

*Lawyers are the intended audience of these Guidelines. The Guidelines, therefore, are addressed to lawyer conduct and not directly to the conduct of legal assistants and paralegals. Both the National Association of Legal Assistants (N.A.L.A.) and the National Federation of Paralegal Associations (N.F.P.A.) have adopted guidelines of conduct that are directed to legal assistants and paralegals.*

*It is unlawful for any person to practice law, or to engage in the law business, or in any manner whatsoever to lead others to believe that he is authorized to practice law or to engage*

*in the law business, or in any manner whatsoever to represent or designate himself or herself as an attorney and counselor, attorney at law, or lawyer, unless the person so doing is regularly licensed*

# NOT JUST FOR

*and authorized to practice law in this state. Any person who violates the provisions of this section is guilty of contempt of the Supreme Court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law. This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter.*

*We adopt the following:*

**A**s the legal assistant (paralegal) profession grows and matures, a significant number of professional organizations are implementing their own codes of ethics and professional responsibility tailored specifically to legal assistants. But the rules by which attorneys must abide are always the starting point.

These topics are explored from several different perspectives. The first focus is on the national level, including the American Bar Association, the National Association of Legal Assistants, Inc., and the National Federation of Paralegal Associations, Inc.

R U L E S O F  
E T H I C S A N D  
P R O F E S S I O N A L  
**LAWYERS**

*by Margaret Lucas Agius, CLA*

R E S P O N S I B I L I T Y  
G U I D E L E G A L  
A S S I S T A N T S I N  
M A I N T A I N I N G  
H I G H S T A N D A R D S  
O F S E R V I C E

The second focus is on the state level, featuring the State Bar of Michigan and its Legal Assistant Section. This section also includes a number of relevant examples of how legal assistant ethics, professional responsibility, and UPL are handled in other states.

The third and final focus is on education. Education is the foundation of ethics and professional responsibility for legal assistants. This includes the formative education received in the course of obtaining a legal assistant certificate or degree, as well as continuing legal education taken over the course of a legal assistant's career.

## NATIONAL PERSPECTIVE

### American Bar Association

The American Bar Association has both Model Rules of Professional Conduct, which are the basis of most state rules of professional conduct for attorneys (including in Michigan) and Model Guidelines for the Utilization of Legal Assistant Services, which address several aspects of ethics, professional responsibility, and UPL as they apply to the attorney-legal assistant working relationship. The rules and guidelines must work together to be effective.

According to the Model Guidelines adopted in 1991 by the ABA's policy-making body, the House of Delegates:

*Lawyers are the intended audience of these Guidelines. The Guidelines, therefore, are addressed to lawyer conduct and not directly to the conduct of legal assistants and paralegals. Both the National Association of Legal Assistants (NALA) and the National Federation of Paralegal Associations (NFPA) have adopted guidelines of conduct that are directed to legal assistants and paralegals.<sup>1</sup>*

Guidelines 1 and 2 provide the framework for the attorney-legal assistant working relationship: A lawyer is responsible for all of the professional actions of a legal assistant and may delegate to a legal assistant any task normally performed by the lawyer with certain exceptions. Guideline 3 spells out three of those exceptions:

*A lawyer may not delegate to a legal assistant:*

*(a) Responsibility for establishing an attorney-client relationship.*

*(b) Responsibility for establishing the amount of a fee to be charged for a legal service.*

*(c) Responsibility for a legal opinion rendered to a client.*

This guideline provides a bright line between what duties a legal assistant or paralegal may ethically perform and those that would constitute UPL. The balance of the ABA guidelines address related topics, including disclosure of the legal assistant's nonattorney status, preservation of client confidences by the legal assistant, and prevention of conflict of interests by the legal assistant.

### National Association of Legal Assistants, Inc.

The National Organization of Legal Assistants, Inc. (NALA) has its own Code of Ethics and Professional Responsibility.<sup>2</sup> In addition, NALA's Certified Legal Assistant (CLA) Examination has an entire section devoted to ethics. The CLA designation may be revoked for ethical violations, including falsification of information on the application form, subsequent conviction of UPL, divulging the contents of any examination question or questions, subse-

quent conviction of a felony, and violation of the NALA Code of Ethics and Professional Responsibility. NALA also strictly forbids unauthorized use of the CLA and CLA Specialist designations. The Legal Assistants Association of Michigan, Inc. (LAAM) is the NALA affiliated association in Michigan. The NALA Code of Ethics and Professional Responsibility also binds LAAM and its members.

### National Federation of Paralegal Associations, Inc.

The National Federation of Paralegal Associations, Inc. (NFPA) also has a Model Code of Ethics and Professional Responsibility.<sup>3</sup> In addition, NFPA has Guidelines for Enforcement, Guidelines for Rendering Ethics and Disciplinary Opinions, and Informal Ethics and Disciplinary Opinions. NFPA also offers the Paralegal Advanced Competency Exam (PACE). In addition to the work experience and education requirements to take the PACE, "The paralegal cannot have been convicted of a felony nor be under suspension, termination, or revocation of a certificate, registration, or license by any entity." The Michiana Paralegal Association, Inc. (MPA) is the NFPA-affiliated association serving southwest Michigan and northwest Indiana. The NFPA Model Code of Ethics and Professional Responsibility also binds MPA and its members.

## FAST FACTS

- The American Bar Association, National Association of Legal Assistants, Inc., and the National Federation of Paralegal Associations, Inc., all have codes that address ethics, professional responsibility, and the unauthorized practice of law.
- Michigan enjoys unique cooperation between the State Bar and the Legal Assistants Section, shared only by a handful of other states.
- Education, both initial and continuing, is the foundation of ethics and professional responsibility for legal assistants.

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## STATE ISSUES

### Michigan

As noted above, the Michigan Rules of Professional Conduct (MRPC) are based on the ABA Model Rules of Professional Conduct. While all MRPC's apply to legal assistants where practical, there are some with special significance. One such rule is MRPC 5.3, Responsibilities Regarding Nonlawyer Assistants:

*With respect to a nonlawyer employed by, retained by, or associated with a lawyer:*

*(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;*

*(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and*

*(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:*

*(1) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or*

*(2) the lawyer is a partner in the law firm in which the person is employed or has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.*

Many State Bar of Michigan formal and informal ethics opinions interpret Rule 5.3. Formal opinions include R-1 (Adequate Supervision), R-4 (Duty to Protect Nonlawyer Employees), and R-6 (Supervision of Nonlawyers). Informal opinions include RI-26 (Employee as Witness), RI-34 (Nonlawyers on Firm Letterhead), RI-103 (Employee Undertaking Administrative Agency Representation), RI-104 (Nonlawyer Consultants), RI-105 (Nonlawyer Professional Employed by Law Firm), RI-107 (Nonlawyer Employees), RI-123 (Nonlawyer Performing Client Intake), RI-125 (Employee Undertaking Administrative Agency Representation), RI-128 (Nonlawyer Acting as Intermediary with Client), RI-153 (Employee

Conduct Imputed to Lawyer), and RI-210 (Supervision of Nonlawyers).

Another rule with special significance to legal assistants is MRPC 5.5, Unauthorized Practice of Law:

*A lawyer shall not:*

*(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or*

*(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.*

Many State Bar of Michigan formal and informal ethics opinions also interpret Rule 5.5. Formal opinions include R-1, cited above. Informal opinions not previously cited include JI-26 (Duty to Prevent Unauthorized Practice of Law), JI-76 (Divorce Forms for Use by Nonlawyers), RI-190 (Nonlawyer Agents of Lawyer's Business), RI-223 (Prepaid Legal Services Plan), and RI-298 (Lawyer Overseeing Deed Preparation).

In Michigan, the following statute, MCL 600.916, governs the unauthorized practice of law:

*It is unlawful for any person to practice law, or to engage in the law business, or in any manner whatsoever to lead others to believe that he is authorized to practice law or to engage in the law business, or in any manner whatsoever to represent or designate himself as an attorney and counselor, attorney at law, or lawyer, unless the person so doing is regularly licensed and authorized to practice law in this state. Any person who violates the provisions of this section is guilty of contempt of the Supreme Court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law. This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter.*

The Michigan Supreme Court delegates the investigation and prosecution of UPL violations to the State Bar of Michigan in Rule 16 of the Supreme Court Rules Concerning the State Bar of Michigan:

*The State Bar of Michigan is hereby authorized and empowered to investigate*



matters pertaining to the unauthorized practice of law and, with the authority of its Board of Commissioners, to file and prosecute actions and proceedings with regard to such matters.

Of the UPL prosecutions successfully undertaken by the State Bar of Michigan in the past decade, several have involved paralegals. Victoria V. Kremski, assistant counsel for the State Bar of Michigan, provided a list of permanent injunctions for unauthorized practice of law that includes the following paralegals as defendants:

**ROY ANDERSON**, d/b/a ROY'S PARALEGAL AND COPY SERVICE, Circuit Court of Wayne County, #95-520377-AZ, non-lawyer operating a "Paralegal and Copy Service" which includes writing legal motions and briefs which are filed "pro se" by customers. Defendant enjoined from practicing law in any form in this state, either individually or through any business entity, acting as representative or intermediary of other persons with regard to their legal matters, including the preparation of any legal documents on behalf of other persons. Injunction entered 2/21/96.

**ANTOINETTE DEFOE**, Circuit Court for the County of Berrien, 97-0756-CM, a paralegal engaging in activities that are reserved for attorneys. Defendant was hired to prepare a divorce and quit claim [sic] deed. The divorce judgment drafted by Defendant stated there was no marital property but two years after the divorce Defendant prepared a quit claim [sic] deed transferring property from the ex-husband to the ex-wife. This created a problem because the ex-husband had remarried and his current wife was entitled half of the property. The ex-wife was trying to sell the property but could not because of a cloud on the title. The Consent Judgment bars Defendant from giving legal advice and preparing legal documents. Defendant can perform transcription services but she cannot add, delete, or change language to standardized forms. Defendant must also post notice of her limitation in her business office and pay the complainants \$200.00. Injunction entered on 1/15/98.

**MARY LOU HOPKINS**, d/b/a the Missing Link, Circuit Court for the County of Calhoun, #97-4299-CZ, a paralegal engaged in activities reserved for attorneys. Ms. Hopkins would assist individuals by giving legal advice and preparing legal divorce papers without the supervision of a licensed attorney. The activities of Ms.

Hopkins exceeded those allowed under the Cramer decision. Injunction entered 10/7/98.

**CRAIG KLOPENSTINE**, Circuit Court of Jackson County, Case No. 98-087252, paralegal who has represented numerous "clients" without the supervision or direction of a licensed attorney. Mr. Klopenstine educated himself in the law while incarcerated. He served as a jailhouse lawyer and upon his release, he continued to practice law. He claims to have a "constitutional right" to practice law. Permanent injunction was entered 12/4/98. Klopenstine and his assigns are enjoined from giving legal advice and preparing legal documents.

While these four are the only examples on the list in which the defendant is specifically called a paralegal, several other defendants could fit into that category as well. Two such defendants are Alfredo Rodriguez and Margaret Mainardi:

**ALFREDO RODRIGUEZ**, Circuit Court for the County of Ottawa, Case No. 99-33794-CZ. Rodriguez was employed by the Law Offices of John Watts, in Holland. In the course of his employment, Rodriguez held himself out as an attorney, collected attorneys fees, gave legal advice, and acted as an attorney in immigration matters. Injunction entered 1/7/00.

**MARGARET MAINARDI**, Circuit Court of Wayne County, #91-123925-AW, non-lawyer assisting pro se litigants. Defendant permanently enjoined from "drafting legal documents, giving legal advice, adding, amending, and deleting language from legal form documents, selling or preparing forms for legal services other than preprinted standardized forms, acting as representative or intermediary of others with regard to legal matters, and hiring or contracting with licensed attorneys to provide legal services to others." Original injunction issued 2/28/92; Amended Order of Injunction entered 3/17/95.

Also, in In the Matter of Bright, U.S. Bankruptcy Court of the Eastern District of Michigan, #93-42713-S, the Bankruptcy Court permanently enjoined Mainardi from collecting raw data concerning debtor finances; actual preparation and filing for the debtor of Chapter 7 petitions, statements, and schedules; deciding what information should be placed on forms and in what format; adding language to standard forms not dictated by

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*debtor and transcribed verbatim; responding to debtor questions regarding interpretation or definition of terms; showing debtors reference books; providing information about remedies and procedures available in the bankruptcy system; and acting as an intermediary between debtor and attorney selected by nonlawyer. Injunction issued 8/9/94.*

In addition to the injunctions cited above, Mainardi was also the subject of a recent show cause hearing for additional acts of UPL.

Regarding the foregoing examples of UPL by paralegals, Kremksi said, "I think the interesting issue here is the harm done to the public. Just looking at the facts, think of the global impact these people had on the public. Yes, you can find someone to do your legal work cheaper than an attorney, but it may cost you more in the long run. Under the guise of "helping" the public, they actually caused more harm than if an attorney had handled the situation from the beginning."

The State Bar of Michigan, like the ABA, has Guidelines for Utilization of Legal Assistant Services.<sup>4</sup> The Michigan Guidelines are similar to the ABA Guidelines and offer helpful interpretative commentary following each guideline. They also outline the criteria for membership in the Legal Assistants Section of the State Bar of Michigan.

Legal assistants are offered the privilege of affiliate membership in the State Bar of Michigan. The Legal Assistants Section of the State Bar of Michigan relies on the Michigan Rules of Professional Conduct, the same rules that bind Michigan attorneys. Not many other state bar associations offer such a privilege to legal assistants. Of those that do, several have a separate and distinct code of ethics for legal assistants, in addition to the rules that apply to attorneys. Most are based on the NALA Code of Ethics and Professional Responsibility, and like most state bars they base rules of professional conduct on the ABA Model Rules of Professional Conduct. Although there are others, examples of four such state bar legal assistant divisions follow. A fifth state will be highlighted for its recent Supreme Court opinion addressing paralegal UPL.

## New Mexico

The Legal Assistants Division of the State Bar of New Mexico has its own code of ethics.

It also has continuing legal education (CLE) requirements, including mandatory ethics CLE. While some substantive CLE hours may be carried over from year to year, "any excess ethics credit hours carried over will be counted as general hours only. Members must earn one (1) credit hour of ethics per year."<sup>5</sup>

## North Carolina

The North Carolina Bar Association Legal Assistants Division also has a code of ethics.<sup>6</sup> In addition, each applicant must certify that he or she is not a convicted felon; has not been convicted in any state or federal court of any crime involving or related to a charge of moral turpitude; has not been the subject of and reprimanded or otherwise censured in any disciplinary or other similar proceeding involving such applicant's business affairs or other conduct involving the public; has not had a professional business license granted to such applicant by the State of North Carolina,

any other state, the federal government, or an agency of any of the foregoing revoked or suspended for breach of ethics or a charge relating to the character or personal fitness of such applicant; and is otherwise mentally and morally fit.

## Texas

The Legal Assistants Division of the State Bar of Texas has both Standing Rules and a Code of Ethics and Professional Responsibility. The Standing Rules of the Legal Assistants Division of the State Bar of Texas, revised in 2000, provide that a member may be expelled, or application for membership or reinstatement of membership may be rejected, for:

*(a) Proof of conviction of a felony involving moral turpitude;*

*(b) Revocation or suspension of a license or permit to practice or engage in a profession or occupation.*



(c) *Expulsion from or suspension of membership in a law related professional association.*

(d) *Proof of conviction of a misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property.*

(e) *Incurring a permanent injunctive decree or a judgment granted in favor of the Unauthorized Practice of Law Committee of the Texas Supreme Court.*

(f) *Willful misrepresentation of a material fact upon the application for membership of any member.*

The Texas Standing Rules also address misconduct, grievances, and discipline.<sup>7</sup>

## Utah

The Legal Assistant Division of the Utah State Bar addresses ethics and professional

*professional association without being fully reinstated.*

*[T]hey have completed 10 hours of CLE, of which one hour was ethics....*

*[T]hey have read the "Definition of Legal Assistant" as stated in the application and have read and agree to be bound by the Division's Code of Ethics. They have further read Rules 5.3 and 5.5 of the Utah Rules of Professional Conduct applicable to attorneys licensed to practice law in the State of Utah. Must further agree to avoid any action which might involve their employer attorney in the violation of the said Utah Rules of Professional Conduct or any Supreme Court rule, and to avoid any action which may create an appearance of professional impropriety.<sup>8</sup>*

## South Carolina

While the South Carolina Bar Association does not have a legal assistant division or



conduct in its Bylaws, Canons of Ethics, Standing Rules, and Membership Requirements. Membership Requirements mandate that applicants certify:

*That they have not been convicted of a felony for which they have not been pardoned or otherwise had my full rights restored;*

*They have never been convicted of a misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property; and*

*They have never been expelled or suspended from membership in a law related*

section, the South Carolina Supreme Court issued a compelling decision on paralegals and the unauthorized practice of law just last year. The Court issued a per curiam opinion in which it made the following holding:

*We adopt the referee's findings and recommendations attached to this opinion and hold that a non-lawyer employee conducting unsupervised legal presentations for the public and answering legal questions for the public or for clients of the attorney/employer engages in the unauthorized practice of law. See State v.*

*Despain, 319 S.C. 317, 460 S.E.2d 576 (1995). We further hold that a proposed fee arrangement which compensates non-lawyer employees based upon the number and volume of cases the non-lawyer employee handles for an attorney violates the ethical rules against fee-splitting with non-lawyer employees. Rule 5.4 of the Rules of Professional Conduct, Rule 407, SCACR.<sup>9</sup>*

## EDUCATION ISSUES

The foundation of ethics and professional responsibility for legal assistants and paralegals is education. This includes education for legal assistant students and continuing legal education for working legal assistants.

### Paralegal Ethics for the Next Generation

The key for the next generation of legal assistants is in the programs offered by colleges, universities, and other schools, from which a prospective legal assistant may earn a degree or certificate.

A conclave of six legal professional organizations has published a brochure entitled, "How to Choose a Paralegal Program." Those organizations include the American Association for Paralegal Education, the ABA Standing Committee on Legal Assistants, the Association of Legal Administrators, the Legal Assistant Management Association, NALA, and NFPA. Among the factors listed in evaluating a paralegal program was the content and nature of the curriculum:

*The courses should teach practical job skills in conjunction with the underlying legal theory. The curriculum should cover legal research and writing, litigation, ethics, contracts, business organizations, and torts. Courses should develop students' critical thinking, communication, computational, computer and organizational skills, and competency to handle ethical issues. Programs should offer an experiential learning component such as an internship, practicum, or clinical experience.*

At the heart of these programs is the right combination of instructor and textbook. Attorneys teach most paralegal ethics courses and author most textbooks used in these courses. However, experienced paralegals are emerging as instructors and authors in this



field as well. For example, Angela Schneeman, a practicing paralegal, authored a recent text, *Paralegal Ethics*.<sup>10</sup> Attorneys and experienced legal assistants must work together to educate the next generation in ethics and professional responsibility.

## Continuing Legal Education

Continuing legal education seminars provide updates on current trends and refreshers on the basics for working legal assistants. The Legal Assistants Section of the State Bar of Michigan has offered two such seminars in recent years. In 1998, Vicki Voisin, CLAS, immediate past president of NALA, taught *Ethics for the Legal Assistant*. In 2000, Victoria V. Kremiski, Assistant Counsel of the State Bar of Michigan, taught the ethics section of *A Day Dedicated to Legal Assistant Education*.

## CONCLUSION

In general, legal assistants are subject to the same rules of professional conduct as attorneys. Paralegals belonging to national professional organizations or their affiliates are subject to additional ethics codes. Legal assistants in some states, such as New Mexico, North Carolina, Texas, and Utah, may be sub-

ject to additional ethics rules and regulations intended solely for legal assistants, as well as ethics rules and codes that apply to attorneys in those states. Statutes governing the unauthorized practice of law apply to all nonattorneys, including legal assistants and paralegals.

If a legal assistant thinks something may be unethical, there is a good chance it is. Rules, codes, statutes, bylaws, and case law give legal assistants and paralegals—and their supervising attorneys—guidelines to follow. Education, common sense, dedication, and respect for the profession give them the wisdom to implement those guidelines. ♦



*Margaret Lucas Agius, CLA, has been a legal assistant for more than 10 years. She holds a BS with Highest Honors from Madonna University's ABA-approved Legal Assistant Program. She earned her CLA designation in 2000. She is an active member of the Legal Assistants Section of the State Bar of Michigan and a former section council member. She is the section's newsletter chair and is managing editor of the Michigan Legal Assistant.*

## FOOTNOTES

1. ABA Standing Committee on Legal Assistants, Model Guidelines for the Utilization of Legal Assistant Services (1991). ABA website: <http://www.abanet.org/legalassts/home.html>
2. National Association of Legal Assistants, Inc., Code of Ethics and Professional Responsibility (1998). NALA website: <http://www.nala.org>
3. National Federation of Paralegal Associations, Inc., Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement (1997). NFPA website: <http://www.paralegals.org>
4. State Bar of Michigan website: <http://www.michbar.org/opinions/ethics/>
5. Requirements for Maintaining MCLE Credits for Membership in the State Bar of New Mexico Legal Assistants Division (1999). website: <http://www.nmbar.org/statebar/legalassistdivision/LAD.htm>
6. North Carolina Bar Association Legal Assistants Division Code of Ethics and Professional Responsibility (1999). website: <http://www.barlinc.org/divisions/lad/ethics.asp>
7. Website: [http://www.lad.org/about\\_lad/standing\\_rules.htm](http://www.lad.org/about_lad/standing_rules.htm)
8. Website: <http://www.utahbar.org/sites/lad/index.html>
9. John Doe, *Alias v Condon*, \_\_\_ SC \_\_\_; \_\_\_ SE2d \_\_\_ (2000). Website: <http://www.law.sc.edu/opinions/25138.htm>
10. Angela Schneeman, *Paralegal Ethics*, West Legal Studies, Delmar/Thomson Learning (2000). Website: [http://www.westlegalstudies.com/sampchaps/schneeman\\_ethics-index.html](http://www.westlegalstudies.com/sampchaps/schneeman_ethics-index.html)

# The State Bar Needs **YOU** JOIN a Committee

*Many men and women have worked diligently throughout the history of the State Bar of Michigan to build effective programs for the benefit not only of lawyers, but of the general public as well. Much of that work has been accomplished through and by State Bar committees.*

The size of committees is limited by the bylaws to make them workable (and working) groups. To keep up a flow of fresh, new ideas, and to encourage broad member involvement, the bylaws also limit the number of terms any member can continuously serve. Hence, there are committee vacancies to fill each year.

The process begins in late spring when the president-elect reviews and evaluates the work of each committee and its members during the past year. The president-elect makes the appointments for the coming year, since it will be during his or her year as president that the committees will do their work. The ap-

pointments will be announced at the time of the Annual Meeting in September.

For a list of committees, see page 11 of the February 2001 *Bar Journal*. For your reference, the jurisdictions of the committees are listed in the Organizations Directory bound into the December 2000 issue.

If you are interested in a particular committee, please send a letter by April 16, 2001 indicating the committee to which you seek appointment, your experience in that area, and any other pertinent qualifications.

Please address your letter to: **Committees**  
**Bruce W. Neckers, President-elect**  
**State Bar of Michigan**  
**Michael Franck Building**  
**306 Townsend Street**  
**Lansing, Michigan 48933-2083**