision to not allow an objection to prevail. Also, a high court’s decision that a lower court’s decision was in error. (See also Sustain)

P

Parenting time Formerly known as “visitation.” The time a child spends with a non-custodial parent.

Parole The supervised, conditional release of a prisoner.

Parties The persons who are actively involved with the prosecution or defense of a legal proceeding. Plaintiffs and defendants are parties to lawsuits, appellants and appellees are parties in appeals. (They may also be known as petitioners and respondents.)

Patent A government grant giving an inventor the exclusive right to make or sell his or her invention for a term of years.

Paternity Establishing legal fatherhood. In Michigan, paternity may be established in several ways, including a legal action or a signed acknowledgment by both parents.

Peremptory challenge A motion to reject a juror for an unspecified race-neutral reason. May only be used a limited number of times. (Also see Challenges)

Perjury The criminal offense of making a false statement under oath.

Personal property Tangible physical property (such as cars, clothing, furniture, and jewelry) and intangible personal property, but not real property--that is, not land or rights in land.

Personal protection order Commonly referred to as PPO; a court’s order to prevent recurrences of acts or threats of assault and/or harassment, e.g., to keep a stalker from contacting or approaching a victim. See MCL 600.2950 – MCL 600.2950a.

Personal recognizance When a person is released from custody before trial on his or her promise to return for further proceedings.

Petit jury The twelve (or fewer) jurors selected to sit in the trial of a civil or criminal case.

Petitioner Person filing an action or appealing from a lower court’s judgment.

Plaintiff A person who brings an action; the party who complains or sues in a personal action and is so named on the record. The person who files the complaint in a civil lawsuit.

Plea The defendant's declaration of guilty or not guilty, in response to the criminal charges contained in the information or indictment.

Plea bargain The process by which an accused person agrees to plead guilty to some of the charges in return for the government's promise to drop some of the charges. Plea bargains must be approved by a judge.

Pleadings Written statements of fact and law filed by the parties to a lawsuit, e.g., complaints, answers, replies, motions, briefs, application on appeal, etc.

Polling the jury A practice whereby the jurors are asked individually whether they agreed, and still agree, to the verdict.

Pour-over will A will that leaves some or all estate assets to a trust established before the will-maker's death.

Precedent Previously decided case that guides future decisions. (Also see Stare decisis)

Prejudicial error Synonymous with "reversible error"; a trial court error that warrants the appellate court reversing the lower court's judgment. Contrasted with "harmless error," in which the trial court's error is deemed not to warrant reversal.

Preliminary examination Criminal hearing at which a judge determines whether sufficient evidence exists to warrant trying an individual charged with a crime; in Michigan, an evidentiary hearing in felony cases. The hearing takes place in district court. If the prosecutor meets the burden of proof, the case is "bound over" to circuit court.

Preponderance of evidence the burden of proof in civil cases; evidence which, as a whole, shows that the fact sought to be proved is more probable than not. (Also see Burden of proof)

Pre-sentence investigation An inquiry conducted at the request of the court after a person has been found guilty of a criminal offense. Provides the court with extensive background information to determine an appropriate sentence.

Presumption A rule of law that courts and judges will draw a particular inference from a particular fact, or from particular evidence.

Pre-trial conference A meeting in which attorneys for both sides meet the judge in advance of the trial to seek to clarify or narrow the issues.

Prima facie case The minimum amount of evidence a plaintiff must produce to overcome a motion to dismiss; evidence which is sufficient “on its face” to establish a given fact when not rebutted or contradicted. (Also see Burden of proof)

Pro hac vice Latin meaning “for this one particular occasion.” The phrase usually refers to an out-of-state lawyer who has been granted special permission by a court to participate in a particular case, even though the lawyer is not licensed to practice in the state where the case is being tried. (Also see State Bar of Michigan)

Probable cause Reasonable belief that an individual has committed a crime. (Also see Burden of proof)

Probate court The court with primary authority over cases involving wills, guardians and conservators, and mentally ill or developmentally disabled persons. Probate judges may also be assigned to hear cases in the family division of circuit court. There are 79 probate courts in Michigan; probate judges serve six-year terms.

Probate estate Estate property that may be disposed of by a will.

Probation A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision as long as certain conditions are observed. If the defendant violates any term of probation, the assigned probation officer, or the prosecutor, can ask the sentencing judge to impose additional penalties after a probation violation hearing.

Pro per/pro se Latin (*in propria persona*), meaning “on one’s own behalf”; in courts, it refers to persons who present their own cases without lawyers.

Prosecutor Government lawyer who tries criminal cases. In Michigan, prosecutors are known as “prosecuting attorneys.”

Public defender Lawyer employed by the government to represent individuals accused of crimes who cannot afford to hire their own attorney privately.

Q

Quash To overthrow; vacate; to annul or void a summons or indictment.

R

Real property Land, buildings, and other improvements affixed to land.

Reasonable doubt Uncertainty that might exist in the mind of a reasonable person applying reason to the evidence introduced. (Also see Burden of proof; beyond a reasonable doubt)

Rebuttal The introduction of contrary evidence; the showing that statements of witnesses as to what occurred is not true; the stage of a trial at which such evidence may be introduced.

Record A written account of all the acts, proceedings and testimony in a lawsuit.

Redirect examination Follows cross-examination and is exercised by the party who called first and questioned the witness.

Referee A person who takes testimony, prepares reports, and makes recommendations to family court judges in domestic relations, juvenile delinquency, designated proceedings involving juveniles, and child protective proceedings.

Relevance Evidence has relevance if it tends to make the existence of a fact more or less probable than it would be without that evidence. See MRE 401.

Reliance Confidence or dependence upon what is deemed sufficient authority, such as a warranty that provides a written guarantee of a product's integrity.

Remand When an appellate court sends a case back to a lower court for further proceedings.

Removal, order of An order by a court directing the transfer of a case to another court.

Reply A pleading in response to an answer. (Also see Answer, Complaint)

Repossession To take back -- as in a seizure or foreclosure -- to satisfy the obligation to the seller, bank or finance company after the debtor defaults on his or her payments.

Rest A party is said to "rest" or "rest its case" when it has presented all the evidence it intends to offer.

Restitution Payments ordered by a judge to repay crime victims for economic losses (property loss or injuries) incurred as a result of the crime. Does not include compensation for pain and suffering or other non-economic damages that may be pursued through a civil law suit.

Reverse When an appellate court sets aside the decision of a lower court because of an error. A reversal is often accompanied by a remand. (See Prejudicial error, Remand)

Revoke To cancel or nullify a legal document.

S

Search warrant A written order issued by a judge that directs a law enforcement officer to search a specific area for a particular piece of evidence.

Self-defense Legally-justified use of force to protect one's self, another person, or property against some injury attempted by another. Must be based on an honest and reasonable belief that one has to use force for protection. In addition, a person claiming self-defense must use only the type and degree of force that seems necessary at the time, and cannot have acted wrongfully to bring on the initial attack.

Self-proving will A will whose validity does not have to be testified to in court by the witnesses to it, since the witnesses executed an affidavit reflecting proper execution of the will prior to the maker's death.

Sentence The punishment ordered by a court for a defendant convicted of a crime.

Sentencing Guidelines Criteria adopted by the Legislature to set an appropriate range that a judge may impose for the minimum sentence on felonies and high court misdemeanors. "Prior Record Variables" (PRV) and "Offense Variables" (OV) are calculated and applied to a Sentencing Range Grid. A judge may depart from the range, either on the high or low side, only when there are "substantial and compelling" reasons to do so, which the judge must explain on the record.

Sentence The punishment ordered by a court for a defendant convicted of a crime.

Sequester To separate. Sometimes juries or witnesses are sequestered from outside influences, for example, as when witnesses are prevented from watching court proceedings or talking to other witnesses before they testify.

Serve To deliver a legal document, such as a complaint, summons or subpoena. Service constitutes formal legal notice.

Settlement Agreement between parties to resolve a lawsuit without going to or completing trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims.

Sex offender A person convicted as an adult or adjudicated as a juvenile of Criminal Sexual Conduct (CSC), Indecent Exposure, Gross Indecency, or similar enumerated crimes. Sex offenders are required to register with the Michigan State Police, and verify their home address quarterly, for a minimum of 25 years. The State Police maintain a searchable database of adult sex offenders.

Show cause A court order obtained on motion by either party to demonstrate why the particular relief sought should not be granted. Generally used in connection with proceedings for contempt of court.

Sidebar conference Confidential discussion between judge and attorneys to resolve legal matters, which could be prejudicial if aired before the jury.

Slander False and defamatory spoken words tending to harm another's reputation, business, or means of livelihood. Slander is spoken defamation; libel is published. (Also see Defamation)

Small claims court A division of District Court that handles civil claims up to \$3,000. People represent themselves rather than hire an attorney.

Special appearance Notice of the party that has been sued that he or she is aware of the lawsuit, but contests the court's authority over himself or herself. This prevents a defendant from losing a case by default.

Special damages A form of compensatory damages ordered paid when the injury resulted from the other side's wrong but was not a natural or necessary consequence.

Specific performance Where damages would be inadequate compensation for the breach of a contract, the party who breached the contract will be compelled to perform specifically what he or she originally agreed to do.

Standing The legal right to sue or enter a lawsuit on a particular matter.

Stare decisis The doctrine that, when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same. (Also see Precedent)

State Bar of Michigan The association for attorneys licensed to practice law in Michigan. Attorneys must be members of the state bar in order to practice law in Michigan, with the exception of out-of-state attorneys who are admitted pro hac vice for a specific case. (Also see Pro hac vice)

Statute Law enacted by legislatures or executive officers, such as codes.

Statute of limitations A law that sets the time within which parties must take action to enforce their rights.

Stay A suspending of a judicial proceeding by order of the court.

Stipulation An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless agreed to by the parties.

Strike To remove improperly offered evidence from the court record.

Subpoena A document issued by the court to compel a witness to appear and give testimony or to procure documentary evidence in a proceeding.

Subpoena duces tecum A process by which the court commands a witness to produce certain documents or records in a trial.

Substantive law Law dealing with rights, duties and liabilities, as distinguished from law that regulates procedure.

Suit in equity A civil case in which a court forbids or allows another person to take an action.

Summary disposition/judgment A court order that decides a case in favor of one side on the basis of affidavits or other evidence, before the trial commences. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgment as a matter of law. (Michigan court practice refers to “summary disposition,” while federal courts use the term “summary judgment.”)

Summons Legal notice informing an individual of a lawsuit and the date and location of the court where the case will be heard.

Superintending control, writ of An original action designed to order a lower court or tribunal to perform a legal duty.

Suppress Legal bar to admitting evidence at a trial or other court proceeding.

Supreme Court Generally, the highest appellate court in a jurisdiction; in Michigan, the Michigan Supreme Court. (Note that some states use a different title for their highest appellate courts.)

The Michigan Supreme Court consists of seven justices; they are elected to eight-year terms.

Appellants file applications for “leave to appeal” which the Court can grant or deny. If the Court grants the application, it will hear the case; if the application is denied, the lower court decision stands. Denial of leave is not an expression of the merits of the case.

The Supreme Court grants leave in cases involving significant legal and/or public interest issues. See MCR 7.302(B).

Surety bond A bond purchased at the expense of the estate to insure the executor's proper performance. Often called a fidelity bond.

Sustain A judge's decision to allow an objection or motion to prevail. (Also see Overrule)

T

Temporary restraining order (TRO) Prohibits a person from an action that is likely to cause irreparable harm. This differs from an injunction in that it may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held.

Termination of parental rights hearing A hearing held in the family division of circuit court to determine if the parent(s)' rights to a child are to be taken away; if so, the child becomes a ward of the court.

Testamentary trust A trust set up by a will.

Testimony Evidence given by a competent witness, under oath, as distinguished from evidence derived from writings and other sources.

Third-party claim An action by the defendant that brings a third party into a lawsuit.

Title Legal ownership of property, usually real property or automobiles.

Tort A civil wrong or breach of a duty to another person, as outlined by law. A very common tort is negligent operation of a motor vehicle that results in property damage and personal injury in an automobile accident.

Turner hearing A hearing to determine whether a defendant was entrapped by law enforcement officials into committing an offense; based on *People v Turner*, 390 Mich 7 (1973).

Transcript The official record of proceedings in a trial or hearing.

Trust A legal device used to manage property – real or personal – established by one person (the donor, grantor or settlor) for the benefit of another (the beneficiary). A third person or the grantor manages the trust. This person is known as the trustee. (Also see Trustee)

Trust agreement or declaration - The legal document that sets up a living trust. Testamentary trusts are set up in a will.

Trustee The person or institution that manages the property put in trust.

U

UBAL Acronym for operating with an Unlawful Blood Alcohol Level; the offense of operating a vehicle with 0.10 percent or more blood alcohol. In contrast to OUIL, it is irrelevant whether the driver is affected by the alcohol. See MCL 257.625. (Also see OUIL)

UDAA Acronym for the offense of Unlawfully Driving Away an Automobile; a felony punishable by up to five years in prison; car theft. See MCL 750.413.

Unlawful imprisonment A felony punishable by up to 15 years in prison and/or a \$20,000 fine; the offense of knowingly restraining a person under any of the following circumstances: 1) using a weapon or dangerous instrument to restrain the person; 2) secretly confining the person; 3) restraining the person to facilitate the commission of another felony or to facilitate flight after the commission of another felony. See MCL 750.349b. (Also see Kidnapping)

Uttering and publishing A felony punishable by up to 14 years in prison; the offense of knowingly presenting a false, altered, forged, counterfeited or fictitious instrument, such as a check or money order, with an intent to defraud or injure another. See MCL 750.249.

V

Vacate To set aside, as when a court vacates an earlier court order.

Venue The particular county, city or geographical area in which a court with jurisdiction may hear and determine a case. A “change of venue” — the transfer of a case to another county or court — may take place because the case should have been filed there originally, for the convenience of witnesses or parties, or because a fair trial cannot be had in the original location.

Verdict Formal decision made by a jury, read before a court, and accepted by the judge.

Voir dire Literally, “to speak the truth.” A preliminary examination of prospective jurors or witnesses under oath to determine their competence or suitability. The process generally involves the judge and attorneys asking potential jurors about their experiences and beliefs to determine whether they can perform their duties in an impartial manner.

W

Wade hearing In criminal cases, a pre-trial hearing to test the fairness of a line-up. The issue is whether to admit or suppress an identification of an accused that resulted from the line-up. The hearing takes its name from a U.S. Supreme Court case, *United States v Wade*, 388 U.S. 218 (1967).

Waive To voluntarily give up a right or a claim, e.g., as when a defendant waives the right to remain silent during a police interview.

Waiver of jurisdiction A process by which a juvenile may be processed or convicted as an adult.

Walker hearing An evidentiary hearing on a defendant's motion to suppress the defendant's incriminating statement to police. The hearing focuses on the totality of the circumstances surrounding the statement, including whether it was voluntarily and intelligently made, whether police advised the defendant of his/her Miranda rights and the defendant waived those rights, etc. Based on *People v Walker*, 374 Mich 331 (1965).

Warrant Court order authorizing an arrest or search.

Warrantless arrest In some situations, a police officer may arrest a person without a warrant, as when the officer witnesses a crime, has probable cause to believe that domestic violence or a PPO violation has occurred, etc. See MCL 764.15.

Warranty A written or oral statement by one party to a contract that a fact is or will be as it is expressly declared or promised to be.

Weight of evidence The balance or preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

Wharton's Rule Provides that an agreement by two persons to commit a crime cannot be prosecuted as a conspiracy when the underlying crime requires the participation of the same two persons (e.g., dueling, bigamy, incest). If the offense could logically be committed by a single person, or the number of alleged conspirators exceeds the minimum number logically necessary to complete the substantive offense, Wharton's Rule does not apply.

Will A legal declaration that disposes of a person's property when that person dies.

With prejudice As applied to a judgment of dismissal, the term refers to the adjudication of a case on its merits, barring the right to bring or maintain another action on the same claim.

Without prejudice A dismissal "without prejudice" allows a new suit to be brought on the same cause of action. In criminal matters, a dismissal without prejudice allows a prosecutor to re-file the same charge arising from the same incident.

Witness One who testifies under oath as to what she or he has seen, heard or otherwise observed.

Work release In criminal cases, a probation program where the defendant is permitted to work while residing in jail. The defendant leaves jail on work days only for work hours, plus limited travel time.

Writ An order issued from a court requiring the performance of a specified act, or giving authority and commission to have it done.

Y

YTA Acronym for Holmes Youthful Trainee Act. (See Holmes Youthful Trainee Act)

MCR 8.116 (D), Access to Court Proceedings.

(1) Except as otherwise provided by statute or court rule, a court may not limit access by the public to a court proceeding unless

(a) a party has filed a written motion that identifies the specific interest to be protected, or the court *sua sponte* has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access;

(b) the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect the interest; and

(c) the court states on the record the specific reasons for the decision to limit access to the proceeding.

(2) Any person may file a motion to set aside an order that limits access to a court proceeding under this rule, or an objection to entry of such an order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies the motion or objection, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.

(3) Whenever the court enters an order limiting access to a proceeding that otherwise would be public, the court must forward a copy of the order to the State Court Administrative Office.

MCR 8.119 Court Records and Reports; Duties of Clerks

(E) Access to Records. The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court.

(1) Unless access to a file, a document, or information contained in a file or document is restricted by statute, court rule, or an order entered pursuant to subrule (F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in subrule (E)(2) and (E)(3).

(2) If a person wishes to obtain copies of papers in a file, the clerk shall provide copies upon receipt of the reasonable cost of reproduction. If the clerk prefers, the requesting person may be permitted to make copies at personal expense under the direct supervision of the clerk. Except for copies of transcripts or as otherwise directed by statute or court rule, a standard fee may be established for providing copies of papers on file.

(3) A court is not required to create a new record, except to the extent required by furnishing copies of a file, paper, or record. A court may create a new record or compilation of records pertaining to case files or case-related information on request, provided that the record created or compiled does not disclose information that would otherwise be confidential or restricted by statute, court rule, or an order entered pursuant to subrule (F).

(4) Every court, shall adopt an administrative order pursuant to MCR 8.112(B) to

(a) make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions;

(b) specify the reasonable cost of reproduction of records provided under subrule (E)(2); and

(c) specify the process for determining costs under subrule (E)(3).

(F) Sealed Records.

(1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts records, in whole or in part, in any action or proceeding, unless

(a) a party has filed a written motion that identifies the specific interest to be protected,

(b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and

(c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.

(2) In determining whether good cause has been shown, the court must consider,

(a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and

(b) the interest of the public.

(3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records.

(4) For purposes of this rule, “court records” includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court’s authority to issue protective orders pursuant to MCR 2.302(C).

(5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.

(6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action. See MCR 8.116(D).

(7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.

ADMINISTRATIVE ORDER NO.1989-1

Film or Electronic Media Coverage of Court Proceedings

The following guidelines shall apply to film or electronic media coverage of proceedings in Michigan courts:

1. Definitions.

(a) “Film or electronic media coverage” means any recording or broadcasting of court proceedings by the media using television, radio, photographic, or recording equipment.

(b) “Media” or “media agency” means any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, or other news reporting or news gathering agency.

(c) “Judge” means the judge presiding over a proceeding in the trial court, the presiding judge of a panel in the Court of Appeals, or the Chief Justice of the Supreme Court.

2. Limitations.

(a) Film or electronic media coverage shall be allowed upon request in all court proceedings. Requests by representatives of media agencies for such coverage must be made in writing to the clerk of the particular court not less than three business days before the proceeding is scheduled to begin. A judge has the discretion to honor a request that does not comply with the requirements of this subsection. The court shall provide that the parties be notified of a request for film or electronic media coverage.

(b) A judge may terminate, suspend, limit, or exclude film or electronic media coverage at any time upon a finding, made and articulated on the record in the exercise of discretion, that the fair administration of justice requires such action, or that rules established under this order or additional rules imposed by the judge have been violated. The judge has sole discretion to exclude coverage of certain witnesses, including but not limited to the victims of sex crimes and their families, police informants, undercover agents, and relocated witnesses.

(c) Film or electronic media coverage of the jurors or the jury selection process shall not be permitted.

(d) A trial judge’s decision to terminate, suspend, limit, or exclude film or electronic media coverage is not appealable, by right or by leave.

3. Judicial Authority.

Nothing in these guidelines shall be construed as altering the authority of the Chief Justice, the Chief Judge of the Court of Appeals, trial court chief judges, or trial judges to control

proceedings in their courtrooms, and to ensure decorum and prevent distractions and to ensure the fair administration of justice in the pending cause.

4. Equipment and Personnel.

Unless the judge orders otherwise, the following rules apply:

(a) Not more than two videotape or television cameras, operated by not more than one person each, shall be permitted in any courtroom.

(b) Not more than two still photographers, utilizing not more than two still cameras each with not more than two lenses for each camera, and related necessary equipment, shall be permitted in any courtroom.

(c) Not more than one audio system for radio and/or television recording purposes shall be permitted in any courtroom. If such an audio system is permanently in place in the courtroom, pickup shall be made from that system; if it is not, microphones and wires shall be placed as unobtrusively as possible.

(d) Media agency representatives shall make their own pooling arrangements without calling upon the court to mediate any dispute relating to those arrangements. In the absence of media agency agreement on procedures, personnel, and equipment, the judge shall not permit the use of film or electronic media coverage.

5. Sound and Light Criteria.

(a) Only television, photographic, and audio equipment which does not produce distracting sound or light shall be utilized to cover judicial proceedings. Courtroom lighting shall be supplemented only if the judge grants permission.

(b) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed with a still camera.

(c) Media agency personnel must demonstrate in advance, to the satisfaction of the judge, that the equipment proposed for utilization will not detract from the proceedings.

6. Location of Equipment and Personnel.

(a) Television camera equipment and attendant personnel shall be positioned in such locations in the courtroom as shall be designated by the judge. Audio and video tape recording and amplification equipment which is not a component of a camera or microphone shall be located in a designated area remote from the courtroom.

(b) Still camera photographers shall be positioned in such locations in the courtroom as shall be designated by the judge. Still camera photographers shall assume fixed positions within the designated areas and shall not move about in any way that would detract from the proceedings.

(c) Photographic or audio equipment may be placed in, moved about in, or removed from, the courtroom only during a recess. Camera film and lenses may be changed in the courtroom only during a recess.

(d) Representatives of the media agencies are invited to submit suggested equipment positions to the judge for consideration.

7. Conferences. There shall be no audio pickup, broadcast or video closeup of conferences between an attorney and client, between co-counsel, between counsel and the judge held at the bench at trial, or between judges in an appellate proceeding.

8. Conduct of Media Agency Personnel. Persons assigned by media agencies to operate within the courtroom shall dress and deport themselves in ways that will not detract from the proceedings.

9. Nonexclusivity. These guidelines shall not preclude coverage of any judicial proceeding by news reporters or other persons who are employing more traditional means, such as taking notes or drawing pictures.

ADMINISTRATIVE ORDER NO.1997-10

Access to Judicial Branch Administrative Information

On order of the Court, the following order is effective February 1, 1998. The Court invites public comment on ways in which the objectives of the policy expressed in this order -- an informed public and an accountable judicial branch -- might be achieved most effectively and efficiently, consistent with the exercise of the constitutional responsibilities of the judicial branch.

(A) Scope, Coverage, and Definitions

(1) This order does not apply to the adjudicative function of the judicial branch. It neither broadens nor restricts the availability of information relating to a court's adjudicative records.

(2) Solely as used in this order:

(a) "Adjudicative record" means any writing of any nature, and information in any form, that is filed with a court in connection with a matter to be adjudicated, and any writing prepared in the performance of an adjudicative function of the judicial branch.

(b) "Administrative function" means the nonfinancial, managerial work that a court does, outside the context of any particular case.

(c) "Administrative record" means a writing, other than a financial record or an employee record, prepared in the performance of an administrative function of the judicial branch.

(d) "Employee record" means information concerning an employee of the Supreme Court, State Court Administrative Office, Michigan Judicial Institute, and Board of Law Examiners.

(e) "Financial record" means the proposed budget, enacted budget, judicial salary information, and annual revenues and expenditures of a court.

(f) "Judge" means a justice of the Supreme Court or a judge of the Court of Appeals, circuit court, probate court, district court, or municipal court.

(g) "Person" means any individual or entity, except an individual incarcerated in a local, state, or federal correctional facility of any kind.

(h) "Supreme Court administrative agency" means the State Court Administrative Office, the Office of the Clerk, the Office of the Chief Justice, the Supreme Court Finance Department, and the Public Information Office.

(B) Access to Information Regarding Supreme Court Administrative, Financial, and Employee Records.

(1) Upon a written request that describes an administrative record, an employee record, or a financial record sufficiently to enable the Supreme Court administrative agency to find the record, a person has a right to examine, copy, or receive copies of the record, except as provided in this order.

(2) Requests for an administrative or employee record of a Supreme Court administrative agency must be directed to the administrative agency or to the Public Information Office. Requests for a financial record must be directed to the Supreme Court Finance Department. An administrative record, employee record, or financial record must be available for examination during regular business hours.

(3) A Supreme Court administrative agency may make reasonable rules to protect its records and to prevent unreasonable interference with its functions.

(4) This order does not require the creation of a new administrative record, employee record, or financial record.

(5) A reasonable fee may be charged for providing a copy of an administrative record, employee record, or financial record. The fee must be limited to the actual marginal cost of providing the copy, including materials and the time required to find the record and delete any exempt material. A person requesting voluminous records may be required to submit a deposit representing no more than half the estimated fee.

(6) A copyrighted administrative record is a public record that may not be re-published without proper authorization.

(7) The following are exempt from disclosure:

(a) Personal information if public disclosure would be an unwarranted invasion of an individual's privacy. Such information includes, but is not limited to:

(i) The home address, home telephone number, social security account number, financial institution record, electronic transfer fund number, deferred compensation, savings bonds, W-2 and W-4 forms, and any court-enforced judgment of a judge or employee.

(ii) The benefit selection of a judge or employee.

(iii) Detail in a telephone bill, including the telephone number and name of the person or entity called.

(iv) Telephone logs and messages.

(v) Unemployment compensation records and worker's disability compensation records.

Based upon discussions internally among pool members, the following pool members will provide equipment for the duration of the trial.

- WDIV-TV will provide a 16 channel video/audio multi-box
- WXYZ-TV will provide a 4-channel audio mixer and wired microphones
- WJBK-TV will provide cabling (2-video & 2-audio)

Each pool member outlet will provide its own camera, cameraperson, and tripod.

- (11) Leaving/returning during a witness' testimony: If you must leave, you will be allowed to return during a break. If you arrive after court has begun, you will be allowed in during a break.
- (12) Still photography will be allowed with the use of a camera with a silent shutter.
- (13) If your news station is not represented during any part of the trial, a summary of the day's events will not be provided by the court's staff. You will need to contact either the defense attorney or the prosecuting attorney.
- (14) Request and Notice for Film and Electronic Media Coverage of Court Proceeding forms should be faxed by _____ PM, one day prior to your coverage, to fax #_____. *(copy attached)*

Date

Hon. Timothy M. Kenny
The Third Judicial Circuit Court of Michigan