

STATE OF MICHIGAN  
IN THE SUPREME COURT

Deputy Chief GARY A. BROWN and  
Police Officer HAROLD C. NELTHROPE,

Plaintiffs/Cross-Appellants,

Supreme Court Nos. 132016/132017  
COA Docket Nos. 259911/259923

v

KWAME KILPATRICK, Mayor, City of  
Detroit, and the CITY OF DETROIT,  
a Municipal Corporation, jointly and severally,

Defendants/Cross-Appellees.

---

Michael L. Stefani (P20938)  
Frank J. Rivers (P62973)  
STEFANI & STEFANI, P.C.  
Attorneys for Plaintiffs  
512 East Eleven Mile Road  
Royal Oak, MI 48067-2741  
(248) 544-3400

Valerie A. Colbert-Osamuede (P42506)  
CITY OF DETROIT LAW DEPARTMENT  
Attorney for Defendants  
660 Woodward Avenue  
1650 First National Building  
Detroit, MI 48226-3535  
(313) 237-3012

Wilson A. Copeland, II (P23837)  
GRIER & COPELAND, P.C.  
Co-Counsel for City of Detroit Only  
615 Griswold Street, Suite 400  
Detroit, MI 48226  
(313) 961-2600

Samuel E. McCargo (P25298)  
LEWIS & MUNDAY, P.C.  
Co-Counsel for Kilpatrick Only  
2490 First National Building  
660 Woodward Avenue  
Detroit, MI 48226  
(313) 961-2550

Morley Witus (P30895)  
BARRIS, SOTT, DENN & DRIKER, P.L.L.C.  
Special Counsel for Defendants  
211 W. Fort Street, 15<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 596-9308

---

**PLAINTIFFS' SUPPLEMENTAL BRIEF**

**FILED**

MAR 16 2007

CORBIN R. DAVIS  
CLERK  
MICHIGAN SUPREME COURT

132016/17  
S. J. J.  
9/2

**Table of Contents**

Index of Authorities ..... i

I. STATEMENT OF FACTS ..... 1

II. ARGUMENT..... 1

    A. Legal Standard To Be Applied ..... 1

    B. The WPA Expanded The Scope Of An Existing Whistleblower Law That Allowed And Still Allows Public Employees To Report Misconduct To A Supervisor Within The Same Agency ..... 1

        1. The Legislature Enacted The WPA To Protect And Encourage Whistleblowing By All Public And Private Employees ..... 1

        2. The WPA Expanded P.A. 1973 No. 196 Which Allows A Public Employee To Report To His Or Her Supervisor ..... 4

    C. Nothing In The WPA Requires An Employee Of A Public Body To Report To Another Public Body To Be Protected By The Act ..... 6

    D. The Legislature Rejected The Notion That A Whistleblower's Job Duties Cannot Include The Reporting Of Misconduct ..... 8

    E. This Court Has Refused To Follow Dicta Which Conflicts With The Plain Language And The Legislative Intent Of A Statute ..... 10

III. CONCLUSION..... 13

IV. RELIEF REQUESTED..... 13

**Index of Authorities**

**Cases**

*Dickson v Oakland University*, 171 Mich App 68; 429 NW2d 640 (1988) ..... 12, 13

*Dudewicz v Norris-Schmid, Inc*, 443 Mich 68; 503 NW2d 645 (1993) ..... 13

*McNitt v. Citco Drilling Co.*, 397 Mich 384; 245 NW2d 18 (1976)..... 10, 11, 12

*People v. Borchard-Ruhland*, 460 Mich 278; 597 NW2d 1 (1999)..... 1, 10, 11, 12

*People v. Weaver*, 74 Mich App 53; 253 NW2d 359 (1977)..... 11, 12

**Statutes**

MCL §15.341 ..... 1, 3

MCL §15.342 ..... 2, 3, 4

MCL §15.361 ..... 1, 3, 5, 7

MCL §15.362 ..... 3, 6, 7

MCL §257.625 ..... 10

Public Act 1973 No. 196..... 1, 2, 3, 4, 5, 6, 8, 9

**House Bills/Legislative Analysis**

Michigan Legislature, HB 5088 and HB 5089 ..... 1, 8, 9

House Legislative Analysis HB 5088, 5089; February 5, 1981 ..... 1, 3, 4, 6, 8, 9, 10

## I. STATEMENT OF FACTS

On February 2, 2007, this Court issued an Order instructing the parties to submit supplemental briefs addressing whether an employee of a public body must report to an outside agency or higher authority to be protected by the Whistleblower Protection Act, MCL §15.361 *et seq.* (“WPA”), and, if so, what statutory language supports that conclusion.

## II. ARGUMENT

### A. Legal Standard To Be Applied

This Court has ruled that the fundamental task of statutory construction is to discover and give effect to the intent of the Legislature, which task begins by examining the language of the statute itself, *People v. Borchard-Ruhland*, 460 Mich 278, 284-285; 597 NW2d 1 (1999). Where the language of a statute is unambiguous, the plain meaning reflects the Legislature’s intent and this Court applies the statute as written, *Id.* Judicial construction under such circumstances is not permitted, *Id.*

### B. The WPA Expanded The Scope Of An Existing Whistleblower Law That Allowed And Still Allows Public Employees To Report Misconduct To A Supervisor Within The Same Agency

#### 1. The Legislature Enacted The WPA To Protect And Encourage Whistleblowing By All Public And Private Employees

The WPA was enacted with the passage of two bills by the Michigan Legislature, HB 5088 and HB 5089, in 1980 (Public Act No. 469 of 1980, effective March 31, 1981). According to the legislative history of the Act, (**Exhibit 1**, House Legislative Analysis HB 5088, 5089; February 5, 1981), the Legislature enacted the WPA to expand the scope of whistleblower protection beyond that of an existing whistleblower statute, Public Act 1973 No. 196 (codified at MCL §15.341 *et seq.*). At the time, P.A.1973 No. 196 protected only State Executive Branch

employees from sanctions for reporting violations of certain standards of ethical conduct by officials and employees of the State Executive Branch.<sup>1</sup>

The Legislature recognized that because of the limited scope of P.A. 1973 No. 196, not only were State Executive Branch employees insufficiently protected from retaliation for whistleblowing, but employees in other public offices and private corporations who were aware of violations of law were probably not reporting these violations because of a fear of retaliation by their employers. The legislative history of the WPA reflects the Legislature's concern with the threat to the public welfare posed by unreported illegal activity, and the need to protect and encourage whistleblowers not only in the State Executive Branch but in all public and private employment:

“Violations of the law by corporations or governments and by the men and women who have the power to manage them are among the greatest threats to the public welfare...The people best placed to observe and report violations are the employees of the government and business, but employees are naturally reluctant to inform on an employer or a colleague...[I]t is often fear of the consequences to himself or herself that prevents a person from informing the authorities of illegal actions...

The need to encourage and protect ‘whistleblowers’ has been recognized in [P.A. 1973 No. 196]. That law proscribed certain types of unethical activities, including influence peddling and conflicts of interest, by public officers and employees. It was amended by Public Act 352 of 1978 to provide that public employees or officers (by which the law means state executive department personnel only) who reported violations of the act's proscriptions would be protected from retaliatory sanctions—specifically, dismissal and the withholding of pay raises and promotions. Some persons think that this law is too limited in that it applies only to the executive branch and because its list of prohibited reprisals is insufficiently comprehensive.

---

<sup>1</sup> P.A. 1973 No.196 imposed on State Executive Branch employees, *inter alia*, a duty to refrain from divulging confidential information and using public resources and funds for personal benefit. See, MCL §15.342.

While Public Act 196 provides limited protection for persons who give information about a narrow range of crimes, there is no more general law to encourage vigilance and to protect employees from reprisals. Some persons think that Public Act 196 should be amended to make it more effective and that a new law should be enacted to protect both public and private employees who assist in the enforcement of the laws.” **Exhibit 1**, House Legislative Analysis HB 5088, 5089; February 5, 1981.

The WPA extended the coverage of P.A. 1973 No. 196 by expanding the statute’s list of prohibited “sanctions”, and also by providing that not only State Executive Branch employees but all public employees are protected for reporting on ethical violations by any elected or appointed state or local official:

“House Bill 5088 amends Public Act 196 of 1973 to expand the list of retaliatory actions which may not be taken against a public employee or official who reports or is about to report a violation of the law to include demotion and transfer of employment location.<sup>2</sup> It also expands the definition of “employee” to include employees of the state or a political subdivision rather than state executive branch employees only, and expands the definition of “public officer” to include elected or appointed officials of the state or a political subdivision rather than appointed state executive branch officials only.”<sup>3</sup> **Exhibit 1**, House Legislative Analysis HB 5088, 5089; February 5, 1981.

The WPA also extended whistleblower protection in Michigan beyond the scope of P.A. 1973 No. 196 by protecting and encouraging **all public and private employees** who report violations of law:

“House Bill 5089 would create a new act to forbid employers, both public and private, to take reprisals against employees who had given information to authorities concerning possible violations of

---

<sup>2</sup> See, MCL §15.342(b)(1)(d), (e). The WPA also added a provision to P.A. 1973 No. 196 similar to that found in the general WPA statute, MCL §15.361 *et seq.*, that a whistleblower who is “about to report” is protected from retaliation. See, MCL §15.342(b)(1), (2); MCL §15.362, *infra*, p. 5.

<sup>3</sup> See, MCL §15.341(b), (c).

the law or who were about to give such information. The bill would prohibit specifically the firing or the threatening of an employee, or discrimination against an employee with regard to compensation, terms, conditions, locations, or privileges of employment because that employee reported or was about to report a violation of the law. Employees would be likewise protected if they were requested by a public body to participate in an investigation, hearing or inquiry.” **Exhibit 1**, House Legislative Analysis HB 5088, 5089; February 5, 1981.<sup>4</sup>

Thus, the Legislature intended for the WPA to **broaden and encourage whistleblowing** beyond the limited scope of P.A. 1973 No. 196, by (1) protecting not only State Executive Branch employees, but all whistleblowers in public and private employment; (2) protecting the reporting of all violations of law, instead of only ethical violations by members of the Executive Branch; and, (3) expanding the list of retaliatory actions which employers are prohibited from taking against whistleblowers.

2. The WPA Expanded P.A. 1973 No. 196 Which Allows A Public Employee To Report To His Or Her Supervisor

It is critical to note that the legislation which the WPA expanded, P.A. 1973 No. 196, **specifically permits any public employee to report a violation of the statute by any state or local official to the employee’s own supervisor.** At the time the WPA was passed (as well as now), P.A. 1973 No. 196 provided:

**“15.342b. Reporting violations; penalties**

Sec. 2b. (1) A public officer or employee who has knowledge that another public officer or employee has violated section 2 may report the existence of the violation **to a supervisor, person, agency, or organization....”**

The fact that the Legislature broadly designated the entities to whom a public employee can report misconduct under P.A. 1973 No. 196 (including the employee’s own supervisor)

---

<sup>4</sup> See, MCL §15.362, *infra*, p. 5.

indicates that the Legislature intended to facilitate to the greatest extent possible the reporting of violations of P.A. 1973 No. 196's ethical standards of conduct. Likewise, the fact that under the WPA a "public body" to whom a public employee may report is also broadly defined<sup>5</sup> shows that the Legislature intended to facilitate as much as possible all employees' ability to report on violations of law.

As noted *supra*, the WPA amended P.A. 1973 No. 196 to permit not only State Executive Branch employees but any public employee to report a violation of the statute's ethical code of conduct, to any public agency or his or her own supervisor. Also, the Legislature intended for the WPA to promote whistleblowing beyond the scope of P.A. 1973 No. 196, to include employees in the entire public and private employment sectors. It is illogical to presume that, in passing the WPA to expand whistleblowing beyond the reach of P.A. 1973 No. 196, the Legislature (1) amended P.A. 1973 No. 196 to permit **all public employees** to report to any public agency or their own supervisor, but (2) without saying so, meant to create a special requirement under the WPA which restricts **only a public body employee** with respect to the

---

<sup>5</sup> The WPA provides that "public body" means all of the following: "(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government." "(ii) An agency, board, commission, council, member, or employee of the legislative branch of state government." "(iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school district, special district, or municipal corporation, or a board, department, commission, council, agency, or any member or employee thereof." "(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body." "(v) A law enforcement agency or any member or employee of a law enforcement agency." "(vi) The judiciary and any member or employee of the judiciary." MCL §15.361.

entities the employee can report to, and which requires the public body employee to “go out on a limb” and report to an “outside agency” or “higher authority”.<sup>6</sup>

For that matter, nothing in the legislative history speaks to or suggests that the Legislature intended to create **any** distinction between a public employee who reports misconduct under P.A. 1973 No. 196 and the WPA, or between an employee of a public body and other public or private employees. A public body employee is permitted to report a violation of the state ethical code to his or her employer or supervisor under P.A. 1973 No. 196. There is simply no credible authority to support a contention that a public body employee cannot also report a violation of law to his or her employer or supervisor under the WPA.

C. Nothing In The WPA Requires An Employee Of A Public Body To Report To Another Public Body To Be Protected By The Act

Likewise, there is nothing in the plain language of the WPA which excludes employees of public bodies who report to their employers from the protection of the Act. The WPA does not speak to which public body an employee of a public body must report information concerning a violation of the law. The Act does not even make reference to “public body employees”, “outside agencies” or “higher authorities”. The plain language of the WPA is clear and unambiguous:

**“15.362. Discharge, threats, or discrimination against employee for reporting violations of law**

An employer shall not discharge, threaten or otherwise discriminate against an employee regarding the employee’s

---

<sup>6</sup> The Legislature’s statement that “... [I]t is often fear of the consequences to himself or herself that prevents a person from informing the authorities of illegal actions” (House Legislative Analysis HB 5088, 5089; February 5, 1981), shows that the Legislature already recognized that irrespective of to whom a report is made, **every** whistleblower “goes out on a limb” because of the possibility of retaliation by their employer.

compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.”  
MCL §15.362

The plain language of the WPA does not require an employee of a public body to report to an outside agency or higher public body to be covered by the Act. Had the Legislature wanted to create such a requirement, it could have easily done so by drafting the WPA’s language to distinguish between how an employee of a public body and other public employees are required to report misconduct, similar to how the Legislature specifically named and excluded state classified civil service employees from the protection of the Act.<sup>7</sup>

To the contrary, there is simply nothing in the language of the WPA or the legislative history which suggests the Legislature meant to require a public employee to report misconduct to a particular public body or an “outside agency”. Indeed, the language which begins the legislative analysis of the WPA--“Violations of the law by corporations or governments and by the men and women who have the power to manage them are among the greatest threats to the public welfare...”--says absolutely nothing about a legislative concern with “reporting to outside agencies” but speaks volumes with respect to the Legislature’s intent to encourage

---

<sup>7</sup> The Legislature specifically exempted State classified civil service employees from the protection of the WPA. The Act provides that “employee” under the WPA “includes a person employed by the state or a political subdivision of the state **except state classified civil service.**” MCL §15.361 (Emphasis added). The Legislature made no such similar effort to distinguish public body employees in any respect, let alone impose a requirement that these employees report to an “outside agency” to be protected by the Act.

whistleblowers in all public and private employment **to bring violations to the attention of the public.**

D. The Legislature Rejected The Notion That A Whistleblower's Job Duties Cannot Include The Reporting Of Misconduct

Defendants contend that employees whose regular job duties require them to investigate and report wrongdoing should not be protected by the WPA because they are “just doing their job” (Defendants’ Response to Application for Cross-Appeal, p. 8). Defendants also claim that applying the Act to these employees would result in an inability of employers to effectively manage because any time a disgruntled employee was fired, demoted or denied a promotion, the employee would automatically claim that their employer retaliated against them for investigating or reporting violations (Defendant’s Application for Leave to Appeal, p. 14).

In fact, in considering the proposed legislation which would later become the WPA, the Legislature rejected these types of arguments. As the legislative history shows, the Legislature recognized that the goal of a whistleblower statute is to protect those who “give information to authorities” and who “assist in the enforcement of laws”<sup>8</sup> by whistleblowing (**Exhibit 1**, House Legislative Analysis HB 5088, 5089; February 5, 1981). With the passage of the HB 5088, which amended P.A. 1973 No. 196, the Legislature did not see fit to change the language of the statute which provides that any public employee can report to a “**supervisor, person, agency, or organization...**”, to distinguish those whose job duties involve reporting of violations from other public employees.

---

<sup>8</sup> The legislative analysis states, “While Public Act 196 provides limited protection for **persons who give information** about a narrow range of crimes, there is no more general law to encourage vigilance and to protect employees from reprisals. Some persons think that Public Act 196 should be amended to make it more effective and that a new law should be enacted to protect both **public and private employees who assist in the enforcement of the laws.**” **Exhibit 1**, House Legislative Analysis HB 5088, 5089; February 5, 1981 (Emphasis added).

The Legislature obviously intended for HB 5088 to protect all public employees who “assist” in enforcing P.A. 1973 No. 196 by “giving information” on ethical violations, irrespective of whether the individual’s job involves reporting of misconduct. Similarly, with the passage of HB 5089, the Legislature did not distinguish in the language of the WPA between public employees whose jobs involve reporting misconduct and other public employees. By its plain language, the WPA protects any employee who brings a violation of law to the attention of a public body, irrespective of whether the employee’s job involves reporting.

With respect to Defendants’ claim that employers cannot effectively manage employees whose jobs involve reporting violations and who are protected by the WPA, it should be noted that in considering specific arguments “for” and “against” passage of the WPA, the Legislature was presented with an argument “against” HB 5088 and HB 5089 similar to Defendants’:

“...[The language of the proposed legislation] is an open invitation for disgruntled employees or former employees to claim that their treatment by an employer has been illegal. It could become difficult or impossible to fire or discipline employees.” **Exhibit 1**, House Legislative Analysis HB 5088, 5089; February 5, 1981.

Despite the opponent’s suggestion that passage of the WPA would lead to an onslaught of frivolous litigation filed by disgruntled employees,<sup>9</sup> the WPA was passed by the Legislature--and there is no evidence which suggests that Michigan courts, and the summary disposition procedure, have been unsuccessful in ferreting out meritless claims brought under the Act. Moreover, as a proponent “for” passage of the bills stated:

---

<sup>9</sup> The fact that the opponent’s “against” argument does not even specifically mention employees whose jobs involve reporting misconduct highlights the fallacy of Defendants’ argument in this case--an employer faces the risk that **any** “disgruntled employee” could file a frivolous claim under the WPA, irrespective of whether or not the employee’s job involves reporting of violations. This fact is not a sufficient reason to exclude any person with a meritorious claim from the protection of the Act.

“There is never any foolproof way of guarding against false claims of discrimination, but it would be unreasonable to deny protection to the conscientious because that shelter might be used by the unscrupulous.” **Exhibit 1**, House Legislative Analysis HB 5088, 5089; February 5, 1981.

E. This Court Has Refused To Follow *Dicta* Which Conflicts With the Plain Language And Legislative Intent Of A Statute

The jurisprudence of this Court is that *dicta* which conflicts with the plain language and legislative intent of a statute does not establish a binding rule of law, *People v. Borchard-Ruhland, supra*, p. 289. In *Borchard*, the issue before this Court was whether the Court of Appeals erred in holding that the “implied consent” statute, MCL §257.625c, required the suppression of blood alcohol evidence obtained where the defendant was not under arrest and not advised of their rights under the statute. The *Borchard* Court reversed the Court of Appeals, ruling that under the plain language of the implied consent statute, the Legislature clearly intended that only persons who have been arrested fall within the purview of the statute, and therefore blood alcohol evidence obtained when a defendant was not under arrest and not advised of their rights could not be excluded.

This Court determined that the Court of Appeals in *Borchard* had applied a mistaken interpretation of the implied consent statute. This mistaken statutory interpretation found its origin in the *dicta* of a case decided by this Court over 20 years earlier, *McNitt v. Citco Drilling Co.*, 397 Mich 384; 245 NW2d 18 (1976). Some courts had apparently interpreted the *McNitt dicta* to be a binding rule of law. *McNitt* was a wrongful death case where the plaintiff sought to admit blood alcohol evidence which had been obtained without the defendant’s consent while he was unconscious. Because at the time the statute limited the admissibility of blood alcohol

evidence to criminal prosecutions for OUIL only, the *McNitt* Court ruled that the plaintiff was precluded from admitting the evidence.

The *Borchard* Court noted that although this ruling on the part of the *McNitt* Court disposed of the case, the *McNitt* Court, for unknown reasons, addressed additional issues in *dicta* which had nothing to do with the resolution of the issue before the court<sup>10</sup>:

“The language of the statute prohibiting the admission of chemical test results in civil actions was and should have been dispositive of the issue as framed by the *McNitt* Court. However, for reasons that are unclear, the *McNitt* Court chose to address additional arguments in *dicta*. It is this *dicta* that has given rise to the erroneous construction of the statute on which the Court of Appeals [in *Borchard*] relied.” *Borchard*, p. 288.

To the extent the *McNitt dicta* created a legal presumption, the *Borchard* Court overruled *McNitt*. The *Borchard* Court ruled:

“In sum, it appears that, in *dicta*, *McNitt* created a legal presumption that the requirements of the implied consent statute apply to *any* chemical testing. This *McNitt dicta* can also be read to require that an officer seeking a blood alcohol test expressly disclaim reliance on the statute in order to overcome the presumption. Neither of these conditions originate from the plain text of the statute as it existed then or now. Nevertheless, the Court of Appeals [in *Borchard*] relied on this dubious presumption. To the degree that this *McNitt dicta* created a legal presumption with corresponding disclaimer obligations, it is erroneous and of no persuasive force.” *Borchard*, p. 289.

The *Borchard* Court went on to note that the Court of Appeals in *People v. Weaver*, 74 Mich App 53; 253 NW2d 359 (1977), following the “erroneous presumption” of the *dicta* in

---

<sup>10</sup> In response to the *McNitt* plaintiff’s claim that statutory authority is not required for a police officer to authorize the administration of blood alcohol tests or their admission in evidence, the *McNitt* Court remarked that hospital personnel only administer tests at the request of law enforcement because they are protected under the statute from civil and criminal liability by the implied consent statute. The *McNitt* Court opined that absent a disclaimer by a law enforcement officer that his request for a blood test is not under the statute, hospital personnel are protected in relying on the officer’s request as authorization to administer a test without making an independent determination whether the statute has been complied with, *Borchard*, pp. 288-289.

*McNitt*, created its own mistaken rule of law with respect to the implied consent statute. The *Borchard* court overruled the *Weaver* Court's incorrect holding that, because *McNitt* suggested that the statute applied absent an express disclaimer to hospital personnel, the statute also applied absent a disclaimer of reliance on the statute to a conscious driver:

“In [*Weaver*] the Court of Appeals extended the erroneous *McNitt* presumption to the suspected intoxicated driver who *did* consent to chemical testing...[As we have explained] any judicially created legal presumption found in *McNitt* is contrary to the plain language of the statute. The extension of this dubious legal presumption to a suspected intoxicated driver who is not under arrest and who consents to chemical testing is also erroneous...Accordingly, the judicially created presumption created in *Weaver* is expressly overruled.” *Borchard*, pp. 289-291.

This Court ruled in *Borchard* that “...**sound principles of statutory construction require that Michigan courts determine the Legislature's intent from its words, not from its silence**”, *Id*, p. 286. In the instant case, the plain language of the WPA does not require an employee of a public body to report misconduct to an “outside” public body or “higher authority”, nor does the Act exclude from its protection persons who report misconduct as part of their job. And, nothing in the language of the WPA or the legislative history suggests a legislative intent to impose these restrictions. Why the Court of Appeals panel in *Dickson v. Oakland University*, 171 Mich App 68; 429 NW2d 640 (1988) suggested a construction of the WPA which is at odds with the plain language of the Act, by implying in *dicta* that a police officer is required to report to a “higher authority”, is unclear.

This Court **has** made clear, however, that it will not hesitate to establish the proper rule of law where *dicta* conflicts with the plain language and legislative intent of a statute. *Borchard* demonstrates that the Court should issue a peremptory order to clarify the misimpression that its

comments in footnote 4 of *Dudewicz v. Norris-Schmid, Inc*, 443 Mich 68; 503 NW2d 645 (1993) recognized *Dickson* as establishing a binding rule of law.

### **III. CONCLUSION**

The WPA is clear and unambiguous and does not require an employee of a public body to make his or her report to an outside public body. The legislative history of the Act demonstrates that the WPA was intended to facilitate and encourage whistleblowing by all government and private employees, not to impose special restrictions on an employee of a public body. Interpreting the WPA as requiring an employee of a public body to make his or her report to an outside public body to obtain the protection of the WPA has no basis in the language of the Act or its legislative history, and would be in direct opposition to the intent of the Legislature. Consequently, this Court should issue a peremptory order to clarify that a requirement that an employee of a public body report to an outside public body to be protected by the WPA is not the law in Michigan.

### **IV. RELIEF REQUESTED**

Plaintiffs request that this honorable Court issue a peremptory order stating that the WPA does not require an employee of a public body who reports a violation of the law to his or employer to also report the violation to an outside public body in order to be afforded the protection of the Act in a situation which otherwise satisfies the requirements of the Act. In the alternative, Plaintiffs request that the Court grant Plaintiffs' Application for Leave to Cross-Appeal.

Respectfully submitted,

**Stefani & Stefani,  
Professional Corporation**

By: 

Michael L. Stefani (P20938)

Frank J. Rivers (P62973)

Attorneys for Plaintiffs/Cross-Appellants

512 East Eleven Mile Road

Royal Oak, MI 48067-2741

(248) 544-3400

March 16, 2007