Michigan's Consumer Protection Act: A Basic Guide for Legal Aid Attorneys

Michigan's Consumer Protection Act (MCL 445.901, *et seq.*) prohibits statutorily defined unfair, unconscionable, or deceptive practices committed in the conduct of "trade or commerce." This guide provides a basic overview of the Act and can be used in conjunction with MPLP's sample MCPA complaint. It focuses on the law governing claims brought by individuals, rather than class actions or actions brought by the Attorney General.

Basics:

- **Coverage.** The MCPA has broad coverage. It applies to all practices in the conduct of "trade or commerce," which is defined as "providing goods, property, or service primarily for personal, family or household purposes." MCL 445.902(1)(g). The Act provides examples of activities that meet this definition. *Id.*
    - **Exemptions.** MCL 445.904 contains narrow exemptions to coverage, such as certain insurance practices, practices prohibited by other specific statutes, and a transaction or conduct specifically authorized by a state or federal regulatory board or officer. The defendant has the burden of proving the exemption. MCL 445.904(4).
- **Who can bring claims.** The MCPA broadly defines a "person" who can bring claims under the Act. MCL 445.901(1)(d). Person, for example, includes individuals as well as organizations, including corporations and unincorporate associations. *Id.* Any "person" can seek declaratory or injunctive relief under MCL 445.911(1). To bring damages claims, the plaintiff must be a person who suffered a loss as a result of the violation. MCL 445.911(2), (4).[1]
- **Violations.** MCL 445.903(1) lists the specific practices that violate the Act. You must review this list and identify the specific subsection that the conduct in your case violates.
- **Statute of Limitations.** Actions must be brought within 6 years after the act or practice or 1 year after the last payment in the transaction, whichever is later. MCL 445.911(9). A defendant may assert an MCPA defense or counterclaim arising from the transaction even after that period. *Id.*

Available Relief:

Relief	Rule
Declaratory judgment	Any person can seek a declaratory judgment that a method, act, or practice is unlawful under the Act. MCL 445.911(1)(a).
Injunctive relief	Any person can seek relief enjoining threatened or ongoing violations of the Act. MCL 445.911(1)(b).
Statutory damages	Statutory damages of $250, or actual damages, whichever are greater, are available. MCL 445.911(2).[2]

[1] A "loss" can include actual damages, including emotional distress, as well as "unfulfilled expectations," the difference between the actual and represented value. *Mayhall v AH Pond Co, Inc*, 129 Mich App 178, 185-186 (1983).

[2] While there is no case law on point, advocates should argue based on the statutory language that the MCPA provides statutory damages of $250 *per* violation.

Actual damages	Statutory damages of $250, or actual damages, whichever are greater, are available. MCL 445.911(2). Actual damages can include non-economic injury (e.g., emotional distress) and "unfulfilled expectations." *Mayhall v AH Pond Co, Inc*, 129 Mich App 178, 185-186 (1983).
Attorneys fees	Available in actions seeking damages. MCL 445.911(3). Fees should not be limited by the amount in controversy or recovered. *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 97-98 (1995).

Pleading the Claim:

- Do not plead the MCPA as a generic "deceptive practices" count. Identify the specific MCL 445.903(1) subsection(s) violated and plead facts to support each one.
- Plead facts to support each element of the claim, including that the defendant engages in trade or commerce, the plaintiff is a "person" entitled to bring an action, that the plaintiff has suffered a "loss" if seeking damages, that a violation of the Act has occurred and, if seeking injunctive relief, that there is a threatened or ongoing violation of the Act.
- Fraud-based MCPA violations, in particular, should be pled with particularity (e.g., who, what, when, where, and how of the facts).
- Consider additional claims. MCPA violations often also give rise to common law claims (e.g., breach of contract, misrepresentation) and violations of other state and federal consumer protection statutes (e.g., Michigan's Home Solicitation Sales Act).

Practice Tips:

- **Be prepared for negotiations and settlement**. Because your client has the potential to recover attorney's fees, defendants often have a strong incentive to settle MCPA cases. Discuss settlement with your client early in the case, consider preparing a strong opening offer, and be prepared to draft a settlement agreement.
- **File a jury demand**. Requesting a jury increases your leverage in the case and may provide a more sympathetic fact finder. The jury demand can always be waived later, if desired.
- **Track your time carefully.** Record your time contemporaneously in standard increments and use action-oriented descriptions to document your work.
- **Help your client file a complaint with the Attorney General.** Filing a complaint with the Attorney General's office helps track emerging bad practices and identify systemic issues and bad actors.
- **Reach out for help!** MPLP is available to help with your MCPA cases, from brainstorming claims, to reviewing complaints, to co-counseling cases. Contact Libby Benton at ebenton@mplp.org.