

Resources to Assist in Contract Drafting

By Marlene Coir

A review of contract treatises and form books will uncover an in-the-box example for just about any type of agreement practitioners may be charged with drafting. In Michigan, a sample form with pertinent discussion can usually be located in one of the titles published by the Institute of Continuing Legal Education. ICLE publications are typically updated annually by either loose-leaf supplements or a new, free-standing, soft-bound edition. ICLE books are also available online through paid subscription. The publisher is moving away from the accompanying CD-ROM format in its print resources in favor of subscription-based online access of all forms.¹ All comments on the included resources are based on the most current edition; other editions may have variant titles and different or additional authors or editors.

The national publications include both expansive multi-volume treatises and concise works with more narrowly defined subject matter. The drafting manuals often note the distinction between legal writing and the drafting of transactional documents. The former seeking to persuade based on legal precedent and the latter employed to define and enforce legal relationships and agreements.

Several Michigan and national treatises noted in this article as well as additional resources were reviewed by Daniel D. Kopka, senior publications attorney with ICLE, in a May 2007 *Michigan Bar Journal* article titled "Contract Law Resources." The article also comments on databases available through Westlaw, Lexis, ICLE subscription services, and other online sources. An online library guide, *Contracts and the Uniform Commercial Code*, penned by Ruth Stevens in 2005, may be accessed through the Thomas M. Cooley Law School Library catalog.²

Within the Michigan Collection

*Michigan Contract Law*³ is Michigan's principal treatise on contract law with chapter titles reminiscent of law school course lectures: "Statute of Frauds," "Third-Party Beneficiary Contracts," "Specific Performance," etc. Each chapter is individually penned and nearly every explanatory sentence includes a citation to the underlying authority. The chapter on contract drafting is based on Chapter 8 of the *Michigan Basic Practice Handbook*.⁴ Both sources provide a good overview of the drafting process, including discussion of the preliminary client conference, preliminary agreements, capacity of an individual or entity to contract, risk allocation, and successor liability. The two works offer both simple and complex contract examples, standard boilerplate, and general drafting principles. Another respected resource, the encyclopedic *Michigan Legal Forms*⁵ has an entire volume devoted to contracts and another dedicated to the Uniform Commercial Code.

In addition to general contract treatises, guides, and form books, practitioners will want to become familiar with transactional documents specific to real estate, starting and selling a business, employer/employee relations, and more. There are practical treatises which include forms and drafting advice published by ICLE and major national publishers in many areas of legal practice.

One example, the *Michigan Business Formbook*⁶ contains forms for every type of business agreement and includes a chapter on drafting clauses. Sample forms may also be found on the CD which accompanies the two-volume set. *Employment Law in Michigan: An Employer's Guide*⁷ discusses contracts between employer and employee, including at-will termination provisions and just-cause termination presumptions. *Michi-*

*gan Real Estate Practice Forms*⁸ paves the way through every step of commercial or residential real estate transactions with sample forms and practitioner-targeted discussion. There is also a publication specific to *Michigan Residential Real Estate Transactions*.⁹ Another title, *Michigan Lease Drafting and Landlord-Tenant Law*,¹⁰ provides specific lease clauses to cover a variety of residential and commercial requirements. Other titles with contract components include *Buying and Selling a Business in Michigan*¹¹ and *Michigan Limited Liability Companies*.¹²

Perhaps one of the most important contract drafting resources for lawyers is *Attorney Fee Agreements in Michigan*.¹³ This book reviews compliance with rules of professional ethics and referral and fee-splitting agreements as well as ethical considerations in general. Individually written chapters cover specific types of legal services such as divorce, criminal defense, workers' compensation, and bankruptcy. There is also a chapter on fee agreements for attorneys serving as mediators or arbitrators. Sample forms are dispersed throughout the individual chapters. Incidentally, the State Bar of Michigan's website provides a selection of fee-agreement forms in the Practice Management–Client Intake section.¹⁴

National Treatises

Several national treatises offer scholarly text as well as samples of complete documents and instructions for drafting clauses that are clear, concise, and constructed to withstand the test of future interpretation by courts. One of the leading resources in this practice area, the multi-volume *Corbin on Contracts*,¹⁵ has been described as "the greatest law book ever written."¹⁶ This scholarly treatise is truly expansive, covering

every aspect of contract law with entire volumes devoted to subtopics such as construction, statute of frauds, and damages. Another distinguished title is *Williston on Contracts, 4th*.¹⁷ This multi-volume practical treatise includes a CD chock-full of forms. Williston is also available via Westlaw online, where one can execute text searches within the Williston treatise database (WILLSTN-CN), the Williston forms database (WILLSTN-FM), and the combined treatise and forms database (WILLSTN-ALL). In WestlawNext, one may select to browse or search Williston's text or forms databases or search the content of both using the Williston Index database.

In addition to the encyclopedic treatises reviewed above, there are many practical tomes dedicated to the drafting of specific types of agreements. For example, attorneys working with online content may want to look at *Drafting of Internet Agreements*.¹⁸ Drafting a contract that deals with the rights of an entertainer might require review of *Entertainment Law 3d: Legal Concepts and Business Practices*,¹⁹ which contains a chapter on contracts as they relate to various media and performance genres. For the patent attorney, both *Patent Law Fundamentals*²⁰ and *Moy's Walker on Patents*²¹ contain sections dealing with patent issues related to agreements and contracts.

General style manuals and writing aids may be overlooked when drafting legal documents, but they can be useful by providing alternate spellings, everyday usage, and the historical and regional nuances of words. In addition to a current edition of Black's Law Dictionary, a transactional law firm's library should contain a standard dictionary such as *Webster's Third New International Dictionary, Unabridged* (Merriam-Webster), or an acceptable abridged edition. Other portable resources on word definitions and usage include *The American Heritage Dictionary of the English Language* and a number of books written or edited by Bryan Garner including *Garner's Modern American Usage* and *A Dictionary of Modern Legal Usage*.

Drafting Manuals

The following is a short list of single-volume, in-the-briefcase works on the art of

contract drafting. These style manuals offer detailed drafting language analysis along with practical advice and examples. As one of the authors noted, "[w]hether drafting from a form or from scratch, every contract should be considered an original composition from beginning to signature. Thinking of each transactional document as unique to its specific deal can help you view every contract with the necessary fresh eyes."²²

- *Contract Drafting: Powerful Prose in Transactional Practice*²³ is a concise manual for the transactional drafter.
- *Drafting Contracts: How and Why Lawyers Do What They Do*²⁴ is primarily for commercial lawyers; however, it would be useful to anyone who drafts contracts.
- *Drafting Effective Contracts: A Practitioner's Guide*²⁵ is a detailed loose-leaf treatise covering a variety of agreements. The author discusses general drafting elements, language traps, and the possible hazards of becoming too fond of "shrink-wrap" agreements and too reverent of boilerplate contracts.
- *Drafting International Contracts: An Analysis of Contract Clauses*²⁶ delves into the structure and specific drafting conventions of international contracts.
- *Legal Usage in Drafting Corporate Agreements*²⁷ is a slim treatise offering detailed language, structure, and specific drafting conventions.
- *A Manual of Style for Contract Drafting*²⁸ is a classic style manual that maps out the various parts or sections of a legally enforceable agreement. ■



Marlene Coir is a reference librarian at the Thomas M. Cooley Law School in Auburn Hills. She has been a member of the State Bar of Michigan since 1990 and presently sits on the SBM Committee on Libraries, Legal Research, and Legal Publications. She also serves as chair of the Pro Bono Librarians Committee for the Michigan chapter of the American Association of Law Libraries.

ENDNOTES

1. See Kopka, *Contract law resources*, 86 Mich B J 46 (May 2007), available at <<http://michbar.org/journal/pdf/pdf4article1147.pdf>>. All websites cited in this article were accessed May 15, 2013.
2. Stevens, *Contracts and Uniform Commercial Code* <<http://cooleylawlibguides.com/ucc>>.
3. Trentacosta, ed, *Michigan Contract Law* (2003).
4. Feldman, *Michigan Basic Practice Handbook* (6th ed).
5. See 9 West's Michigan Legal Forms (2000); 10 West's Michigan Legal Forms (1995).
6. Kleit, Hudson & Kopka, eds, *Michigan Business Formbook* (3d ed).
7. Seryak, Ellmann & Kopka, eds, *Employment Law in Michigan: An Employer's Guide* (2d ed).
8. Deems, *Michigan Real Estate Practice and Forms* (3d ed).
9. Nathanson, *Michigan Residential Real Estate Transactions* (2009).
10. Chard, Shoffner & Valvo, *Michigan Lease Drafting and Landlord-Tenant Law* (2d ed).
11. Appleman, Borgsdorf & Indenbaum, eds, *Buying and Selling a Business in Michigan* (2d ed).
12. Cambridge & Christopoulos, *Michigan Limited Liability Companies* (2d ed).
13. Stephens & Allen, *Attorney Fee Agreements in Michigan* (5th ed).
14. State Bar of Michigan, Practice Management Resource Center <<http://michbar.org/pmrc/clientrelations.cfm>>.
15. 6 Corbin on Contracts (rev ed, 2002).
16. Gilmore, *The Death of Contract* (Columbus: Ohio University Press, 1974), p 57.
17. Williston, *A Treatise on the Law of Contracts* (4th ed).
18. Battersby & Grimes, *Drafting Internet Agreements* (Frederick: Aspen Publishers, 2010).
19. Selz, Simenksy & Acton, *Entertainment Law: Legal Concepts and Business Practices* (3d ed).
20. Mills, Reiley & Highley, *Patent Law Fundamentals* (2d ed).
21. Moy, *Moy's Walker on Patents* (4th ed).
22. Espenschied, *Contract Drafting: Powerful Prose in Transactional Practice* (2010), § 2.6, p 25.
23. *Id.*
24. Stark, *Drafting Contracts: How and Why Lawyers Do What They Do* (New York: Aspen Publishers, 2007).
25. Feldman & Nimmer, *Drafting Effective Contracts: A Practitioner's Guide* (2d ed).
26. Fontaine, *Drafting International Contracts* (Ardley: Transnational Publishers, 2006).
27. Adams, *Legal Usage in Drafting Corporate Agreements* (Westport: Quorum Books, 2001).
28. Adams, *A Manual of Style for Contract Drafting* (3d ed).