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APRIL 2022

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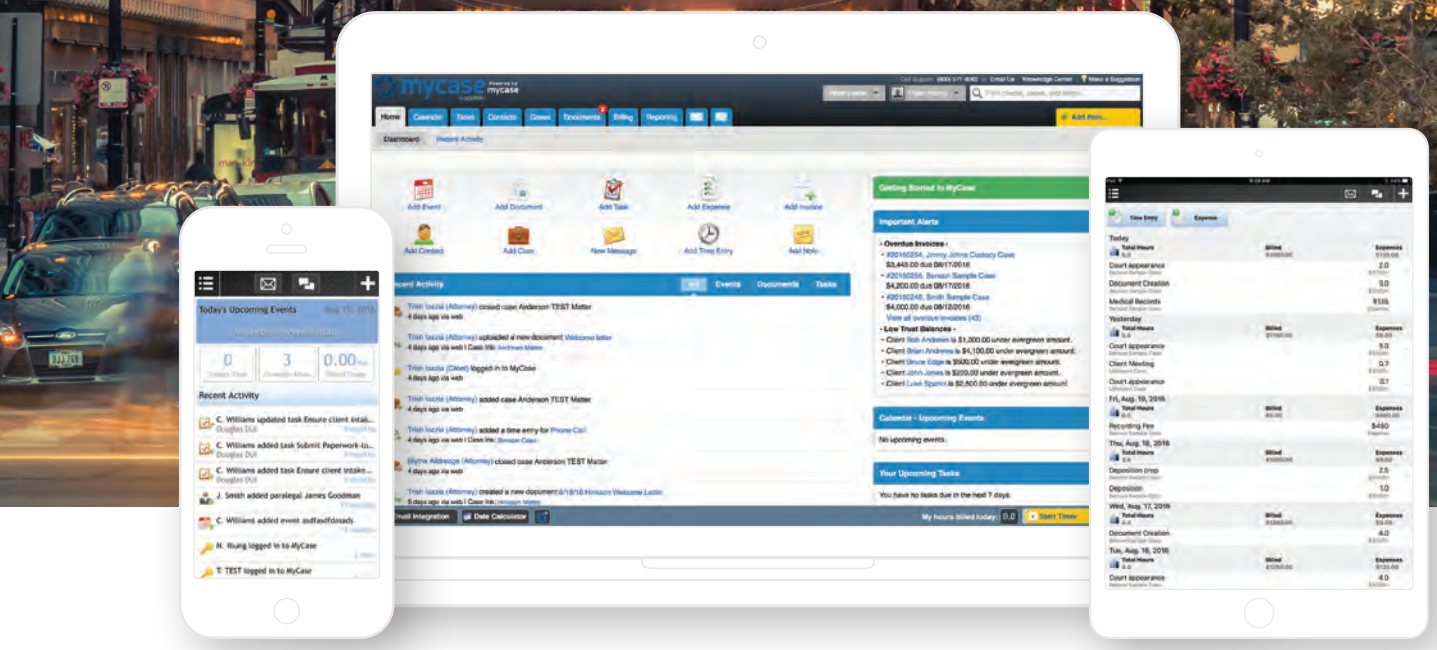

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Visit cooley.edu/LLM to learn more.

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APRIL 9, 2022
SEPTEMBER 17, 2022

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MEMBER SUSPENSIONS
FOR NONPAYMENT OF DUES

The list of active attorneys who are suspended for nonpayment of their State Bar of Michigan 2021-2022 dues is published on the State Bar's website at michbar.org/generalinfo/pdfs/suspension.pdf.

In accordance with Rule 4 of the Supreme Court's Rules Concerning the State Bar of Michigan, these attorneys are suspended from active membership effective February 15, 2022, and are ineligible to practice law in the state.

For the most current status of each attorney, see our member directory at directory.michbar.org.

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IN BRIEF

UPPER MICHIGAN LEGAL INSTITUTE 2022 OFFERS EDUCATIONAL OPPORTUNITY

The Upper Michigan Legal Institute will return to Mackinac Island this summer, offering an opportunity for lawyers statewide to further their legal education. The event is hosted by the State Bar of Michigan in partnership with the Institute of Continuing Legal Education.

UMLI 2022 is set for June 10-11 at the Grand Hotel and is open to all Michigan attorneys. It will feature a keynote address from Chief Justice Bridget M. McCormack as well as sessions on navigating Michigan's still evolving no-fault law, criminal law updates, and how to use technology to increase revenue and decrease stress. Topics also will include UMLI mainstays such as family law, probate and estate planning, and real property law.

The cost to attend is $199. A discounted rate of $149 is offered to those who register before May 20.

For more information, visit michbar.org/umli.

LAWYER REFERRAL SERVICE NEEDS MORE ATTORNEYS TO MATCH WITH MICHIGAN CLIENTS SEEKING SERVICE

The State Bar of Michigan's Lawyer Referral Service has been connecting attorneys with clients for more than 40 years — but now it's even better equipped to help.

The Lawyer Referral Service now incorporates new technology that better screens clients so participating attorneys receive referrals best matched to their areas of expertise. Plus, the Modest Means Program has expanded to include more practice areas, creating an opportunity for more attorneys to participate.

There continues to be need for attorneys to participate in the Michigan Lawyer Referral Service. Last year, the Lawyer Referral Service responded to more than 10,000 requests for legal assistance and made more than 4,000 referrals to participating attorneys. However, more than 1,700 potential clients could not be referred because there was not a participating attorney in the geographic or practice area they needed.

The shortage of attorneys is especially great in northern Michigan and the Upper Peninsula and the practice areas of family, consumer, probate, and medical malpractice law.

Visit michbar.org/programs/lawyerrwferral_panel or contact Monique Smith, LRS panel coordinator, at msmith@michbar.org or (517) 346-6323 for more information.

SECTION BRIEFS

ADR SECTION

The section will host its ADR Conference,

which will continue to be virtual, from Sept. 30-Oct. 1. We are pleased to announce that the annual awards ceremony will return live on Saturday, Oct. 1, at the Inn at St. John's in Plymouth. Upcoming events, past event materials, and the latest Michigan Dispute Resolution Journal can be found at connect.michbar.org/adr.

BUSINESS LAW SECTION

"Doffing Your Cap or Keeping the Cap On," a webinar regarding uncapping or exemptions from uncapping real estate taxes for transfers between common entities and for jointly held property, will be held on April 7 at 4 p.m. Registration information can be found on the section website at connect.michbar.org/businesslaw. The Business Law Institute will take place on Oct. 7 in Grand Rapids. We hope you can join us for these terrific events.

CANNABIS LAW SECTION

The Cannabis Law Section is hosting a one-day training on compliance issues on April 28 at the Kensington Hotel in Ann Arbor. A registration link is available on the section's page. Also, the section will host its seventh annual conference from Sept. 29-Oct. 1 at the Grand Traverse Resort in Acme. Join us for a comprehensive program on cannabis law-related topics. A registration link will be posted soon.

ENVIRONMENTAL LAW SECTION

The Clearing the Air Conference will be held virtually on April 14 from 10 a.m.-12:30 p.m. For a detailed agenda, registration information and the latest issue of the Michigan Environmental Law Journal, visit connect.michbar.org/envlaw.

HEALTH CARE LAW SECTION

The Health Care Law Section is hosting a webinar presented by Timothy C. Gutwald of ADHD Online titled "State and Federal Overview of Surprise Billing" on April 13 starting at noon. Gutwald will look at recent federal regulations and Michigan's surprise billing laws that are designed to restrict excessive out-of-pocket costs to consumers and what both laws mean to providers.

IMMIGRATION LAW SECTION

The Immigration Law Section encourages attorneys interested in providing pro bono representation to Afghan evacuees to contact the Michigan Immigrant Rights Center. MIRC received a Michigan State Bar Foundation grant to organize legal representation; the center will provide training and technical assistance to any attorneys able to volunteer. Contact afghanprobono@michiganimmigrant.org for more information.

INSURANCE AND INDEMNITY LAW SECTION

Join us for our next business meeting on April 14 at 4 p.m. at the Detroit Athletic Club. The meeting will be followed by a discussion with prior section chairs on renewal of our five-year strategic plan. Space is limited. For details on the business meeting and the section scholarship program, please visit us on Facebook or at connect.michbar.org/insurance.

RELIGIOUS LIBERTY SECTION

On March 11, Robert Dunn, a former clerk for U.S. Supreme Court Justice Clarence Thomas and one of the nation's premier religious liberty litigators, gave a remarkable presentation to the section. Dunn discussed his success before the Supreme Court in *Tandon v. Newsom*. We thank Mr. Dunn for his support of the section.

SOCIAL SECURITY SECTION

The Social Security Section will offer two more seminars this year and we hope you will join us. Our Boyne Mountain seminar will take place from June 12-14. We are lining up an impressive agenda of speakers. We will also meet in person at Schoolcraft College on Sept. 23 for our fall seminar. Save the dates and sign up for the section listserv for further updates.

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FROM THE PRESIDENT

DANA WARNEZ

Mock trial competitions offer an opportunity to inspire, be inspired

Confrontation. It is a foundational part of our experience as lawyers. As we all know, it's embedded into the Sixth Amendment of the U.S. Constitution and at the heart of our adversarial trial processes.

Lately, it seems like confrontation is an integral thread running not just through our profession, but also through just about everything around us. It's seemingly become the norm in recent political culture. Expressing points of view has devolved into a blood sport dominated by excessive combativeness — calling a candidate a clown, a group of like-minded thugs planning a kidnapping, even Russia's invasion of Ukraine, which is ravaging destruction and displacing millions of people. There is no telling what awfulness is coming next, right?

With so much conflict around us, sometimes we need a reminder to look around so we can also enjoy the rays of light shining through the cracks, breaching the darkness.

One of my favorite examples of the good that deserves our attention is the annual coming together of lawyers, judges, and high school students for the Michigan High School Mock Trial competition. Since 1982, and with the help and support of many volunteers and community sponsors, the Michigan Center for Civic Education has offered this platform enabling high school students to learn how to conduct both civil and criminal trials by actually presenting cases as plaintiffs and defendants, prosecutors and defense counsel, and witnesses.

With the support of the State Bar of Michigan Litigation Section and the Young Lawyers Section, the SBM Public Outreach and Education Committee, the Oakland County Bar Foundation, the Macomb County Bar Foundation, individual donors, and many, many

volunteers, the 2022 High School Mock Trial competition included more than 30 teams from across the state, including students from Washtenaw, Ingham, Oakland, Kent, Macomb, and Wayne counties. These students took on a civil negligence trial scenario centering around consumer privacy rights and potential liability of phone manufacturers when security breaches occur.

Michigan is lucky, for the first time ever, to host the National High School Mock Trial Championship from May 4-7 in Kalamazoo. The competition is virtual, but some volunteers and others will gather for receptions and related events. Learn more at miciviced.org

In teams of eight, students jump in feet first, most often having to learn on the fly about how to approach the process of confrontation. Is it best to object multiple times to every opposing witness's testimony or is it best to pick and choose moments for effectiveness? As witnesses, students quickly ascertain how to give good testimony and how to respond to cross-examination. They nimbly determine, round by round, what is most effective in presenting cases. Successful teams incorporate feedback from the scoring and presiding judges after each of their presentations — learning, improving, increasing their scores, and advancing further in the tournament. Along the way, students frequently learn that excessively aggressive behavior doesn't pay off, but neither does sitting on your hands and never objecting to anything the other side is doing.

The experience is made even more true to life for participants because the program expanded to incorporate opportunities for student journalists and artists to use their skills in a trial setting.

Mock trial competitions give us an opportunity to plant a seed of inspiration in young people to pursue careers in the legal profession — and an opportunity for us to be inspired. In the recent state finals, one student gifted spectators with a moment to remember:

Members of the winning Kalamazoo Central team competing in the 2019 State Finals.

While strenuously pursuing testimony, one student encouraged opposing counsel to take up their turn even though it would have been just as easy to say nothing and maintain an advantage borne from the other's weakness. It was an inspiring display of integrity and character — and it catapulted this student's team into the lead in a tight competition that either side arguably could have won.

These moments are also a great reminder of how important it is to guide and encourage the next generation of people seeking to advocate for justice. For us seasoned professionals, mock trial competitions are also an opportunity to learn new lessons from these novice competitors. They are our harbingers of hope for an ever-improving, inclusive, and respectful justice system.

And there is still more high school mock trial to come in May.

Michigan is lucky, for the first time ever, to host the National High School Mock Trial Championship from May 4-7 in Kalamazoo. The competition is virtual, but some volunteers and others will gather for receptions and related events. Visit https://miciviced.org to volunteer or provide other support for the programs sponsored by MCCE.

A special thanks to James Liggins of Warner Norcross and Judd, who is completing his longstanding term of service as co-coordinator of the Michigan High School Mock Trial; Christine Hekman, who serves as learning and events coordinator; and MCCE Executive Director Ellen Zwarensteyn, who brings these programs to our educational communities through her positive energy and hard work.

UPPER MICHIGAN
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KEYNOTE SPEAKER:
CHIEF JUSTICE BRIDGET M. MCCORMACK

Be sure not to miss the joint UMLI and Bar Leadership Forum keynote presentation by Chief Justice Bridget M. McCormack. Her presentation will focus on the lessons learned from COVID and the role of technology within the judicial system. She is just one of more than a dozen speakers you will get a chance to hear from and learn from at UMLI.

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The Upper Michigan Legal Institute (UMLI) is hosted by the State Bar of Michigan in partnership with the Institute of Continuing Legal Education to provide legal education to Michigan attorneys. Located at the Grand Hotel on beautiful Mackinac Island, the UMLI is open to all State Bar of Michigan members. UMLI will provide you with information you need to stay up-to-date on emerging legal issues.

- Real Property Law
- Criminal Law
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- Michigan's Evolving No-Fault Law
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- Family Law
- Managing the Hybrid Work Place

EARLY BIRD SPECIAL

REGISTER BY MAY 20 TO SAVE!

This year we are offering a special rate of $149 for those who register before May 20. That's a 25% savings off the regular rate of $199. Remember: If you plan to stay at the Grand Hotel, the deadline to book your room at a special UMLI rate is May 10.

Final registration for UMLI is June 4, 2022! On-site registration is permitted, but not encouraged.

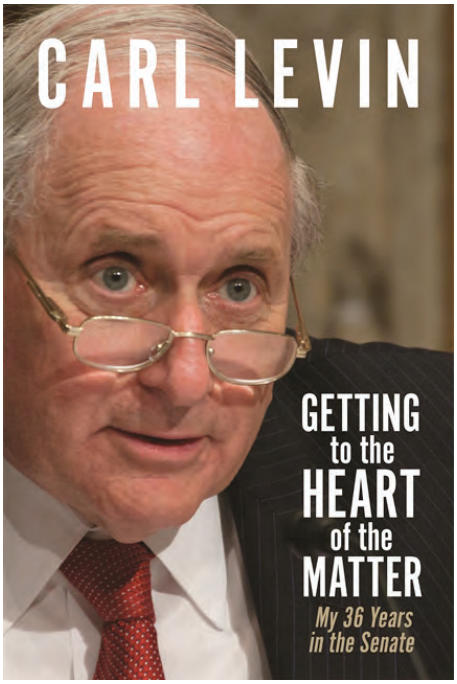
REGISTER AT MICHBAR.ORG/UMLI

BOOK REVIEW

Getting to the heart of the matter

MY 36 YEARS IN THE SENATE

REVIEWED BY DAVID KRAUS



Written by Senator Carl Levin
Published by Wayne State University Press (2021)
Hardcover | 392 pages | $29.99

In their significant new book "The Dawn of Everything," authors David Graebner and David Wengrow provide a new perspective on the last 12,000 years of human history. Rather than accepting the traditional view that cities grew only after agriculture overcame the hunter-and-gatherer lifestyle, Graebner and Wengrow argue that archaeological findings show that large settlements already had flourished without agriculture.

In their discussion of the origins (or lack thereof) of "the state," the authors address the concept of power and how it is used. They provide a rather succinct statement of their position:

> To understand the realities of power, whether in modern or ancient societies, is to acknowledge this gap between what elites claim they can do and what they are actually able to do. As the sociologist Philip Abrams pointed out long ago, failure to make this distinction has led social scientists up countless blind alleys, because the state is 'not the reality which stands behind the reality of political practice. It is itself the mask which prevents our seeing political practice as it is.'

The late Sen. Carl Levin, who represented Michigan in Washington for 36 years, spent much of his time on Capitol Hill trying to take that mask off the government and allowing the populace to see political practice as it was. As described in his recently published memoir "Getting to the Heart of the Matter: My 36 Years in the Senate," completed shortly before his death in 2021, Levin recounts what he actually was able to do and where he fell short.

That Levin chose a career in public service was practically preordained. He begins the book by listing the members of his family who also were in the public eye: uncle Ted Levin, a federal court judge; cousin Charles Levin, a Michigan Supreme Court justice; cousin Avern Cohn, a federal court judge; and brother Sandy Levin, a U.S. congressman for 36 years. But it was Carl Levin who almost certainly outshone them all.

In his development, the decidedly liberal Democrat Levin comes across as a series of contradictions — basically an elite common man. To help pay for his undergraduate college and law school education, he worked in three different Detroit auto plants. Of course, the schools from which he graduated were Swarthmore College and Harvard Law School.

This idea of the elite common man continued throughout his career. While he continually served in office from 1968 to 2014 and clearly cultivated power, his endearing image was that of a rumpled civil

servant questioning a witness while peering through his trademark glasses perched on the end of his nose.

After graduating from law school, Levin had stints in private practice with the Michigan Civil Rights Commission and the Legal Aid and Defender Association. Following the 1967 Detroit riots, he ran for Detroit Common Council in 1968 and was elected.

While on the council, Levin writes of the lessons he learned that would help him as he navigated his way through various legislative branches. These included working with other legislators, compromise, listening to witnesses, and — not surprisingly — patience.

It was during his time on the council that Levin made his initial forays into the issue of governmental oversight, an area that would become his strength in Washington. As council president, it became clear to Levin that the U.S. Department of Housing and Urban Development was doing little to renovate the thousands of houses it owned in Detroit, and those houses were becoming eyesores and drug dens.

With the backing of the council and then-Mayor Coleman Young, Levin ordered the houses to be demolished despite a threat of indictment from the federal government. The houses came down, but no indictment followed.

In 1978, Levin defeated incumbent Sen. Robert Griffin and headed to Washington. He retired undefeated, having never lost an election.

Most of the book deals with Levin's career in Washington. Rather than a linear trip, the author organized his memoirs by topic. Among the chapter titles: The Armed Service Committee, Protecting the Great Lakes and the Environment, and Ethics and Impeachment. While this gives the reader a complete (and, in some instances, too detailed) immersion into a subject, it is sometimes difficult to place those issues into the context of what else may have been happening in the country and the world at the same time.

One lengthy and fascinating chapter deals with what Levin refers to as the "capstone" on his career: his time on the Permanent Subcommittee on Investigations both as chairman and ranking member. His inside stories on investigations into money laundering, corporate tax dodging, hidden ownership of corporations and offshore accounts, and credit card companies showed his continuing efforts to pull the mask off government.

Two other chapters will resonate with followers of current events in Washington. In The Filibuster, Levin writes that he is steadfastly in favor of it. He fully believed in compromise and felt the filibuster led to better legislation. However, he would make one significant change to how it is used.

In the past, people had to continue speaking to maintain the filibuster. (Think James Stewart in "Mr. Smith Goes to Washington" for one of the better-known popular examples.) Such a practice is no longer necessary; rather, a senator announces a filibuster and the issue is sidelined. Levin would revert to the previous method, which would significantly reduce its use.

One other chapter of note is Bipartisanship, which seems to be nearly foreign in today's political landscape. Levin speaks with pride of working with Republican senators — including Orrin Hatch, John McCain, Mark Warner, and Bob Dole — while trying to pass legislation or working on investigations. Levin also is effusive in his praise of his staffers, going so far as to list them in a six-page index at the back of the book.

Levin rarely is negative in discussing colleagues and other Washingtonians. However, there are exceptions, especially regarding the war in Afghanistan. Levin calls President George W. Bush's decision to go to war with the support of Congress "the most misguided strategic decision by our government that I witnessed in my thirty-six years in the Senate."

Levin, who voted against the war resolution, is quite critical of Vice President Dick Cheney and the president's advisors, who he believes wanted war. Interestingly, Levin also has little good to say about Afghanistan President Hamid Karzai, whom Levin met on numerous occasions; he found him "full of himself and contradictions."

The Senate that Carl Levin joined in January 1979 is almost certainly a different place from the one of today. To the most casual of observers, the concepts of compromise and collegiality seem to be as antiquated as the Rolodex or the landline. Their places have been overtaken by severe partisanship and lack of trust.

To a certain extent, "Getting to the Heart of the Matter" provides a blueprint for moving beyond the problems that plague governments today. It is a model that those in public service — or those considering a career in public service — would be wise to understand.

David Kraus is a retired attorney and avid reader who lives in Royal Oak.

1960s

As part of our celebration of the Michigan Bar Journal's 100th year, each month we highlight important events and legal news in a decade-by-decade special report. This month, we look at the 1960s, a decade marked by change. Across America and within Michigan, we saw giant leaps in the civil rights movement, institutional change, and landmark Supreme Court cases.

In 1961, 144 delegates assembled in Lansing to draft a new state Constitution. This constitution, which would become Michigan's fourth, made changes to all branches of state government and altered the powers granted to local governments, the administration of public education, and the terms of office for elected officials. The new constitution also established a state civil rights commission. After a year of drafting, the constitution was approved by voters on April 1, 1963. The U.S. Constitution also underwent change during the decade; in 1967, the 25th Amendment spelling out the succession of the presidency was ratified.

The civil rights movement was a driving force in the '60s. In 1963, Martin Luther King Jr. delivered his famous "I Have a Dream" speech at a rally in Washington. One year later, President Lyndon B. Johnson signed the Civil Rights Act of 1964 prohibiting discrimination based on race, color, religion, sex, or national origin. In 1965, a series of protest marches in Alabama helped spark passage of the Voting Rights Act, which outlawed discriminatory voting practices adopted in many southern states after the Civil War (and nearly a century after the 15th Amendment was ratified.) We also saw several cases affirm individual civil rights, including *Loving v. Virginia*, which declared unconstitutional laws that prohibit interracial marriage, and *Tinker v. Des Moines Independent Community School District*, which defined First Amendment rights for public school students.

Closer to home, the 1967 Detroit Rebellion — which started after police raided an unlicensed bar — became the largest civil disturbance in America during the 20th century, the consequences of tensions over institutional racism, segregation, deindustrialization and job loss, and antagonistic police tactics. The resulting five days of riots led to 43 deaths, nearly 1,700 fires, and more than 700 arrests. Both the National Guard and the U.S. Army were summoned to quell the violence. After the uprising, Detroit saw a growth in activism and community engagement; the city elected its first Black mayor in 1973.

The decade finished with one small step for man and a giant leap for mankind, when, in July 1969, American astronauts Neil Armstrong and Buzz Aldrin became the first humans to walk on the moon.

Introduction and timeline by **Narisa Bandali**, a member of the Michigan Bar Journal Committee and marketing and advertising counsel at Bissell Homecare in Grand Rapids.

1960

Michigan becomes the first state to complete a border-to-border interstate highway when the final stretch of I-94 between New Buffalo and Detroit opens to traffic.

OCTOBER 3, 1961

144 delegates gather in Lansing for the Michigan Constitutional Convention to begin the process of drafting a new state Constitution. Voters approve the constitution in 1963.

NOVEMBER 22, 1963

President John F. Kennedy is assassinated in Dallas.

JULY 1, 1963
The United States Postal Service launches nationwide use of five-digit ZIP codes.

AUGUST 28, 1963
Martin Luther King Jr. delivers his "I Have a Dream" speech to an estimated 250,000 civil rights supporters at the Lincoln Memorial in Washington.

JULY 2, 1964
The landmark Civil Rights Act of 1964 takes effect.

MARCH 7, 1965
The first of three marches from Selma, Alabama, to the state capital of Montgomery begins, bringing attention to the rights of African-American voters. The marches contributed to the passage of the federal Voting Rights Act later that year.

1965
Michigan begins putting photos on driver's licenses.

FEBRUARY 10, 1967
The states ratify the 25th Amendment, cementing succession of the presidency. President Lyndon Johnson certifies the amendment 13 days later.

JULY 23, 1967
The Detroit Rebellion begins with a police raid of an unlicensed after-hours bar on 12th Street between Clairmont and Atkinson, sparking what would become the largest civil disturbance in America during the 20th century.

AUGUST 30, 1967
U.S. Solicitor General Thurgood Marshall is confirmed by the Senate as the first African American to serve as a Supreme Court justice.

OCTOBER 10, 1968
The Detroit Tigers win their first World Series championship in 23 years, outlasting the St. Louis Cardinals in seven games. Series MVP Mickey Lolich pitches the Tigers to three complete-game victories.

FEBRUARY 24, 1969
The Supreme Court in *Tinker v. Des Moines Independent Community School District* defines First Amendment rights of students in U.S. public schools.

JULY 20, 1969
Apollo 11's lunar module lands on the moon at approximately 3:17 p.m. EST. Less than seven hours later, NASA astronauts Neil Armstrong and Edwin "Buzz" Aldrin become the first humans to ever set foot on the moon.

What a photo from 1962 can tell us

BY GEORGE M. STRANDER

In many ways, the 1960s was a remarkably different time for our country and our profession. As we look back on that decade this month, the fascinating photograph reprinted here offers a window into that past.

The photograph was taken in the spring of 1962 in the offices of then U.S. Attorney General Robert F. Kennedy. Surrounding Kennedy are Michigan Congressman Charles Chamberlain (to Kennedy's right) and 26 attorneys (including two judges) from Lansing. The occasion of the Lansing contingent's visit to Washington, D.C., was to be sworn in to the bar of the U.S. Supreme Court (as well as the bar of the U.S. Court of Military Appeals, now known as the U.S. Court of Appeals for the Armed Forces).

Kneeling, from left to right: Donald Reisig, Thomas Walsh, Conway Longson, John Eliasohn, Raymond Scodeller, John O'Brien, and Judge Sam Street Hughes.

Standing, from left to right: Jared Collinge, Duane Hildebrandt, James Kallman, Richard Stiles, Eric Kauma, Congressman Charles Chamberlain, Lloyd Parr, John Leighton, U.S. Attorney General Robert Kennedy, Neil McLean, James Burns, Allison Thomas, Fred Abood, Ray Campbell, W. Charles Kingsley, Alvin Neller, Bruce King, Donald Bruce, James Davis, John Bird, Judge Marvin Salmon.

As an initial point, the pictured group reflects a simpler political time when institutions were more accessible and partisan divides were not unbridgeable chasms. The country was smaller (with around 185 million citizens compared to more than 330 million today) as was the bar, and connections were more personal — a large group dropping in on the U.S. attorney general was a possibility. Even so, meeting the attorney general (and having lunch with him in the Senate dining hall, to boot) in 1962 was not easy, but it was arranged by Rep. Chamberlain. That a Republican congressman from Michigan would be able to work with a Democratic attorney general to that extent recalls an earlier era when being from different parties allowed for respected differences of opinion rather than demonizing.

At the time of the photo, Kennedy was a little more than a year into his service as attorney general; he would leave that post in 1964, some nine months after his brother, President John F. Kennedy, was assassinated, to run for (and win) a U.S. Senate seat in New York and eventually fall victim to assassination himself in 1968 while running for president. Rep. Chamberlain was in his sixth year serving Michigan's 6th District, which comprised an area including Ingham, Genesee, and Livingston counties; he would hold that seat until 1974. Before his election to Congress, Chamberlain's work included serving as Ingham County prosecutor. In recognition of his long service in Congress, the federal courthouse in Lansing was later named in his honor.

Among the visitors from Lansing were two sitting judges from the 30th Circuit Court — Marvin Salmon (1947-1973) and Sam Street Hughes (1957-1971). Both were past presidents of the Ingham County Bar Association, and Hughes was also a former Lansing mayor.

Three others in the photo — James Kallman, John O'Brien, and Donald Reisig — would go on to the bench. Kallman in 1963 would be appointed by Gov. George W. Romney as judge of the Ingham County Probate Court (1963-1972) and then go on to serve on the 30th Circuit bench (1972-1990). O'Brien would eventually leave private practice to become judge of the 55th District Court (1979-1980), passing away in office. Reisig would later serve on the 30th Circuit Court bench (1968-1976) after a stint as Ingham County prosecutor, then went on to be president of the State Bar of Michigan, state director of drug

agencies under Gov. James Blanchard, American Bar Association legal liaison to the newly liberated Soviet states of Ukraine and Georgia, and, finally, Ingham County Friend of the Court.

The references to the bench raise another point: the attorneys in the photograph practiced law in a very different judicial system. At that time in Michigan, the Constitution of 1908 still prevailed. While the convention that led to creation of our present constitution was ongoing at the time (and a matter of no small comment in the Bar Journal), the document (which would introduce the concept of "one court of justice") would not go into effect until 1963.

While there were circuit courts and probate courts in 1962, there were no district courts. Also, there were fewer circuit courts (41, compared to 57 now) and fewer circuit judges (81, compared to 217 now) and while every one of Michigan's 83 counties had its own probate court (now, only 73 do, with five two-county courts) 60 years ago, there were fewer probate judges (93 then, 10 fewer than now).

Complementing the circuit and probate courts at that time was a whole range of other courts and authorities based on a variety of older laws. There were municipal courts throughout the state — courts of limited civil and landlord/tenant jurisdiction in several cities. Four municipal courts remain to this day, all in eastern Wayne County. In fact, the aforementioned Sam Street Hughes was a Lansing municipal court judge in the 1930s.

There were still justices of the peace in townships and some cities who could hear very low-level criminal and civil matters. Conway Longson, a member of the mid-Michigan delegation that visited Kennedy, was justice of the peace for Lansing Township. There were also auxiliary judicial officer positions called circuit court commissioners who oversaw proceedings for possession of land, discovery actions on creditors' bills after judgment, and chancery (equity) matters. James Kallman, referenced above, was an Ingham County Circuit Court commissioner at the time of the photograph.

Kallman, by the way, was the subject of a Michigan Supreme Court opinion that same year — *Adams ex rel. Andrews v. Kallman*, 365 Mich. 519 (1962) — which is still good law on the limits of quo warranto actions. The suit challenged Kallman's authority to hold the commissioner position after an earlier local appointment but was dismissed since the case was filed after Kallman's eventual election to the post, rendering the quo warranto cause moot.

Justices of the peace, circuit court commissioners, and several other now arcane aspects of the minor end of the legal system gave way to district courts later in the 1960s. The Lansing group visiting Washington included two future district court judges: John O'Brien, referenced previously, and W. William Reid, who was also on the 55th District Court bench (1969-1980). Reid did not attend the meeting with Kennedy because his young daughter who accompanied him on the trip fell ill that day.

To add personal perspective to the occasion in 1962, we thankfully still have with us at least one person shown in the photograph — Raymond Scodeller, now 88, was, at the time of that meeting, six years from becoming Ingham County prosecutor, a post he held from 1968-1976. Scodeller recalls how the trip was arranged by Rep. Chamberlain under the auspices of the Ingham County Bar Association. No one flew; the attending Lansing attorneys, some of whom brought their families, traveled separately by car to Washington. In fact, Scodeller was only able to finance the trip for himself and his wife by cashing out insurance stock he had purchased the year before that, providently, had tripled in value to $300.

Scodeller's memories suggest a time when the practice of law was a bit less complicated, more formal, and yet more personal, another point suggested by the 1962 gathering. More than a few faces staring back at the camera wear rather businesslike expressions. Moreover, most attorneys on the trip were in private practice, either solo or in partnerships or small firms. The explosion of commercial regulations, and along with it the proliferation of large law firms with more focused business law specialists, was yet to come in earnest. Most attorneys practiced and saw colleagues in the courthouse.

The digital revolution was not even on the horizon. Pleadings and correspondence were typed on a typewriter. Legal research was done by book. There was no word processing, Westlaw, or LexisNexis.

One final point to take away from the photograph: the notable absence of women and people of color. In 1962, the percentage of attorneys nationwide who were female or identified as persons of color was in the low single digits (for example, approximately 3% of attorneys at that time were female.) This, combined with the fact that female attorneys and attorneys of color at the time may not have been well-connected with others in what was then a male-dominated profession and may have had fewer opportunities to take such a trip, is enough to explain the composition of the group. Today, more than 35% of all attorneys are women and approximately 15% of all lawyers are people of color.

It's often said that a picture is worth a thousand words. This photograph has at least that much to say about our profession in the early 1960s.

George M. Strander is court administrator for the 30th Circuit Court in Lansing. A graduate of the University of Michigan Law School, he serves on the State Bar of Michigan Bar Journal Committee and Civil Procedure and Courts Committee as well as the Governor's Mental Health Diversion Council.

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DUTY TO REPORT AN ATTORNEY'S CRIMINAL CONVICTION

All Michigan attorneys are reminded of the reporting requirements of **MCR.9120(A)** when a lawyer is convicted of a crime

WHAT TO REPORT:
A lawyer's conviction of any crime, including misdemeanors. A conviction occurs upon the return of a verdict of guilty or upon the acceptance of a plea of guilty or no contest.

WHO MUST REPORT:
Notice must be given by all of the following:
1. The lawyer who was convicted;
2. The defense attorney who represented the lawyer; and
3. The prosecutor or other authority

WHEN TO REPORT:
Notice must be given by the lawyer, defense attorney, and prosecutor within 14 days after the conviction.

WHERE TO REPORT:
Written notice of a lawyer's conviction must be given to **both**:

Grievance Administrator
Attorney Grievance Commission
PNC Center
755 W. Big Beaver Road, Suite 2100
Troy, MI 48084

Attorney Discipline Board
333 W. Fort St., Suite 1700
Detroit, MI 48226

Pitfalls and landmines in medical malpractice expert witness requirements

BY CHAD ENGELHARDT, STEVE GOETHEL, AND JENNIFER ENGELHARDT

As an area of law where expert witness testimony is not just helpful to the finder of fact but required to present a prima facie claim or defense, medical malpractice cases often involve so-called "battles of the experts." Case law has long provided that absent narrow circumstances, medical malpractice actions raise questions of medical judgment beyond the realm of common knowledge and experience of the average juror.[1]

Accordingly, expert testimony must establish the applicable standard of care based upon facts from which the trier of fact could conclude that a defendant breached or complied with that professional duty.[2] Expert testimony is also generally essential to establish a causal nexus between the alleged breach and the injury suffered by the patient.[3] Because a claim or defense insufficiently supported by properly qualified expert testimony is subject to fully or quasi-dispositive relief, challenges to an expert's qualifications are common in malpractice litigation.

This article aims to give an overview of the expert witness-related landmines and sometimes counterintuitive pitfalls that the unwary practitioner may face in prosecuting or defending a malpractice action. The proponent of medical malpractice expert testimony has the burden of establishing that the expert is qualified under the overlapping layers of MRE 702, MRE 703, MCL 600.2169 and MCL 600.2955.[4] The party seeking to admit the expert testimony must show that the expert is qualified, used a reliable methodology or medical principles, and that the expert's opinion is factually based on the admissible evidence or logical inferences from such evidence.[5]

MRE 702

As part of its gatekeeping function, the trial court must determine whether a witness possesses the requisite qualifications to present expert testimony before a jury. With all expert witness testimony, the start of the analysis is MRE 702. To assist the trier of fact in

determining an issue in dispute, the proposed expert witness must have the necessary knowledge, skill, experience, training, or education to enable them to competently give such testimony.[6]

Paralleling the federal rules of evidence, Michigan takes an expansive view of who may qualify as an expert under MRE 702.[7] Generally, so long as the minimal standards set forth per MRE 702 are met, gaps or limitations in an expert's knowledge or qualifications are relevant to the weight to be given to the testimony by the trier of fact, not to the testimony's admissibility.[8]

The requirement that both the plaintiff and defendant to a medical malpractice action file an affidavit to support the case is codified in MCL 600.2912d and 600.2912e. These are essentially mirror-image statutes differing in their timing. Under MCL 600.2912d, the plaintiff's attorney is required to file with the complaint an affidavit of merit (AOM) signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under MCL 600.2169, discussed infra. An AOM must contain a statement as to each of the following:

1. The claimed appropriate standard(s) of care;
2. How the standard of care was breached;
3. The conduct required to comply with the standard of care; and
4. How the breach caused injury. [9]

Absent certain legal exceptions,[10] a complaint filed without the required AOM is considered a nullity and does not toll the running of the statute of limitations.[11] While affidavits of merit are signed by standard-of-care experts and include a statement of causation, depending on the facts and issues in the case, additional expert testimony on causation may be required to successfully prosecute or defend the case. For example, a nurse may execute an affidavit which sufficiently states the element of proximate causation; however, depending on the issues, the ability of that nurse to offer medical proximate cause testimony at trial may be restricted to comport with the nurse's expertise and scope of practice.[12]

When necessary, affidavits of merit or meritorious defense may be amended back to the filing date of the original affidavit in accordance with MCR 2.118 and MCL 600.2301.[13] MCR 2.118 allows amendment once as a matter of course within 14 days after being served with a responsive pleading by an adverse party or within 14 days after serving the pleading if it does not require a responsive pleading.

MCL 600.2301 allows the amendment of any process or pleading in form or substance on such terms as are just at any time before a judgment is rendered. It also provides that the court disregard any error or defect in the proceedings that does not affect the substantial rights of the parties.

MCR 2.112(L)(2) provides that challenges to an affidavit of merit or affidavit of meritorious defense, including challenges to the qualifications of the signer, must be made by motion within 63 days of service of the affidavit on the opposing party. An affidavit of merit or meritorious defense may be amended in accordance with the terms and conditions set forth in MCR 2.118 and MCL 600.2301. An affidavit of merit is presumed valid and tolls the statute of limitations until successfully challenged by motion. If the challenge is successful, the case may be dismissed without prejudice with whatever time remained in the limitations period at the time of original filing preserved.[14]

MCL 600.2912d and MCL 600.2912e were enacted to offer a "balanced compromise" and "discourage unjustified medical malpractice lawsuits."[15] Under the mirroring statute applicable to a defendant and substantively adding the requirement to detail the factual basis of the defense as required in plaintiff's notice of intent, an affidavit of meritorious defense (AOMD) must be filed within 91 days of service of the plaintiff's affidavit of merit.[16]

STANDARD-OF-CARE TESTIMONY

MCL 600.2169(1) sets forth the requirements for experts who testify regarding the standard of care in medical malpractice cases. As noted by the Michigan Supreme Court in *McDougall v Schanz*, the Report of the Senate Select Committee on Civil Justice Reform stated that the statute was intended "to make sure that experts will have firsthand practical expertise in the subject matter about which they are testifying."[17] While procedural in nature, MCL 600.2169 has been held to be substantive law.[18]

Where a physician is practicing in an area in which he or she could become board certified, the standard-of-care expert witness must practice in that same specialty. If the defendant was board certified, the expert must be board certified in that same specialty.[19]

MCL 600.2169(1)(b)(i) requires that an expert devoted — in the year preceding the date of the alleged injury — a majority of their professional time to "[t]he active clinical practice of the same health profession … and, if that party is a specialist, the active clinical practice of that specialty." A "majority" means more than 50%[20] and "specialty" in this provision refers to a specific area of medical practice.

The Michigan Supreme Court looked to the definition of "health profession" contained in a provision of the Public Health Code, MCL 333.1101 et seq., when interpreting MCL 600.2169(1)(b).[21] The Public Health Code defines a "health profession" as "a vocation, calling, occupation, or employment performed by an individual acting pursuant to a license or registration."

However, the term "specialty" is not defined in the statute. This has led to significant litigation and various conflicting Michigan Court of Appeals opinions. In *Woodard v Custer*,[22] the Michigan Supreme Court defined "specialty" as a particular branch of medicine or surgery in which one can potentially become board certified. Accordingly, if the defendant physician practices a particular branch of medicine or surgery in which one can potentially become board certified, the plaintiff's standard-of-care expert must practice or teach the same branch of medicine or surgery. Under the *Woodard* definition, a subspecialty, although a more particularized specialty, is nevertheless a specialty. Therefore, if a defendant physician "specializes" in a subspecialty, the plaintiff's standard-of-care expert witness must have specialized in the same subspecialty as the defendant physician at the time of the occurrence that provides the basis for the action.[23]

The *Woodard* Court noted that the language of MCL 600.2169(1) only requires a single specialty to match, not multiple specialties. *Id.* In other words, "the plaintiff's expert does not have to match all of the defendant physician's specialties; rather, the plaintiff's expert only has to match the one most relevant specialty." *Id.* at 567-568. The specialty engaged in by the defendant doctor during the course of the alleged malpractice constitutes the one most relevant specialty. *Id.* at 560.

Adding to this complexity, the *Woodard* Court ruled that for purposes of MCL 600.2169, there effectively is no difference between being board certified and having a certificate of added or special qualification:[24]

> Because a certificate of special qualifications is a document from an official organization that directs or supervises the practice of medicine that provides evidence of one's medical qualifications, it constitutes a board certificate. Accordingly, if a defendant physician has received a certificate of special qualifications, the plaintiff's expert witness must have obtained the same certificate of special qualifications in order to be qualified to testify under § 2169(1)(a).

While giving some guidance on the issue of expert witness qualifications, the *Woodard* definition of specialty does not address the modern reality of overlapping specialties in medicine. Consequently, Michigan appellate law is rife with cases with unexpected and counterintuitive outcomes. This includes experts being stricken as overqualified and defendants being held to standards of practice in subspecialties in which they were not certified to practice despite the undisputed fact the care at issue was within the scope of practice of their primary specialty.

As this article is being published, the Supreme Court has granted leave[25] to evaluate such anomalies and may provide practitioners with more clear guidance. Indeed, the Court of Appeals has "encourage[d] our Supreme Court to provide much-needed clarity in this complex area of law."[26] With the current level of uncertainty and resulting challenges, many practitioners take a shotgun approach by hiring multiple potential experts in overlapping fields, resulting in escalating costs of both prosecuting and defending malpractice actions.

To preserve access to the civil justice system, the Supreme Court emphasized the public policy imperative of the courts to "secure the just,

speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties."[27] A clear and simple statutory construction of expert witness requirements furthers that imperative.

In addition to the profession and specialty matching requirements under §2169(1), MCL 600.2169(2) provides additional criteria for courts to consider which largely mirror the required 702 analysis:

(a) The educational and professional training of the expert witness;
(b) The area of specialization of the expert witness;
(c) The length of time the expert witness has been engaged in the active clinical practice or instruction of the health profession or the specialty; and
(d) The relevancy of the expert witness's testimony.

Resident physicians and physician fellows are subject to the same standard of care as a specialist practicing in the field in which the physician-in-training is practicing. Residents training in a particular branch of medicine or surgery who can potentially become board certified in that specialty are specialists for purposes of analysis under the framework provided in MCL 600.2169(1).[28]

A hospital resident is a licensed physician. The applicable standard of care does not change depending on the number of years a physician has been licensed. Physicians are required to provide the same care that a physician of ordinary learning, judgment, or skill in the particular field at issue would provide under the same or similar circumstances as those faced by the defendant.[29]

MD VS. DO

In *Crego v Edward W Sparrow Hosp Ass'n*, 327 Mich App 525; 937 NW2d 380 (2019), the Court of Appeals held that while the defendant doctor and plaintiff's expert were both board-certified obstetrician-gynecologists, the fact that defendant was a licensed osteopathic physician and the expert was a licensed allopathic physician was not relevant for purposes of evaluating the expert's affidavit of merit under MCL 600.2169(1)(b)(i). This holding recognizes the overlap in training afforded to allopathic and osteopathic physicians.

THE ANACHRONISM OF LOCAL STANDARD FOR NON-PHYSICIANS

The standard of care for a specialist is "the recognized standard of practice or care within that specialty as reasonably applied in light of the facilities available in the community or other facilities reasonably available under the circumstances."[30] MCL 600.2912a requires knowledge of the local standard of care, i.e., that in the same or similar communities for non-physicians and "general practitioners," whereas there is a national standard for specialists.[31] This is true for dentists, midlevel providers such as nurse practitioners and physician assistants, nurses, chiropractors, and podiatrists as well. With the progression of national standardization among most health professions, the local standard has become an anachronism.

Nurses practice nursing and do not engage in the practice of medicine. Therefore, nurses are not subject to the standards for specialists. Instead, a nurse is held to a common-law standard of care based on the standards of the same (or similar) community in which they practice.[32] However, as a matter of modern reality, there are national standards that apply to all nurses (as reflected by the requirements to properly use the nursing process) as well as national certification and examination of nurses such as the National Council Licensure Examination.

CONCLUSION

In addition to their complexity, medical malpractice cases are frequently notable for their expense in both prosecution and defense. Expert witness costs are a major factor for all parties to an action. Solid knowledge of the layered court rules, rules of evidence, and statutory provisions regarding expert witness testimony is essential for the malpractice attorney.

Chad Engelhardt, Jennifer Engelhardt, and Steve Goethel (not pictured) concentrate their practice on the investigation and prosecution of catastrophic injury cases. Their firm, Goethel Engelhardt, is based in Ann Arbor and handles cases statewide.

ENDNOTES

1. *Bryant v Oakpointe Villa Nursing Ctr, Inc*, 471 Mich 411, 422; 684 NW2d 864 (2004).
2. *Wilson v Stilwill, MD*, 411 Mich 587; 309 NW2d 898 (1981) and *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488; 668 NW2d 402 (2003).
3. *Dykes v William Beaumont Hosp*, 246 Mich App 471, 478; 633 NW2d 440 (2001).
4. *Clerc v Chippewa Co War Mem Hosp*, 477 Mich 1067, 1067; 729 NW2d 221 (2007) and *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 782; 685 NW2d 391 (2004).
5. MRE 702 and MRE 703.
6. MRE 702, *Siirila v Barrios, MD*, 398 Mich 576, 591; 248 NW2d 171 (1976),

and *Cirner v Tru-Valu Credit Union*, 171 Mich App 163, 168–169; 429 NW2d 820 (1988).
7. *Mulholland v DEC Int'l*, 432 Mich 395, 403-405; 443 NW2d 340 (1989).
8. *McPeak v McPeak*, 233 Mich App 483, 493; 593 NW2d 180 (1999).
9. MCL 600.2912d(1).
10. The exceptions to the requirement that the affidavit of merit be filed with the complaint are narrow. If records are not provided by a notified party within 56 days of receipt of the notice as required under MCL 600.2912b(6), the AOM may be filed up to 91 days after the complaint is filed. Otherwise, on motion for good cause shown, the court may allow an additional 28 days to file the affidavit under MCL 600.2912d(2).
11. *Scarsella v Pollak*, 461 Mich 547; 607 NW2d 711 (2000) and *Young v Sellers*, 254 Mich App 447, 450; 657 NW2d 555 (2002).
12. *Sturgis Bank & Trust Co v Hillsdale Community Health Ctr*, 268 Mich App 484, 492; 708 NW2d 453 (2005) and *Grossman v Brown*, 470 Mich 593; 685 NW2d 198 (2004). See also *Jones v Botsford Continuing Care Corp*, 310 Mich App 192, 199-201; 871 NW2d 15 (2015) (discussing the differing statutory standards governing the admission of an expert's standard-of-care testimony at trial versus the adequacy of an expert's affidavit of merit).
13. MCR 2.112(L)(2).
14. *Kirkaldy v Rim*, 478 Mich 581, 583-586; 734 NW2d 201 (2007).
15. *Vandenberg v Vandenberg*, 231 Mich App 497, 502-503; 586 NW2d 570 (1998).
16. If the plaintiff did not provide medical records or authorization for such records within 56 days of receipt of the notice as required under MCL 600.2912b(5), an affidavit of meritorious defense may be filed up to 91 days after answering the complaint rather than from time of service under MCL 600.2912e(2).
17. *McDougall v Schanz*, 461 Mich 15, 35, 25 n 9; 597 NW2d 148 (1999). However, see *Albright v Christensen*, opinion of the United States Court of Appeals for the Sixth Circuit, issued January 31, 2022 (Case No 21-1046), wherein the court recently held that where medical malpractice cases are pending in federal court due to diversity jurisdiction, Michigan's statutory notice of intent and affidavit of merit requirements are considered procedural, not substantive, and therefore are not required in federal actions.
18. *Id.* and Report of the Senate Select Committee on Civil Justice Reform (Sept. 26, 1995). Thus, a federal court sitting in diversity jurisdiction must follow the requirements of MCL 600.2169 in addition to FRE 702, *Slifcak v Northern Mich Hosp, Inc*, unpublished opinion of the United States District Court for the Western District of Michigan, issued August 20, 1991 (Case No 1:90-CV-565) and *Golden v Baghdoian*, 222 Mich App 220; 564 NW2d 505 (1997).
19. MCL 600.2169(1)(a) and *Woodard v Custer*, 476 Mich 545, 559; 719 NW2d 842 (2006).
20. *Kiefer v Markley*, 283 Mich App 555, 559; 769 NW2d 271 (2009) and Judge Peter O'Connell's dissent in that case. See also Judge Amy Ronayne Krause's analysis of "majority" in *Estate of LeBlanc v Agnone*, unpublished opinion of the Court of Appeals issued July 6, 2017 (Docket No 330330), stating that Woodard's reading of majority is dicta, and with a multi-specialty practice, majority can also be "the largest percentage."
21. MCL 333.16105(2) and *Bates v Gilbert*, 479 Mich 451, 459; 736 NW2d 566 (2007).
22. *Woodard v Custer*, 476 Mich 545, 719; NW2d 842 (2006).
23. See e.g., *Estate of LeBlanc V Agnone* and *Higgins v Traill, MD*, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2019 (Docket No 343664).
24. *Woodard*, 476 Mich at 565.
25. *Estate of Horn v Swofford, DO*, 334 Mich App 281; 964 NW2d 904 (2020).
26. *Id.* at 299.
27. MCR 1.105.
28. *Gonzalez v St John Hosp & Med Ctr*, 275 Mich App 290; 739 NW2d 392 (2007).
29. M Civ JI 30.01. *Gonzalez* expressly overruled the resident/intern standard-of-care ruling in *Bahr v Harper-Grace Hosps*, 198 Mich App 31, 34; 497 NW2d 526 (1993), which had already been reversed on other grounds by *Bahr v Harper-Grace Hosps*, 448 Mich 135; 528 NW2d 170 (1995), *Gonzalez v St John Hosp & Med Ctr*, 275 Mich App at 299.
30. MCL 600.2912a(1)(b).
31. *Cox v Bd of Hosp Managers for the City of Flint*, 467 Mich 1; 651 NW2d 356 (2002).
32. *Id.* at 22 and *Robins v Garg*, 276 Mich App 351; 741 NW2d 49 (2007). Notably, the statute does not require a non-local expert "to contact physicians in one area to determine the applicable standard of care in that community or to determine whether that community is similar to another community," *Turbin v Graesser*, 214 Mich App 215, 219; 542 NW2d 607 (1995).


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MICHIGAN LAWYERS IN HISTORY

Edward Mundy helps Michigan become a state

BY CARRIE SHARLOW

In September 1836, a special election was held to select delegates to a convention in Ann Arbor to determine if the Michigan Territory should become a state, especially considering recent federal legislation requiring the Michigan Territory's concession of the Toledo Strip to achieve statehood.[1] Among those in attendance was the territory's lieutenant governor, Edward Mundy.[2]

It's remarkable that Edward Mundy was residing in Michigan, let alone serving as one of the territory's prominent leaders, in 1836. He was — as so often follows in the stories of Michigan's earliest settlers — a native-born East Coaster who had moved west several times.[3] In Mundy's first westward excursion, he left his home state of New Jersey and overshot Michigan entirely, ending up in Illinois, where an older brother resided.[4] There, as the first resident-attorney of Wabash County, he practiced law, and had the first two of his five children with his wife, Sarah.[5] He likely would have stayed in Illinois if not for a number of unfortunate events, including his house burning down. That prompted Mundy to return to New Jersey, where the Rutgers University alum briefly dropped his college-educated profession and worked as a merchant.[6]

After a few years, Mundy recognized what so many others have discovered before and since — there's no place like the Midwest. Once again, he moved west, this time to Michigan. He settled in the beautiful Washtenaw County seat of Ann Arbor. Within a year of migrating to the state, he was hosting political party meetings at his house[7] and by 1835, Mundy was elected delegate to the territory-wide convention that drafted Michigan's first Constitution,[8] served as president of the county convention,[9] and elected territorial lieutenant governor under "Boy Governor" Stevens T. Mason.[10]

And if things were getting busy for Mundy, it was nothing compared to what was going on in Michigan Territory. The constitutional convention signaled to the powers in Washington, D.C., that the territory was interested in statehood. Unfortunately, there was a massive snag holding up the process — both the state of Ohio and Michigan Territory staked claims to a 468-square-mile piece of land known as the Toledo Strip. In 1835 alone, both Ohio and Michigan Territory moved troops to the Strip, the federal government ordered the Strip to be resurveyed, tensions rose among citizens on both

Photo courtesy of the Michigan Supreme Court Historical Society

sides of the Maumee River, and the popular and defiant territorial Gov. Mason was removed from office – and then reelected.

By early 1836, President Andrew Jackson had had enough. That summer, he signed "An Act to establish the Northern Boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union."[11] The territory was more than welcome to join the Union, but it had to give up all rights to the Toledo Strip beforehand. In exchange, the territory could have the entire Upper Peninsula.[12]

Michigan was none too pleased with the ultimatum, prompting the territory to call a convention to be held in Ann Arbor to discuss the president's order. As delegates were being elected, discussions about the situation were taking place. Some — like Edward Mundy — were in favor of the exchange. Others were not.

One dissenter was Mark Howard, a man who did not mince words and did not speak softly. Howard called the act giving the Toledo Strip to Ohio "fake news," an "electioneering story got up to deceive the people by office holders,"[13] adding that those office holders — particularly the lieutenant governor,[14] who was standing nearby at the time — were lying in order to "keep themselves in power."[15] Those who gave up the Toledo Strip in opposition to the will of the people, Howard said, were traitors no better than Benedict Arnold.

Mundy confronted Howard, saying to him the 19th century version of, "Why don't you say that to my face?"[16] Then, as Howard repeated himself, Mundy kicked him in the "hind quarters" — twice. Howard had Mundy charged with assault.

If you thought the Toledo War was a little bit ridiculous, this just adds to it. Apparently, there were at least two depositions in the case and several news articles about the incident. And even though several bystanders reportedly said Mundy's response was well-merited and he should have kicked Howard much harder,[17] Mundy was fined $5.[18]

While all this was taking place, the territorial convention in September voiced its opposition to the presidential act, only to support it three months later. The Toledo War officially ended on Dec. 14, 1836, and a little more than a month later, Michigan Territory became the state of Michigan. The new state was minus the Toledo Strip but had in its possession the exceptionally beautiful, mineral-rich Upper Peninsula.

Edward Mundy remained lieutenant governor and even served as acting governor for a period while Mason was out of the state. Later, he served as state prosecuting attorney and attorney general. Finally, in 1848, he was appointed to the state Supreme Court as Michigan's first fifth justice (the court previously only had four justices).[19] It was in this position that he died on March 13, 1851.

Mundy is generally remembered in this state as a Supreme Court justice, but his involvement in the Toledo War of 1835-1836 was a key to the statehood of Michigan.

Special thanks to Lori Buiteweg for her suggestion and assistance with review and research.

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PLAIN LANGUAGE

A plain-language standard:

A TOOL FOR ALL OF US

BY CHRISTOPHER BALMFORD

Readers concerned about the clarity of legal writing might like to keep their eye on a project at the International Organization for Standardization (ISO)[1] to develop a plain-language standard, which is due to be published this year. ISO's more than 22,500 standards are written and maintained by volunteer international experts appointed by ISO's 165 members. Each ISO member is a national-standards body — for example, the Japanese Industrial Standards Committee or the American National Standards Institute.[2]

ISO's draft plain-language standard is based on the International Plain Language Federation's widely accepted definition of plain language:

> A communication is in plain language if its wording, structure, and design are so clear that the intended readers can easily find what they need, understand what they find, and use that information.[3]

In this way, the standard will help broaden people's understanding of plain language — as well as help people everywhere produce documents that work for their intended audience.

Legal advisers can encourage their clients to adopt and apply the standard to help them improve the clarity of their documents. By doing so, they are likely to improve the efficiency and effectiveness of their wider operations. In turn, they may find that their new plain-language documents delight their readers — for example, customers, investors, members, patients, staff — and enhance their organizations' brand.

And of course, legal advisers — and the organizations they work in — can adopt the standard.

PLAIN-LANGUAGE EXPERTS INVOLVED

ISO's plain-language project was initiated by the federation, which was formed in 2009 by the three main international plain-language associations: PLAIN, Clarity, and the Center for Plain Language (Clarity has a focus on legal documents and legal writing — and so is particularly relevant to this column's readers).[4]

In 2019, the federation proposed to Standards Australia that it develop an international plain-language standard. Standards Australia decided that the standard would best be developed internationally. In June 2019, Standards Australia proposed to ISO that it develop the standard. ISO approved that proposal.

The federation has a blog telling the story of the journey to the plain-language standard.[5] The blog includes a timeline from 2007 and videos of the standards-related sessions from plain-language conferences in 2020 and 2021.

The ISO working group developing the standard has more than 15 members who are also members of at least one of PLAIN, Clarity, and the Center for Plain Language. Each expert was appointed to ISO's working group by their country's national standards body.

Also, ISO has appointed PLAIN, Clarity, the Center for Plain Language, and the International Institute of Information Design[6] as liai-

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 37 years. To contribute an article, contact Prof. Kimble at WMU–Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, visit www.michbar.org/plainlanguage.

son organizations to the working group developing the standard.[7] This is something of a big deal. Each liaison organization can appoint a representative to the working group. That representative can:

- attend and speak at meetings to express the liaison organization's views; and
- see, and comment on, drafts of the standard.

To help a liaison organization form its views on drafts of the standard, it can seek input from its members, as PLAIN, Clarity, and the Center for Plain Language did during 2020 (at the time, the International Institute of Information Design had not yet been appointed as a liaison organization).

LANGUAGE-NEUTRAL — PART 1 OF A MULTIPART STANDARD

The plain-language standard due to be released this year will be Part 1 of a likely multipart standard. Part 1 covers high-level matters, so it can be language-neutral. That is, it will work in most, if not all, languages and in all sectors of the economy. So far, people speaking more than 17 languages — from every continent except Antarctica — have reviewed the standard to make sure it will work in their language.[8]

Later parts of the standard will likely focus on particular languages and particular types of documents and communication. Perhaps a future part of the standard will focus on legal writing.

A STANDARD FOR "GUIDANCE" — THAT IS, A NONMANDATORY STANDARD

Part 1 of the standard will be a standard for "guidance," which places it in the middle of ISO's three levels of standards:

- At the "bottom" are technical reports, which provide information only.
- In the "middle" are standards for guidance. Again, Part 1 of the plain-language standard will fall into this category. Standards for guidance use the word *should* to guide users toward what the standard aims to help them achieve.
- At the "top" are mandatory standards, which is probably what comes to most of our minds when we think about standards. These mandatory standards use the word *shall* to direct users what they must do if they are to comply. (To be sure, this *shall* causes pain to many a plain-language practitioner.) In the ISO world, these mandatory *shall* standards are known as being "normative."[9]

An example of a mandatory standard — one that uses *shall* — is the one about paper sizes (A3, A4, etc.). The mandatory nature of a paper-size standard helps, for example:

- manufacturers of printers and photocopiers to make machines that will handle the relevant-sized paper; and
- manufacturers of paper to make paper that will fit all the complying machines.

People buying papers and machines that comply with the relevant standard can do so confidently, knowing that paper and machine will fit.

Although the plain-language standard may evolve to become a mandatory standard, for now it will be a standard for guidance. Any ISO project to make the plain-language standard mandatory would go through the same expert-driven, consensus-seeking process that the current standard for guidance is undergoing.

STANDARDS FOR A FIELD THAT HAS SOME CREATIVITY AND SUBJECTIVITY

When the plain-language world first began to consider the possibility of a plain-language standard, it grappled with whether standards have the capacity to govern something as subjective as writing. After all, writing in plain language involves at least some creativity — less creativity than is involved in writing a poem or sculpting a sculpture, but more than is involved in changing a car tire or filling a pothole.

ISO's experts soon removed this concern by pointing out that standards about good governance are subjective but can still set out what's required — for example, a board committee to manage governance, and a governance policy that deals with certain topics.

Those ISO experts also pointed out that a standard about writing poems could:

- set requirements — for example: a sonnet is to have 14 lines with 10 syllables a line, and is to rhyme in one of the many patterns that are accepted as amounting to a rhyme; but
- be silent about the poem's quality.

Further, in the standards world, there is a difference between standards that require "conformity" and standards that don't. And conformity requirements are discouraged — but only if they go so far as to say something like this: "To meet the standard, you need to have your document reviewed, approved, and certified by a relevant expert."

The draft plain-language standard avoids the types of conformity requirements that ISO discourages.

THE FEDERATION'S LOCALIZATION COMMITTEE

To help ease the way for the pending standard, the federation has a standard-localization committee. The committee, chaired by Gael Spivak of Canada, is seeking to work with plain-language practitioners in as many countries as possible to help them engage with their national standards body and work to localize the standard to make it suit their languages, their culture, and the like.[10]

You can contact Gael Spivak at gael@iplfederation.org to find out who else from your country or language is already involved in this work and to inquire about joining the team.

Also, you can apply to be directly involved in developing the standard through your country's national standards body.[11]

A TOOL FOR US ALL

The aim of a plain-language standard is to provide — for writers everywhere who are working on any type of document, from a letter to legislation — a tool with:

- The credibility of ISO, its 165 national-standards body members, and more than 22,500 standards.
- The credibility of being developed with input and support from many plain-language experts.

A useful model of the sort of tool the standard might become is the U.S. Plain Writing Act, which requires federal government agencies to write in plain language.[12] By a happy coincidence, President Barack Obama signed the act into law during Clarity's 2010 conference in Lisbon, Portugal. Conference participants were able to congratulate, and celebrate with, the members of the Center for Plain Language, who had been heavily involved in making the act a reality.[13]

Then, in 2020, at the Access for All plain-language conference,[14] participants celebrated the 10-year anniversary of the U.S. Plain Writing Act.[15] People working in U.S. government agencies reported that the act has empowered them, helped legitimize plain language in the eyes of the skeptics, and generally made their work easier.

Here's hoping that plain-language practitioners everywhere will be saying similar things about ISO's plain-language standard when they celebrate its 10-year anniversary in 2032.

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MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-months intervals in January and July of each year from when the complaint was filed as is compounded annually.

For a complaint filed after December 31, 1986, the rate as of July 1, 2021, is 1.739%. This rate includes the statutory 1%.

A different rule applies for a complaint filed after June 30, 2002, that is based on a written instrument with its own specific interest rate. The rate is the lesser of:

13% per year, compounded annually; or

The specified rate, if it is fixed — or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see courts.michigan.gov/publications/interest-rates-for-money-judgments.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.

BEST PRACTICES

The best things don't always come to those who wait

A STRATEGIC APPROACH TO INTERLOCUTORY CIVIL APPEALS

BY TIMOTHY A. DIEMER

My law partner and appellate guru John Jacobs used to raise eyebrows and blow minds when, after an adverse jury verdict or judgment had been issued, he would say, "Don't worry, it's only halftime." This confident expression in the power of the appellate system to correct a disastrous trial result was met with skepticism and viewed as controversial. But if recent trends are any guide, involving the appellate team at halftime may be too late.

LESS FREQUENT SUPREME COURT REVIEWS OF CIVIL JURY TRIALS

The Michigan Supreme Court has exhibited a preference for issuing major decisions in cases that do not arise out of civil jury verdicts. Instead, the overwhelming majority of significant civil law opinions recently issued by the Michigan Supreme Court arose out of summary disposition orders,[1] in limine rulings,[2] and a host of other non-jury trial proceedings.[3] One must go all the way back to 2017 to find a civil opinion from the Michigan Supreme Court arising out of a jury trial but even in that case, the issue on appeal was whether a jury or judge should decide the amount of attorney fees contemplated under a contract.[4]

There are many reasons why it has been five years since the Supreme Court issued a reversal of a civil case tried to verdict, including the conventional wisdom that people don't try cases any more[5] and a systemic focus on alternative dispute resolution, including arbitration and other procedures.[6] More recently, due to the COVID-19 pandemic, jury trials were put on hold for almost two years and even after a return to something resembling normal, courts across the state continue to suspend jury trials based on local conditions.

In this author's opinion, there may be another factor at play: a preference for the Supreme Court to make controlling legal policy in cases that do not require setting aside the results of a hard-earned trial victory that may include a significant damages award. This represents a break from the past, most notably the early 2000s, when Michigan appellate courts did not hesitate to reverse monetary judgments following full-blown civil jury trials.[7]

This trend away from appellate decisions stemming from civil jury trials is nowhere near as prevalent in the Michigan Court of

"Best Practices" is a regular column of the Michigan Bar Journal, edited by Gerard V. Mantese and Theresamarie Mantese for the Michigan Bar Journal Committee. To contribute an article, contact Mr. Mantese at gmantese@manteselaw.com.

Appeals[8] which, as the state's error correcting court, is vested with jurisdiction over appeals as of right and has to hear an appeal regardless of the nature of the trial court proceedings.[9] The Michigan Supreme Court, however, is a policy-making court and gets to pick and choose which cases to take.[10] The Court's recent reluctance to grant leave to appeal in civil cases that proceeded to verdict may be due, at least in part, to the negative feelings engendered by the reversal of jury verdicts, and it does not matter whether the Court makes policy following a jury trial or a summary disposition order.

WAITING TO APPEAL FROM A FINAL JUDGMENT: NOT ALWAYS AN OPTION

If this trend continues in the Supreme Court, pursuing appellate remedies in advance of trial presents an opportunity to raise a potentially dispositive legal defense in advance of a jury verdict's being attached to it, presenting a strategic advantage to proactive litigants. Indeed, many significant Supreme Court decisions arose out of appeals that were interlocutory when originally filed[11] and, in some of these cases, the Supreme Court granted leave to appeal after the Court of Appeals refused to do so.[12]

The preference for appeals from final orders is still found in Michigan's appellate court rules.[13] This approach that prefers one omnibus appeal from a single final order or judgment is codified in the court rules which provide an appeal as of right from a final order or judgment[14] but designate appeals from non-final orders as discretionary on leave granted.[15]

The federal system requirement of a final judgment before filing an appeal is virtually ironclad. In the federal appellate system, there must be a statute or court rule authorizing an interlocutory appeal[16] such as qualified immunity appeals under the collateral order doctrine,[17] appeals from class certification orders,[18] or where the district court's order specifically allows an appeal by permission.[19]

But Michigan's preference for one appeal from a final order is not nearly as strong. Under MCR 7.205(B)(1), an appellant must establish an error was committed and establish facts "showing how the appellant suffer[s] substantial harm by awaiting final judgment before taking an appeal" to satisfy the requirement for interlocutory review. Individual Michigan Court of Appeals judges have different perspectives on when both prongs for interlocutory review are met. Experience and anecdotal statements from appellate court judges and justices offer clues as to how the standards for interlocutory review are implemented. Every three years, the state's appellate lawyers and judges convene for the Michigan Appellate Bench Bar Conference, where practitioners and members of the court present on best practices and discuss ways in which the appellate system could better function. The range of answers from judges on when interlocutory review is warranted is striking. Some judges tend to align with the federal view that piecemeal appeals are warranted only in the most extreme circumstances. Others have stated that the substantial harm factor hardly weighs in the analysis and that if the appellant can show an error, that judge will vote in favor of granting the appeal.

CONCLUSION

These comments from the members of the bench indicate that it is a mistake to assume Michigan follows the federal view that interlocutory appeals are rarely appropriate. The objective data contained in the cases where the Supreme Court granted interlocutory review refutes this notion.

There has not been a change to the court rule[20] governing when it is appropriate for the Michigan Supreme Court to grant leave to appeal that explains this change. Instead, one basis of this change, purely in this author's opinion, is that there is a judicial hesitation to be viewed, rightly or wrongly, as a tort reform warrior. The previous approach where civil jury verdicts were overturned with regularity caused discord between lawyers as well as between lawyers and the judges and justices in the appellate system.[21]

With a return to normal in the civil justice system across the state, jury trials are on the rise to clear the backlog of cases amassed during the nearly two-year hold caused by the pandemic. Undoubtedly, many of these trials will raise significant legal issues in need of resolution by the appellate system and it is a matter of when, not if, civil jury trial appeals make their way back into Supreme Court review. But recent jury trials will not proceed to the Supreme Court for at least two to three years.

In the meantime, these structural forces lead me to believe that getting your legal issue into the appellate system before there is a substantial dollar amount attached to the case is the best method for adapting to the reigning appellate trends that do not appear to be transitory. Awaiting final judgment may be too late.

This article is based on a webinar hosted by the Michigan Defense Trial Counsel and presented by the author and Beth Wittmann of the Kitch law firm. The webinar can be found on the MDTC YouTube page at <www.youtube.com/watch?v=A08YnAj2kel>

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ETHICAL PERSPECTIVE

Media ethics: Think before you post

THE LINE BETWEEN ACCURACY AND SENSATIONALISM

BY ROBINJIT EAGLESON

It is no secret that when marketing firms use celebrity endorsements to enhance consumer recognition of a brand, it is also to promote the product to encourage additional sales. Every day, consumers are bombarded with advertisements of well-known and unknown brands. When a celebrity is used as a marketing tool to promote brands or products, that person helps influence a positive brand image and consumer buying intention. However, what happens when a celebrity uses their platform to promote a product or brand but does not think of how it ethically impacts the consumer or even themselves?

Kim Kardashian is no stranger to promoting brands and products. She does so on a plethora of platforms, including social media. At times, it is done without even marketing a specific brand or product but simply by Instagramming a recent purchase or idea of hers. As anyone with an inkling of interest in Kim Kardashian knows, she is working toward receiving her law degree through California's non-traditional path. She started sharing her journey on her reality television show, "Keeping Up with the Kardashians,"[1] and social media platforms.

Recently, Kardashian shared on her Instagram account that after completing California's baby bar exam, she is now learning civil procedure and showed off her yellow legal pads. To the average lawyer, legal pads are our way of life — it is how we function day to day. But Kim's legal pads had an additional element to them; printed at the top of each page of her legal pad was the phrase "KIM IS MY LAWYER." These pads became so popular that the legal website "Above the Law" wrote an article[2] about how terrific they were and asked where they could be made. I wonder if potential ethical implications were considered before posting and getting likes?

Before considering potential ethical implications, note that this article does not assess the impact of California's rules of professional conduct. Rather, it examines the rules that could be enforced if a law student in Michigan posted something similar. To simplify this assessment, let's pretend Kardashian is a law student in Michigan, and we'll start where it all begins for law students — character and fitness.

Under the Michigan Constitution, the Michigan Supreme Court has exclusive authority over regulation of lawyers and the practice of law. This authority includes adopting rules for admission to the bar, discipline of members, and authority over the State Bar of Michigan itself. The character and fitness portion evaluates whether an applicant to the bar possesses the moral character needed to practice law based on several factors. New lawyers must pass a character and fitness evaluation, the Multistate Professional Responsibility Exam, and the bar exam before they can practice law. Once admitted, they must adhere to high professional standards.

At this point you're probably wondering, what does all of this have to do with some legal pads promoted by a reality star? Well, a layperson looking at this Instagram post might think, "Kim must be a lawyer now because she is calling herself a lawyer." Could

"Ethical Perspective" is a regular column providing the drafter's opinion regarding the application of the Michigan Rules of Professional Conduct. It is not legal advice. To contribute an article, please contact SBM Ethics at ethics@michbar.org.

this be considered unauthorized practice of law (UPL)[3] because she is promoting herself as a lawyer on a public page where prospective clients may see it even though she is not licensed to practice law yet? Better yet, think about it this way: law students in Michigan routinely work as law clerks, legal assistants, etc. and have regular contact with clients. What if Kardashian took out legal pads with the phrase "KIM IS MY LAWYER" on each page in front of a client? Could that be considered UPL because she is calling herself a lawyer in front of a potential or current client?

If the character and fitness evaluation revealed these pads being used by a law student in Michigan, they would likely contact UPL counsel to investigate. Why? Because with this simple phrase on the legal pad, it could be determined that she is holding herself out as a lawyer before being licensed, which is a violation of MRPC 5.5(b)(2), MRPC 7.1(a), and MRPC 8.1(a)(1) and (b)(1).

MRPC 5.5(b)(2) states "[a] lawyer who is not admitted to practice in this jurisdiction shall not…hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction." Here, Kardashian has posted a photo of a legal pad implying that she is or could be someone's lawyer to millions of Instagram followers. Identifying oneself as a lawyer implies you have done what the state has required you to do to become licensed and that you are in good standing with the bar. By advertising that she is someone's lawyer — even if done in a social or playful way — it could be determined that she has held out to the public (who may not be well versed in the requirements for becoming a lawyer) that she is admitted to practice law in that specific jurisdiction.

MRPC 7.1(a) states "[a] communication shall not ... contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading[.]" Again, if Kardashian falsely states that she is a lawyer, it is not a truthful representation of the services she can provide based upon her current status as a law student. The statement "KIM IS MY LAWYER" alone could be interpreted as omitting the facts that she is not licensed to practice law, still a law student, and unable to provide legal advice or representation. A statement that provides the impression that she is currently representing someone would be a violation of MRPC 5.5.

Beyond the potential violation of ethical rules, who else could be held accountable for Kardashian's conduct? A supervisory lawyer. A lawyer who supervises a law student has a duty to ensure that nonlawyer assistants do not engage in activities that violate the professional obligations of the lawyer. Here, Kardashian is a law student, so she would be considered a nonlawyer assistant. MRPC 5.3 provides that a lawyer is responsible for conduct of nonlawyer assistants that would be a violation of the rules if the lawyer knows the fact of the conduct or is a partner and fails to take steps to avoid or mitigate the conduct. Kardashian may only use these legal pads for her studies, but since she has posted a picture of them on social media to her millions of followers — and future prospective clients — what are the consequences for her supervising lawyer? At the very least, her supervising lawyer and the law firm partners may face questions about this conduct and their supervision.[4] Is that really worth some likes on social media?

Further, Ethics Opinion RI-29 opined that "[a] lawyer having knowledge that a law student has engaged in conduct which if done by a lawyer would have violated the Michigan Rules of Professional Conduct, has a duty to report the conduct to bar admissions authorities, unless the relevant information is protected by attorney-client privilege."

MRPC 8.1 provides the boundaries an applicant for admission to the bar (a law student) must adhere to. Under MRPC 8.1, law students are held to a standard similar to that of lawyers — to not knowingly make false statements of material fact and not engage in the unauthorized practice of law. Law students are required to be truthful when asserting their current status to practice law and should be mindful of their applications under the applicable rules to avoid misrepresentation. No promotion of oneself, brand, or product is worth placing their future license to practice in jeopardy — no matter the number of social media likes.

Kardashian's Instagram post, however, does include, "And so it begins again #lawschool." Would this additional information help counter concerns about potential violations of MRPC 5.5(b)(2), MRPC 7.1(a) and MRPC 8.1(a)(1) and (b)(1), at least within the Instagram post? Maybe. But should law students really take the risk simply to promote a brand, a product, or an idea? Would you?

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ENDNOTES

1. "Keeping Up with the Kardashians" ended its run in 2021.

2. See https://abovethelaw.com/2022/02/kim-kardashians-lawyerly-legal-pads-are-absolutely-amazing/.

3. MCL 600.916.

4. While not addressing this issue directly, Ethics Opinion RI-323 and Ethics Opinion RI-34 provide guidance on titles for nonlawyer assistants that violate advertising rules.

LIBRARIES & LEGAL RESEARCH

Resources for technological competency

BY VIRGINIA A. NEISLER

At the time this article was written, Michigan was one of 39 states that included understanding relevant technologies as a part of the duty of attorney competence.[1] In 2019, the Michigan Supreme Court formally adopted a new comment to MRPC 1.1.[2] With respect to competence as covered under this rule, their comment made explicit that all Michigan attorneys should "engage in continuing study and education, *including the knowledge and skills regarding existing and developing technology* that are reasonably necessary to provide competent representation for the client in a particular matter" [emphasis added].

In February 2020, the State Bar of Michigan issued ethics opinion RI-381 which held "lawyers have ethical obligations to understand technology, including cybersecurity, take reasonable steps to implement cybersecurity measures, supervise lawyer and other firm personnel to ensure compliance with duties relating to cybersecurity, and timely notify clients in the event of a material data breach." The comment to MRPC 1.1 explicitly notes that the duty only exists to the extent that it is "reasonably necessary to provide competent representation for the client in a particular matter," indicating that every attorney does not need to know about every technology used in every circumstance. Rather, attorneys should be aware of the technology they use in practice necessary for adequate representation. Staying up to date at a time when technologies are evolving at an exponential rate and knowing which technologies must be mastered is no simple task. Fortunately, there are many resources available to attorneys looking to boost their own and staff's knowledge. Highlighted below are some of those resources.

STATE BAR OF MICHIGAN RESOURCES

What is technology competency? It can encompass everything from basic computing skills to a good understanding of data security or risks associated with using the web. Fortunately, the State Bar of Michigan has outlined core competencies attorneys may need in the technological competency section of its Practice Management Resource Center.[3]

In this section, attorneys will find competencies as defined by the State Bar, each with its own set of highlighted resources. Competencies are divided into seven main areas: collaboration, computer skills, cybersecurity, data security, e-discovery, e-filing, and internet. On each page is a description of the competencies encompassed under that area, notes on ethical considerations, training materials, articles, publications, and checklists, all designed with practicing attorneys' needs in mind. There are both written and multimedia resources available, providing multiple modalities for learning.[4]

ADDITIONAL RESOURCES FOR TECHNOLOGICAL COMPETENCY

The American Bar Association (ABA) has also published a wide array of materials on legal technology. Its Legal Technology Resource Center provides publications, webinars, and free resources to "help lawyers identify opportunities, overcome obstacles, and understand how technology tools can improve their practices."[5] The site is designed to meet the needs of a wide range of attorneys and practices from small firms to big law including topics like buyers' guides and disaster resources.

The ABA has also published books on software covering everything from common programs like Microsoft Office and Adobe to sophisticated practice management tools. More than point-and-click software manuals, these books explore the necessary considerations when determining what to purchase and how to implement the systems ethically and efficiently. The following titles are just some of the resources available through the ABA's web store.

- Schorr, "Microsoft Office 365 for Lawyers" (Chicago: ABA Book Publishing, 2018). This book explores big picture questions attorneys must address when migrating to Office 365 such as how to make the right decisions about pricing and features for your needs.
- Siegel & Myers, "The Ultimate Guide to Adobe Acrobat DC" (Chicago: ABA Book Publishing, 2021). This book

features step-by-step instructions with screenshots for the most commonly used tasks attorneys perform with Adobe.
- Lauristen, "Working Smarter with Knowledge Tools" (Chicago: ABA Book Publishing, 2021). This book introduces readers to specialized legal knowledge management tools and offers guidance for choosing tools to optimize and streamline work.
- Davis & Levitt, "Internet Legal Research on a Budget: Free and Low-Cost Resources for Lawyers" (Chicago: ABA Book Publishing, 2020). Save your practice time and money by learning more about free, reliable web-based legal research tools.
- Nelson, Simek, and Maschke, "The 2020 Solo and Small Firm Legal Technology Guide" (Chicago: ABA Book Publishing, 2019). This book provides guidance to solo and small firms, taking a practical approach to technology adoption with an eye toward value for money.

For hands-on learning, the Procertas Legal Technology Assessment provides benchmarking assessment and self-directed training modules to help all users become proficient with common office software.[6]

STAYING CURRENT

Keeping up with current trends in legal technology is arguably one of the most difficult aspects of maintaining technological competence. Waiting years between technology tune-ups can be overwhelming, inefficient, and costly, so why not try one of these alternative methods for staying current?

FOLLOW A SPECIALIZED BLOG

- LawSites Blog <https://www.lawsitesblog.com/> [https://perma.cc/J38Q-QYKU]. This long-standing blog has been tracking legal technology updates since 2002. Lawyer and legal journalist Robert J. Ambrogi writes on innovation in legal platforms and companies, providing updates and insights into the rapidly evolving world of legal technology.
- Law Technology Today <https://www.lawtechnologytoday.org/> [https://perma.cc/74MN-JVH2]. This blog is published by the ABA Legal Technology Resources Center and is aimed at lawyers, IT professionals, and practice management experts. The blog offers practical guidance, strategies, and ongoing updates on legal technology trends.

ADD A LEGAL TECH PODCAST TO YOUR PLAYLIST

- Legaltech Week <https://www.lawsitesblog.com/category/legaltech-week> [https://perma.cc/QZF3-ZZPE]. Also from Robert Ambrogi, this weekly 15-minute podcast provides a bite-sized review of recent news on legal technology and innovation.
- Law Technology Now <https://legaltalknetwork.com/podcasts/law-technology-now/> [https://perma.cc/C5Q7-66JY]. Episodes explore top trends and developments in legal technology with a focus on access to justice and affordability of legal services.

ATTEND A CONFERENCE OR TAKE A CLE COURSE

- ABA TECHSHOW 2022 <https://www.techshow.com/>. The American Bar Association holds its annual legal technology conference in Chicago every March. In addition to continuing legal education programming on the latest tech, ethical considerations, and professional development, TECHSHOW features an expo hall where attendees can learn about a wide range of tools from the companies that make them.
- ILTACON <https://www.iltacon.org/>. The International Legal Technology Association hosts an annual conference for peer- and volunteer-presented programs on legal technology, professional development, practice management, and more.
- ICLE seminars on legal technology include "Essential Technology Tools for Every Law Office 2020" [https://perma.cc/EZK9-HBRU] and "Technology to Efficiently Work Remotely and Manage Your Workforce" [https://perma.cc/GJK7-47LA].

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PUBLIC POLICY REPORT

AT THE CAPITOL

Executive Budget for the Michigan Indigent Defense Commission for the 2022-2023 Fiscal Year

POSITION: Support.

Executive Budget for the Department of the Judiciary for the 2022-2023 Fiscal Year

POSITION: Support.

(Position adopted by roll-call vote. Commissioners voting in support: Anderson, Danielle; Bennett; Bilowus; Burrell; Clement; Detzler; Easterly; Gant; Hamameh; Howlett; Kuchon; Larsen; Low; Mason; McCarthy; McGill; Nyamfukudza; Ohanesian; Orvis; Perkins; Potts; Quick; Simpson; Sinas; Walton; Warnez. Commissioner voting in opposition: Wisniewski.)

IN THE HALL OF JUSTICE

Amendment of Rule 1.109 of the Michigan Court Rules (ADM File No. 2017-28) – Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access (See Michigan Bar Journal January 2022, p 69)

STATUS: Comment Period Expired 4/1/22; Public Hearing to be Scheduled.

POSITION: Oppose.

Amendment of Rule 3.950 of the Michigan Court Rules (ADM File No. 2021-47) – Waiver of Jurisdiction (See Michigan Bar Journal March 2022, p 67)

STATUS: Comment Period Expired 4/1/22; Public Hearing to be Scheduled.

POSITION: Support.

Proposed Amendment of Rule 1.8 of the Model Rules of Professional Conduct (ADM File No. 2021-07) – Conflict of Interest; Prohibited Transactions (See Michigan Bar Journal January 2022, p 66)

STATUS: Comment Period Expired 4/1/22; Public Hearing to be Scheduled.

POSITION: Oppose.

DISCOVER

MUST-HAVE TECH SKILLS FOR TODAY'S WORLD

Serving clients today requires a higher level of technical expertise, and the State Bar of Michigan is here to help. Get training, learn about the latest trends, and assess your needs using one of our checklists at the Technology Competency corner of the Practice Management Resource Center.

Discover information on e-filing, e-discovery, data security, collaboration, and more.

SBM | **TECH** COMPETENCY

LAW PRACTICE SOLUTIONS

The Great Resignation and its impact on law firms: Part II

BY JOANN HATHAWAY

In last month's Michigan Bar Journal, I wrote about the "Great Resignation" and its impact on law firms. Communication — whether working remotely or in the office — is a key tool to keeping and retaining employees. In this series finale, I'll share tips and tools to ensure your communication is designed to keep your team engaged and informed.

BETTER MEETINGS

When the State Bar of Michigan Practice Management Resource Center launched in 2006, one of its web resources was a guide on how to conduct a meeting. Of the approximately 125 resources available when the website debuted, this was consistently one of the top 10 downloads. It's somewhat of a surprise, but it shows that members were aware that they needed guidance when conducting meetings and was an issue that never disappeared.

The takeaway: With the COVID-19 pandemic dragging on, meetings abound. Make your meetings productive and keep your employees engaged with the article "Five Ways to Make Meetings Matter" from the popular Attorney at Work blog.[1]

AGENDAS, PLEASE

Most people don't like to be put on the spot, particularly in a room full of their peers — or on a Zoom gathering. Sometimes, the element of surprise is appropriate. A business meeting isn't the time or place.

The takeaway: Create an agenda and make sure attendees have it well in advance of the meeting. This allows your colleagues to prepare for the meeting and come into the room (physical or virtual) knowing its purpose. To learn about the 16 types of business meetings and access templates and charts, visit Lucid, a meeting innovation company.[2]

ZOOM: BEWARE, NO TABLES

I first encountered Zoom at ABA TECHSHOW many years ago. The company's exhibit featuring a huge screen with little boxes impressed me even then. Little did I know it would evolve into an operation that we all wish we had bought stock in. Even though it has other respectable competitors, the onset of the pandemic has cemented Zoom's spot as the leader in virtual collaborations and meetings.

Prior to COVID-19, in-person meetings had boundaries (such as conference tables) separating us from other attendees. Not anymore. Today's Zoom world forces us to be front and center with tightly cropped headshots and, at times, less than optimal lighting and webcams. There's no hiding, and we can feel exposed in ways that should not affect a meeting's goals.

The takeaway: Make sure your team members are well trained in your collaboration applications and have the proper technology to utilize its functionality and put their best face forward, both internally and with clients. A detailed Zoom resource guide is available on the Practice Management Resource Center website, and additional resources can be found on the PMRC collaboration page.[3]

EMAIL PROWESS

It's rare to hear someone say they prefer email over in-person communication, at least on a regular basis. With COVID-19 forcing many to continue remote work, email suddenly became the main mode of communication.

Email can be inefficient. What typically can be accomplished in a brief face-to-face meeting often results in lengthy email threads that can be unproductive. Also, are you often left scratching your head after reading an email? If so, you're not alone. Without eye-to-eye

Law Practice Solutions is a regular column from the State Bar of Michigan Practice Management Resource Center (PMRC) featuring articles on practice, technology, and risk management for lawyers and staff. For more resources, visit the PMRC website at www.michbar.org/pmrc/content or call our Helpline at (800) 341-9715 to speak with a practice management advisor.

contact and the benefit of hearing the tone of one's voice, email recipients are often left to interpret email content, meaning, and intent.

The takeaway: Bone up on email etiquette and train everyone in your firm on best practices. A good place to start is with "16 Workplace Email Etiquette Rules for Communicating with Co-workers and Customers" from the customer communication platform Front Page blog.[4]

SOFTWARE TRAINING

It's no secret that lawyers don't routinely take advantage of software training. While vetting the best software for their firms is a detailed process, training is routinely overlooked, and implementation falls on support staff — who were not involved in the software selection process to begin with and have no idea as to its intended usage or functionality — being told to "learn how to use this."

In my experience, most law firms use only about 35% of their software capability. This typically leads firms to search for additional software to complete tasks their existing software can probably already handle. The result? Unneeded expenses, increased inefficiency, and greater user frustration.

The takeaway: Most software vendors offer training; many have certified consultants for onsite training. Even better, many vendor-based options are free. Take the time to explore your options. If you need help finding training, contact the Practice Management Resource Center at (800) 341-9715 to speak with an advisor.

TELL ME WHAT'S HAPPENING

When employees work remotely or in a hybrid work environment, communication can suffer. While often not intentional, unless there is a detailed method for sharing information, the disconnect only grows with time. Workers can feel left out, isolated, and invalidated, resulting in low morale.

The takeaway: Clearly define communication goals and policies throughout the firm; the best practice is developing a policy on working remotely. Legal software company Clio has a guide to help you through this process.[5]

GENERATIONALLY BASED DESIRES

Is the "Great Resignation" due to different factors based on your generation? I think so, and I'm not alone.

Well before the onset of COVID-19, millennials and Gen Z congregated socially online. It was (and remains) the preferred mode of contact, with texting favored over phone calls and online game nights the norm. Now that these generations have a taste of remote work, they don't want to give it up; having more control over the working environment has opened a whole new world for many.

The takeaway: Understanding what drives people to leave the workforce is a key to retaining them. Forbes provides good insight into this phenomenon with articles on why Gen Z is leaving the workforce[6] and how to retain millennials.[7]

MORE FEEDBACK…AND FASTER

There are as many articles about performance evaluations as there are opinions on them. I contend they can be a wonderful vehicle for sharing insights about goals and other information. If done poorly, however, employees can view them as punitive and critical.

The takeaway: Management should be trained in performance evaluation to ensure the process is uniform for all employees. Goals should be evaluated at least quarterly, if not more frequently. Feedback should be swift, meaningful, and not punitive and a two-way exchange in which workers can engage in open discussions without fear of retaliation. Finally, don't underestimate the importance of commending employees on a job well done.

CONCLUSION

Navigating the "Great Resignation" can feel daunting, but open communications, an eye on employee well-being, and willingness to craft a flexible work environment can help law firms retain their best and their brightest assets.

JoAnn L. Hathaway is a practice management advisor for the State Bar of Michigan.

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PRACTICING WELLNESS

Suicide prevention in the legal community

BY MOLLY RANNS

It was a Friday morning when the calls began coming in, just days after the article on Chelsie Kryst's suicide was published in the ABA Journal.[1]

"How could this have happened to someone like her?" callers asked. "She was so young," they said. "She had so much success," some noted. Others wondered, "How did this happen again to a member of the profession I chose?"

The calls poured in from law students and lawyers who just wanted to talk. Others called wanting to understand what happened. A few requested presentations and educational outreach from Lawyers and Judges Assistance Program staff on suicide prevention in the legal community. But the calls all had one thing in common: a clear indication that the need to discuss suicide was vital. For as difficult as suicide is to talk about, it's even more dangerous to ignore.

Let's talk about some hard truths. Coming in just after cancer and heart disease, suicide is the third-leading cause of death among attorneys; the rate of death by suicide for lawyers is six times the suicide rate for the general population.[2] With one suicide every 15 minutes and more than 34,000 suicides per year in the United States, this data has startling implications for the legal community.[3] A strong correlation exists between suicide and depression and we know attorneys experience depression at a greater rate than the general population.[4] The groundbreaking 2016 study, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," revealed that nearly 46% of attorneys reported suffering from depression at some point during their careers and 11.5% acknowledged suicidal thoughts.[5]

I clearly remember the first time in my professional career I had a client bring up suicide. I was working toward my master's degree in counseling while working 40 hours per week as an intern at Community Mental Health. As I sat down to begin a session, the individual sitting across from me, who had been diagnosed with a major depressive disorder, told me that the idea of suicide was becoming harder for her to disregard.

As difficult as suicide is to talk about, it's even more dangerous to ignore.

I froze. So many thoughts were going through my mind but, most prominently, I was worried that something I would say could make the situation worse. If I was having these thoughts as someone with an undergraduate degree in psychology, one year in a graduate program in counseling, and countless hours of supervision and education, it's no wonder people shy away from this discussion — particularly lawyers, who are trained to focus on thinking rather than feeling, being impersonal and objective, and routinely placed in the role of solving problems for others as opposed to asking for help themselves.[6]

Our fear of this topic isn't going to make the problem go away, so we'll explore warning signs of suicide and the key suicide prevention

"Practicing Wellness" is a regular column of the Michigan Bar Journal presented by the State Bar of Michigan Lawyers and Judges Assistance Program. If you'd like to contribute a guest column, please email contactljap@michbar.org.

strategy — making it part of open and honest conversations. First, let's debunk some common suicide myths.

1) Talking about suicide will increase its likelihood: **FALSE!** Research shows that not only do prevention strategies exist for suicide, but that talking about suicide decreases suicidal ideation.[7] Having this discussion can decrease the stigma associated with having suicidal thoughts and encourage individuals to seek help.

2) Most suicides happen suddenly and without warning: **FALSE!** The truth is warning signs accompany most suicides.[8] These signs can include (but are not limited to) expressions of worthlessness; threatening or talking about killing oneself; loss of interest in hobbies, relationships, and social activities; increased substance abuse; reckless behavior; withdrawing from family and friends; and/or displaying dramatic mood changes. Again, this list is not exhaustive.

3) People who commit suicide are selfish and taking the easy way out: **FALSE!** People who die by suicide are oftentimes not looking to die, but rather to end their suffering.[9] They may suffer from a (treatable) mental health condition. They may have experienced physical or sexual violence, child abuse, bullying, or other forms of violence or injury.[10]

Experts agree that the key prevention strategy to suicide is talking about it.[11] So what, exactly, can one do if they are concerned that someone is suicidal? Are you thinking about taking your life? Be direct and ASK! We had the privilege of sitting down with Texas Lawyers' Assistance Program Director Erica Grigg for the January 2022 SBM On Balance Podcast[12] to learn just how this is done.

A: Ask the question. Ask it directly. Are you suicidal? Research shows that asking about suicide won't cause or encourage it; in fact, it can prevent it. Asking about suicide can provide a suffering individual with tremendous relief. Avoid indirect questions such as, "Are you okay?" These questions are likely to elicit vague responses. Be direct.

S: Seek more information. Be ready and willing to listen. Avoid judging or shaming the other person. Take what they say seriously, and don't try to interrupt or rush the conversation.

K: Know where to find resources. Call the National Suicide Prevention Lifeline at 1-800-273-TALK (8255). Contact your local lawyers' assistance program. Call your local community mental health agency. Finally, if the individual is a threat to themselves or others, dial 911.

Legal professionals suffer from depression at higher rates than the general population,[13] and there is a strong correlation between depression and suicide. Talking about suicide can help prevent it.[14] To learn more about suicide prevention in the legal community, contact the Lawyers and Judges Assistance Program or listen to January's edition of the State Bar of Michigan: On Balance podcast. Help is here when you need it.

Molly Ranns is director of the State Bar of Michigan Lawyers and Judges Assistance Program.

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4. Krill, Johnson & Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J Addict Med 46, 46 (2016), available at <https://judicialstudies.duke.edu/wp-content/uploads/2019/02/The-Prevalence-of-Substance-Use-and-Other-Mental-Health-Concerns-Among-American-Attorneys-Patrick-R.-Krill-Ryan-Johnson-and-Linda-Albert-2016.pdf> [https://perma.cc/WA7S-YG6J].

5. *Id.*

6. *The Lawyers' Epidemic.*

7. Ritter, *Why Lawyers Must Talk About Suicide*, Texas Lawyers Assistance Program <https://www.texasbar.com/AM/Template.cfm?Section=Suicide_Prevention&Template=/CM/ContentDisplay.cfm&ContentID=34476> [https://perma.cc/H54X-E6KQ].

8. Fuller, *5 Common Myths About Suicide Debunked*, Nat'l Alliance on Mental Illness (September 30, 2020) <https://www.nami.org/Blogs/NAMI-Blog/September-2020/5-Common-Myths-About-Suicide-Debunked> [https://perma.cc/KQB5-8PRV].

9. *Id.*

10. *Facts About Suicide*, CDC, available at < https://www.cdc.gov/suicide/facts/index.html> [https://perma.cc/VG3F-F4WZ].

11. *Why Lawyers Must Talk About Suicide.*

12. State Bar of Michigan, *On Balance Podcast*, <https://www.michbar.org/pmrc/podcast>.

13. *The Prevalence of Substance Use and Other Mental Health Concerns.*

14. *Why Lawyers Must Talk About Suicide.*

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IN MEMORIAM

JAMES E. BRENNER, P11178, of Detroit, died Dec. 29, 2021. He was born in 1943, graduated from University of Michigan Law School, and was admitted to the Bar in 1972.

HOWARD J. BUECHE, P11353, of Flushing, died Jan. 20, 2022. He was born in 1926, graduated from University of Detroit School of Law, and was admitted to the Bar in 1951.

CHARLES F. CLIPPERT, P11983, of Troy, died Feb. 12, 2022. He was born in 1931, graduated from University of Michigan Law School, and was admitted to the Bar in 1960.

DALE E. COOPER, P12200, of Fort Lauderdale, Florida, died Aug. 23, 2021. He was born in 1944, graduated from Detroit College of Law, and was admitted to the Bar in 1970.

JIMEY D. EDGAR, P36187, of Chesaning, died Feb. 14, 2022. He was born in 1956, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1984.

JAMES J. GOULOOZE, P44497, of Hastings, died Nov. 16, 2021. He was born in 1948, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1991.

ROBERT L. GROSSMAN, P36145, of Minneapolis, Minnesota, died Oct. 12, 2021. He was born in 1944 and was admitted to the Bar in 1984.

DAVID D. KOHL, P25286, of Novi, died Nov. 18, 2021. He was born in 1947, graduated from Detroit College of Law, and was admitted to the Bar in 1975.

HON. WILLIAM F. LAVOY, P16453, of Monroe, died Dec. 5, 2021. He was born in 1934, graduated from Wayne State University Law School, and was admitted to the Bar in 1961.

PATRICIA L. LEARMAN, P16485, of Saginaw, died Feb. 19, 2022. She was born in 1927 and was admitted to the Bar in 1952.

MICHAEL D. LEWIS, P16635, of Traverse City, died Nov. 3, 2021. He was born in 1944, graduated from Wayne State University Law School, and was admitted to the Bar in 1969.

STEPHEN A. MAZURAK, P56111, of Naples, Florida, died Jan. 29, 2022. He was born in 1944 and was admitted to the Bar in 1997.

TERENCE C. MERRICK, P37437, of Eaton Rapids, died Jan. 25, 2022. He was born in 1945, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1985.

HON. DENNIS N. POWERS, P24757, of Highland, died Jan. 16, 2022. He was born in 1942, graduated from Detroit College of Law, and was admitted to the Bar in 1975.

KATHERINE LOUISE ROOT, P71469, of Detroit, died Feb. 14, 2022. She was born in 1978, graduated from University of Michigan Law School, and was admitted to the Bar in 2008.

RONALD M. ROTHSTEIN, P19698, of Farmington Hills, died June 24, 2021. He was born in 1927 and was admitted to the Bar in 1952.

WILLIAM F. SCHELL, P23632, of Okemos, died Feb. 1, 2022. He was born in 1943, graduated from University of Detroit School of Law, and was admitted to the Bar in 1973.

KEITH L. SKUTT, P37815, of Saginaw, died Aug. 30, 2021. He was born in 1953, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1985.

RAMON A. VON DREHLE, P21866, of Alexandria, Virginia, died Oct. 25, 2021. He was born in 1930 and was admitted to the Bar in 1957

KATHRYN L. WESTMAN, P22213, of Birmingham, died Feb. 13, 2022. She was born in 1930, graduated from Wayne State University Law School, and was admitted to the Bar in 1973.

In Memoriam information is published as soon as possible after it is received. To notify us of the passing of a loved one or colleague, please email barjournal@michbar.org.

ORDERS OF DISCIPLINE & DISABILITY

DISBARMENT

Charles A. Carpenter, P61118, Maryville, Tennessee, by the Attorney Discipline Board. Disbarment effective March 1, 2022.

The grievance administrator filed a notice of filing of reciprocal discipline pursuant to MCR 9.120(C) that attached, in relevant part, a certified copy of an Order of Enforcement entered by the Supreme Court of Tennessee on Oct. 22, 2021, permanently disbarring respondent from the practice of law in Tennessee in a matter titled *In Re: Charles Alphonso Carpenter*, No M2021-01234-SC-BAR-BP.

An order regarding imposition of reciprocal discipline was issued by the board on Dec. 21, 2021, ordering the parties to, within 21 days from service of the order, inform the board in writing (i) of any objection to the imposition of comparable discipline in Michigan based on the grounds set forth in MCR 9.120(C)(1) and (ii) whether a hearing was requested. The 21-day period set forth in the board's Dec. 21, 2021, order expired without objection or request for hearing by either party.

On Jan. 31, 2022, the Attorney Discipline Board ordered that the respondent be disbarred from the practice of law in Michigan effective March 1, 2022. Costs were assessed in the amount of $1,500.

SUSPENSION (BY CONSENT)

Casper P. Connolly, P12136, White Lake, by the Attorney Discipline Board Tri-County Hearing Panel #76. Suspension, 30 days, effective March 2, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admission to the factual statements contained in the formal complaint and his admission that he committed professional misconduct, as charged in the complaint, during his representation of a client in proceedings relating to bankruptcy and the judicial foreclosure of the client's home.

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent engaged in a conflict of interest with a former client, in violation of MRPC 1.9. The panel also found that the

respondent violated MCR 9.104(2)-(4) and MRPC 8.4(a).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 30 days. Costs were assessed in the amount of $759.76.

SUSPENSION WITH CONDITIONS (BY CONSENT)

Donovan Rashaad Johnson, P82508, Detroit, by the Attorney Discipline Board Tri-County Hearing Panel #15. Suspension, 180 days, effective March 2, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel. Pursuant to the parties' stipulation, the panel found that the respondent committed professional misconduct when he was convicted in 2020 and 2021 for misdemeanor disorderly person (window peeping) in violation of MCL 750.167(1)(c) and his 2021 criminal conviction for misdemeanor trespassing in violation of MCR 750.552, reduced from window peeping (*People v Donovan Rashaad Johnson*, Case 20BT00820, 48th District Court; *People v Donovan Rashaad Johnson*, Case 20SO0149A, 46th District Court; *People v Donovan Rashaad Johnson*, Case 20-004728, 52-3rd District Court.)

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent engaged in conduct that violated a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615 in violation of MCR 9.104(5).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 180 days with conditions relevant to the established misconduct. Costs were assessed in the amount of $820.91.

REINSTATEMENT (WITH CONDITIONS)

Ralph Wendell Kimble, P64054, Union City, by the Attorney Discipline Board. Reinstated effective March 9, 2022.

The petitioner's license to practice law in Michigan was suspended for 180 days effective Jan. 8, 2019. On Jan. 25, 2021, the petitioner filed a petition for reinstatement pursuant to MCR 9.123 and MCR 9.124, which was assigned to Calhoun County Hearing Panel #1. After hearings on the petition, the panel concluded that the petitioner satisfactorily established his eligibility for reinstatement and on Feb. 17, 2022, issued an Order of Eligibility for Reinstatement with Conditions. On Feb. 23, 2022, the board received written confirmation that the petitioner paid his bar dues in accordance with rules 2 and 3 of the Supreme Court Rules concerning the State Bar of Michigan.

The board issued an Order of Reinstatement with Conditions reinstating the petitioner to the practice of law in Michigan, effective Feb. 24, 2022.

DISBARMENT

Charles William Malette, P68928, Sault Ste. Marie, by the Attorney Discipline Board Washtenaw County Hearing Panel #3. Disbarment effective May 2, 2021.[1]

The respondent was convicted by guilty pleas in the following cases: (1) *People of the State*

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

of Michigan v Charles William Malette, 11th Circuit Court Case No. 2019 1478-FH of perjury, a felony, in violation of MCL 750.422-B; and (2) *People of the State of Michigan v Charles William Malette*, 50th Circuit Court Case No. 20-005108-FH of fraud-common law, a felony, in violation of MCL 750.280 and habitual offender second conviction in violation of MCL 769.10.

Based on his convictions, the panel found that the respondent engaged in conduct that violated criminal laws of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, in violation of MCR 9.104(5).

The panel ordered that the respondent be disbarred from the practice of law in Michigan. Total costs were assessed in the amount of $1,676.75.

1. Respondent has been continuously suspended from the practice of law in Michigan since Nov. 1, 2019. Please see Notice of Automatic Interim Suspension entered in Grievance Administrator v Charles William Malette, Case Nos. 19-121-AI; 20-21-JC, issued Nov. 26, 2019.

SUSPENSION

Steven Edward Phillips, P76651, Grand Rapids, by the Attorney Discipline Board Kent County Hearing Panel #3. Suspension, 180 days effective March 5, 2022.[1]

After proceedings conducted pursuant to MCR 9.115, the panel found, by default, that the respondent committed professional misconduct when he signed his former partner's name without her permission or knowledge to a Petition to Reopen and Modify Trust which he then filed in Kent County Probate Court on behalf of his wife, with whom the respondent's former partner had no established attorney-client relationship. Count 2 of the complaint alleged that the respondent failed to answer a request for investigation filed by his former partner within the required time frame referenced in MCR 9.113(A).

Based on the respondent's default and the evidence presented at the hearing, the panel found that the respondent, with regard to Count 1, made a false statement of material fact or law to a tribunal or failed to correct a false statement of material fact or law previously made to the tribunal in violation of MRPC 3.3 and engaged in conduct that involved dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law in violation of MRPC 8.4(b).

As to Count 2, the panel found that the respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2) and failed to answer a request for investigation in violation of MCR 9.104(7) and MCR 9.113(A) and (B)(2).

Additionally, as charged in both counts of the complaint, the panel found that the respondent engaged in conduct that violated the Rules of Professional Conduct in violation of MRPC 8.4(a) and MCR 9.104(4); engaged in conduct that was prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); and engaged in conduct that was contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3).

The panel ordered that the respondent's license to practice law be suspended for a period of 180 days. Costs were assessed in the amount of $1,824.28.

1. The respondent has been continuously suspended from the practice of law in Michigan since Oct. 19, 2021. Please see Notice of Suspension Pursuant to MCR 9.115(H)(1) issued Oct. 21, 2021.

SUSPENSION WITH CONDITIONS (BY CONSENT)

Hussein N. Rahal, P79471, Dearborn, by the Attorney Discipline Board Tri-County Hearing Panel #16. Suspension, 90 days effective Feb. 10, 2022.

The respondent and the grievance administrator filed a First Amended Stipulation for Consent Order of Discipline with Conditions in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's plea of no contest to the factual statements contained in the formal complaint and his admission that he committed professional misconduct, as charged in the complaint, during his representation of a client in a personal injury matter and by filing a late answer to a request for investigation and failing to respond to the grievance administrator's request for additional information and documents relating to the request for investigation.

Based on the respondent's no contest plea, admissions, and the stipulation of the parties, the panel found that the respondent neglected a legal matter entrusted to him in violation of MRPC 1.1(c); failed to seek the lawful objectives of a client through reasonably available means permitted by law in violation of MRPC 1.2(a); failed to act with reasonable diligence and promptness in violation of MRPC 1.3; failed to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information and by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of MRPC 1.4(a); and failed to respond to a lawful demand for information from the Attorney Grievance Commission in violation of MRPC 8.1(a)(2). The respondent was also found to have violated MCR 9.104(1)-(4) and MRPC 8.4(a)-(c).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 90 days with conditions relevant to the established misconduct. Costs were assessed in the amount of $750.

SUSPENSION (BY CONSENT)

Bruce R. Redman, P46958, Lake Orion, by the Attorney Discipline Board Tri-County Hearing Panel #76. Suspension, 30 days effective March 2, 2022.

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admission to the factual statements and his admission that he committed professional misconduct during his representation of a client in proceedings relating to the client's bankruptcy and the judicial foreclosure of the client's home and when he engaged in a real-estate deal with the same client that was a conflict of interest, and that resulted in litigation during which the respondent failed to act with reasonable diligence and failed to sufficiently explain the matter to his client, as charged in Count 1 of the complaint. The parties agreed to dismiss all other factual statements and allegations of misconduct not admitted in their stipulation, including Count 2 in its entirety.

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent failed to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.3; failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of MRPC 1.4(b); and engaged in a conflict of interest/prohibited transaction in violation of MRPC 1.8(a). The panel also found that the respondent violated MCR 9.104(2)-(4) and MRPC 8.4(a).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 30 days. Costs were assessed in the amount of $808.52.

NOTICE VACATING INTERIM SUSPENSION AND NOTICE OF REINSTATEMENT

John H. Underhill, P42326, Adrian, by Attorney Discipline Board Livingston County Hearing Panel #1. Reinstated effective March 1, 2022.

On Oct. 21, 2021, Livingston County Hearing Panel #1 issued an Order of Suspension Pursuant to MCR 9.115(H)(1) [Failure to Appear] suspending the respondent's license to practice law in Michigan effective Oct. 28, 2021.[1]

On March 1, 2022, the panel issued an order granting the respondent's motion to set aside the Oct. 21, 2021, Order of Suspension Pursuant to MCR 9.115(H)(1) [Failure to Appear]. The panel's order reinstated the respondent's license to practice law in Michigan effective March 1, 2022.

1. See Notice of Suspension Pursuant to MCR 9.115(H)(1), issued Nov. 1, 2021.

REPRIMAND WITH CONDITIONS (BY CONSENT)

Eric J. Wells, P54292, Bloomfield Hills, by the Attorney Discipline Board Tri-County Hearing Panel #60. Reprimand effective Feb. 26, 2022.

The respondent and the grievance administrator filed a Revised Stipulation for Consent Order of Discipline which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The revised stipulation contained the respondent's admission that he pleaded guilty on Jan. 29, 2019, to Operating While Intoxicated, second offense, a misdemeanor, in violation of 257.62561-A, *People v Eric J. Wells*, Sixth Circuit Court Case No. 2020-275745-FH.

Based on the respondent's plea, admission, and the parties' stipulation, the panel found that the respondent committed professional misconduct when he engaged in conduct that violated a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615 in violation of MCR 9.104(5).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded and subject to conditions relevant to the established misconduct. Costs were assessed in the amount of $791.62.

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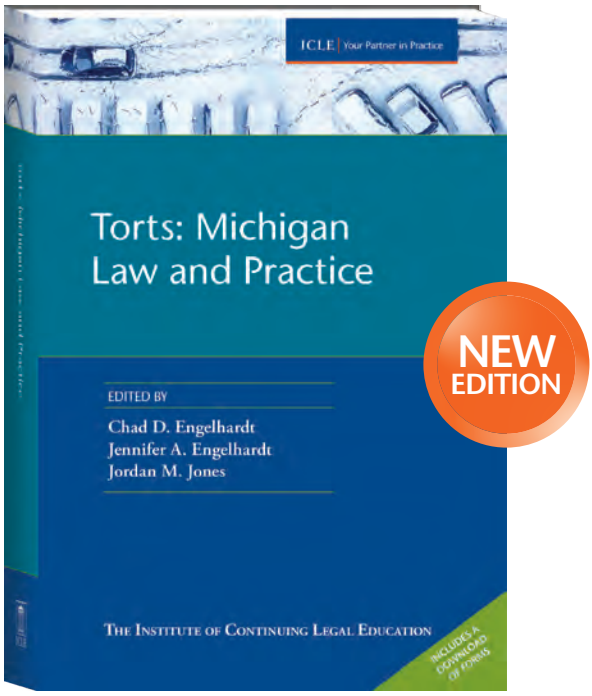

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FROM THE MICHIGAN SUPREME COURT

ADM File No. 2022-01
Supreme Court Appointment to the Committee on Model Civil Jury Instructions

On order of the Court, pursuant to Administrative Order No. 2001-6 and effective immediately, Julie Clement is appointed as reporter of the Committee on Model Civil Jury Instructions.

ADM File No. 2022-01
Supreme Court Appointments to the Court Reporting and Recording Board of Review

On order of the Court, pursuant to MCR 8.108(G)(2)(a) and effective April 1, 2022:

Hon. Anica Letica (Court of Appeals judge) is appointed to a first four-year term that will expire on March 31, 2026. Judge Letica will serve as chairperson.

Bradley Hall (attorney) is appointed to a second full term that will expire on March 31, 2026.

ADM File No. 2022-01
Supreme Court Appointment to the Justice for All Commission

On order of the Court, pursuant to Administrative Order No. 2021-1, Carmen Wargel (on behalf of nonprofit local community organizations) is appointed to the Justice for All Commission for a term commencing immediately and ending on Dec. 31, 2024.

ADM File No. 2022-01
Supreme Court Appointment to the Michigan Tribal State Federal Judicial Forum

On order of the Court, pursuant to Administrative Order No. 2014-12 and effective immediately, Hon. Carol Montavon Bealor is appointed to the Michigan Tribal State Federal Judicial Forum for the remainder of a partial term ending on Dec. 31, 2022.

ADM File No. 2020-26
Amendments of Rules 1.109 and 8.119 of the Michigan Court Rules

On order of the Court, the following amendments of Rules 1.109 and 8.119 of the Michigan Court Rules are adopted, effective April 1, 2022.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access

(A)-(C [Unchanged.]

(D) Filing Standards.

(1)-(8) [Unchanged.]

(9) Personal Identifying Information.

(a) The following personal identifying information is protected and shall not be included in any public document or attachment filed with the court on or after April~~July~~ 1, 2022~~1~~, except as provided by these rules:

(i)-(v) [Unchanged.]

(b)-(e) [Unchanged.]

(10) Request for Copy of Public Document with Protected Personal Identifying Information; Redacting Personal Identifying Information; Responsibility; Certifying Original Record; Other.

(a) The responsibility for excluding or redacting personal identifying information listed in subrule (9) from all documents filed with or offered to the court rests solely with the parties and their attorneys. The clerk of the court is not required to review, redact, or screen documents at time of filing for personal identifying information, protected or otherwise, whether filed electronically or on paper. For a document filed with or offered to the court, except as otherwise provided in these rules, the clerk of the court is not required to redact protected personal identifying information from that document, regardless of whether filed before or after April~~July~~ 1, 2022~~1~~, before providing a requested copy of the document (whether requested in person or via the internet) or before providing direct access to the document via a publicly accessible computer at the courthouse.

(b)-(e) [Unchanged.]

(E)-(H) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(G) [Unchanged.]

(H) Access to Records. Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules. The clerk shall not permit any case record to be taken from the court without the order of the court. A court may provide access to the public case history information through a publicly accessible website, and business court opinions may be made available as part of an indexed list as required under MCL 600.8039. If a request is made for a public record that is maintained electronically, the court is required to provide a means for access to that record. However, the documents cannot be provided through a publicly accessible website if protected personal identifying information has not been redacted from those documents. If a public document prepared or issued by the court, on or after April~~July~~ 1, 2022~~1~~, contains protected personal identifying information, the information must be redacted before it can be provided to the public, whether the document is provided upon request via a paper or electronic copy, or direct access via a publicly accessible computer at the courthouse. The court may provide access to any case record that is not available in paper or digital image, as defined by MCR 1.109(B), if it can reasonably accommodate the request. Any materials filed with the court pursuant to MCR 1.109(D), in a medium for which the court does not have the means to readily access and reproduce those materials, may be made available for public inspection using court equipment only. The court is not required to provide the means to access or reproduce the contents of those materials if the means is not already available.

(1)-(2) [Unchanged.]

(I)-(L) [Unchanged.]

Staff comment: The amendments of MCR 1.109 and MCR 8.119 update references to the effective date of the amendments regarding personal identifying information.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

ADM File No. 2021-11
Proposed Amendment of Rule 9.116 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 9.116 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 9.116 Judges; Former Judges

(A) [Unchanged.]

(B) Former Judges. Except as otherwise provided in this subrule, the administrator or commission may not take action against a former judge for conduct where the Michigan Supreme Court imposed a sanction less than removal or the Judicial Tenure Commission has taken any action under MCR 9.223(A)(1)-(5). The administrator or commission may take action against a former judge:

(1) for conduct resulting in removal as a judge;~~, and~~

(2) if the former judge does not hold judicial office at the time the Court issues its decision under MCR 9.252(A), and the Court finds that the conduct would have resulted in removal as a judge had the former judge still held judicial office at that time; or

(3) for any conduct that~~which~~ was not the subject of a disposition by the Judicial Tenure Commission or by the Court.

~~The administrator or commission may not take action against a former judge for conduct where the court imposed a sanction less than removal or the Judicial Tenure Commission has taken any action under MCR 9.223(A)(1)-(5).~~

(C) [Unchanged.]

Staff Comment: The proposed amendment of MCR 9.116 would allow the Attorney Grievance Commission to initiate disciplinary proceedings against a former judge who, but for his or her departure from the bench, would have been removed from office based on misconduct that was the subject of judicial disciplinary proceedings.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

(CONTINUED)

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by July 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-11. Your comments and the comments of others will be posted under the chapter affected by this proposal.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN

NOTICE OF AMENDMENTS AND PROPOSED AMENDMENTS TO LOCAL RULES

The United States District Court for the Eastern District of Michigan publishes proposed amendments and approved amendments to its Local Rules on its website at www.mied.uscourts.gov.

Attorneys are encouraged to visit the court's website frequently for up to date information.

A printer-friendly version of the Local Rules, which includes appendices approved by the court, can also be found on the website.

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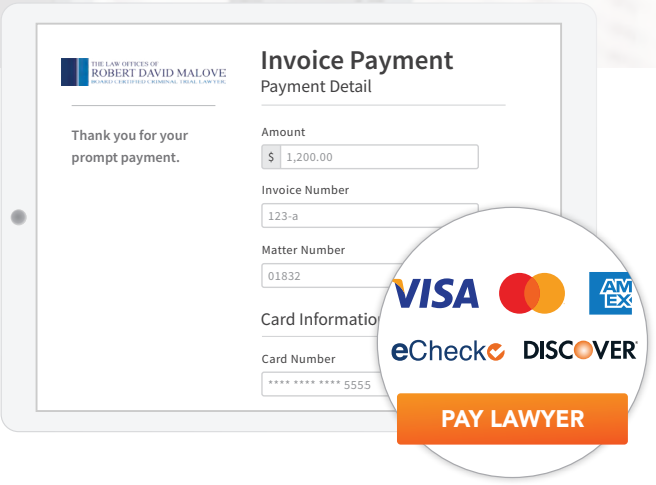

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Of Counsel — Established solo law firm with a focus on estate planning, trust administration, condominium, and real estate development seeks growth opportunity by way of acquiring a practice, an affiliation, or an arrangement. Interested persons are encouraged to reply in confidence to Managing Attorney, PO Box 55, Frankenmuth, MI 48734.

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Individual offices or virtual space available in attorney suite on Northwestern Highway in Farmington Hills with receptionist, three conference rooms, high-speed internet, phone system, and 24-hour access. Call Jerry at 248.613.1310 for details to view suite and see available offices.

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Robert E. Edick, former deputy administrator of the Michigan Attorney Grievance Commission, is available to consult in matters involving professional misconduct or negligence. Contact ethicsconsultant2021@gmail.com for details.

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Retiring? We will buy your practice. Looking to purchase estate planning practices of retiring attorneys in the Metro Detroit area. Possible association opportunity. Reply to Accettura & Hurwitz, 32305 Grand River Ave., Farmington, MI 48336 or maccettura@elderlawmi.com.

LAWYERS & JUDGES ASSISTANCE
MEETING DIRECTORY

The following list reflects the latest information about lawyers and judges AA and NA meetings. Meetings marked with "*" have been designated for lawyers, judges, and law students only. All other meetings are attended primarily by lawyers, judges, and law students, but also are attended by others seeking recovery. In addition, we have listed "Other Meetings," which others in recovery have recommended as being good meetings for those in the legal profession.

For questions about any of the meetings listed, please contact the Lawyers and Judges Assistance Program at (800) 996-5522 or jclark@michbar.org.

PLEASE DO NOT HESITATE TO CONTACT LJAP DIRECTLY WITH ANY QUESTIONS PERTAINING TO VIRTUAL OR ONLINE 12-STEP ATTENDANCE DURING THE COVID-19 PANDEMIC. LJA COMMITTEE MEMBER ARVIN P. CAN ALSO BE CONTACTED FOR VIRTUAL LJAA MEETING LOGIN INFORMATION AT (248) 310-6360.

ALCOHOLICS ANONYMOUS & OTHER SUPPORT GROUPS

Bloomfield Hills
WEDNESDAY 6 PM*
Kirk in the Hills Presbyterian Church
1340 W. Long Lake Rd.
1/2 mile west of Telegraph

Detroit
MONDAY 7 PM*
Lawyers and Judges AA
St. Paul of the Cross
23333 Schoolcraft Rd.
I-96 south service drive, just east of Telegraph
(This is both an AA and NA meeting.)

East Lansing
WEDNESDAY 8 PM
Sense of Humor AA Meeting
Michigan State University Union
Lake Michigan Room
S.E. corner of Abbot and Grand River Ave.

Houghton Lake
SECOND SATURDAY OF THE MONTH 1 PM
Lawyers and Judges AA Meeting
Houghton Lake Alano Club
2410 N. Markey Rd.
Contact Scott with questions (989) 246-1200

Lansing
THURSDAY 7 PM*
Central Methodist Church, 2nd Floor
Corner of Capitol and Ottawa Street

Royal Oak
TUESDAY 7 PM*
Lawyers and Judges AA
St. John's Episcopal Church
26998 Woodward Ave.

Stevensville
THURSDAY 4 PM*
Al-Anon of Berrien County
4162 Red Arrow Highway

West Bloomfield Township
THURSDAY 7:30 PM*
Maplegrove
6773 W. Maple Rd.
Willingness Group, Room 21

GAMBLERS ANONYMOUS

For a list of meetings, visit
gamblersanonymous.org/mtgdirMI.html.

Please note that these meetings are not specifically for lawyers and judges.

OTHER MEETINGS

Bloomfield Hills
THURSDAY & SUNDAY 8 PM
Manresa Stag
1390 Quarton Rd.

Detroit
TUESDAY 6 PM
St. Aloysius Church Office
1232 Washington Blvd.

Detroit
FRIDAY 12 PM
Detroit Metropolitan Bar Association
645 Griswold
3550 Penobscot Bldg., 13th Floor
Smart Detroit Global Board Room 2

Farmington Hills
TUESDAY 7 AM
Antioch Lutheran Church
33360 W. 13 Mile
Corner of 13 Mile and Farmington Rd., use back entrance, basement

Monroe
TUESDAY 12:05 PM
Professionals in Recovery
Human Potential Center
22 W. 2nd St.
Closed meeting; restricted to professionals who are addicted to drugs and/or alcohol

Rochester
FRIDAY 8 PM
Rochester Presbyterian Church
1385 S. Adams
South of Avon Rd.
Closed meeting; men's group

Troy
FRIDAY 6 PM
The Business & Professional (STAG)
Closed Meeting of Narcotics Anonymous
Pilgrim Congregational Church
3061 N. Adams
2 blocks north of Big Beaver (16 Mile Rd.)

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