The Gavel

Issue 2/99 October, 1999

A periodic newsletter on legal issues for clients and friends of **David B. Forest, P.C.**
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This issue of The Gavel
is already On the Web!

This and ALL back issues of *The Gavel* are available at our new Webpage. The location is WWW.FORESTLAW.COM *Disclaimer: Nothing in this newsletter is intended to be or is a substitute for legal advice.*

Can you get *(Linda)* Tripped up for Michigan Eavesdropping?

As virtually everyone knows, Linda Tripp was a major player in the Monica Lewinsky-President Clinton Scandal played out over the last two years. Tripp secretly recorded phone conversations between herself and Lewinsky in which Lewinsky revealed private information regarding her relationship with the President. Earlier this summer, Maryland officials brought charges against Tripp for her recording activities. **Could she be prosecuted if she had done the recording in Michigan? No!**

Michigan's eavesdropping statute and the Federal wiretapping statute prohibit taping a phone conversation when the taping is done by someone who is NOT a party to the conversation. But, **neither law prohibits a PARTICIPANT to the conversation from taping it, <u>even without</u> notice to the other party!** Does this mean you may secretly tape a phone conversations between yourself and your mother or your friend or your enemy or a paramour or anyone? Yes. Does the tape have to make a beeping sound? No. This is not limited to just phone conversations; if so inclined, you may hide a recorder in your coat pocket when talking to another.

A gray area of the law is answering machine tapes. Can they be used as evidence in court? While there are no reported cases in Michigan regarding this issue, one author has taken the position that "the nature of the recordings themselves provide a strong argument of consent.

Because a person who leaves a message is aware that a tape recording is being made, by continuing to speak, the person implicitly consents to the recording." D.G. Adams, *Michigan Lawyers Weekly*.

You are prohibited from taping or intercepting the conversation of other persons when you are not a known participant to the conversation. This includes such activities as taping a conversation between your spouse and another, and may even extend to taping a conversation between your minor child and someone else (this issue is currently split between Federal law [could be OK] and Michigan law [not OK]). This prohibition can even extend to electronic communications such as recording e-mails sent to someone else.

But for Linda Tripp, at least one of her mistakes was not recording her phone conversations in Michigan.

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Dumb Law: In Ohio, women are prohibited from wearing patent leather shoes in public [what about the men?].

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Drunk Driving Laws

All are aware of the dangers and perils of drinking and driving. The consequences for driving in Michigan under the influence get much more severe this year.

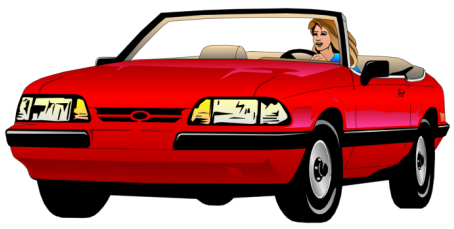
Starting this October, our Legislature has stiffened the penalties under Michigan's drunk driving laws. They now provide:

¶ Repeat Offenders without driver's licenses are prohibited from getting license plates.

¶ Vehicles can be immobilized or forfeited, and the Secretary of State can confiscate license plates and driver's licenses

¶ Ignition locks for licenses restored after revocation.

¶ Penalties are increased for causing death or serious injury while driving on a suspended license.



Under the new law, any prior alcohol related driving offense (e.g. impaired) will count as a first offense when a driver is arrested; therefore, the second incident will now count as a second offense. A third offense is now considered a felony.

If you are arrested for an alcohol related offense, you should contact our office immediately and we will try to help you or refer you to another attorney who can. **The bottom line is clear: Don't drink and drive. Get someone else to drive, call a cab, get a ride or just stay where you are.**

Employment Contracts: Get it in Writing!

Many people have a false sense of security regarding the promises that their employers make to them. While it is true that a contract for employment does not need to be in writing (i.e. oral contracts are OK), Michigan law has changed over the past two decades. Now, it almost impossible to enforce an oral employment contract.

First, some basics: **all non government employees are presumed to be employed "at-will"**. This means

that the employee is free to leave the employer ‘at will’, and that the employer can terminate the employee ‘at will’ (but never for discriminatory reasons). The only way to overcome this presumption is if the parties have entered into an employment contract (e.g. collective bargaining agreement with union members).

If an employment contract exists, it is usually called a ‘just cause’ contract (i.e. the employee can only be terminated for a just cause). Michigan law does not mandate that a just cause contract be in writing. However, a spoken promise for job security will rarely hold up in court after the employee is terminated. Purported oral employment agreements, when premised on general statements of job security, are not enforceable.

Some examples of employer statements to employees that have **not** been deemed sufficient to overcome the ‘at will’ presumption include:

✂Jobs at employer were “lifetime jobs ... As long as we did our job.”

✂a newly hired employee would "be there for retirement" unless "something really was wrong"

✂"You can stay till sixty-five, if you perform satisfactorily."

✂Employer’s policy that “no employee will be terminated without proper cause or reason and not until management has made a careful review of the facts.”

The Court will decide as a matter of law that no contract exists even when the employer sends mixed signals to its employees. In one case, an employer’s handbook stated that employees would not be terminated “without proper cause or reason”, but it also had a disclaimer stating that the employer reserved the right to terminate employees without cause. When an employee sued for wrongful termination, the court held that the disclaimer clearly (?) communicated that the employer did not intend to be bound by the policies in its own handbook.

The message is clear: **an employee should NOT rely on oral assurances of job security. If it is not stated clearly in writing and signed by the employer, an employee should not rely upon such promises and assurances.**

CASE IN POINT:

Sports Injuries Revisited: ice skating.

In a past issue, cases involving injuries related to golf and tennis have been examined, with mixed results. In a recent case involving ice skating, the Michigan Supreme Court addressed sports injuries head on.

The Plaintiff was injured when another skater at a public skate, while skating backwards, ran into the Plaintiff and caused an injured knee. The issue before the Court involved what level of duty (in legalese: standard of care) do participants owe to co-participants? The Plaintiff argued that an ordinary standard of care should be applied (i.e. Plaintiff wins if the Defendant skater is found negligent or careless).

In its discussion, the Court stated that our society recognizes that there are benefits to recreational activity, and we permit individuals to agree to rules and conduct that would otherwise be prohibited (e.g. battling for a rebound in basketball). **When people engage in a recreational activity, they have voluntarily subjected themselves to certain risks inherent in that activity. When one of those risks**

results in an injury, the participant has no ground for complaint.

Therefore, the court decided that the standard of care for coparticipants in recreational activities should be 'reckless misconduct'. Based on this decision, the Plaintiff lost the case.. *Ritchie-Gamester v City of Berkley.*

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Dumb Law: In Detroit, it is illegal for a man to scowl at his wife on Sunday [does this mean that it's OK the other six days?].

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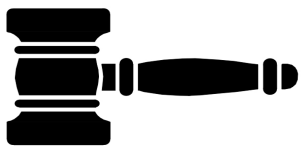

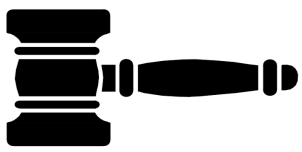

➥REFERRALS

If you are pleased with the **service and professionalism** you have received from our office, it would be greatly appreciated if you passed the good word along. **Referrals are always appreciated and encouraged**, and we look forward to the opportunity to serve your associates and friends. If we cannot immediately service their needs, we will be happy to **refer them to the appropriate attorney specializing** in their specific area of need.

However, if you have not been pleased, contact us directly!

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