MICHIGAN
# BAR JOURNAL
JULY/AUGUST 2022

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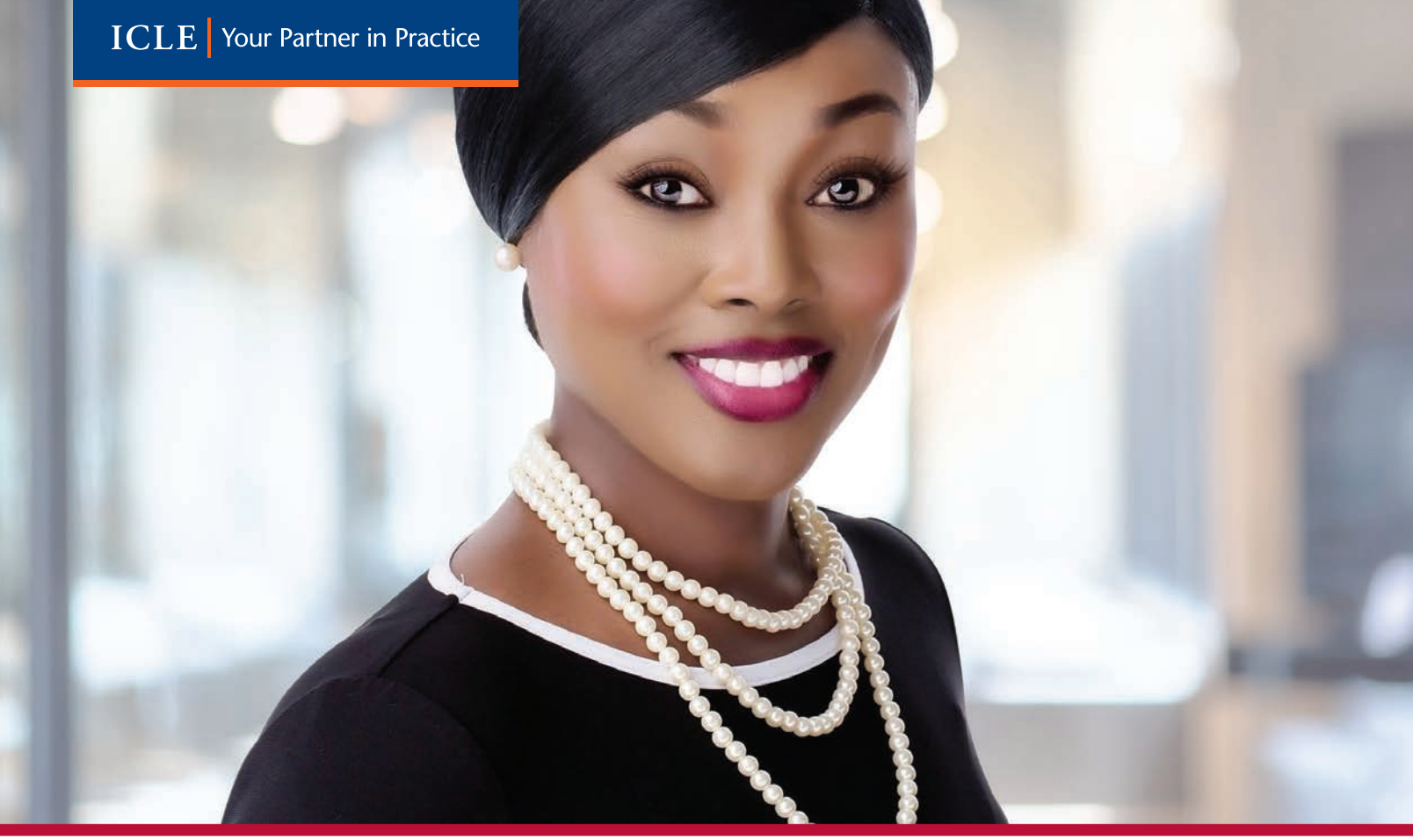

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JULY/AUGUST 2022 | VOL. 101 | NO. 07



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# BAR JOURNAL

JULY/AUGUST 2022 • VOL. 101 • NO. 07

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### BOARD OF COMMISSIONERS

SEPTEMBER 16, 2022

### REPRESENTATIVE ASSEMBLY

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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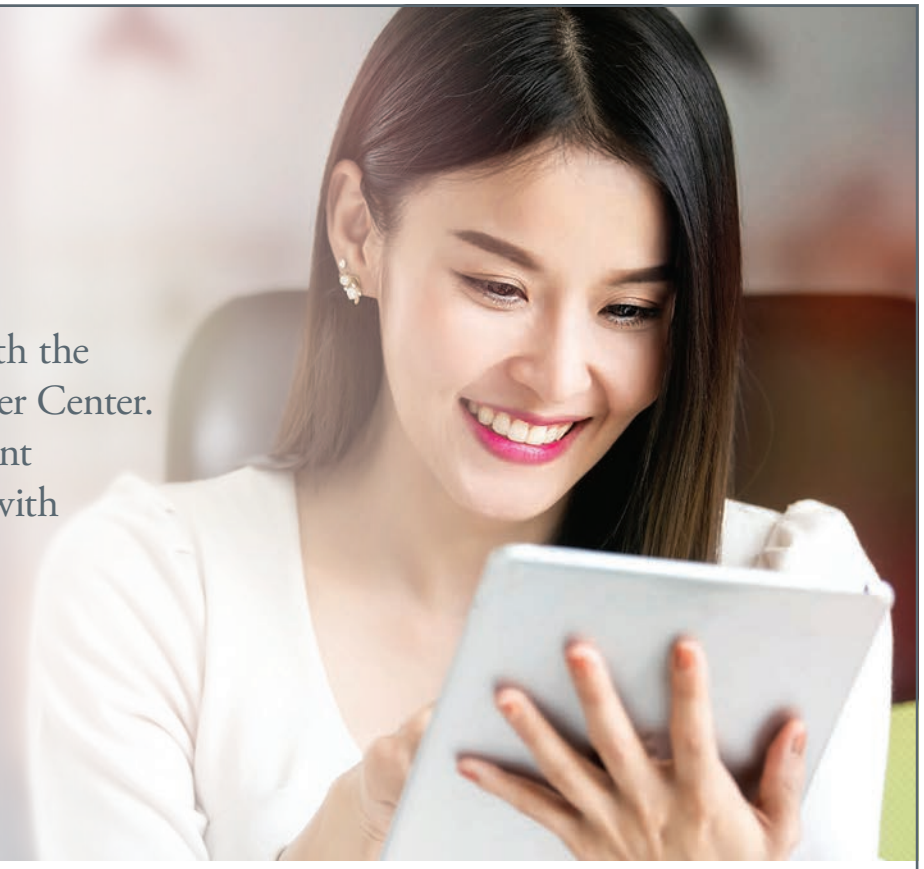

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# IN BRIEF

## ALTERNATIVE DISPUTE RESOLUTION SECTION

The ADR Section will host its annual conference virtually on Sept. 30-Oct. 1. The section's annual awards ceremony will be held live on Saturday, Oct. 1, at the Inn at St. John's in Plymouth. Upcoming events, past event materials, and the latest edition of the Michigan Dispute Resolution Journal can be found at connect.michbar.org/adr/home.

## CANNABIS LAW SECTION

The Cannabis Law Section hosts its seventh annual conference from Sept. 29-Oct. 1 at the Grand Traverse Resort in Acme. Join us for a comprehensive and informative program on topics related to cannabis law. More information about the conference can be found on the section's page at connect.michbar.org/cannabis/home or at the ICLE website. Also, the section has a new swag store at cannabis-law-section-swag-store.square.site with all proceeds benefiting the Allen Peisner Scholarship Fund.

## ELDER LAW AND DISABILITY RIGHTS SECTION

The Elder Law and Disability Rights Section held its spring conference, highlighted by a keynote speech from Attorney General Dana Nessel. The section's fall conference will be held from Oct. 12-14 at Crystal Mountain Resort in Thompsonville. The next regular council meeting is on Saturday, Aug. 6, at 10 a.m. Please consider becoming active on one of our committees, which include administrative advocacy, disability rights advocacy, legislative advocacy, litigation advocacy, and membership.

## ENVIRONMENTAL LAW SECTION

The ELS summer conference took place on June 9 at the Michigan Wildlife Conservancy Bengel Center in Bath. Plans are underway for the annual joint conference in November. The latest issue of the Michigan Environmental Law Journal and event information are available at connect.michbar.org/envlaw.

## FAMILY LAW SECTION

The Family Law Section is hosting its annual mid-summer seminar in beautiful northern Michigan at Crystal Mountain Resort in Thompsonville from Aug. 11-14. The seminar includes two half-days of great topics and lots of fun activities for the whole family. Registration costs $195 for section members, $225 for non-members, and judges are free! Contact Liisa Speaker at lspeaker@speakerlaw.com for the registration link. We hope to see you up north!

## HEALTH CARE LAW SECTION

On July 14 at 11:30 a.m., the Health Care Law Section will present a pharmacy benefit manager (PBM) regulatory update webinar to discuss the recent state legislation in response to *Rutledge v. PCMA* and provide a case study on Michigan's new PBM law. The webinar will also include an update on Medicare Part D developments and price transparency initiatives impacting drug pricing and PBMs. The speakers will be Julie Lappas from Hall Render and Stephanie Phillips, assistant general counsel from Blue Cross Blue Shield of Michigan.

## INSURANCE AND INDEMNITY LAW SECTION

The section's next business meeting is July 14 at 4 p.m. at the historic Ford Piquette Avenue Plant in Detroit with a program followed by a presentation by Chirco Title President, Michael Luberto. A $20 advance registration is required, with food and drink provided. For more details and a registration link, visit us on Facebook or at connect.michbar.org/insurance/home.

## REAL PROPERTY LAW SECTION

Sign up now for the section's annual summer conference, "Finding the Balance," from July 20-23 at Crystal Mountain Resort in Thompsonville. In this swift-moving real estate environment, striking the balance between safety and cost is increasingly difficult. The conference allows Michigan real estate attorneys to meet their colleagues and participate in discussions on current legal issues that impact real property law in the state. The three-day event will include expert panel discussions, workshops, and interactive roundtables. Conference registration is at na.eventscloud.com/rplssc22. Lodging can be reserved at reservations.guestdesk.com/sites/CrystalMountain/?checkin=7/20/2022&checkout=7/23/2022&group=4642US#/room.

## SOCIAL SECURITY SECTION

Save the date! The next Social Security Section seminar and the section's annual meeting will take place on Friday, Sept. 23 at the Schoolcraft College VisTaTech Center in Livonia. We hope to see you there.

# IN MEMORIAM

**LAWRENCE L. BULLEN**, P11376, of Jackson, died April 4, 2022. He was born in 1929, graduated from University of Michigan Law School, and was admitted to the Bar in 1954.

**HORACE D. COTTON**, P33268, of Southfield, died April 2, 2022. He was born in 1953, graduated from Detroit College of Law, and was admitted to the Bar in 1981.

**CLARENCE MICHAEL DASS,** P74074, of Bloomfield Hills, died May 29, 2022. He was born in 1985 and was admitted to the Bar in 2010.

**CHARLES M. HADDAD**, P14504, of Clinton Township, died Jan. 12, 2022. He was born in 1933, graduated from Detroit College of Law, and was admitted to the Bar in 1962.

**ROBERT N. HAMMOND**, P14587, of Grand Rapids, died Oct. 1, 2021. He was born in 1925, graduated from University of Michigan Law School, and was admitted to the Bar in 1954.

**JAMES F. LOGAN**, P16766, of Palm City, Fla., died May 16, 2022. He was born in 1933, graduated from University of Michigan Law School, and was admitted to the Bar in 1959.

**NOEL D. MASSIE**, P28988, of Birmingham, died Feb. 15, 2022. He was born in 1949, graduated from University of Michigan Law School, and was admitted to the Bar in 1978.

**KARL E. MILLER,** P30049, of Northville, died April 21, 2022. He was born in 1943 and was admitted to the Bar in 1968.

**ROBERT J. RILEY**, P27085, of Grand Rapids, died May 3, 2022. He was born in 1945, graduated from University of Detroit School of Law, and was admitted to the Bar in 1976.

**MAURICE E. SCHOENBERGER**, P20044, of East Lansing, died May 12, 2022. He was born in 1941, graduated from University of Michigan Law School, and was admitted to the Bar in 1966.

**RONALD P. WEITZMAN**, P22159, of Dearborn, died June 8, 2022. He was born in 1942, graduated from Detroit College of Law, and was admitted to the Bar in 1972.

**BENJAMIN WHITFIELD JR.**, P23562, of Detroit, died May 18, 2022. He was born in 1946 and was admitted to the Bar in 1973.

**SUSAN G. WRIGHT**, P22576, of Detroit, died April 18, 2022. She was born in 1946, graduated from University of Michigan Law School, and was admitted to the Bar in 1972.

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*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.*

FROM THE PRESIDENT

DANA WARNEZ

# Better together

The phrase "Better Together" is more than just a popular Luke Combs country song, and it is more than just another catchy phrase about my approach to leadership or our identity as a bar association.

This phrase inherently emphasizes that our membership, and society in a broader sense, is made up of many different kinds of people. More importantly, it highlights the truth that each of us brings something different, valuable, and unique to the table — which, when collectively brought together, yields better results.

Organizationally, the bar has systematically adopted this "better together" kind of approach in its thinking, planning, and administration of services, and it fuels the State Bar of Michigan's commitment to diversity, equity, and inclusion. As proof of this, please consider the Bar's past efforts:

The bar created a **senior management position** in 2010 to spearhead our multifaceted work in diversity, a leadership role filled by Gregory Conyers since its inception. The following year, the Bar adopted the Pledge to Improve Diversity and Inclusion of the Legal Profession, thanks to the combined efforts of Gregory and former State Bar President W. Anthony Jenkins. That pledge now has more than 5,000 signatories, each of whom has committed to increase diversity, equity, and inclusion in the profession. Furthermore, the Bar has conducted implicit bias training annually since 2015 — reaching 2,000 Bar members, including SBM commissioners and staff.

Also, the Bar has supported programming to **diversify the pipeline** of students entering the legal profession, including Face of Justice, the award-winning program developed in collaboration with the National Association of Women Judges (and one of my favorite programs personally). The jet-mentoring program gives high school students the opportunity to interact with a variety of legal professionals and allows them to explore career paths related to law and law enforcement.

The bar also **collaborates** with others to promote diversity, equity, and inclusion programming. One example is working alongside the Southeast Michigan Urban League to provide Detroit-area students tours of the 36th District Court while in session and Wayne County Community College to learn about higher education opportunities.

The Bar continues to adapt and evolve to **address current issues**. The leadership of the Bar created Race and Justice Forums in response to the murder of George Floyd so that we could engage the legal community in a quest to do more than offer statements of support for justice and equity. This includes quarterly Race and Justice Forums with presentations and discussion as well as a resources

and education page online to share programming offered by other local, special purpose, and affinity bars in Michigan.

The actions of the Bar demonstrate a longstanding commitment to diversity, equity, and inclusion, and we hope our work has helped moved the needle in our state. However, it is important to recognize inequities continue to exist in both our profession and society in general.

The State Bar of Michigan annually issues a report detailing the demographics of Michigan attorneys, and as of 2021, 18.9% of Michigan attorneys are people of color and 36.1% are women. Both still fall short of being representative of the state population (25.8% and 50.4% respectively), but the numbers certainly reflect significant improvement. In 1981, just 10.1% of new admits to the State Bar were people of color; in 2021, 37.3% of new attorneys were. This racial diversity is also helping to fuel gender diversity.

Among millennial attorneys, women outnumber men among attorneys who identified as American Indian, African American, Arab, Asian-Pacific Islander, and Hispanic. Among millennials, men only significantly outpaced women among attorneys who identified as having European descent.

Among the 18.9% of Michigan attorneys who identify as non-white, African-American attorneys account for the largest portion, with 1,230 active attorneys living in Michigan in 2021, about 6.1%. While there have been years with significant gains, 40 years ago 4.1% of the admission class was African American. In 2021, it had only inched higher to 4.5%.

We must do better.

At the Bar, we will continue our work to make the profession more open and more inclusive, but we know that success also depends on many other factors such as creating equitable standardized testing, diversifying law school admissions, broadening access to higher education and educational opportunities, and beyond.

Diversity, equity, inclusion — and justice — are complex issues. They are not about one goal, one effort, one step forward. They are about all of us, by all of us, and for all of us, because we really are all better together.



# A LOOK BACK AT THE 2022 UPPER MICHIGAN LEGAL INSTITUTE & BAR LEADERSHIP FORUM

## JOIN US JUNE 9-10, 2023, ON MACKINAC ISLAND FOR THE GREAT LAKES LEGAL CONFERENCE






**1 |** The Upper Michigan Legal Institute and Bar Leadership Forum returned to the Grand Hotel this year after a two-year hiatus due to COVID-19. **2 |** Offered in partnership with the Institute for Continuing Legal Education, the annual conference is open to all Michigan attorneys, but is hosted on Mackinac Island to offer northern Michigan attorneys a more easily accessible educational opportunity. **3 |** The conference attracts leaders from throughout the state of Michigan, including the State Bar of Michigan Board of Commissioners (pictured here). **4 |** Hosted the second weekend in June, the conference also coincides with the Mackinac Island Lilac Festival. **5 |** The officers of the State Bar of Michigan pose for a photo on the first day of the 2022 Bar Leadership Forum. Pictured are: (front row, left to right) President Dana M. Warnez, President-Elect James W. Heath; (back row, left to right) Vice President Daniel D. Quick, Treasurer Lisa J. Hamameh, and Secretary Joseph P. McGill. **6 |** State Bar of Michigan Executive Director Peter Cunningham cracks a joke during an update on State Bar of Michigan's work. **7 |** A highlight of the conference is the Grand Reception on Friday night on the famed porch of the Grand Hotel. **8 |** Michigan Supreme Court Chief Justice Bridget Mary McCormack gives the conference's keynote address. **9 |** Hon. Cynthia D. Stevens, retired judge of the Michigan Court of Appeals, gives an overview of the Michigan Supreme Court's Commission on Diversity, Equity, and Inclusion. Stevens and Supreme Court Justice Elizabeth M. Welch, both co-chairs, provided a glimpse into the commission's history and work.

# THE NINETIES

## FEB. 11, 1990

Nelson Mandela, leader of the movement to end South African apartheid, was released from prison after 27 years by South African President F. W. de Klerk. In his autobiography, Mandela wrote, "I deeply wanted to leave prison as soon as I could, but to do so on such short notice would not be wise. I thanked Mr. de Klerk, and then said that at the risk of appearing ungrateful I would prefer to have a week's notice in order that my family and my organization could be prepared."

de Klerk excused himself to consult with his advisers, returned, and insisted that Mandela would have to check out the next day whether he liked it or not. Mandela relented and the jailer and the jailed shared a glass of whiskey.

## JUNE 4, 1990

The U.S. Supreme Court in *Keller v. State Bar of California* held that the California Bar's use of compulsory dues to finance political and ideological activities with which its members disagreed violated their First Amendment right of free speech when such expenditures were not necessarily for the purpose of regulating the legal profession or improving the quality of legal services.

## AUGUST 1991

Senior Soviet officials including its defense minister, vice president, and heads of the interior ministry and the KGB detained Mikhail Gorbachev at his holiday villa in Crimea in a coup attempt. That group was arrested three days later. In December, Boris Yeltsin banned the Soviet Communist Party in Russia, seized its assets, and recognized the independence of the Baltic republics.

## MARCH 3, 1992

The Michigan Scenic Rivers Act was signed into law by President George H.W. Bush, protecting more than 500 miles on 14 rivers from development.

## APRIL 29, 1992

Six days of unrest began in south central Los Angeles after a jury acquitted four Los Angeles police officers charged with using excessive force in the arrest of Rodney King, an incident that had been videotaped and widely shown on television. When the riots ended, 63 people had been killed, nearly 2,400 had been injured, more than 12,000 had been arrested, and property damage estimates exceeded $1 billion.

## MAY 7, 1992

The 27th Amendment to the U.S. Constitution was ratified by the Michigan Legislature. Incredibly, the amendment was originally submitted to the states as part of the Bill of Rights in 1789 but languished for 200 years until it was approved by 38 states. The amendment reads, in part, that "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."

## AUG. 3, 1993

Ruth Bader Ginsburg was sworn in as a U.S. Supreme Court justice, becoming the second woman to serve in that capacity. In the 1970s, she litigated sex discrimination cases for the American Civil Liberties Union and was instrumental in launching its Women's Rights Project in 1973. Ginsburg, who served on the Supreme Court for 27 years until her death in 2020, earned attention in American popular culture for her passionate dissents in numerous cases.

## MARCH 1994

The Michigan Bar Journal published its first theme issue devoted to women and minorities.

## JULY 22, 1994

The SBM Board of Commissioners voted to rename the State Bar of Michigan building in honor of Michael Franck, the organization's executive director from 1970 until his death on June 28, 1994.

## OCTOBER 3, 1995

A California jury acquitted former NFL star O.J. Simpson of the murders of his ex-wife, Nicole Brown Simpson, and her friend, Ronald Goldman. The trial, which lasted eight months, was viewed on television by millions and the major figures involved in the case became instant celebrities.

## JUNE-DECEMBER 1995

During the last six months of 1995, Michigan legislators proposed, drafted, and approved sweeping changes to Michigan's tort liability laws. Many changes were specifically directed at product liability actions, though other provisions affected all types of tort actions.

## AUG. 2, 1996

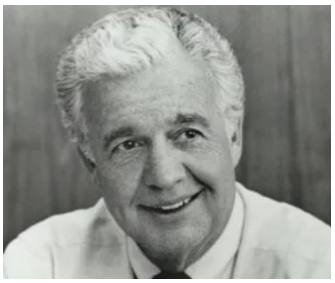
A State Bar survey on member satisfaction was mailed to about 3,000 members. More than 900 surveys (approximately 31%) were returned. According to then SBM Executive Director Larkin Chenault, of the eight services surveyed, two stood out with high membership satisfaction ratings: the annual legal directory and the Michigan Bar Journal.

## JUNE 7, 1997

The Detroit Red Wings swept the Philadelphia Flyers to win their eighth Stanley Cup championship and first since 1955. Goaltender Mike Vernon was awarded the Conn Smythe Trophy as the playoffs' most valuable player.

## DEC. 19, 1998

President Bill Clinton was impeached by the U.S. House of Representatives for high crimes and misdemeanors. Less than two months later, Clinton was acquitted by the Senate. The charges for which Clinton was impeached stemmed from a sexual harassment lawsuit filed by Paula Jones; during pre-trial discovery in that suit, Clinton denied that he had engaged in a sexual relationship with White House intern Monica Lewinsky.



## DEC. 31, 1998

Frank J. Kelley served his last day as Michigan attorney general, a position he had held since 1961.

## SEPT. 27, 1999

The Detroit Tigers bid farewell to venerable Tiger Stadium. The corner of Michigan and Trumbull had been the home of professional baseball in Detroit since April 13, 1896, when George Vanderbeck built Bennett Park on the site of an old hay market.

# 1983-2011: The Bar Journal years

**BY** FREDERICK M. BAKER JR.

In my 28 years on the Bar Journal Advisory Board (later the Publications and Website Advisory Committee and now Michigan Bar Journal Committee), I learned a lot about publishing, the internet, and the complexity of producing a monthly magazine for an organization of lawyers. During those years, first as a member and then as its chair for 24 years, the board transformed the Bar Journal and, when it was expanded to include all Bar publications and the website, virtually everything the Bar published.

My membership began quietly enough. The Journal was a fairly self-executing publication primarily run by staff with routine contributions from board members. Our meetings were mostly an opportunity for the Journal's editor, Shel Hochman, a non-attorney veteran journalist, to describe what we were doing, consult with board chair George Roumell and members on future issues, and seek any needed guidance or assistance.

At that time, we published mostly over-the-transom articles by Bar members, usually on a subject related to their area of practice. Each article was assigned to a board member to vet and edit. Articles badly written (or insufficiently improved after revision) and "fetchers" (thinly disguised advertising) were declined as gently as possible. If an article advocated a position, we often invited someone knowledgeable to provide a different perspective, from which it was a short step to adding a point-counterpoint feature that ran for some time.

Collectively, board members possessed both considerable editorial experience and a remarkable range of substantive knowledge of the law. Conscientious editing was one of the board's most important and valuable functions. At the same time, we were mindful of cases like *Falk v. State Bar* and *Keller v. State Bar of California*. We did not censor letters to the editor critical of a published article or column, but we did reserve the right to limit length and require civil discourse and always offered the author an opportunity to respond.

We made hundreds of editorial decisions in those 28 years, some consequential and some imperfect, either through oversight, mistake, or because no answer was satisfactory to all. But the board always took very seriously its obligation to provide a forum for all members of our unified bar and not let the Journal be co-opted to serve the vanity or agenda of any Bar leader or faction.

Board membership entailed more than bimonthly meetings and occasional editing tasks. We often had to deal with controversial questions, and our only ally was our reputation for fairness and impartiality. But the board also was somewhat insulated from Bar politics by design, unique among Bar entities in two ways. First, members could serve an unlimited number of terms unless the chair did not recommend reappointment of a member who failed to attend meetings or contribute to the board's work. This allowed the board to accumulate vast experience in the complicated business of publishing a monthly journal. Second, the board was allowed to select its chair.

After my first year on the board, George Roumell left to serve as SBM president. No one wanted the chair and the responsibility for organizing meetings, setting an agenda, sending meeting notices (by mail!), and working with staff between meetings to address issues that required immediate attention. George invited Mark McAlpine and me to consider taking the chair, and Mark agreed to do it for one year if I would agree to do it the following year. I hoped Mark would like the job and want to keep it, but when he did not, I kept my word and succeeded him. At the end of my first term, I asked the board a question I repeated annually for 23 years: "Does anyone want this job?" Though some kindly said I should remain because I was doing a good job, I suspect they also saw it entailed a fair amount of effort and decided to let me do it.

The board was always exploring ways to improve the Journal's look and content. Apart from mandated content — court rule updates, notices of discipline, and the like — the Journal consisted mostly of member-submitted articles on random subjects, sparse advertising, and classifieds ads. The Board of Commissioners granted a request to hire a firm to help us redesign the magazine, and we began to use fine art on most covers curated (and obtained without charge!) by board member Diane Duvall.

Eventually, it dawned on us that the Bar's sections were an enormous untapped reservoir of expertise and talent. Articles from sections

could address subjects chosen by the authors, section leaders, or even the board itself when important decisions or new legislation suggested the need. The sections responded enthusiastically to our proposal and the theme issue was born (soon followed by the mini-theme when the subject did not warrant an entire issue.)

The theme issue approach enabled us to upgrade the quality and consistency of the Journal's content and illustrations, which could be keyed to the theme. When an issue's theme was related to a product or service, it increased our ability to attract first-time advertisers or increase the size of an existing advertiser's buy.

We were careful, however, to reserve room for a non-theme inventory article in most theme issues and scheduled several general-interest issues to publish unsolicited articles we received from members. These measures and our column content ensured that each issue remained useful and interesting to our general readership and that members who wrote articles still had a forum.

If you are too young to recall the Bar Journal of the '70s and early '80s, you probably take today's full-color publication for granted, but the work we did to increase reader and advertiser appeal allowed this to become a reality. We first added interior color to just one 16-page signature (a printing term referring to page layouts on a press sheet), attracting advertisers who could not afford to buy the back covers, which were previously the only color pages. Eventually, we added color throughout the magazine, making it more attractive to readers and advertisers alike. And we periodically surveyed readers so we could respond to their preferences rather than basing our decisions on hunches.

Nancy Brown continued as editor for several years after Shel Hochman retired and became a remarkable journalist and publisher before my eyes. When I joined the board, the Bar Journal's rough layout was done in-house. (See Nancy's article in the May Michigan Bar Journal for more on that process.) After the first of at least two redesigns of the Journal, we used outside design assistance.

The Bar Journal Advisory Board morphed into the Publications and Website Advisory Committee (PWAC) and, with Nancy's guidance, we introduced an in-house print center that helped Bar sections reduce publication costs for typesetting, design, and print services. Revenue from those services helped offset the overall cost of the Bar's in-house printed materials (excluding the Journal which, due to quantity and number of pages, was first printed on a sheet-fed press and later on a web press.) Also, instead of paying the printer a markup on paper often purchased in a volatile market, Nancy worked directly with a paper merchant that bought direct from the mill and shipped the paper by the truckload to our printer for a significant savings.

PWAC was also given responsibility for overseeing the development of the Bar's website, which was in a primitive early stage. It is now a rich resource with extensive content for members. And PWAC worked with staff to establish the e-Journal that provides free email summaries of Michigan court decisions within days of their release.

I resisted discontinuing the annual directory issue, which at the time was our biggest revenue source. We sold more than 130,000 volumes each year, with sales to non-members at a premium price of about three times cost. Shortly after I left, PWAC put the directory online. I understand why. The paper directory required a months-long expenditure of staff time, inevitably contained errors, started to become outdated as soon as typesetting began, and no longer generated revenue because of the growth of membership and the telephone-book size of the issue. Today, the online directory is updated within minutes of a member record change, making it much more accurate.

I thank, but cannot name here, the scores of members who served with me, but I must mention four people. Nancy Brown, whose friendship I treasure, was the tireless engine of most of the important changes we made. Two editors who succeeded Nancy, Amy Cluley Ellsworth and Linda Novak, lived their lives on deadline. Their sharp eyes and pencils enabled us to maintain the high standards that made the Michigan Bar Journal one of the most copied — and honored — state bar publications.

Finally, Joe Kimble, the longest-serving member in the board's history, has edited the Plain Language column since 1988. He helped to pioneer advocacy of plain language in the law and his column has hosted every luminary in the field, including Bryan Garner. Joe made the Bar Journal an early and influential voice in the plain language movement. But I am not just being sentimental. Joe's column was also an important revenue source, generating more reprint sales than all other columns and articles combined. Just before I left the PWAC, I completed a two-year negotiation with HeinOnline, which wanted every issue of the Journal in its database. I used Joe's column as a bargaining chip to obtain a unique benefit: Our members have free website access not only to a searchable database of every issue since 1921, but also to the entire HeinOnline multistate library. That extra access was unique to Michigan, and we have Joe to thank for it.

If you wish to meet the cream of our profession, seek a place on this committee. There, I worked with some of the finest minds — and finest people — in our profession. Those who freely volunteer their time and share what they know for the betterment of their profession are the best of the best. It was my honor to serve with them.

**Frederick M. Baker Jr.** is a Lansing attorney.

# Judicial disqualifications

**BY** HON. VALERIE K. SNYDER

Having grown up in Charlevoix, the beauty of northern Michigan has never lost its appeal for me. After law school, I returned home and was in private practice for 20 years before being appointed, and then elected, to serve as the probate court judge in Charlevoix and Emmet counties. It has been a blessing to have this career in the only place I have ever considered home.

Like most judges before taking the bench, I was very involved in my community, serving in many elected, appointed, and volunteer roles. That, coupled with the fact that Charlevoix has been my home practically since birth, means I know a lot of people. That in and of itself is not unique to northern Michigan judges. However, when you consider that the combined population of Charlevoix and Emmet counties is about half that in just the city of Lansing, I frequently preside over cases involving parties I have known over the years.

Living in a smaller community means you see people you know everywhere: at grocery stores, gas stations, restaurants, community events, and even at work. In one of my counties, I work in a building where one of my former teachers, my sons' driver's education instructor, a former law partner, high school classmates, former clients, a good friend's brother, and my own sister also work. This is the nature of living in a small town.

It is not uncommon to have cases involving my former classmates or their children, people I've worked or served on boards with, my children's friends or their parents, and other acquaintances I've made during a lifetime of living in the same community. It may come as a surprise, then, that I've had only a handful of cases where I had to disqualify myself because of those relationships.

Having an unbiased and impartial decision maker is one of the hallmarks of due process. As such, judges have an obligation to disqualify themselves when they are unable to be fair and impartial. When the judge is acquainted with a party or counsel outside of the courtroom, disqualification may need to be considered.

## AUTHORITY FOR JUDICIAL DISQUALIFICATIONS

When a disqualification issue arises, judges are guided by the Michigan Code of Judicial Conduct, the Michigan Court Rules, the Michigan Rules of Professional Conduct, and case law. Additionally, the Judicial Ethics Committee of the State Bar of Michigan provides advisory opinions. While these opinions are not binding, they may be helpful when considering a specific disqualification issue.

The Michigan Code of Judicial Conduct consists of eight canons. Disqualifications are addressed in Code of Judicial Conduct, Canon 3(C), which refers to the court rule governing disqualifications. Canon 3(C) states that a judge should raise the issue of disqualification whenever that judge has cause to believe that grounds for disqualification may exist under MCR 2.003(C), and also references MCR 2.003(E) regarding disqualification waivers.

MCR 2.003 spells out the answers to most questions about how judicial disqualification works — who may raise the issue and how, the grounds upon which disqualification is warranted or not warranted, and waiving disqualification.

## GROUNDS FOR DISQUALIFICATION

MCR 2.003(C)(1) is a non-exhaustive list of reasons that warrant disqualification. Some are straightforward, such as whether a judge was a member of a law firm representing an involved party within the preceding two years.[1] Others, however, are open for interpretation, such as whether the judge is biased or prejudiced for or against an attorney or a party.[2]

When a judge's prior relationship or community acquaintance with a party or counsel is the basis for a request to disqualify, a party alleges "bias or prejudice" by the judge, which requires a showing of "actual bias."[3] Because a "trial judge is presumed to be impartial," it puts a heavy burden to overcome that presumption on the party asserting partiality.[4] More commonly, such motions rely on an alleged appearance of impropriety that would cause the judge to violate Canon 2 of the Code of Judicial Conduct if not disqualified. However, the Michigan Court of Appeals has held that a judge's casual or distant acquaintance with with an attorney or party to an action, by itself, does not warrant disqualification.[5] Coming to a similar conclusion, the Judicial Ethics Committee issued its opinion that a "'personal acquaintance' without more is insufficient grounds for a judge to automatically recuse."[6]

## RAISING THE ISSUE

The procedure for raising disqualification is found in MCR 2.003(D). In trial courts, a judge may raise the issue, or a party may raise the issue by filing a motion within 14 days of disclosure of a judge's assignment to the case or within 14 days of the discovery of the grounds for disqualification. If a potentially disqualifying issue is discovered within 14 days of trial, the motion must be filed "forthwith."

I always disclose prior relationships or acquaintances on the record. My disclosure includes the nature of the relationship and what I know or, more often, what I don't know, about the case. The parties then have 14 days to file a motion for disqualification.

The motion will be heard by the judge whose disqualification is at issue. If the judge denies the motion, a party can upon request refer the matter to the chief judge, who decides the motion de novo. In cases where there is only one judge of the court or the challenged judge is the chief judge, the state court administrator will assign a judge for a de novo hearing, again, upon request of a party.

If the motion to disqualify is granted, the case will be assigned to another judge of the same court, if one is available, or to a judge selected by the state court administrator. Court staff handles the communication and paperwork requesting assignment of another judge.

A party must comply with the time frames and procedural requirements of the court rule to preserve any claim of error for appeal.[7]

## WAIVING DISQUALIFICATION

In many cases where disqualification of a judge is potentially warranted, the parties choose instead to waive the disqualification issue and have the case heard by the assigned judge. This is permitted by MCR 2.003(E) provided that the judge is willing to serve and all parties agree to the waiver either in writing or on the record.

More often than not, when I disclose a prior acquaintance or social relationship, the parties agree on the record to waive the disqualification and proceed with the case as scheduled. The parties' waiver does not bind the judge; the judge must determine if he or

### AT A GLANCE

Having an unbiased and impartial decision maker is one of the hallmarks of due process. Judges in more rural areas, who are likely to encounter acquaintances in court, have an obligation to disqualify themselves when they are unable to be fair and impartial. When the judge is acquainted with a party or counsel outside of the courtroom, disqualification may need to be considered.

she is willing to hear the case considering not only the facts and circumstances of the case, but also the obligations under the judicial canons.

## THE DUTY TO SIT

From the judicial perspective, it may seem that the safer course of action when a disqualification question is raised is to simply grant the request and allow another judge to hear the case. However, judges also have a duty to sit — "an obligation to remain on any case absent good grounds for recusal."[8] When grounds warranting disqualification have not been established, "disqualification is not optional; rather, it is prohibited."[9]

## CONCLUSION

Although judges serving in more rural areas may encounter acquaintances from their communities in their courtrooms more frequently than our counterparts in more metropolitan areas, many of the potential disqualification issues are resolved by judicial disclosure and a waiver by the parties. Certain types of cases, such as guardianships for developmentally disabled individuals, can be emotional and difficult for the families involved. More than once, parties have not only waived disqualification, but expressed appreciation to see a familiar face handling their hearing.

Perhaps this is another benefit of serving in a small town.

**Hon. Valerie K. Snyder** is probate and family court judge for the 7th Probate District covering Emmet and Charlevoix counties.

ENDNOTES

1. MCR 2.003(C)(1)(e).
2. MCR 2.003(C)(1)(a).
3. *Cain v Mich Dept of Corrections*, 451 Mich 470, 478-479; 548 NW2d 210 (1996).
4. *In re MKK*, 286 Mich App 546, 566; 781 NW2d 132 (2009).
5. See, for example, *Reno v Glen R Gale, Corner of State & William Partnership*, 165 Mich App 86; 418 NW2d 434 (1987) (acquaintance with attorney who is a party does not warrant disqualification).
6. Opinion JI-44, issued November 1, 1991.
7. *Kloian v Schwartz*, 272 Mich App 232, 244; 725 NW2d 671 (2006).
8. *Adair v State Dept of Education*, 474 Mich 1027, 1040-41; 709 NW2d 567 (2006).
9. *Id.*

# 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 January 1, 2022, is 2.045%. 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.

# 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

# HANDLING
## CONFLICTS OF INTEREST

# Practicing in small towns may come with challenges

**BY** AMY L. STIKOVICH

The duty of loyalty to a client is of paramount importance to the attorney-client relationship. Prior to entering into an attorney-client relationship, a lawyer must examine and determine whether a conflict of interest exists that undermines the duty of loyalty. For the first 21 years of my legal career, I practiced in Chicago and its surrounding suburbs. While conflict checks were performed as a matter of course, there were rarely conflict issues. Relocating my practice to a more rural area highlighted the need for a solid conflict-checking procedure. This is especially true because the "everybody knows everybody" perception that creates coziness in a small town can also create conundrums for attorneys as potential conflicts are explored.

## AUTHORITY FOR LAWYER DISQUALIFICATION

Michigan Rules of Professional Conduct 1.7 through 1.12 govern attorneys as they analyze potential conflicts of interest and disqualification. The focus here is on rules governing representation of adversarial interests of current clients, former clients, and a lawyer's personal interests as these conflict issues most often come into play for small-town attorneys. MRPC 1.7 sets forth the general rule covering current clients as well as when a lawyer's duties to a third party or the lawyer's own interests may create a conflict. MRPC 1.9 covers former clients, including instances when an attorney changes firms. Specifically:

- MRPC 1.7(a): A lawyer cannot represent a client if the representation will be "directly adverse" to another client. The comments to MRPC 1.7 explain this rule is not meant to prohibit representation when the interests are merely generally adverse.[1] Moreover, a possible conflict does not preclude representation. The critical question is the likelihood that a conflict will eventually occur.[2]
- MRPC 1.7(b): A lawyer cannot provide representation if such representation will be "materially limited" by the lawyer's own interests or responsibilities to another client or third party. Representation in these instances is permitted if the lawyer believes such representation will not adversely affect the relationship and each client consents after consultation.
- MRPC 1.9(a): A lawyer who formerly represented a client in a matter cannot represent a new client in the same or substantially related matter if the new client's interests are materially adverse to the former client unless the former client consents after consultation.
- MRPC 1.9(b): A lawyer cannot knowingly represent a person in the same or substantially related matter "in which the firm with which the lawyer formerly was associated has previously represented a client" if the interests are materially adverse and the lawyer acquired confidential information.

While rural areas have excellent and experienced legal counsel, there are definitely not as many attorneys in small communities as there are in large metropolitan areas. So, when a firm or attorney is disqualified, where is the potential client to go for proper legal representation? Attorneys cannot overlook the rules to ensure clients have representation. The same conflict rules that apply in Wayne County also apply in Emmet County. Sometimes clients must travel to other counties to find an attorney. There is a well-known story among attorneys of one particularly litigious person who had filed so many lawsuits that the parties had to travel more than 60 miles north to locate attorneys able to provide representation.

Most attorneys in rural areas — whether solo practitioners or multi-attorney practices — handle more than one area of law. My current firm has attorneys who handle estate planning and administration,

## AT A GLANCE

Practicing in a more rural area highlights the need for a solid conflict-checking procedure. This is especially true because the "everybody knows everybody" perception that creates coziness in a small town can also create conundrums for attorneys as potential conflicts are explored.

family law litigation, transactional work in real estate and business, probate litigation, and criminal defense. My associate is a public defender, and most of us take court appointments from juvenile and probate court. We carefully check conflicts to make sure, for example, that the defendant/client in a criminal appointment is not the opposing party in a custody case. We also must be sure that advocating for our clients does not conflict with outside business interests, as we serve on various boards and have spouses with business interests that could be affected by certain representations. There's no question it is a careful balancing act, but we have found that we can ensure our clients have our undivided loyalty by checking for existing conflicts (we use Clio) and discussing our concerns if we think there might be a conflicting third-party or personal interest.

Routine conflict checks often require a more in-depth analysis to determine if it is possible to resolve by disclosure and consent. Other times, analysis determines that the perceived conflict does not require disqualifying the attorney. For example, a potential client having a strong dislike for an existing client, while perhaps uncomfortable, does not create a conflict since their interests are not directly or materially adverse.[3]

## SAMPLE SCENARIOS RURAL AND SMALL-TOWN ATTORNEYS HAVE FACED[4]

**Scenario 1**

A prospective client consults with an attorney regarding obtaining a divorce from her spouse. The spouse is a former client the attorney represented in a domestic violence case. Can the attorney provide representation in the divorce?

MRPC Rule 1.9 prohibits representation since it is a substantially related matter if the former client's interests are materially adverse to those of the potential client. It would be difficult, if not impossible, to maintain the domestic violence client's confidences in litigation where domestic violence could be used to gain an advantage. This is especially true if the case also involves custody determination. This situation requires an analysis of the likelihood that an actual conflict between the two parties would arise.[5] "The question is often one of proximity and degree."[6]

**Scenario 2**

Both the mother and father in a child welfare case seek representation from the same attorney. The clients' interests differ, but there is no other attorney on the court appointment list to take the case.

MRPC Rule 1.7(b) prohibits representation of both parties because their interests differ. While a possible conflict does not necessarily prohibit representation, the attorney cannot represent both in cases where the parties' interests differ from the start. Under this rule, "[a] lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client. …"

The only way the lawyer could represent both clients is if the lawyer believes dual representation would not adversely affect either client and the clients consent after consultation and explanation of the advantages and risks.[7] If the lawyer is unsure, a good approach would be to ask a disinterested lawyer to review the situation and determine whether he would conclude that the client should not consent to dual representation.[8] While this scenario presents a difficult situation, it can potentially be resolved by asking the court to appoint an attorney from the appointment list of a neighboring county.

**Scenario 3**

An existing client seeks representation on a new issue regarding violation of an easement. The attorney discovers that the possible defendant is a business associate of her husband and occasionally refers work to the attorney.

This is the type of scenario that happens often in small communities. Per MRPC 1.7(b), representation could be materially limited by the lawyer's own interests — i.e., interest in maintaining a referral relationship and not adversely affecting her husband's business relationship. If the lawyer believes that representation will not be affected and the client consents after consultation, the lawyer may accept representation.

**Scenario 4**

A public defender has a conflict of interest in an appointment, but no other attorney can take the case. How can appointment proceed?

The first question is determining whether the conflict is due to the public defender's relationship with the defendant or prior representation of the complaining witness. If the public defender believes she can maintain the confidences of the client and provide a vigorous defense, the appointment can be accepted if the client consents after consultation as required by MRPC 1.7. If the issue is that the public defender already has a client whose interests are in direct opposition to the new appointment, the representation cannot proceed. The recommendation here would be to ask the court to appoint a public defender from another county.

**Scenario 5**

A lawyer moves from one firm to another. A prospective client comes to the new firm for consultation. The prospective client's case conflicts with the new lawyer's former client. Can the new lawyer be screened from the prospective client so the new firm can provide representation?

The question is whether there is an imputed disqualification of the new firm based upon the new lawyer's prior representation of a client with adverse interests. MRPC 1.10(b) prohibits representation unless the new lawyer is screened from any participation in the matter and receives no part of the fee the firm receives. Additionally, the firm must notify the appropriate tribunal to ensure compliance with MRPC 1.10(b). In accordance with the rule, the new firm can represent the potential client so long as the new attorney is screened or shielded from any involvement. This includes ensuring the new lawyer is not part of case discussions, has no access to client files, and does not receive any portion of the fee paid by the client.

**Scenario 6**

This is the same as scenario 5, but the new lawyer's former client comes with her to the new practice. Hence, the former client is now a client of the new firm. Can the new firm represent the prospective client?

MRPC 1.10(a) states that when lawyers are associated in a firm, none can take a case when they would be barred from doing so if they could not when practicing alone. This situation requires an analysis under MRPC 1.7: Specifically, is representation of the existing client directly adverse to the prospective client? Representation is barred unless the lawyer believes such representation will not adversely affect the relationship with either client and both parties consent after consultation.

## CONCLUSION

Most attorneys are adept at determining whether conflicts exist. The dilemma then becomes what to do with the potential client if the lawyer must decline representation. My practical experience in these instances is that the legal community of a small town will do what they can to help ensure clients have representation. Sometimes, that means referring a client to an attorney in a county an hour or more away. While not ideal, most courts are open to allowing attorneys to appear via telephone or Zoom. My first contested hearing after moving to northern Michigan involved a case in a county in the Upper Peninsula more than three hours from my office. The judge kindly let me appear via Zoom to avoid travel expenses and additional fees for my client. Of course, this is something that must be verified with each individual court as different rules apply to virtual appearances.

If the attorney is still in doubt as to whether the conflict requires declining representation, consider the appearance of impropriety. This can be a subjective determination since "impropriety" is not defined in the rules, but it can be a good guideline.

Small-town practice is fulfilling and, more often than not, clients appreciate that that they know their attorneys outside of the case.

**Amy L. Stikovich**, a shareholder of Nelson Forster & Stikovich in Petoskey, has practiced for more than 26 years in both metropolitan and rural areas. She is president of the Emmet Charlevoix Bar Association and a member of the SBM Michigan Bar Journal Committee.

## ENDNOTES

1. MRPC 1.7, Comment "Loyalty to a Client."
2. *Id.*
3. MRPC 1.7(a) prohibits representation of clients whose interests are "directly adverse," while MRPC 1.9(a) prohibits representation in the same or similar matter when a potential client's interests are "materially adverse" to those of a former client.
4. These scenarios are based upon ethics inquiries from rural areas presented to the State Bar of Michigan.
5. MRPC 1.7, Comment "Other Conflict Situations."
6. *Id.*
7. MRPC 1.7(b).
8. MRPC 1.7, Comment "Consultation and Consent."

**MOVING MEDIATION**
FORWARD

# Grants help services expand in Michigan

**BY** DR. JANE MILLAR

There are 17 citizen dispute resolution program (CDRP) centers in the state of Michigan. They are non-profit organizations partially funded by the Michigan Supreme Court State Court Administrative Office (SCAO) and hence, are accountable to the SCAO.

The centers offer mediation and restorative practice services to Michigan residents and rely on volunteer mediators trained in the use of the facilitative model of mediation to guarantee that they remain neutral; all participants' voices are heard; the disputing parties are the ones making the agreement, not the mediators; and that confidentiality is ensured. CDRP mediators are required to complete 40 hours of SCAO-approved general civil training or 48 hours of SCAO-approved domestic training, have practical experience supervised by seasoned mediators, and participate in continuing education.[1]

"Our mediators are highly skilled and trained on how to best serve their community members facing conflict in a respectful, professional manner," said Shannon Taylor, executive director of Upper Peninsula Commission for Area Progress conflict resolution program and the Michigan Community Mediation Association (MCMA) training committee chair.[2]

CDRP volunteer mediators will be instrumental in implementing two new, grant-funded programs available to Michigan residents: the Michigan Agricultural Mediation Program (MAMP) and the Michigan Behavioral Health Mediation Services (MBHMS) program; both require specialized training beyond the basic training discussed above. The MAMP requires an additional 20 hours[3] while the MBHMS requires an additional eight hours.[4]

The MAMP grant was awarded to the MCMA by the United States Department of Agriculture (USDA). MCMA is a professional organization made up of the 17 CDRP centers in the state. Its mission is to help advocate for the CDRP centers and educate Michigan residents on the importance of mediation and restorative practices.

MAMP offers free mediation services to Michigan farmers to help them resolve disputes outside of court. Disputes covered by this grant can include contract issues, estate and probate complications, adverse determinations by the USDA, bankruptcy, and any other conflicts they may face.[5]

"Our association is honored to have been awarded this grant to provide a vital alternative to resolving disputes for our farmers," said former MCMA Executive Director Gabriella Reihanian Havlicek in a prepared statement.[6]

The executive directors of the 17 CDRP centers and their staffs, the Michigan Department of Agriculture and Rural Development, industry stakeholders, and local leaders are working diligently to inform the state's farmers about this golden opportunity by making presentations at service clubs, going to farmers' markets, and generally doing whatever it takes to get the word out.

"Michigan's farmers work to feed our communities and families 24-7, 365 days a year, and mediation provides an avenue for them to be an integral part of the conflict resolution process," Michigan Department of Agriculture and Rural Development (MDARD) Director Gary McDowell said in a press release. "MDARD is proud to support MCMA [and] I encourage farmers to look into mediation as a viable option for resolving conflict."[7]

"Farmers already have heavy issues to navigate on a daily basis whether it's a supply chain shortage, finding workers, or navigating continually changing weather conditions," said Michigan Potato Industry Commission CEO Kelly Turner in a statement. "What they don't need is to have extra legal issues hanging over their head for years to come. Now they can contact MCMA and request a free mediation to resolve any dispute they may be facing."[8]

Buddy Sebastian, president of the Michigan Ground Water Association, echoed Turner's sentiments. "We at the Michigan Ground Water Association are excited to be partnering with MCMA and the 17 community dispute resolution program mediation centers," Sebastian said in a release. "The services they provide to our residents — and now our farmers — allow Michiganders the opportunity to resolve disputes in a free and faster way."[9]

Farmers who wish to request mediation can contact the Michigan Community Mediation Association at www.micommunitymediation.org [https://perma.cc/3ZL6-JB9U] via email at micommunitymediationassoc@gmail.com, or by calling (800) 616-7863.

The second community mediation grant was presented by the Michigan Department of Health and Human Services (MDHHS) to the Michigan Behavioral Health Mediation Services (MBHMS) program. Specifically, MDHHS awarded the grant to the Oakland Mediation Center as part of an effort to develop and implement a statewide system of local mediation services to resolve disputes related to behavioral health services provided by community mental health services programs (CMHSP) and their contract providers.[10]

"We are honored to have been awarded this grant to provide a vital alternative to resolving service disputes for behavioral health service complaints," Charity Burke, executive director of the Oakland Mediation Center, said in a statement. "We will be working

## AT A GLANCE

Two new, grant-funded programs are available to Michigan residents. The Michigan Agricultural Mediation Program offers free mediation services to farmers to help them resolve disputes outside of court, while a Michigan Department of Health and Human Services grant is part of an effort to implement a statewide system of local mediation services to resolve disputes related to behavioral health services.

with our counterparts across the state, MDHHS, and local officials to ensure this program is offered to people that need their voices heard and conflicts resolved."[11]

Two MDHHS departments — the Behavioral Health and Developmental Disability Administration and the Office of Recipient Rights — partnered with community and advocacy groups to ensure that all people receiving publicly funded behavioral health services in Michigan have access to an independent mediation process to resolve concerns about their services and treatment.[12] Michigan's community mental health services programs are used by more than 230,000 Michigan residents, and the CMHSP customer services and recipient rights departments receive a variety of inquiries related to treatment planning and behavioral health opportunities.[13]

Using mediation as a first step in the dispute resolution process fosters better treatment relationships and provides for a timelier agreement on what supports and services will be provided by the responsible mental health agency.

"The use of mediation has a proven record of successful outcomes in resolving disputes and allows the patient to be an active participant," MDHHS Director Elizabeth Hertel said in a press release. "It is exciting that we are able to provide mediation services to resolve complex behavioral health treatment needs in a meaningful way by bringing all parties to the table."[14]

For more information on the Michigan Behavioral Health Mediation Services program, call (844) 3-MEDIATE or email them at behavioralhealth@mediaton-omc.org.

**Dr. Jane Millar** has been executive director of Northern Community Mediation in Petoskey since 2003. She also facilitates mediation trainings throughout Michigan and serves on Michigan Community Mediation Association development, training, and funding committees.

## ENDNOTES

1. *CDRP Policies and Procedures Manual*, Office of Dispute Resolution, SCAO (2022), available at <https://www.courts.michigan.gov/4993e0/siteassets/offices/odr/cdrp-policies-procedures.pdf> [https://perma.cc/AK8A-ADPV]. All websites cited in this article were accessed June 22, 2022.
2. *Michigan Community Mediation Association Launches Michigan Agricultural Mediation Program*, Mich Dep't of Agriculture & Rural Development (October 18, 2021) <https://www.michigan.gov/mdard/about/media/pressreleases/2021/10/18/Michigan-Community-Mediation-Association-Launches-Michigan-Agricultural-Mediation-Program> [https://perma.cc/C767-R55X].
3. *Learning to be a Mediator*, Community Mediation Services (2020) <https://www.mimediation.com/training> [https://perma.cc/LS6D-WKD4].
4. *FAQ*, Michigan Behavioral Health Mediation Services, <https://mibehavioralhealthmediationservices.com/wp-content/uploads/2022/05/MBHMS-FAQ-final.pdf> [https://perma.cc/UTE8-SHA3].
5. *Michigan Community Mediation Association Launches Michigan Agricultural Mediation Program.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *MDHHS awards grant to develop and implement statewide system of behavioral health mediation service,* Mich Dep't of Health & Human Services (April 28, 2021), available at <https://www.michigan.gov/mdhhs/inside-mdhhs/newsroom/2021/04/28/mdhhs-awards-grant-to-develop-and-implement-statewide-system-of-behavioral-health-mediation-service> [https://perma.cc/4N2M-N5TD].
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*

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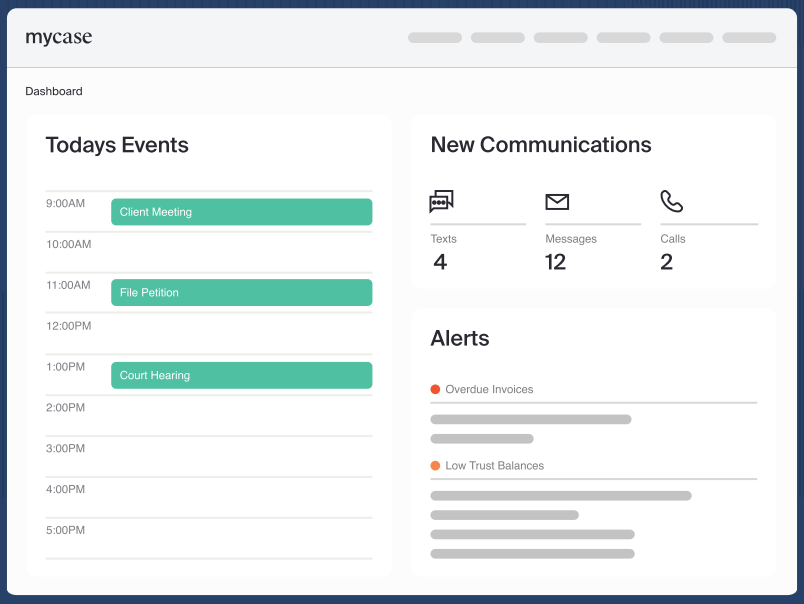


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# IN SEARCH OF **SISTERHOOD**

## WLAM Tip of the Mitt Region

**BY** AMANDA J. SKEEL

I graduated from Washington University in St. Louis School of Law in 2015 at 33 years old, ready to embark on a second career as a first-generation lawyer. I clerked with a small boutique firm during law school and accepted an associate position with the same firm upon passing the bar. My work for this firm was almost exclusively performed remotely. As it turned out, we were ahead of our time: the rest of the world would move to remote work in 2020 with the onset of COVID-19.

Though remote work was convenient in many ways, it offered no opportunities to collaborate with other attorneys or learn through observation. It often felt lonely, so I joined some local bar associations. I found that, in particular, women-focused organizations were the most supportive and best met my needs. I found the collegiality and support in those organizations that I lacked in my work environment.

A year later, my husband and I moved back to our native northern Michigan to be near our families as we welcomed our first child. Again, my remote work was convenient and facilitated the move, but professionally, I felt more isolated than ever. Although I was back home where I had many friends and family members, I didn't know any local lawyers and missed the opportunities to connect with other women lawyers that my prior bar associations had provided.

Luckily for me, my friend and mentor, Hon. Angela Sherigan, a judge with the Little River Band of Ottawa Indians and managing partner at Wojnecka & Sherigan, soon introduced me to the Women Lawyers Association of Michigan. As a two-time WLAM past president, Sherigan was a great advocate for the organization and knew that it could provide the professional home I was seeking.

She was right. I joined the Western Region of WLAM and attended a few events; I felt welcomed immediately.

WLAM provided continuing education opportunities, networking events, mentorship programs, and other benefits that I hadn't

even realized I needed. As I learned upon joining the organization, WLAM was founded in 1919 — before women even had the right to vote — by five forward-thinking women lawyers in the Detroit area. At the time, as one can imagine, women lawyers were few and far between. Significant cultural, educational, and even legal impediments existed that made it very difficult for women to pursue a career in the law.

As time went on and women's professional and civil rights advanced, WLAM grew into a statewide organization dedicated to promoting the interests of women in the legal profession, securing social justice and civil rights for all people, and broadly advancing improvements in the practice of law and administration of justice. WLAM's recent accomplishments include partnering with the State Court Administrative Office and the Michigan Department of Civil Rights to help courthouses create lactation spaces for nursing mothers and promoting an amendment to the Michigan Code of Judicial Conduct prohibiting judges from participating in organizations that practice invidious discrimination.

Although I was thrilled to have found WLAM, a significant barrier remained. The Western Region was primarily based in Grand Rapids and none of the other regions were much closer to my home in Charlevoix. However, it wasn't long before then WLAM President Alena Clark recruited me to help create a WLAM region for northern Michigan.

Though Clark was graciously confident I could lead this effort, I was not so sure. I had few legal connections in northern Michigan, I had recently formed a solo practice in Charlevoix, and I had a toddler at home. Could I build a regional chapter in a location where most women lawyers had never even heard of WLAM and, certainly, none of them had ever heard of me?

Although I lacked confidence, I believed in WLAM's mission. I knew that creating a local region was my best chance to find the kind of professional sisterhood I'd been looking for in my home community, so in December 2018, I sent a cold email to a number of women attorneys in northern Michigan, asking them to meet for dinner to gauge their interest in creating a WLAM region in the area.

To my surprise, 10 women showed up for dinner and we had a great discussion — not just about forming a WLAM region, but about work and life in general. It was clear by the end of the evening that I was not alone in seeking collegiality with other women lawyers. Over the next year, we worked closely with WLAM leaders to draft bylaws and meet all other requirements to be approved as a region and continued to grow closer as women legal professionals.

Our time as a provisional region was not without its challenges, but we persevered. Finally, our acceptance as a full region was placed on the agenda for the WLAM April 2020 meeting. Unfortunately, just prior to that meeting, COVID-19 had taken hold of the world. Just as the Tip of the Mitt Region of WLAM was born, we found ourselves unable to host the exciting events we had planned around our region. Again, we persevered. We found creative ways to bring together women attorneys in our area through virtual events and continued our monthly meetings on Zoom instead of at local venues. In the midst of the most extreme isolation we had ever experienced, seeing one another's faces on those monthly Zooms gave us all some comfort.

As restrictions on gatherings have loosened, the Tip of the Mitt Region of WLAM has been able to hold successful in-person events such as a reception for several Court of Appeals judges in Boyne City and our second annual meeting in Bay Harbor. Under the capable leadership of our new president, Amber Libby, our priorities include growing our membership and planning more frequent in-person networking, educational, and charitable events throughout the region.

I am so grateful to our founding members for working together to make WLAM accessible to law professionals in northern Michigan and to all my "sisters in law" for their camaraderie and support of one another through this incredible organization. We're finally home.

The Tip of the Mitt Region of WLAM officially includes Antrim, Charlevoix, Cheboygan, Emmet, Grand Traverse, and Leelanau counties, but legal professionals throughout northern Michigan regardless of gender are welcomed as members. For more information about the Tip of the Mitt Region of WLAM, visit womenlawyers.org/leadership/wlam-regions/tip-of-the-mitt/ or email tipofthemitt.wlam@gmail.com.

# IN PERSPECTIVE

AMANDA J. SKEEL

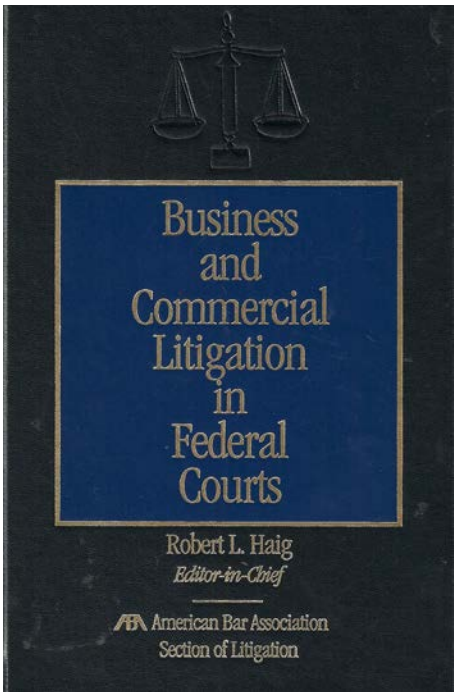
**Amanda J. Skee**l is the owner of Round Lake Legal in Charlevoix. She is a founder and past president of Tip of the Mitt Region of Women Lawyers Association of Michigan.

BOOK REVIEW

# Business and commercial litigation

## IN FEDERAL COURTS, FIFTH EDITION

**REVIEWED BY** GERARD V. MANTESE AND DOUGLAS L. TOERING




Edited by Robert L. Haig
Published by Thomson West (2021)
Hardcover | 23,254 pages | $2,088

The fifth edition of "Business and Commercial Litigation in Federal Courts" edited by Robert L. Haig is a monumental work built on the foundation of the first four editions.[1] This treatise is an exhaustive, in-depth guide to litigating in the federal courts, much of which can also be helpful for state court practice.

Indeed, this edition contains chapters on almost everything you would expect to be covered in a definitive treatise on this subject — and even more. Given its breadth, it is not something most litigators would read from start to finish. Rather, it is a resource for the business litigator. When the need arises, it is there. It includes explanations of the law, and also adds ideas and practical advice gained from the years of experience of the 373 principal authors (including 32 distinguished judges and many exceptional members of the commercial litigation bar nationwide). Practice checklists, jury instructions, and an abundance of forms are also included.

The fifth edition includes 18 volumes, more than 23,000 pages, 180 chapters (26 of them on new topics),[2] and upwards of 50,000 case citations. New chapters include such hot topics as climate change; corporate sustainability and environmental, social, and governance factors; shareholder activism; use of jury consultants; valuation of a business; and virtual currencies.

The chapters are well-researched and contain abundant footnotes. They are easy to navigate and include thousands of cross-references to other sections. They are comprehensive, practical, and well-organized. At $2,088, the cost is significant, but the volumes of material, analyses, case citations, and strategic considerations are prodigious. Updates are in pocket parts.

The foreword states one of the authors' main objectives "is to provide commercial litigators with enough information so they can do almost everything they need to without any further guidance from anyone else." With that in mind, we will briefly focus on a few chapters that may be of particular interest.

**Chapter 11: Comparison with Commercial Litigation in State Courts** discusses many important factors to consider in deciding whether to file in state court versus federal court. Simply because federal jurisdiction is available doesn't mean you automatically want to file in federal court.

**Chapter 72: Litigation Avoidance and Prevention** contains a reminder: The lawyer is both attorney and counselor. Other important reminders include seek early resolution;[3] consider including alternative dispute resolution provisions in the contracts; enforce sound internal policies and procedures; and before filing suit, know

what damages will be available and how they will be calculated.

**Chapter 83: Teaching Litigation Skills** is a critical issue right now. How can we train new litigators when so few cases go to trial?[4] Here, the authors recommend numerous books and treatises on various aspects of litigation and provide helpful tips on oral advocacy. As to written work, the authors recommend, among other things, preparing an outline and ruthless editing.

**Chapter 96: Director and Officer Liability** offers an interesting perspective of director and officer (D&O) liability from the viewpoint of both an attorney and a judge. It includes an analysis of the duties of due care, loyalty, and disclosure for directors and officers.[5] Of particular interest is the analysis of the special attorney-client privilege considerations involving D&O litigation and D&O insurance.

**Chapter 97: Shareholder Activism** is a broad concept that relates to many strategies involving shareholders in public companies. Generally, activist investors seek to quietly accumulate stakes in public companies. Social activists have shifted their emphasis to the governance practices of a target company. This chapter covers various topics including accumulating a stake in a company, pursuing a takeover, initiating a proxy contest, shareholder proposals, and Section 16(b) claims.

**Chapter 98: Corporate Sustainability and ESG** discusses the ever-growing body of law involving environmental, social, and governance (ESG) concepts facing publicly traded U.S. companies. It explains how ESG has been used in far-reaching areas such as climate change. The chapter offers insight into the complex relationship between society and publicly traded corporations and how litigation can be used to influence corporate decisions.

**Chapter 104: Health Care Institutions** opens with a section designed to assist counsel navigating disputes between a health care provider and Medicare through the administrative review process to judicial review in federal court. The authors next discuss key issues of litigation under various federal health care statutes. They examine the effects of state privacy laws on discovery in the context of medical staff and peer review litigation. The final section addresses the False Claims Act, the Stark law, and the Medicare Anti-Kickback Statute. The authors also examine various antitrust challenges for health care providers.

**Chapter 136: Fiduciary Duty Litigation** is especially helpful in discussing ethical considerations in representing a fiduciary. These include conflicts of interest as well as settlement agreements and releases. The authors also identify issues that may cause a breach of fiduciary duty resulting in litigation.[6]

**Chapter 148: Commercial Real Estate** covers topics such as foreclosures, substantive due process claims, and takings claims that arise in zoning and partnership disputes. The chapter also analyzes COVID-19 and its impact on the real estate market.

Whether your focus is business litigation in federal or state courts, this treatise is very valuable and well done. Its case citations alone are impressive, but its analyses, practical tips, and forms make it a definitive treatise on business and commercial litigation in federal courts.

*The authors would like to thank colleagues Theresamarie Mantese and M. Jennifer Chaves for their excellent contributions.*

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**Gerard Mantese** is a partner at Mantese Honigman and focuses his national practice on business breakups. He and the firm have handled a significant percentage of the reported cases on shareholder oppression in Michigan, including the only two Michigan Supreme Court cases on oppression. Mantese is a past recipient of the State Bar of Michigan Roberts P. Hudson Award and Champion of Justice Award for service to the profession and the community.

**Douglas L. Toering** is a partner at Mantese Honigman and a past chair of the State Bar of Michigan Business Law Section, for which he currently chairs the Business Courts and Commercial Litigation committee. The 2021 recipient of the Stephen H. Schulman Outstanding Business Lawyer Award, Toering focuses his practice on complex business litigation.

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## ENDNOTES

1. Available in print or through Westlaw, see <https://store.legal.thomsonreuters.com/law-products/Forms/Business-and-Commercial-Litigation-in-Federal-Courts-5th/p/106758826>[https://perma.cc/8J4U-SJPA]. All websites cited in this article were accessed June 14, 2022.
2. The new chapters are: Animal Law; Art Law; Artificial Intelligence; Budgeting and Controlling Costs; Climate Change; Comparison with Business and Commercial Litigation in Delaware Courts, New York Courts, Canada, and Mexico (four chapters); Congressional Investigations; Constitutional Litigation; Coordinating Counsel; Corporate Litigation Reporting Obligations; Corporate Sustainability and ESG; Fee Arrangements; Fraudulent Transfer; Litigation Management by Judges; Monitorships; Political Law; Shareholder Activism; Space Law; Third-Party Litigation Funding; Trade Associations; Use of Jury Consultants; Valuation of a Business; and Virtual Currencies.
3. E.g., Foster, Hurford, and Toering, *Business Courts, Arbitration, and Pre-Suit Mediation: A Modest Proposal for the Strategic Resolution of Business Disputes*, 35 Mich Bus L J 21 (2015), available at <https://higherlogicdownload.s3.amazonaws.com/MICHBAR/ebd9d274-5344-4c99-8e26-d13f998c7236/UploadedImages/pdfs/journal/Fall2015.pdf#page=23>[https://perma.cc/PF93-Z979].
4. For more on this, see, e.g., Basile and Gretch, *Training Trial Lawyers*, 48 Litigation 46 (2022), available at <https://www.kirkland.com/-/media/publications/article/2022/04/trainingtriallawyers.pdf?la=en>[https://perma.cc/2UM4-9NFN] and Toering and Williamson, *Virtual Hearings and Vanishing Trials: A Modest Proposal for Training New Business Litigators in the Virtual Era*, 42 Mich Bus L J 19 (Spring 2022), <https://higherlogicdownload.s3.amazonaws.com/MICHBAR/ebd9d274-5344-4c99-8e26-d13f998c7236/UploadedImages/pdfs/journal/Spring22.pdf#page=21>
5. *Murphy v Inman*, ___ Mich ___; ___ NW2d ___, decided April 5, 2022 (Docket No 161454) (holding, among other things, that corporate directors owe common-law fiduciary duties directly to shareholders).
6. E.g., Mantese, *The Fiduciary Duty:* Et tu, Brute?, 99 Mich B J 52 (2020), available at <http://www.michbar.org/file/barjournal/article/documents/pdf4article4005.pdf> [https://perma.cc/HH49-VRGF].

# THANK YOU.

The State Bar of Michigan, the Michigan State Bar Foundation, and the Access to Justice Campaign thank the attorneys, law firms, and corporations supporting access to justice through pro bono legal services and financial donations. Both are essential to nonprofit legal aid organizations and families in need. Each year, the pro bono and financial contributions from Michigan attorneys make a significant difference in closing the gap in access to justice and increasing civil legal services for low-income individuals.

The Voluntary Pro Bono Standard adopted by the State Bar of Michigan Representative Assembly encourages Michigan attorneys to provide 30 or more hours of pro bono legal services each year or contribute a minimum of $300 to support civil legal services to low-income individuals. As evidenced by the following lists, many attorneys and law firms exceed those standards.

Supporting access to justice is a well-established tradition among many members of the legal community. Many Michigan lawyers regard pro bono legal service and financial support for access to justice as a personal endeavor and an aspirational obligation. The generous donations of both time and financial contributions support the ongoing effort to provide free civil legal aid to low-income individuals.

# ACCESS TO JUSTICE CAMPAIGN

The Access to Justice Campaign seeks to ensure access and fairness for all in the justice system. The ATJ Campaign is a collaborative centralized campaign administered by the Michigan State Bar Foundation in partnership with the State Bar of Michigan to increase resources for 15 regional and statewide civil legal aid programs. Participating programs encourage legal community support through the ATJ Fund. The ATJ Campaign is pleased to publish its 2021 recognition lists and thanks the legal community for its financial support. The lists honor:

- **Leadership Law Firms:** 47 firms earned this status in 2021 for donating at $300, $500, $750, and $1,000 tiers. The total amounts include both individual and firm donations.
- **Law Firms and Corporate Legal Departments:** Firms of two or more attorneys and corporate legal departments are recognized on a tiered list based on total dollars given by combining individual and firm/corporation gifts. Firms included on the list made minimum contributions of $1,000.
- **Individual Donors:** Individual donors and solo practitioners are recognized on a tiered list based on dollars given, with a minimum contribution of $300.

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PLAIN LANGUAGE

# Untangling legalese:

## FAMILIAR WORDS, VERTICAL LISTS, AND A FRIEND

**BY** IAN LEWENSTEIN

Plain language, its opponents argue, is imprecise and less accurate than the standard legalese that lawyers prefer, a myth that Joseph Kimble has debunked.[1] How ironic, then, that opponents are quick to cite plain language's purported imprecision in the face of a legalese-caused flood of litigation. While, admittedly, the inherent difficulties of untangling legalese *can* result in imprecision, it's more accurate to say that legalese itself causes this potential imprecision because it obfuscates and obscures. One simple solution: don't use legalese in the first place.

Despite this simple solution, you are still likely to encounter heavy doses of legalese. But you can start to untangle the thicket by beginning with these three crucial steps. First, identify the legalese and then substitute words that normal people utilize (use). Second, use vertical lists and marked paragraphs (with headings) to sort out muddled passages. And third, find a knowledgeable legal-drafting friend or a subject-matter expert and have them check your work. Here are some examples from a Minnesota statute and three administrative rules on labor disputes.

### TRY TO USE FAMILIAR WORDS

You are a labor representative, and your union claims that workers from another labor union should be represented by your union. What to do? First, you would look to the relevant statute:

> Whenever two or more labor organizations adversely claim for themselves or their members jurisdiction over certain classifications of work to be done for any employer or in any industry, or over the persons engaged in or performing **such** work and **such** jurisdictional interference or dispute is made the ground for picketing an employer or declaring a strike or boycott against the employer, the commissioner may appoint a labor referee to hear and determine the jurisdictional controversy. If the labor organizations involved in the controversy have an agreement between themselves defining their respective jurisdictions, or if they are affiliated with the same labor federation or organization which has by the charters granted to the contending organizations limited their jurisdiction, the labor referee **shall** determine the controversy in accordance with the proper construction of the agreement or of the provisions of the charters of the contending organizations. If there is no agreement or charter which governs the controversy, the labor referee **shall** make **such** decision as, in consideration of past history of the organization, harmonious operation of the industry, and most effective representation for collective bargaining, will best promote industrial peace. If the labor organizations involved in the controversy so desire, they may submit the controversy to a tribunal of the federation or labor organization which has granted their charters or to arbitration before a tribunal selected by themselves, **provided** the controversy is so submitted **prior to** the appointment by the governor of a labor referee to act in the controversy. After the appointment of the labor referee by the governor, or the submission of the controversy to another tribunal **as herein provided**, it **shall be** unlawful for any person or labor organization to call or conduct a strike or boycott against the employer or industry or to picket any place of business of the employer or in the industry on account of **such** jurisdictional controversy.[2]

"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.

This statute (legalese in boldface) is not helpful to you — or to anyone, really. As any English teacher will tell you, use paragraphs to organize your writing. This simple advice applies to legal drafting as well. Be kind to your readers and respect their time by using paragraphs, headings, and vertical lists.

Let's assume that you listened to your teacher, yet you are still left with a statute brimming with legalese. Though the enormous text block itself screams, "Don't read me," the legalese in the text block says, "If you do happen to read me, I dare you to understand me."

First, *such* is used four times; it can usually be replaced (as in the first, third, and last instances here) with *the* or *a*. *Such* is not more precise than the humble article and provides enough of a bump to pause the reader. Pausing the reader can lead to confusion, frustration, and, ultimately, noncompliance.

Second, *herein provided* is used in a text block with no paragraphs or headings, so the reader must tediously search the text. The relevant reference could be anywhere, and what if there are several possible references? The solution is to use normal words and active voice to eliminate clutter:

> After ~~the appointment of~~ the governor appoints a labor referee ~~by the governor,~~ or ~~the submission of~~ the parties submit the controversy to ~~another~~ a tribunal ~~as herein provided~~ under [insert cross-reference], it ~~shall be~~ is. ...

Third, *shall* is used incorrectly. *Shall*'s only meaning is to establish a mandatory duty. For example, look to the first *shall*: "the labor referee **shall** determine the controversy. ..." The labor referee has a duty to determine the controversy. In contrast, look to the last *shall*: "it **shall be** unlawful for any person or labor organization to call or conduct a strike or boycott. ..." Unlike with the first example, no duty is being established. Instead, a legal fact is being stated: "it **is** unlawful for any person or labor organization. ..." And this could be rewritten to state that "a person or labor organization **may not** call or conduct a strike or boycott. ..." That is, the person or labor organization does not have permission. And some might argue that *must* should be used as a stronger prohibition.[3]

The upshot: as with legalese generally, *shall* should not appear — in codified law, anyway — because it is so often misused (with its various potential meanings) and is sometimes ambiguous; use a normal word — *must* — when establishing a duty.

## USE VERTICAL LISTS

You represented your labor union before the labor referee, and now you want the record. But you can't easily tell what is included in the record as described in the administrative rule:

> The record in the proceedings **shall** consist of the order appointing the commission, the notice of hearing, proof of service of **such** notice upon the parties to the proceedings, the objections of any person to the proceedings, the rulings **thereon**, all motions, stipulations between the parties, exhibits, documentary evidence, depositions, the stenographic notes or record if kept, and the report of the commission.[4]

As in the first example, the same problems appear: legalese, an absent vertical list, and a misused *shall*. Additionally, the legalese here causes trouble: legalese such as *thereon*, when combined with other legalese and long horizontal lists, can create ambiguity. At first, I substituted *on the proceedings* for *thereon* because *proceedings* was the closest noun to *thereon*. But I misinterpreted because (1) there was no vertical list, and (2) *thereon* is vague legalese that can easily be misinterpreted. With a vertical list — and some other changes — it becomes clearer what *thereon* refers to.

> The record consists of:
>
> A. the order appointing the commission;
> B. the hearing notice;
> C. proof of service of notice on the parties;
> D. any objection of any person to the proceedings;
> E. any ruling **on an objection**;
> F. all motions, stipulations, exhibits, documentary evidence, and depositions;
> G. the transcript, if kept; and
> H. the commission's report.

Untangling legalese usually results in questions. In this example under item D, for instance, one wonders whether a *person* is different from a *party* and whether *to the proceedings* applies to *any objection* or to *any person*.

## CHECK YOUR WORK; USE A FRIEND

Untangling legalese requires diligence: check your work, and then check it again. And don't neglect having subject-matter experts review your work to ensure that you don't inadvertently change meaning. As for me, I have a friend — my wife, a longtime Minnesota

legal drafter — check my work and point out my errors. Here's an example from another administrative rule with a tricky *thereof*:

> After such hearing the labor referee shall make an order granting or denying the request. If the request is granted, the labor referee shall proceed to reconsider or clarify the determination and shall fix a time and place for hearing thereon, of which notice shall be given as for the first hearing. … Thereupon, further proceedings shall be had as upon the original notice or jurisdictional controversy. At the conclusion **thereof**, the labor referee shall affirm the determination or shall make and file an amended determination which shall supersede the original determination.[5]

What does *thereof* refer to? I thought it referred to *hearing* because previous sentences established hearing requirements. After checking my work, I untangled the legalese to determine that *thereof* referred to the *proceedings*.

Why not make it challenging and have multiple *thereof*s? Here's an example from a different rule:

> The person making the challenge **shall** state fully the grounds **thereof** and a record **thereof shall be** made by the agent conducting the election. The agent **shall** then examine the challenged employee as to the employee's qualifications for voting and **shall** make a record **thereof**.[6]

I got my first two *thereof* translations correct (*the challenge*) but not the last one, when I first presumed *employee's qualifications*; it should be *the examination* — though either could be correct. (Note, though, that the noun *examination* doesn't appear; the reader must extrapolate meaning from the verb *examine*.) But potential errors should not dissuade you from translating legalese into something clearer and more accurate.

In addition to errantly untangling the legalese, I also wasted time and effort to rectify something that should have never been drafted in the first place, something that most likely confused labor unions, labor referees, and other members of the public.

Follow the simple solution: eschew legalese.

**Ian Lewenstein** works for the State of Minnesota, helping agencies write clear regulations in plain language. He also runs his own consulting business which tracks state and federal rulemaking and provides writing expertise to businesses, nonprofit organizations, city governments, and individuals.

ENDNOTES

1. Kimble, *Writing for Dollars, Writing to Please* (Durham: Carolina Academic Press, 2012), pp 37–43.
2. Minn Stat 179.083.
3. Garner, *Garner's Guidelines for Drafting and Editing Contracts* (St. Paul: West Academic Publishing, 2019), p 172.
4. Minn R 5500.1100, subp. 9.
5. Minn R 5500.2100.
6. Minn R 5505.1100.

ETHICAL PERSPECTIVE

# Ins and outs of the lawyer trust account

BY ALECIA M. CHANDLER

Most lawyers in private practice are required to maintain a lawyer trust account, primarily to hold prepayments for legal services, legal costs, or settlement proceeds. While it is something that is used quite frequently, mismanagement can lead to disciplinary action. The Attorney Discipline Board 2020 Annual Report shows that nearly half the attorneys disciplined that year violated MRPC 1.15 and MRPC 1.15A, the trust accounting rules.[1] Every lawyer has a fiduciary duty to their client, and anything belonging to the client that comes into the lawyer's possession must be maintained with care — and that includes funds.

## AVOIDING OVERDRAFTS IN LAWYER TRUST ACCOUNTS

Per MRPC 1.15 and MRPC 1.15A, all third-party or client funds must be deposited into an Interest on Lawyer Trust Account (IOLTA) or a non-IOLTA. For most lawyers, this means setting up a traditional IOLTA where retainers paid in advance for legal services to be rendered or settlement proceeds are deposited. However, a lawyer must not deposit or maintain their own funds in the account[1] so there should be no buffer like many people use in their personal accounts to avoid the possibility of an overdraft.[2] Additionally, while overdraft protection is likely available, the financial institution is still obligated to notify the Attorney Grievance Commission that funds in the IOLTA to cover outstanding liabilities were insufficient.[3]

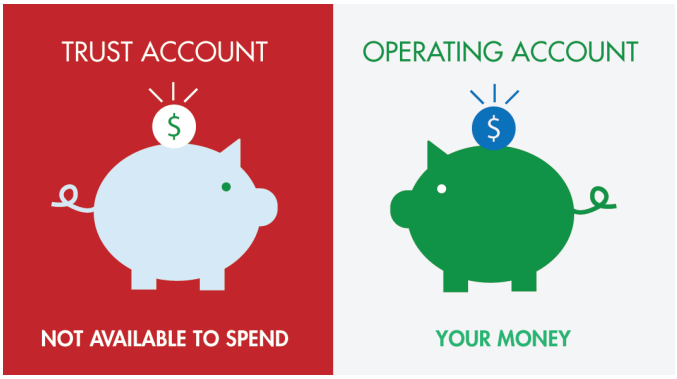
It is important to remember that all partners of a law firm may be held liable for commingling, conversion, or other mishandling of client or third-party funds, and lack of actual knowledge, inexperience, or delegating responsibility does not absolve liability.[4] To avoid overdrafts, it is important to keep accurate accountings that assign every dollar within the IOLTA to a client.

## MISTAKES

Mistakes happen! The most common mistake is making a payment out of the IOLTA when the funds should have come from the operating account. This is an understandable, but avoidable, mistake.

If you use physical checks, ensure that the color of the checks for the operating account and the IOLTA are different. Additionally, consider adding a picture or large note on the checkbook cover. In my former firm, both methods were used.

If you use online accounts, many financial institutions allow you to title your accounts differently. For example, you may wish to title the account "STOP – IOLTA," since only those who access the accounts can see the titles.




"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.

## AVOID SCAMS!

The State Bar of Michigan "Scams Targeting Attorneys Reported in Michigan" webpage lists scams that have been reported to the Bar.[5] The site also provides information and resources for reporting scams. The various reports on this site are only a small sample of the types of scams perpetrated on Michigan attorneys. Even cashier's checks can be fraudulent, and many attorneys have fallen victim to the ramifications of scams involving cashier's checks and fraudulent electronic transfers into IOLTAs.[6] The perpetrators provide very realistic documents and impersonate executives on the phone and during video conferences; the funds are remitted using wire transfers or forged cashier's checks.

## PREMATURE DISBURSEMENT OF FUNDS

Premature disbursement of funds resulting from very sophisticated scams has cost lawyers millions of dollars.[7] In these cases, the lawyer is responsible for repaying the bank for the improperly remitted funds and working with law enforcement to attempt to recover funds from the fraudsters, which is often impossible.[8]

Fortunately, this situation is easy to avoid. Before disbursing funds from an IOLTA, lawyers must ensure that the payment into the IOLTA has cleared and is not simply "available" pursuant to the Expedited Funds Availability Act, which requires financial institutions to make funds available for withdrawal pursuant to a schedule.[9] However, while the funds are available, the payment can be reversed, causing an overdraft if those funds have been remitted to the client or a third party. Clients often pressure lawyers to remit their portion of the funds as soon as possible, yet the lawyer must wait until the funds have cleared, which can take up to 30 days depending on how the lawyer received the funds. For example, payments from overseas financial institutions take additional time to officially clear.

Unfortunately, there is no set timeframe to ensure a check or other transfer has cleared. Therefore, it is important to recognize that just because the funds appear to be in the IOLTA, that does not mean they are not subject to reversal either by a stop payment or because the payment was fraudulent. Lawyers should check with their banks about their clearing procedures.

The first step is determining your financial institution's policies regarding deposits. Under certain circumstances, the financial institution may have a policy that covers most deposits. One such example is the financial institution I used in private practice, which advised that all transactions within the United States less than $200,000 would clear within 10 days. So, with the exception of large settlement checks and international wire transfers, we utilized the 10-day rule before disbursing funds. For international transactions, I advised my clients that the funds would not be remitted until the transfers were confirmed as cleared. I set these expectations with my clients the first time they came to the office and we foresaw the funds were coming from a foreign country. Fortunately, I can't recall one that took more than 12 days to officially clear.

It's important to note that not all financial institution employees understand the difference between expedited funds availability and the payment officially clearing. We are aware of several scenarios where someone at a financial institution advised an attorney that the funds cleared — and the payments were later reversed. It helps to have a banker who understands IOLTAs.[10]

## LACK OF PROPER ENDORSEMENT

Another reason payments are reversed is because the signatures required to deposit the check are missing. If a check is made payable to the lawyer and a third party, MCL 440.3110(4) provides that "(i)f an instrument is payable to 2 or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them." The Michigan Court of Appeals in *University of Michigan Regents v. Valentino* concluded that an attorney cannot "overcome the requirements of MCL 440.3110(4) by simply depositing any check bearing his name into an IOLTA account."[11] Therefore, if a check is made payable to the lawyer or law firm and a client or third party, both signatures are required.

Some lawyers obtain properly executed limited powers of attorney from the client if the client will be unable to endorse the check. We do not recommend placing this power of attorney in the attorney fee agreement for three reasons:

1. If the financial institution requires a copy of the power of attorney, you may be exposing client confidential information contained in the fee agreement in violation of MRPC 1.6;
2. It is best practice to use a formal limited power of attorney that can be placed on file with the financial institution; and
3. When the lawyer has received previous complaints, the Attorney Grievance Commission (AGC) may give the file extra scrutiny for misappropriation.

## ACCOUNTING AND RECORD-KEEPING ERRORS

Under MRPC 1.15, lawyers are required to maintain certain trust account records for five years. Lawyers should review additional statutes, case law, or court rules that may require maintenance of records (i.e., tax documents) for a longer period. It is best practice to establish a plan for accounting and record-keeping that includes a monthly reconciliation between client ledgers, financial institution statements, and IOLTA records.

## WHAT TO DO IF YOU DO RECEIVE A TRUST ACCOUNT OVERDRAFT NOTIFICATION

Don't panic! The worst thing any lawyer can do is bury their head in the sand. Take a breath and review the following steps:

1. Contact the financial institution to determine what happened and request the information be provided to you in writing.
2. Consider your state of mind and the facts surrounding the overdraft. If it's a financial institution error, you may consider tak-

ing the steps below on your own. However, if it involves intentional conduct, failure to institute proper accounting processes, or if you are concerned about liability, consider contacting an attorney who specializes in ethics defense to assist you with your answer. Some malpractice insurance policies cover grievance defense, so lawyers should also contact their carriers.

3. Send a letter to the grievance administrator reporting and explaining what occurred and which steps have been taken or will be taken to correct the problem either on your own or through retained ethics counsel. Review the letter carefully before sending.
4. Follow through with the steps you told the grievance administrator you would take.
5. If the financial institution dishonored an instrument, immediately contact the intended recipient of the funds and let them know what has occurred and how the situation will be remedied. Confirm this contact in writing.
6. Expect correspondence from the grievance administrator requesting additional information including financial institution records. MRPC 1.15 requires lawyers to "preserve complete records of such account funds and other property for a period of five years after termination of the representation."
7. Use the request for investigation as an outline for your response. Determine if you need to order records from the financial institution to fully respond and, if so, order the records right away. Review your answer for content, accuracy, and references to attachments. Make sure your answer conveys a cooperative attitude toward the proceedings.
8. Send an answer to the request for investigation and all other requests from the grievance administrator. Don't be disciplined for failure to respond. If you are drafting your own answer, have someone review and proofread it. Remember, the person at the AGC reviewing your answer has no knowledge of the underlying facts and circumstances pertaining to the financial transaction(s) at issue.
9. Continue to communicate with the AGC if relevant information becomes available or additional questions are asked.

## CONCLUSION

IOLTAs are a commonly used tool for practicing attorneys. To avoid discipline, it is imperative for attorneys using IOLTAs to know about proper management. It's a lawyer's fiduciary duty and ethical responsibility to safeguard client funds whether it be from a retainer for legal services yet to be performed, prepaid costs, or settlement proceeds.

For an overview of ethical management of lawyer trust accounts including the analysis used in processing client or third-party funds and an in-depth focus on recordkeeping requirements, consider attending the Lawyer Trust Account Seminar: Management Principles and Record Keeping Resources, which is open to lawyers and their staff members. It is an excellent opportunity for participants opening new IOLTAs and can serve as a refresher on trust account management focusing on MRPC 1.15 and 1.15A.

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**Alecia M. Chandler** is professional responsibility programs director for the State Bar of Michigan.

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## ENDNOTES

1. Under MRPC 1.15(f), a lawyer may deposit a reasonable amount of their own funds into a trust account solely to prevent use of client or third-party funds to pay financial institution service fees.
2. "Maintaining earned fees in a lawyer's trust account or depositing the lawyer's own funds into his or her trust account constitutes commingling," Pozehl and Dajani, *Common Trust Accounting Pitfalls and Avoiding Trust Account Overdraft Notifications*, 94 Mich Bar J 34 (2015), available at <https://www.michbar.org/file/barjournal/article/documents/pdf4article2581.pdf> [https://perma.cc/APC4-FWUC].
3. MRPC 1.15A(b), "financial institutions must file with the State Bar of Michigan a signed agreement, in a form provided by the State Bar of Michigan, that it will submit the reports required in paragraph (d) of this rule to the Grievance Administrator and the trust account holder when any properly payable instrument is presented against a lawyer trust account containing insufficient funds or when any other debit to such account would create a negative balance in the account, *whether or not the instrument or other debit is honored and irrespective of any overdraft protection or other similar privileges that may attach to such account.*" Emphasis added.
4. MRPC 5.1, MPRC 5.3, and Ethics Opinion R-7 (April 27, 1990). The MRPC and Ethics Opinions are available at <https://www.michbar.org/opinions/ethics/search> [https://perma.cc/6A8A-YL9D].
5. Available at < https://www.michbar.org/generalinfo/scamalerts> [https://perma.cc/3ZFD-HMCM].
6. *Fake Check Scams,* Consumer Alerts, Michigan Dept of Attorney General <https://www.michigan.gov/ag/consumer-protection/Consumer-Alerts/consumer-alerts/scams/fake-check-scams> [https://perma.cc/4XBM-DVPV].
7. Reported to the author by frantic Michigan attorneys calling the Ethics Helpline. For an example demonstrating the risk to all lawyers of all types, see Jackson, *Scammers intercepted emails of law firm hired to oversee stock sale*, benefitsPRO (July 31, 2020) <https://www.benefitspro.com/2020/07/31/law-firms-remain-vulnerable-to-wire-transfer-scams-as-liability-and-breach-costs-grow-412-101820/#:~:text=According%20to%20the%20recent%20lawsuit,between%20the%20firm%20and%20plaintiffs.> [https://perma.cc/E4AN-8EZF].
8. Bagger, *Lawyer Beware: Four Tips to Avoid Email Scams Targeting Lawyers,* ABA (June 17, 2020) <https://www.americanbar.org/groups/litigation/committees/commercial-business/practice/2020/tips-to-avoid-email-scams-targeting-lawyers/> [https://perma.cc/T9QV-PKUJ] and *Sarrouf Law LLP v First Republic Bank*, 97 Mass App Ct 467; 148 NE3d 1243 (2020).
9.12 USC 41.
10. *Greenberg, Trager & Herbst, LLP v HSBC Bank USA*, 17 NY3d 565; 958 NE 2d 77 (2011). See also *Internet Scams Targeting Attorneys*, USI Affinity (May 24, 2017) <https://insurancefocus.usiaffinity.com/2017/05/internet-scams-targeting-attorneys.html> [https://perma.cc/A4Q7-AJUB].
11. *University of Mich Regents v Valentino*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2020 (Docket No. 349942), p 7.

LAW PRACTICE SOLUTIONS

# Cultivate innovation mindsets to build your future (Part 2)

**BY** JUDA STRAWCZYNSKI

When the COVID-19 pandemic shined a spotlight on the antiquated parts of our justice system and exposed gaps in our legal practice models, courts and law firms quickly shifted processes and practices. Now, there's no turning back.

To help you plan for the future of your practice, you can embrace innovation mindsets — different ways of thinking to help us create processes and ideas that improve our lives. Building on last month's installment, we continue in this issue by presenting tips to help you make your innovations become a reality and transform your practice over the long haul.

## INNOVATION IN ACTION: TIPS FOR IMPLEMENTATION

### Innovation as a project

An innovation project is like any other project. At its core, an innovation project involves:

- Conducting an environmental scan to see what's going on;
- Defining the issue to address;
- Considering your options and choosing your solution;
- Planning for and launching your solution;
- Seeking feedback to continuously improve on your solution; and
- Starting on the next project.

There are lots of project management and design thinking models to help map out the steps for your innovation project. While project management tools can help, creating a simple project plan that identifies key steps, timing, and the people who need to be involved can help you move forward.

### Start with one project

As you scan for problems, you will likely find lots of things you'd like to try and more than one area where you could improve. Pick one project. When you tackle innovation projects one at a time, they add up and make your practice better with each change. Taking small steps rather than trying to make everything happen at once is also far less stressful.

As "Atomic Habits" author James Clear notes, the effects of our habits multiply over time.[1] There is power in working continuously toward incremental improvements. By focusing on one step at a time and continuously working on improving your practice, you're compounding your gains and you're not only benefitting from the innovations you roll out, but also transforming your practice into one that embraces continuous improvement. When the next challenge arises, you will have the experience and confidence to meet it head on. Innovation, continuous learning, and improvement become part of your practice mindset, and minor setbacks become learning opportunities rather than full-blown crises.

### Call in your dream team

At its core, innovation is about people. It may lead to changes in processes or how services are delivered, but it starts with people and improving their lives. Having a range of people on board

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.

can help you build diversity of thought and keep you open to new possibilities.

Spark innovation by calling in your team. In a law firm, this includes all staff. Whether you are in a large firm or a true solo with no staff, ask for input from suppliers, clients, and colleagues.

### Innovate to identify and fix your pain points

Whether you're a solo lawyer or in a large firm, to get started … you need to get started. Explore your terrain and focus on your pain points.

Ask yourself and your team: If I could change one thing about my practice, what would it be? What's the most aggravating part of my daily practice, the one task that seems that seems to cause frustration and/or delay? Similarly, ask your clients: What's one thing you wish we'd done differently for you? What's something that would have made things easier?

### Take the time to properly define

Spend as much time as you can getting to know the issue. Ask your clients and staff follow-up questions to make sure you're focusing on the root cause of the problem rather than a symptom. Clearly define the issue you're trying to address before trying to jump in to solve it.

### Tech isn't always the answer

Too often, we rush the process of solving the problem. There are usually many options available to address a pain point. While technology can often help, it may not be the easiest, most efficient, or cost-conscious solution. If the problem does require a tech solution, think carefully about how different options work with your existing processes, workflows, and technology.

### Don't forget training

There is a risk of mistakes being made any time a new process or technology is introduced to a workplace. Reduce your risk by making sure your rollout plan includes training. Budget for it (in dollars, time, or both.) Build in early-stage quality assurance checks and assume training may need to happen in stages with refreshers as required. Support your team and you'll get there faster and easier.

### Embrace continuous feedback loops

The innovation journey never ends. Gains lead to further gains. For each new shift in process, build in opportunities for real-time feedback and debriefs about what worked and didn't work with both your innovation and your process for getting there. Ask everyone involved in the rollout and include opportunities for user comment. By embracing continuous feedback loops, you can learn to detect and prevent mistakes, correct mistakes at earlier stages, and improve your products and processes. Adopting this approach also embeds an openness to innovation, creativity, and collaboration within your practice, which further accelerates opportunities for positive change.

### Celebrate wins

Legal practice has its ups and downs, so it's important to celebrate wins. It's a win when you introduce changes to your practice that make life better. Celebrate it. Make it a ritual. It may not be scientifically proven that law firms are more productive when there are cupcakes celebrating milestone events, but it couldn't hurt.

## TIPS FOR THE LONG RUN

### Take your breaks and find supports when you need them

The practice of law is a marathon, not a sprint. It's important to take breaks daily and throughout the year. During the day, stretch, go for walks, listen to music, or find breaks that help you recharge and enhance your overall productivity. Plan vacations in advance for something to look forward to.

Lawyers and staff can also be exposed to high levels of stress and the risk of vicarious trauma and burnout. It's important to recognize and understand the mental health stresses in the legal profession.[2] Lawyers and law firms can encourage open discussions about mental health and promote mental health resources.[3] We are all human and can use help.

### Set a learning plan to keep exploring and keep innovating

Keep exploring to find your inspiration. At least once a year, create a learning plan focusing on areas in which you wish to improve based on self-reflection and self-assessment. While it is important to keep up with changes to the law, consider other skills you need to develop, including skills to harness legal innovation. There are many ways to continue building your skills including:

- Attending state and local bar association conferences and continuing legal education and technology events such as ABA TECHSHOW (www.techshow.com) to learn more about innovation and practice management.
- Taking courses or setting aside time to learn how to maximize everyday technology supports such as Microsoft Outlook, Word, and Teams.
- Exploring and building skills through executive education programs or from lower-cost online learning platforms such as Coursera (www.coursera.com) and Udemy (www.udemy.com).

There are also lots of publications that can fuel your innovation dreams. Here are just a few you can explore:

- Jordan Furlong, "Law is a Buyer's Market: Building a Client-First Law Firm." A free PDF version of the book is located at <www.law21.ca/wp-content/uploads/2020/04/LAW-IS-A-BUYERS-MARKET-FINAL-PRINT-VERSION.pdf> [https://perma.cc/TG9L-ZXEL]
- Jack Newton, "The Client-Centered Law Firm"
- Richard Susskind and Daniel Susskind, "The Future of the Professions"
- Sharon D. Nelson, et al., "The 2020 Solo and Small Firm Legal Technology Guide"
- Mike Whelan Jr., "Lawyer Forward: Finding Your Place in the Future of Law"

Finally, while some of this learning will happen at the individual level, you can always learn with colleagues from both inside and outside of your firm. Having a study peer can keep you moving forward with your learning objectives — and keep it fun.

Best of luck on your journey and building toward your future practice.

**Juda Strawczynski** is a Toronto-based lawyer and director of practicePRO, LAWPRO's claims and risk management initiative.

## ENDNOTES

1. Clear, *Atomic Habits* (New York: Avery Publishing Group, 2018).
2. *Understanding mental health in the legal profession*, practicePRO (January 1, 2020) <https://www.practicepro.ca/2020/01/understanding-mental-health-in-the-legal-profession/> [https://perma.cc/6PB8-HAWF] (website accessed June 11, 2022).
3. *Warning Signs: Why it's important for lawyers and firms to be proactive about mental health*, practicePRO (January 1, 2020) <https://www.practicepro.ca/2020/01/warning-signs-why-its-important-for-lawyers-and-firms-to-be-proactive-about-mental-health/> [https://perma.cc/7ZAM-UZ8K] (website accessed June 11, 2022).

LIBRARIES & LEGAL RESEARCH

# Is the shipwreck I found in Lake Michigan mine?

## GREAT LAKES SHIPWRECK LEGAL RESEARCH BASICS AND SOURCES

**BY** KINCAID C. BROWN

There have been approximately 6,000 shipwrecks[1] claiming an estimated 30,000 lives in the Great Lakes[2] and new shipwrecks continue to be located, such as the recently discovered Atlanta.[3] There are many opportunities for divers, boaters, and other users of the Great Lakes to come across found and new shipwrecks. This article discusses the basic framework of federal, state, and other law governing these shipwrecks.

### FEDERAL LAW

In 1988, the Abandoned Shipwreck Act[4] (ASA) became law. Congress passed this law to affirm that the states have a responsibility for managing resources in state waters and submerged land (defined as "lands beneath navigable waters").[5] These resources specifically include shipwrecks "which have been deserted and to which the owner has relinquished ownership rights with no retention."[6] Management of shipwreck resources was important for the states for recreational, educational, tourism, research, and biological sanctuary reasons.[7] The federal government asserted title over the abandoned shipwrecks but then transferred title to the state in whose submerged lands the shipwreck was located.[8]

The ASA also directed the National Park Service to publish guidelines that would ensure the management of and access to shipwreck resources while also recognizing interests in shipwreck discovery and salvage.[9] These guidelines were published accordingly and provide the states with advice on how to effectively manage shipwrecks in the waters they control including the location and identification of shipwrecks, determining if a shipwreck is abandoned (so that it meets the criteria of the ASA), protecting shipwrecks, and providing sports divers access to shipwrecks.[10] While the National Park Service guidelines are advisory, they note that state shipwreck management programs were to be consistent with the spirit of the guidelines.[11]

### MICHIGAN LAW

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) estimates that approximately 1,500 shipwrecks are located in state waters.[12] State law regarding the management of Great Lakes shipwrecks is set in Part 761 of the Michigan Compiled Laws governing aboriginal records and antiquities.[13] Pursuant to the ASA, Michigan reserves title to "abandoned property of historical or recreational value found on the state owned bottomlands of the Great Lakes."[14] For the purposes of the statute, Lake St. Clair replaces Lake Ontario in the definition of "Great Lakes" because Lake Ontario does not touch the state.[15]

In an effort to protect the historical and recreational value of Great Lakes shipwrecks, it is illegal to remove, alter, or harm a shipwreck or property in the vicinity of a shipwreck without a permit.[16] Possible penalties include fines and imprisonment along with the confiscation

of watercraft and other equipment used in the crime.[17] However, It is permissible to recover abandoned property without a permit if it is not located in the vicinity of a shipwreck and the recovery can be accomplished by hand without mechanical assistance.[18] In order to adhere to the purposes of the ASA and protect recreational uses of the Great Lakes, Michigan law affirms the right of recreational divers to access the bottomlands and visit shipwrecks — assuming divers do not engage in prohibited activities.[19]

The statute also created the permit system necessary to administer interactions with shipwrecks in the Great Lakes bottomlands.[20] This permit system is now available online[21] and permits are approved by EGLE and the Michigan Department of State with the advice of the Underwater Salvage and Preserve Committee established by the statute.[22] The committee's purpose is to provide technical advice to the government regarding shipwreck salvage and preservation activities.[23]

Michigan law calls for the creation of Great Lakes bottomlands preserves that are established to protect one or more shipwrecks or "other features of archaeological, historical, recreational, geological, or environmental significance."[24] These preserves may not individually exceed 400 square miles and the total amount of preserve area may not be more than 10% of the total bottomlands except for the Thunder Bay Great Lakes Bottomlands Preserve, which was created separately as a national marine sanctuary.[25] To date, 13 bottomlands preserves have been established, protecting 7,200 square miles of bottomlands — an area larger than Connecticut and Rhode Island combined.[26] Salvage permits for artifacts within a preserve may only be granted for historical or scientific purposes or when recovery will not degrade the preserve.[27]

## THE LAW IN OTHER GREAT LAKES STATES

Other states bordering the Great Lakes have similar statutory schemes. Wisconsin retains title to "submerged cultural resources," establishes bottomland preserves, and has set penalties for damaging or removing objects.[28] Illinois reserves the right to regulate and excavate archaeological resources[29] including shipwrecks[30] and prohibits the disturbance of such resources.[31] Ohio retains ownership of abandoned property in Lake Erie[32] including shipwrecks,[33] has a permit system for salvage,[34] establishes submerged lands preserves,[35] and statutorily affirms recreational diving rights.[36] Minnesota has not revised its archeology legislation to incorporate shipwrecks, but has published a preservation plan for the approximately 50 shipwrecks in its Lake Superior waters.[37] Finally, New York reserves the right to salvage archaeological objects and prohibits the removal of such objects.[38]

## ONTARIO LAW

The only Canadian province that borders the Great Lakes, Ontario protects shipwrecks by prohibiting archaeological fieldwork, removing artifacts, or diving within 500 meters of a "marine archaeological site" without a license.[39] Marine archaeological sites are prescribed individually, such as to protect the wreck of the Edmund Fitzgerald in Lake Superior[40] and the wrecks of the Hamilton and Scourge in Lake Ontario.[41] Ontario can also extend the prohibited diving area around a shipwreck for further protection; for example, the regulated areas around the Hamilton and Scourge are 750 meters.[42]

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## ENDNOTES

1. *Michigan Shipwrecks*, Mich Dept of Environment, Great Lakes, and Energy <https://www.michigan.gov/egle/about/organization/water-resources/shipwrecks> [https://perma.cc/KT9C-TUEG]. All websites cited in this article were accessed June 9, 2022.
2. Jacobs, *Maps of Great Lakes shipwrecks detail one of North America's biggest graveyards*, Big Think (April 7, 2022) <https://bigthink.com/strange-maps/great-lakes-shipwrecks/> [https://perma.cc/6KSC-F8KN].
3. Tamsett, *Missing ship found in Lake Superior after 130 years*, CNN (March 4, 2022) <https://www.cnn.com/travel/article/shipwreck-atlanta-found-lake-superior/index.html> [https://perma.cc/F5MD-NMUZ].
4. 43 USC 2101 *et seq.*
5. 43 USC 2102(f)(2) and 43 USC 2101(a).
6. 43 USC 2101(b).
7. 43 USC 2103.
8. 43 USC 2105(a) and 43 USC 2105(c).
9. 43 USC 2104(a).
10. Abandoned Shipwreck Act Guidelines, 55 Fed Reg 50116 (December 4, 1990).
11. *Id.* at 50120.
12. *Michigan Shipwrecks.*
13. MCL 324.76101 *et seq.*
14. MCL 324.76102(2).
15. MCL 324.76101(d).
16. MCL 324.76107(1) and MCL 324.76109(1).
17. MCL 324.76107 and MCL 324.76117.
18. MCL 324.76108.
19. MCL 324.76113(a).
20. MCL 324.76109.
21. *MiWaters: Permitting and Compliance*, Mich Dept of Environment, Great Lakes, and Energy <https://www.michigan.gov/egle/maps-data/miwaters> [https://perma.cc/GQ52-Y29K].
22. MCL 324.76103.
23. *Id.*
24. MCL 324.76111 and MCL 324.76111(2).
25. MCL 324.76111(5) and MCL 324.76111(7).
26. *Michigan Underwater Preserves System,* Mich Dept of Environment, Great Lakes, and Energy <https://www.michigan.gov/egle/about/organization/water-resources/shipwrecks/michigan-underwater-preserves-system> [https://perma.cc/58XR-W5UT].
27. MCL 324.76112(4).

28. Wis Stat § 44.47 (1997).
29. 20 Ill Comp Stat 3435/1 (2018).
30. 20 Ill Comp Stat 3435/02(a) (2018).
31. 20 Ill Comp Stat 3435/3 (2018).
32. Ohio Rev. Code Ann. § 1506.33 (2015).
33. Ohio Rev Code Ann § 1506.30(A) (2013).
34. Ohio Rev Code Ann § 1506.32 (2015).
35. Ohio Rev Code Ann § 1506.31 (2015).
36. Ohio Rev Code Ann § 1506.36(A) (2015).
37. Marken et al, *Beneath Minnesota Waters*, Minnesota Historical Society (June 1997) <https://mnhs.gitlab.io/archive/shipwrecks/www.mnhs.org/places/nationalregister/shipwrecks/mgmtplan/plan0697.html> [https://perma.cc/JTZ7-2MYG].
38. NY Educ § 233 (2014).
39. Ontario Heritage Act, RSO 1990, c O 18, s 48(1).
40. Ontario Heritage Act, Marine Archaeological Sites, O Reg 11/06, s 1(2).
41. *Id.*, s 1(1).
42. Ontario Heritage Act, Alternate Distances, O Reg 11/06, s 2.

BEST PRACTICES

# Offers of judgment may be in fashion again

**BY** DAVID C. ANDERSON AND SEAN P. MURPHY

According to publications like GQ and other fashionistas, many of the styles from the 1980s are in vogue once again. And with the Michigan Supreme Court decision to do away with case evaluation sanctions in the revised MCR 2.403, the offer of judgment rule created in 1985 may also be trending soon. As you wonder whether you still have that oversized blazer with shoulder pads somewhere deep in your closet, consider these pointers for utilizing the offer of judgment rule found in MCR 2.405.

## OFFERS OF JUDGMENT: A BRIEF HISTORY

Michigan courts follow the American rule for attorney fee awards which prohibits an award of attorney fees unless a statute, court rule, or contractual provision expressly provides otherwise.[1] In 1985, the Michigan Supreme Court adopted MCR 2.405, known as the offer of judgment rule.[2] "The purpose of the offer of judgment rule," the Court of Appeals has explained, "is to avoid protracted litigation and encourage settlement."[3] By adopting MCR 2.405, the Michigan Supreme Court modified the existing procedure under which only a party defending against a claim could make an offer of judgment.[4]

## RISE AND FALL OF CASE EVALUATION SANCTIONS

MCR 2.403, also adopted in 1985, sets forth the framework for case evaluation in Michigan.[5] Case evaluation is a mediation proceeding prior to trial during which parties submit and argue their positions to a panel of three independent evaluators.[6] The panel then issues an evaluation that includes separate damage awards for each claim asserted.[7] The parties must then accept or reject the evaluation.[8] Before the most recent amendment to MCR 2.403 removing section O,[9] a party that rejected an evaluation was obligated to pay the opposing party's actual costs if the ultimate verdict was more favorable to the opposing party than the case evaluation.[10] The recoverable costs included "reasonable attorney fees for services necessitated by the rejection."[11]

The amended MCR 2.403 took effect at the start of this year.[12] Case evaluation is now discretionary in civil actions in which the relief sought is primarily money damages or division of property.[13] Likewise, case evaluation sanctions are no longer mandatory.[14] These changes will likely make other settlement tools more prevalent, including offers of judgment.[15]

## MCR 2.405(E): INTERPLAY BETWEEN CASE EVALUATION AND OFFERS OF JUDGMENT

Before 1997, parties could utilize offers of judgment in conjunction with case evaluation.[16] At that time, MCR 2.405(E) was aimed at reconciling the cost provisions of the offer of judgment rule and the case evaluation rule.[17] MCR 2.405(E) provided that if a party had rejected both a case evaluation award and an offer of judgment, the cost provisions of the rule under which the later rejection occurred would control,[18] but if the same party would be entitled to costs under both rules, that party could recover costs from the date of the earlier rejection.[19]

"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.

The Michigan Court of Appeals later observed that this version of MCR 2.405(E) allowed parties to use the offer of judgment rule as a tactic to avoid case evaluation sanctions such that it undermined the process.[20] Thus, the Michigan Supreme Court amended MCR 2.405(E) in 1997 in an attempt to eliminate the potential for gamesmanship.[21] The amendment, which remained in effect until the end of 2021, provided that costs could not be awarded under the offer of judgment rule in cases that had already been submitted to case evaluation unless the award was not unanimous such that sanctions were unavailable.[22] Under the new amendment to MCR 2.405, this provision no longer applies.[23] Thus, MCR 2.405 no longer prevents courts from awarding sanctions under the offer of judgment rule if the case has already been submitted to case evaluation.

## HOW OFFERS OF JUDGMENT FUNCTION

### Who can make offers of judgment?

Under MCR 2.405, any party may serve an adverse party with a written offer to stipulate to the entry of a judgment in a sum certain.[24] Additionally, any party may make multiple offers of judgment.[25]

### Responding to an offer of judgment

The recipient of an offer of judgment can accept, reject, or make a counteroffer.[26] To accept, the recipient must serve the other parties with a written notice of agreement to stipulate to the entry of the judgment offered.[27] The recipient must then file the offer, notice of acceptance, and proof of service with the court.[28] Counteroffers must be made in writing but need not be filed with the court unless accepted.[29] Rejections can be made in writing or by simply not responding.[30]

### Timing is everything

Well, it's not everything, but it is important. A party may make an offer of judgment until 28 days before trial.[31] An offer of judgment may be accepted within 21 days of service.[32] If an offer of judgment is not accepted within 21 days after service, it is considered rejected.[33]

## SANCTIONS

### How are sanctions calculated?

Sanctions are calculated by comparing the adjusted verdict to the average of the offers made. The adjusted verdict "means the verdict plus interest and costs from the filing of the complaint through the date of the offer."[34] When an offer and a counteroffer have been made, they are added together and divided by two to establish the average offer.[35] If no counteroffer is made, the single offer establishes the average.[36] If a party has made more than one offer of judgment, the most recent offer is used to calculate the average offer.[37] This system tends to encourage reasonable offers and counteroffers since there is little tactical benefit to making an unreasonably low or high offer. The party to whom the adjusted verdict is more favorable than the average offer can recover its actual costs.[38] Actual costs are costs and fees taxable in a civil action plus a reasonable attorney fee for services necessitated by the failure to stipulate to the entry of judgment.[39]

### The interest of justice exception

The interest of justice exception states that "[t]he court may, in the interest of justice, refuse to award an attorney fee under this rule."[40] Awarding attorney fees under MCR 2.405 "should be the rule rather than the exception."[41] Economic disparity between the parties doesn't warrant applying the interest of justice exception,[42] nor does the fact that the offeree's rejection may have been reasonable or that its position wasn't frivolous.[43] The interest of justice exception requires unusual circumstances such that few situations will justify it.[44] For example, the exception may be invoked when a party makes "a *de minimus* offer of judgment early in a case in the hopes of tacking attorney fees to costs if successful at trial."[45]

### Retainer agreements are as relevant as parachute pants

MCR 2.405(D)(5) provides that "proceedings under the offer of judgment rule do not affect a contract or relationship between a party and his or her attorney."[46] Thus, MCR 2.405(D)(5) contemplates that an attorney is not bound to accept a fee set by the court in lieu of a fee called for by a contract between the attorney and their client.[47]

## THE FEDERAL RULE'S KEY DIFFERENCES

Federal Rule of Civil Procedure 68 is the counterpart to MCR 2.405.[48] Unlike MCR 2.405, FR Civ P 68 only permits a defending party to make an offer of judgment while MCR 2.405 allows any party to do so.[49] Further, FR Civ P 68 permits an offer of judgment to be made "on specified terms" while MCR 2.405 requires an offer of judgment to be made "in a sum certain."[50] Finally, FR Civ P 68 permits an offer of judgment to be made until 14 days before trial while MCR 2.405 allows an offer of judgment to be made until 28 days before trial.[51]

## PRACTICAL IMPLICATIONS

An offer of judgment differs from settlement in that settlement does not typically result in the entry of an enforceable public judgment.[52] Unlike settlement, "a judgment entered pursuant to the acceptance of an offer of judgment under MCR 2.405 functions as a full and final adjudication on the merits."[53] Practitioners contemplating an offer of judgment must not only be aware that an enforceable judgment will be entered upon acceptance, but must also consider that

an offer of judgment will not result in execution of a written release unless negotiated separately.

## CONCLUSION

The Michigan Supreme Court decision to do away with case evaluation sanctions in the revised MCR 2.403 likely means that offers of judgment are back in fashion. Like belt bags (formerly known as fanny packs), offers of judgment can be useful. Accordingly, practitioners should reacquaint themselves with the operation and nuances of MCR 2.405.

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ENDNOTES

1. *Tennine Corp v Boardwalk Commercial, LLC*, 315 Mich App 1, 18; 888 NW2d 267 (2016).
2. *Id.* and MCR 2.405.
3. *Tennine Corp*, 315 Mich App at 18, citing *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 297; 769 NW2d 234 (2009).
4. MCR 2.405 (1985 Staff Comment).
5. MCR 2.403 and *Meemic Ins Co v DTE Energy Co*, 292 Mich App 278, 283; 807 NW2d 407 (2011).
6. *Merc Bank Mtg Co, LLC v NGPCP/BRYS Centre, LLC*, 305 Mich App 215, 223; 852 NW2d 210 (2014).
7. *Id.*
8. *Id.*
9. Administrative Order No 2020-06 (2021).
10. MCR 2.403(O)(1), as amended March 24, 2021.
11. MCR 2.403(O)(6)(b), as amended March 24, 2021.
12. Administrative Order No 2020-06.
13. MCR 2.403(A)(1).
14. MCR 2.403(N).
15. Note, however, that the most recent amendments to MCR 2.403 appear to conflict with statutes that require case-evaluation sanctions in certain cases. For example, case-evaluation sanctions are still mandatory in medical malpractice cases and tort cases seeking damages in excess of $10,000 pursuant to MCL 600.4921 and MCL 600.4969. These statutes were not regularly utilized before the amendments to MCR 2.403 but may now become more common.
16. *Luidens v 63rd Dist Court*, 219 Mich App 24, 29; 555 NW2d 709 (1996), citing MCR 2.403(E), as amended December 1, 1994.
17. *Reitmeyer v Schultz Equip & Parts Co, Inc*, 237 Mich App 332, 343 n 3; 602 NW2d 596 (1999).
18. *Id.*, citing MCR 2.403(E), as amended December 1, 1994.
19. *Id.*
20. *Reitmeyer*, 237 Mich App at 341.
21. *Id.* at 341-342.
22. *Stitt v Holland Abundant Life Fellowship*, 243 Mich App 461, 475; 624 NW2d 427 (2000), citing MCR 2.405(E), effective October 1, 1997.
23. MCR 2.405(E).
24. MCR 2.405(B).
25. MCR 2.405(A)(1).
26. MCR 2.405(C).
27. MCR 2.405(C)(1).
28. *Id.*
29. MCR 2.405(A)(2), (C)(1).
30. MCR 2.405(C)(2).
31. MCR 2.405(B).
32. MCR 2.405(C)(1).
33. MCR 2.405(C)(2)(b).
34. MCR 2.405(A)(5).
35. MCR 2.405(A)(3).
36. *Id.*
37. MCR 2.405(A)(1).
38. MCR 2.405(D)(1) and (2).
39. MCR 2.405(A)(6).
40. MCR 2.405(D)(3).
41. *Luidens*, 219 Mich App at 32, quoting *Butzer v Camelot Hall Convalescent Centre, Inc (After Remand)*, 201 Mich App 275, 278-279; 505 NW2d 862 (1993).
42. *Id.* at 34.
43. *Id.* at 33-34.
44. *Id.* at 32.
45. *Id.*, citing *Sanders v Monical Machinery Co*, 163 Mich App 689, 692; 415 NW2d 276 (1987).
46. MCR 2.405(D)(5).
47. Michigan Court Rules Practice Text, § 2405.12 (7th ed).
48. FR Civ P 68.
49. FR Civ P 68(a) and MCR 2.405(B).
50. *Id.*
51. *Id.*
52. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 299; 769 NW2d 234 (2009).
53. *Id.*, citing *Hanley v Mazda Motor Corp*, 239 Mich App 596, 606; 609 NW2d 203 (2000).

PRACTICING WELLNESS

# Emerging lawyers face imposter syndrome

**BY** VICTORIA OSBURN

Imposter syndrome is a term that describes high-achieving individuals who, despite their objective successes, fail to internalize their accomplishments and have persistent self-doubt and fear of being exposed as a fraud or impostor.[1]

Imposter syndrome is more common in people who exhibit traits of conscientiousness, achievement orientation, and perfectionistic expectations, as well as those working in stressful and highly competitive professions.[2] Researchers who've studied the relationship between compassion, burnout, and imposter syndrome found that those who experience imposter syndrome tend to exhibit similar personality traits:

- Engaging in self-doubt, fearing they cannot repeat their accomplishments and dwelling on past failures. The self-doubt can be accompanied by worry, anxiety and fear around projects, and a propensity to either overwork and overprepare or procrastinate.
- The need to be special or the best and, falling short of being the best, a tendency to dismiss their very real talents.
- The superwoman/superman aspect, which results in the need to do everything perfectly and with ease.
- A fear of failure associated with shame and humiliation which results in taking drastic measures to avoid making mistakes, including steering clear of challenges or situations where the possibility of failure exists.
- Denying competence and discounting praise, resulting in an inability to accept positive feedback.
- Fear of and guilt surrounding success due to the fear of consequences stemming from family-of-origin or environmental messages.[3]

Lawyers remain among the top category of professionals who experience imposter syndrome. It should come as no surprise — attorneys are expected to be organized, flawless, high achieving, and excellent in their field. They are known to be hard working, devoted, and driven toward success.

New lawyers, especially, are more likely to experience imposter syndrome. In a constantly growing, success-driven environment, young associates feel an immense amount of pressure to excel immediately upon starting their new careers. Other potential contributors to imposter syndrome include excessive workloads, inefficient work processes, clerical burdens, lack of input or autonomy relating to issues that directly impact their work lives, organizational support structures, and leadership culture.[4]

New lawyers frequently experience anxiety and low self-efficacy while transitioning to the workplace. Their new environments include unanticipated changes in structure, oversight, and appropriateness regarding interpersonal interactions. Compounding these challeng-

"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.

es, entering the workforce often coincides with decreased contact with peer and family support networks. The perception of diminished interpersonal support can stimulate feelings of isolation and exacerbate psychological difficulties associated with the transition.[5]

Not only are new lawyers expected to take on caseloads comparable to those of their senior counterparts, but they lack the experience and confidence to carry out tasks with the same aplomb. Constantly being compared to their more seasoned coworkers creates an almost impossible standard. Those experiencing imposter syndrome fight to reach that standard — even though they know just how impossible it is. Any failure reinforces their feelings of not being good enough.

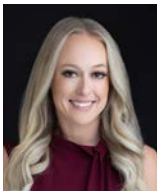
Those with imposter syndrome lose self-confidence, internalize failures, are hyper-focused on mistakes, and internalize stress and anxiety. Consequently, they try to compensate by working harder and overextending themselves. They emphasize perfection and effort and, as a result, often inflict unachievable, unrealistic goals upon themselves. When those goals are not achieved or the individual is not acknowledged for reaching them, the feelings of inadequacy are accentuated, leading to an endless cycle of workaholic behavior, which then leads to exhaustion and, finally, burnout.[6]

Impostor syndrome not only affects a lawyer's mental health, but it may impact their career as well. Failure to recognize this phenomenon can stunt growth, hamper leadership, and impede innovation. Lawyers with impostor syndrome may refrain from moving outside of their comfort zones and avoid taking important risks when making decisions that could be considered unsafe and harmful to their clients.[7]

The best way to deal with imposter syndrome is preventing it.[8] Many tools are available to minimize imposter syndrome effects. The following techniques are the most recommended by experts:

- Validation. Encouraging the development of self-validation skills can teach emerging lawyers that their desire to feel competent is healthy and appropriate. Therapy and mindfulness training have proven beneficial in teaching alternative options to external validation.
- Normalizing imposter syndrome. Talking about imposter syndrome with others who are going through the same experiences promotes universality and vicarious learning. The comfort in feeling like you are not alone is healing.
- Changing your stress response. Changing the way your body reacts to stress is the most notable change one can make to achieve instant results. Taking breaks throughout the day, practicing mindfulness, talking about your stressors, and participating in stress-relieving exercises can help.

Taking steps to manage and prevent imposter syndrome is the best method of treatment. It is unlikely that the culture of the legal profession will change in the near future, but implementing these techniques as part of your daily practice can enhance your belief in yourself and your professional abilities.



**Victoria Osburn** is an associate attorney at Mallory Lapka, Scott & Selin in Lansing.

## ENDNOTES

1. Bravata et al, *Prevalence, Predictors, and Treatment of Impostor Syndrome: a Systematic Review*, 35 J Gen Intern Med 1252 (2019), available at < https://link.springer.com/content/pdf/10.1007%2Fs11606-019-05364-1.pdf> [https://perma.cc/NTS3-FN6W]. All websites cited in this article were accessed June 8, 2022.
2. Kawcutt et al, *Bias, Burnout, and Imposter Phenomenon: The Negative Impact of Under-Recognized Intersectionality*, 2 Women's Health Reports 643 (2021), available at <https://www.liebertpub.com/doi/epdf/10.1089/whr.2021.0138> [https://perma.cc/RP5R-YJU7].
3. Clark et al, *The Imposter Phenomenon in Mental Health Professionals: Relationships Among Compassion, Fatigue, Burnout, and Compassion Satisfaction*, 44 Contemporary Family Therapy 185 (2021), available at <https://doi.org/10.1007/s10591-021-09580-y> [https://perma.cc/667N-9GQB].
4. *Bias, Burnout, and Imposter Phenomenon.*
5. Lane, *The Imposter Phenomenon Among Emerging Adults Transitioning Into Professional Life: Developing a Grounded Theory*, 24 Counselor Ed Publications and Presentations 1 (2015), available at <https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1024&context=coun_fac> [https://perma.cc/R47M-K77Q].
6. *Bias, Burnout, and Imposter Phenomenon.*
7. *What Is Imposter Syndrome and How Lawyers Can Get Affected?* JD Supra (December 13, 2021) <https://www.jdsupra.com/legalnews/what-is-impostor-syndrome-and-how-1049952/> [https://perma.cc/E8UM-HCQU].
8. Josa, *Burnout Research: Pandemic Coping Strategies, Toxic Resilience & Imposter Syndrome*, Clare Josa (March 29, 2022) < http://www.clarejosa.com/soulledleaders/burnout-research/> [https://perma.cc/95CP-9RL4].

# FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instruction, M Crim JI 25.7 [Trespassing], for the crimes defined in MCL 750.552. The instruction is effective July 1, 2022.

## [NEW] M Crim JI 25.7

### Trespassing

(1) The defendant is charged with trespassing. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] owned or legally occupied property located at [*provide property address or location*].

[*Select from the following three options according to the charge and the evidence*:]

(3) Second, that [*name complainant or agent*] told the defendant [he/she] could not come onto the property.

(4) Third, that the defendant entered on the property after being forbidden to do so.

[*or*]

(3) Second, that the defendant was on the property owned or occupied by [*name complainant*].

(4) Third, that [*name complainant or agent*] told the defendant [he/she] had to leave the property.

(5) Fourth, that the defendant remained on the property after being directed to depart.

(6) Fifth, that the defendant had no legal authority to remain on the property.[1]

[*or*]

(3) Second, that the property was farm property.

(4) Third, that the property was fenced or posted with signs that forbid entry on the property.

(5) Fourth, that the defendant entered on the property without having obtained permission from [*name complainant or agent*].

[*Provide the following element only where the defendant offers the defense of being a process server serving process and provides evidence in support of that defense*:]

(5/7/6) [Fourth/Sixth/Fifth], that the defendant was not a process server attempting to serve legal documents on an owner, occupant, or lessee of the property or on an agent of an owner, occupant, or lessee.

**Use Note**

1. Read this only where the defendant presents some evidence that he or she had a legal right to remain on the premises.

# ORDERS OF DISCIPLINE & DISABILITY

## DISBARMENT AND RESTITUTION

**Tarek M. Baydoun, P74551**, Dearborn, by the Attorney Discipline Board Tri-County Hearing Panel #14. Disbarment effective May 27, 2022.

After proceedings conducted pursuant to MCR 9.115, the panel found, by default, that the respondent committed professional misconduct as alleged in a four-count formal complaint during his representation of clients in one landlord-tenant matter (count 1) and four separate personal injury matters (counts 2-3). The respondent was also alleged to have failed to answer or respond in any way to five separate requests for investigation (count 4).

Based on the respondent's default, the panel found that the respondent failed to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information in violation of MRPC 1.4(a) [count 3]; knowingly disobeyed obligations under the rules of a tribunal in violation of MRPC 3.4(c) [counts 1-2]; failed to promptly notify the client or third person when funds or property in which a client or third person has an interest is received in violation of MRPC 1.15(b)(1) [counts 2-3]; failed to promptly pay or deliver any funds that clients or third persons were entitled to receive in violation of MRPC 1.15(b)(3) [counts 1-3]; failed to safeguard client funds held in connection with a representation by failing to hold them in trust in an IOLTA or non-IOLTA trust account and to separate them from respondent's own funds or those of his firm in violation of MRPC 1.15(d) [count 3]; knowingly failed to timely respond to a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2) [count 4]; and failed to timely answer a request for investigation in violation of MCR 9.104(7) and MCR 9.113(A) and (B)(2) [count 4]. The panel also found that the respondent violated MRPC 8.4(a) [counts 1-4]; MRPC 8.4(b) [counts 1-3]; MCR 9.104(2) [counts 1-3]; and MCR 9.104(3) [counts 1-3].

The panel ordered that the respondent be disbarred from the practice of law and pay

restitution in the total amount of $94,000. Total costs were assessed in the amount of $1,898.89.

## REPRIMAND WITH CONDITION (BY CONSENT)

**Brian M. Ellison, P64090**, Southfield, by the Attorney Discipline Board Tri-County Hearing Panel #51. Reprimand effective May 27, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline pursuant to MCR 9.115(F)(5) that was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based upon the respondent's admissions as set forth in the parties' stipulation, the panel found that the respondent committed professional misconduct during his representation of a client in a divorce proceeding in 2018. Specifically, the complaint alleged that the respondent knew that his client provided false testimony during a hearing to take the necessary proofs for a consent judgment of divorce but failed to correct the record or otherwise take remedial action.

In accordance with the parties' stipulation, the panel found that the respondent offered evidence that the lawyer knew to be false in violation of MRPC 3.3(a)(3); failed to take remedial measures including, if necessary, disclosure to the tribunal after becoming aware that his client's testimony was false in violation of MRPC 3.3(a)(3); engaged in conduct that was prejudicial to the administration of justice in violation of MCR 9.104(1) and MRPC 8.4(c); and engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded and subject to a condition relevant to the established misconduct. Costs were assessed in the amount of $750.

## SUSPENSION AND RESTITUTION

**George D. Gostias, P73774**, Livonia, by the Attorney Discipline Board Tri-County Hearing Panel #17. Suspension, 180 days effective May 27, 2022.

After proceedings conducted pursuant to MCR 9.115, the panel found, by default, that the respondent committed professional misconduct when, after being retained and paid $2,000 to assist in expunging a client's felony record, he abandoned the rep-





## ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

resentation without ever taking any action on his client's behalf and failed to respond to a request for investigation he acknowledged receiving in an email to the administrator's counsel.

Based on the respondent's default and the evidence presented at the hearing, the panel found that the respondent neglected a legal matter entrusted to him in violation of MRPC 1.1(c); failed to act with reasonable diligence and promptness in representing his client in violation of MRPC 1.3; failed to keep his client reasonably informed about the status of a matter in violation of MRPC 1.4(a); failed to take reasonable steps to protect his client's interests upon termination of a representation such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property the client is entitled to, and refunding any advance fee that has not been earned in violation of MRPC 1.16(d); knowingly failed to respond to a lawful demand for information 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). The respondent was also found to have violated MRPC 8.4(a) and (c); and MCR 9.104(1)-(4).





The panel ordered that the respondent's license to practice law in Michigan be suspended for 180 days and that he pay restitution in the total amount of $2,000. Costs were assessed in the amount of $1,680.44.

### AUTOMATIC INTERIM SUSPENSION

**Alexandra Ichim, P79557**, Waterford, effective April 25, 2022.

On April 25, 2022, the respondent pleaded guilty to forgery in violation of MCL 750.248, a felony, in the matter titled *People of the State of Michigan v Alexandra Ichim*, 7th Circuit Court Case No. 22-049158-FH. The respondent's plea was accepted by the court the same day. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on the date of her felony conviction. Upon the filing of a certified judgment of conviction, this matter will be assigned to a hearing panel for further proceedings. The interim suspension will remain in effect until the effective date of an order filed by a hearing panel.

### SUSPENSION AND RESTITUTION (BY CONSENT)

**James Lawrence, P33664**, Clinton Township, by the Attorney Discipline Board Tri-County Hearing Panel #80. Suspension, 100 days effective June 2, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of 100-Day Suspension with Condition[1] 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 that he committed professional misconduct during his representation of a client in his attempt to obtain post-conviction relief from his 1983 first-degree murder conviction and during his representation of another client to investigate if a sufficient basis existed to file a motion for relief from

judgment regarding his 1995 first-degree murder conviction.

Based upon the respondent's admissions as set forth in the parties' stipulation, 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 in violation of MRPC 1.2(a); failed to act with diligence and promptness in representing a client in violation of MRPC 1.3; failed to keep a client reasonably informed about the status of a matter in violation of MRPC 1.4(a); failed to comply promptly with a client's reasonable request for information in violation of MRPC 1.4(a); upon termination of representation, failed to refund an unearned fee in violation of MRPC 1.16(d); and knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2). The respondent was also found to have violated MCR 9.104(1) and (2) and MRPC 8.4(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 100 days and that he be required to pay restitution totaling $2,500. Costs were assessed in the amount of $874.02.

1. The parties' stipulation is titled as "with condition" but that condition described a payment of restitution and in order to avoid confusion, the panel's order is titled as such.

# NOTICE OF HEARINGS ON PETITIONS FOR REINSTATEMENT

## State of Michigan Attorney Discipline Board

**In the Matter of the Reinstatement Petition of David D. Black, P43367, ADB Case No. 22-27-RP**

### Petitioner

Notice is given that David D. Black, P43367, has filed a petition with the Michigan Supreme Court, the Attorney Discipline Board, and the Attorney Grievance Commission seeking reinstatement as a member of the State Bar and restoration of his license to practice law in accordance with MCR 9.124(A). *In the Matter of the Reinstatement Petition of David D. Black* (P43367), ADB Case No. 22-27-RP.

Effective April 13, 2011, the petitioner pleaded guilty to attempt to evade and defeat his 2004 federal taxes. In accordance with MCR 9.120(B)(1), the petitioner's license to practice law in Michigan was suspended effective April 13, 2011, the date of his felony conviction.

Based on the petitioner's conviction and the stipulation for the parties, the panel found that the petitioner committed professional misconduct that violated a criminal law of a state or of the United States contrary to MCR 9.104(A)(5).

The panel ordered that the petitioner's license to practice law in Michigan be suspended for four years, effective April 13, 2011, the date of his felony conviction.

The Attorney Discipline Board has assigned the matter of the reinstatement to Tri-County Hearing Panel #102. A virtual hearing via Zoom videoconferencing is scheduled for Tuesday, Aug. 16, 2022. Any interested person may participate in the hearing and request to be heard in support of or in opposition to the petition for reinstatement.

In the interest of maintaining the high standards imposed upon the legal profession as conditions for the privilege to practice law in this state and of protecting the public, the judiciary, and the legal profession against conduct contrary to such standards, the petitioner will be required to establish his eligibility for reinstatement by clear and convincing evidence.

Any person having information bearing on the petitioner's eligibility for reinstatement should contact:

Pamela I. Linville, Senior Associate Counsel
Attorney Grievance Commission
PNC Center
755 W. Big Beaver, Suite 2100
Troy, MI 48084
(313) 961-6585
pilinville@agcmi.com

### Requirements of the Petitioner

The petitioner is required to establish by clear and convincing evidence the following:

1. He desires in good faith to be restored to the privilege to practice law in this state;
2. The term of the suspension ordered has elapsed or five years have elapsed since the disbarment, whichever is applicable;
3. He has not practiced or attempted to practice law contrary to the requirement of his suspension or disbarment;
4. He has complied fully with the terms of the order of discipline;
5. His conduct since the order of discipline has been exemplary and above reproach;
6. He has a proper understanding of and attitude toward the standards that are imposed on members of the Bar and will conduct himself in conformity with those standards;
7. He can safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and, in general, to aid in the administration of justice as a member of the Bar and as an officer of the court;
8. That if he has been out of the practice of law for three years or more, he has been recertified by the Board of Law Examiners; and
9. He has reimbursed or has agreed to reimburse the Client Protection Fund any money paid from the fund as a result of his conduct. Failure to fully reimburse as agreed is grounds for vacating an order of reinstatement.

## State of Michigan Attorney Discipline Board

**In the Matter of the Reinstatement Petition of Mark Hermiz, P76378, ADB Case No. 22-28-RP**

### Petitioner

Notice is given that Mark Hermiz, P76378, has filed a petition for reinstatement in the Supreme Court of the state of Michigan and with the Attorney Grievance Commission seeking reinstatement as a member of the Bar of this state and restoration of his license to practice law.

In *Grievance Administrator v Mark Hermiz*, 17-85-GA (ADB 2017), a panel found, by stipulation of the parties, that the petitioner committed acts of professional misconduct in his representation of Relief Physical Therapy and Rehab to obtain payment of insurance claims for medical services provided by the company to accident injury victims. The petitioner failed to enter into a signed, written contingent fee agreement with Relief

Physical Therapy and Rehab; did not maintain adequate communications with the client concerning the settlement amounts; failed to adequately advise the client of the receipt of settlement checks; failed to provide a written disbursement sheet setting forth the disbursement of funds following settlement; and failed to maintain adequate bookkeeping records concerning his IOLTA account and the amounts he was due from each individual settlement.

Based upon the petitioner's admissions and the stipulation of the parties, the panel found that the petitioner failed to obtain specific settlement authority from his client in each matter in violation of MRPC 1.2(a); failed to explain each settlement to his client through its authorized representative in violation of MRPC 1.4(b); failed to keep a client reasonably informed about the status of a matter in violation of MRPC 1.4(a); failed to enter into a written contingent fee agreement in violation of MRPC 1.S(c); failed to issue a disbursement sheet for each settlement in violation of MRPC 1.S(c); failed to notify his client promptly when settlement checks were received in violation of MRPC 1.15(b)(1); failed to hold client funds separate from his own funds in violation of MRPC 1.15(d); engaged in conduct that was in violation of the Rules of Professional Conduct in violation of MRPC 8.4(a) and MCR 9.104(4); 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). Based on the parties' stipulation, the panel ordered the petitioner be suspended for 179 days effective Oct. 11, 2017, and ordered him to comply with the conditions contained in the parties' stipulation.

In *Grievance Administrator v Mark Hermiz*, 20-46-GA (ADB 2020), the petitioner entered into a stipulation containing his admissions to the allegations that he committed acts of professional misconduct in relation to his representation of a client and the client's company after being retained to negotiate or file civil actions to collect unpaid medical bills owed to the client and the client's company.

Based upon the petitioner's admissions and the stipulation of the parties, the panel found that the petitioner failed to obtain specific settlement authority from his client in each matter in violation of MRPC 1.2(a); failed to keep a client reasonably informed about the status of a matter in violation of MRPC 1.4(a); failed to explain each settlement to his client through its authorized representative in violation of MRPC 1.4(b); failed to enter into a written contingent fee agreement in violation of MRPC 1.5(c); failed to issue a disbursement sheet for each settlement in violation of MRPC 1.5(c); failed to notify his client promptly when settlement checks were received in violation of MRPC 1.15(b)(1); and failed to hold client funds separate from his own funds in violation of MRPC 1.15(d). The petitioner was also found to have violated MRPC 8.4(a) and MCR 9.104(2), (3), and (4). Based on the finding of misconduct and the stipulation of the parties, the panel suspended the petitioner for 18 months effective April 8, 2020, and ordered compliance with the conditions contained in the parties' stipulation.

A hearing is scheduled for Thursday, Aug. 18, commencing at 9:30 a.m. This matter has been scheduled as a virtual proceeding via Zoom videoconferencing.

In the interest of maintaining the high standards imposed upon the legal profession as conditions for the privilege to practice law in this state and of protecting the public, the judiciary, and the legal profession against conduct contrary to such standards, the petitioner will be required to establish his eligibility for reinstatement by clear and convincing evidence.

Any interested person may appear at such hearing and be heard in support of or in opposition to said petition for reinstatement. Any person having information bearing on the petitioner's eligibility for reinstatement should contact:

Nathan C. Pitluk, Associate Counsel
Attorney Grievance Commission
755 W. Big Beaver, Suite 2100
Troy, MI 48084
(313) 961-6585
ncpitluk@agcmi.com

## Requirements of the Petitioner

The petitioner is required to establish by clear and convincing evidence the following:

1. He desires in good faith to be restored to the privilege to practice law in this state;
2. The term of the suspension or revocation of his license, whichever is applicable, has elapsed;
3. He has not practiced or attempted to practice law contrary to the requirement of his suspension or revocation;
4. He has complied fully with the terms of the order of discipline;
5. His conduct since the order of discipline has been exemplary and above reproach;
6. He has a proper understanding of and attitude toward the standards that are imposed on members of the Bar and will conduct himself in conformity with those standards;
7. He can safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence and, in general, to aid in the administration of justice as a member of the Bar and as an officer of the court;
8. That if he has been out of the practice of law for three years or more, he has been recertified by the Board of Law Examiners; and

## NOTICE OF HEARING ON PETITION FOR REINSTATEMENT (CONTINUED)

9. He has reimbursed or has agreed to reimburse the Client Protection Fund any money paid from the fund as a result of his conduct. Failure to fully reimburse as agreed is grounds for revocation of a reinstatement.

### State of Michigan Attorney Discipline Board

**In the Matter of the Reinstatement Petition of Peter T. Howe, P57973, ADB Case No. 22-23-RP**

### Petitioner

Notice is given that Peter T. Howe, P57973, has filed a petition for reinstatement in the Supreme Court of the State of Michigan and with the Attorney Grievance Commission seeking reinstatement as a member of the Bar of this state, and restoration of his license to practice law.

On March 9, 2011, the petitioner was convicted in the Oakland County Circuit Court of larceny by conversion $1,000 to $20,000, a felony, contrary to MCL 750.362. The petitioner's conduct was in violation of MCR 9.104(A)(5). Based on the petitioner's felony conviction, the panel ordered that the petitioner's license to practice law in Michigan be suspended for two and a half years retroactive to March 9, 2011, the date of his conviction. On Nov. 21, 2011, the grievance administrator filed a petition for review, seeking an increase in discipline. Prior to the scheduled review hearing before the board, the grievance administrator and the petitioner stipulated that the matter should be remanded to the hearing panel for further consideration in conjunction with a newly filed reciprocal discipline proceeding based upon an order of discipline entered in the state of Illinois (ADB Case No. 12-22-RD). On April 17, 2012, in accordance with MCR 9.115(F)(5), the parties filed a stipulation for consent order of discipline which was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based on the agreement of the parties, the hearing panel ordered that petitioner be disbarred from the practice of law in Michigan effective March 9, 2011, the date of his felony conviction.

A Zoom hearing is scheduled for Friday, July 29, 2022, at 9:30 a.m. with the State of Michigan Attorney Discipline Board.

Any interested person may appear at such hearing and be heard in support of or in opposition to said petition for reinstatement. Any person having information bearing on the petitioner's eligibility for reinstatement should contact:

Michael K. Mazur, Associate Counsel
Attorney Grievance Commission
PNC Center
755 W. Big Beaver, Suite 2100
Troy, MI 48226
(313) 961-6585

### Requirements of the Petitioner

Pursuant to MCR 9.123(B), the petitioner is required to establish the following by clear and convincing evidence:

1. He desires in good faith to be restored to the privilege of practicing law in Michigan;
2. The term of the suspension ordered has elapsed or five years have elapsed since his disbarment or resignation;
3. He has not practiced or attempted to practice law contrary to the requirement of his suspension or disbarment;
4. He has complied fully with the order of discipline;
5. His conduct since the order of discipline has been exemplary and above reproach;
6. He has a proper understanding of and attitude toward the standards that are imposed on members of the Bar and will conduct himself in conformity with those standards;
7. Taking into account all of the attorney's past conduct, including the nature of the misconduct that led to the revocation or suspension, he nevertheless can safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence and in general to aid in the administration of justice as a member of the Bar and as an officer of the court;
8. That if he has been suspended for three years or more, he has been recertified by the Board of Law Examiners; and
9. He has reimbursed the client security fund of the State Bar of Michigan or has agreed to an arrangement satisfactory to the fund to reimburse the fund for any money paid from the fund as a result of his conduct.

# PUBLIC POLICY REPORT

## AT THE CAPITOL

HB 5749 (Fink) Courts: district court; Courts: circuit court; Courts: judges. Courts: district court; compensation for district court judges; increase. Amends sec. 8202 of 1961 PA 236 (MCL 600.8202).

**POSITION: Support.**

(Unanimous vote by Board of Commissioners with one abstention.)

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HB 5956 (Lightner) Criminal procedure: sentencing; Law: sunset. Criminal procedure: sentencing; sunset on certain costs that may be imposed upon criminal conviction; modify. Amends sec. 1k, ch. IX of 1927 PA 175 (MCL 769.1k).

**POSITION: Support.**

Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, David; Bennett; Bilowus; Burrell; Butler; Christensen; Clement; Detzler; Easterly; Gant; Hamameh; Heath; Howlett; Kuchon; Larsen; Low; Mason; McCarthy; McGill; Newman; Nyamfukudza; Ohanesian; Orvis; Perkins; Potts; Quick; Simmons; Simpson; Sinas; Walton; Warnez; Wisniewski. Commissioners voting in opposition of the position: Washington.

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HB 5957 (Lightner) Courts: funding; Courts: state court administration. Courts: funding; formula for local court operational needs based; allow the state court administrative office to create. Amends 1961 PA 236 (MCL 600.101–600.9947) by adding sec. 2406.

**POSITION: Support.**

Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, David; Bennett; Bilowus; Burrell; Butler; Christensen; Clement; Detzler; Easterly; Gant; Hamameh; Heath; Howlett; Kuchon; Larsen; Low; Mason; McCarthy; McGill; Newman; Nyamfukudza; Ohanesian; Orvis; Perkins; Potts; Quick; Simmons; Simpson; Sinas; Walton; Warnez; Wisniewski. Commissioners voting in opposition of the position: Washington.

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HB 5975 (Pohutsky) Courts: guardian ad litem; Courts: state court administration. Courts: guardian ad litem; trauma-informed training for lawyer-guardian ad litem; require. Amends sec. 17d, ch. XIIA of 1939 PA 288 (MCL 712A.17d).

**POSITION: Support.**

HB 5987 (LaGrand) Crime victims: other; Crime victims: compensation; Crime victims: restitution. Crime victims: other; restorative justice practices enabling act; create. Creates new act.

**POSITION: Oppose as drafted, but support the concept of restorative justice practices, and urge the creation of a workgroup to further develop the proposed legislation.**

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SB 1015 (Bayer) Criminal procedure: evidence; Crimes: human trafficking; Crimes: prostitution. Criminal procedure: evidence; admissibility of certain hearsay testimony in certain human trafficking and prostitution prosecutions; provide for. Amends sec. 27c, ch. VIII of 1927 PA 175 (MCL 768.27c).

**POSITION: Oppose.**

Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, David; Bennett; Bilowus; Burrell; Butler; Christensen; Clement; Detzler; Easterly; Gant; Hamameh; Heath; Howlett; Kuchon; Larsen; Low; Mason; McCarthy; McGill; Nyamfukudza; Ohanesian; Orvis; Perkins; Potts; Quick; Simmons; Simpson; Sinas; Warnez; Washington; Wisniewski. Commissioners voting in opposition of the position: Walton.

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## IN THE HALL OF JUSTICE

Proposed Amendment of Rule 9.116 of the Michigan Court Rules (ADM File No. 2021-11) – Judges; former judges (See Michigan Bar Journal April 2022, p 59).

**STATUS:** Comment period expired 7/1/22; Public hearing to be scheduled.

**POSITION: Support.**

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Amendment of Rule 5 of the Rules for the Board of Law Examiners (ADM file No. 2021-40) –

Admission without examination (See Michigan Bar Journal May 2022, p 62).

**STATUS**: Comment period expired 7/1/22; Public hearing to be scheduled.

**POSITION: Support with a recommendation that additional language be added to require an attorney practicing under the authority granted by a special certificate to designate that fact on any filings made when representing clients pursuant to the proposed amendment.**

# FROM THE MICHIGAN SUPREME COURT

## ADM File No. 2021-41
## Amendments of Rules 6.001, 6.003, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933 and Addition of Rules 6.105, 6.441, and 6.450 of the Michigan Court Rules

To read ADM File No. 2021-41, dated May 18, 2022, visit http://courts.michigan.gov/courts/michigansupremecourt and click "Administrative Matters & Court Rules" and "Proposed & Recently Adopted Orders on Admin Matters."

## ADM File No. 2002-37
## ADM File No. 2017-28
## Amendments of Rules 1.109 and 8.119 of the Michigan Court Rules

On order of the Court, this is to advise that the amendments of Rules 1.109 and 8.119 of the Michigan Court Rules are adopted, effective immediately. Concurrently, individuals are invited to comment on the form or the merits of the amendments during the usual comment period. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

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**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) [Unchanged.]

(b) Filing, Accessing, and Serving Personal Identifying Information

(i)-(ii) [Unchanged.]

(iii) Except as otherwise provided by these rules, ~~i~~If a party is required to include protected personal identifying information in a public document filed with the court, the party shall file the document with the protected personal identifying information redacted, along with a personal identifying information form approved by the State Court Administrative Office under subrule (i). The personal identifying information form must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers listed in the personal identifying information form will be understood to refer to the corresponding complete identifier. A party may amend the personal identifying information form as of right. Fields for protected personal identifying information may be included in SCAO-approved court forms, and the information will be protected, in the form and manner established by the State Court Administrative Office.

Unredacted protected personal identifying information may be included on Uniform Law Citations filed with the court and on proposed orders presented to the court.

(iv)-(vii) [Unchanged.]

(c)-(e) [Unchanged.]

(10) [Unchanged.]

(E)-(H) [Unchanged.]

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**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.

(1) The clerk shall not permit any case record to be taken from the court without the order of the court.

(2) 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.

(3) Public access to all electronic documents imported from an electronic document management system maintained by a court or its funding unit to the state-owned electronic document management system maintained by the State Court Administrative Office will be automatically restricted until protected personal identifying information is redacted from all documents with a filed date or issued date that precedes April 1, 2022.

(4) 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 records~~documents~~ cannot be provided through a publicly accessible website if protected personal identifying information has not been redacted from those records~~documents~~.

(5) If a public document prepared or issued by the court~~,~~ on or after April 1, 2022, or a Uniform Law Citation filed with the court on or after April 1, 2022, 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. Upon receipt by the court on or after April 1, 2022, protected personal identifying information included in a proposed order shall be protected by the court as required under MCR 8.119(H) as if the document was prepared or issued by the court.

(6) 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) [Renumbered (7)-(8) but otherwise unchanged.]

(I)-(L) [Unchanged.]

Staff Comment: The amendments of MCR 1.109 and MCR 8.119 aid in protecting personal identifying information included in Uniform Law Citations, proposed orders, and public documents filed with or submitted to the court.

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.

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 September 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. 2002-37/2017-28. Your comments and the comments of others will be posted under the chapter affected by this proposal.

## ADM File No. 2021-31 Amendment of Rule 8.110 of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 8.110 of the Michigan Court Rules is adopted, effective immediately.

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

### Rule 8.110 Chief Judge Rule

(A)-(C) [Unchanged.]

(D) Court Hours; Court Holidays; Judicial Absences.

(1) [Unchanged.]

(2) Court Holidays; Local Modification.

(a) The following holidays are to be observed by all state courts, except those courts which have adopted modifying administrative orders pursuant to MCR 8.112(B):

New Year's Day, January 1;
Martin Luther King, Jr., Day, the third Monday in January in conjunction with the federal holiday;
Presidents' Day, the third Monday in February;
Memorial Day, the last Monday in May;
Juneteenth, June 19;
Independence Day, July 4;
Labor Day, the first Monday in September;
Veterans' Day, November 11;
Thanksgiving Day, the fourth Thursday in November;
Friday after Thanksgiving;
Christmas Eve, December 24;
Christmas Day, December 25;
New Year's Eve, December 31;

(b) When New Year's Day, Juneteenth, Independence Day, Veterans' Day, or Christmas Day falls on Saturday, the preceding Friday shall be a holiday. When New Year's Day,

Juneteenth, Independence Day, Veterans' Day, or Christmas Day falls on Sunday, the following Monday shall be a holiday. When Christmas Eve or New Year's Eve falls on Friday, the preceding Thursday shall be a holiday. When Christmas Eve or New Year's Eve falls on Saturday or Sunday, the preceding Friday shall be a holiday.

(c)-(e) [Unchanged.]

(3)-(6) [Unchanged.]

Staff Comment: In light of the federal act making Juneteenth a federal holiday (PL 117-17), this amendment similarly requires that courts observe Juneteenth as a holiday.

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.

ZAHRA, J. (*dissenting*). The Michigan court system currently observes 12 paid holidays. This is far more than observed by the private sector. I believe as servants of the people we owe it to them to work diligently and regularly to provide good public service. Accordingly, I would not add an additional day off at the taxpayers' expense. Juneteenth has been a ceremonial holiday in Michigan to be celebrated on the third Saturday of June each year. I would continue to follow this observance. But since it is the will of the Court to make it a paid holiday, I would cease to recognize one of the other holidays typically not observed by the private sector, such as the Friday after Thanksgiving. For these reasons, I dissent.

VIVIANO, J. (*dissenting*). I dissent from the Court's decision to adopt a proposed amendment adding Juneteenth to the long list of weekday holidays that generally must be observed by all state courts under MCR 8.110. As I indicated in my previous statement when this amendment was proposed for comment, Juneteenth commemorates a historically significant date that, pursuant to statute, our state recognizes and celebrates by encouraging individuals and organizations to pause and reflect. MCL 435.361(1); Proposed Amendment of MCR 8.110, 508 Mich 1206, 1208 (2021) (VIVIANO, J., dissenting). The Legislature gave this matter thoughtful consideration less than two decades ago, passing the Juneteenth National Freedom Day legislation unanimously and with broad bipartisan support. I would defer to its judgment rather than trying to upstage the Legislature by creating a new holiday of our own.

The Court's decision to add another holiday comes at a particularly bad time for our courts. As I noted last fall, "[m]any of our trial courts — including some of our largest courts — are confronting a significant backlog of criminal and civil cases resulting from their inability to conduct in-person court proceedings for long stretches of time during the COVID-19 pandemic." Administrative Order No. 2021-7, 508 Mich xli, lvi (2021) (VIVIANO, J., concurring in part and dissenting in part). The backlog will only be exacerbated by today's rule change. And, as if to emphasize that trial court operations are not our primary concern, the Court has decided to give the current amendment immediate effect, meaning it will take effect this June rather than next. The lower courts have undoubtedly already scheduled proceedings for June 20, 2022. See, e.g., MCR 2.501 (requiring 28 days' notice for trial assignments). Any court that wishes to proceed with an already scheduled trial or other judicial matters on this new holiday as permitted under MCR 8.110(D)(2)(d) will need to show that holding the proceeding on that day is "necessary" and obtain the chief judge's approval. Thus, the Court has increased the burden on trial courts at a time when many are already having difficulty catching up on jury trials and disposing of cases.

Our courts handle matters that intimately affect the lives of Michigan's residents. It is therefore imperative that the courts expeditiously process and resolve the cases before them. The rule adopted today adds further delay to an already backlogged system. Because the Court is not acting as a responsible steward of our court system, I respectfully dissent.

## ADM File No. 2021-47
## Retention of the Amendment of Rule 3.950 of the Michigan Court Rules

On order of the Court, notice and an opportunity for comment having been provided, the December 29, 2021, amendment of Rule 3.950 of the Michigan Court Rules is retained.

## ADM File No. 2021-45
## Retention of the Amendment of Rule 7.306 of the Michigan Court Rules and Rescission of Administrative Order No. 2021-5

On order of the Court, notice and an opportunity for comment at a public hearing having been provided, the October 27, 2021, amendment of Rule 7.306 of the Michigan Court Rules is retained and, effective immediately, is amended further as indicated below. Administrative Order No. 2021-5 is rescinded, effective immediately.

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

**Rule 7.306 Original Proceedings**

(A)-(C) [Unchanged.]

(D) Answer.

(1) A defendant in an action filed under Const 1963, art 4, § 6(19) must file the following with the clerk within 7 days after service of the complaint and supporting brief, unless the Court directs otherwise:

(a)-(c) [Unchanged.]

(2) In all other original actions, the defendant must file the following with the clerk within 28 days after service of the complaint and supporting brief, unless the Court directs otherwise:

(a)-(b) [Unchanged.]

(E)-(I) [Unchanged.]

(J) Decision. The Court may set the case for argument as a calendar case~~as on leave granted~~, grant or deny the relief requested, or provide other relief that it deems appropriate, including an order to show cause why the relief sought in the complaint should not be granted.

Staff Comment: The additional amendment of MCR 7.306 refines the previous amendment by clarifying the timeframe for filing a supporting brief and makes subsection (J) consistent with MCR 7.313(A).

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.

## ADM File No. 2021-38
## Amendment of Administrative Order No. 2022-1 Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary

On order of the Court, the following amendment of Administrative Order No. 2022-1 is adopted, effective immediately.

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

Administrative Order No. 2022-1 — Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary

In January 2021, the Michigan Supreme Court and the State Court Administrative Office created a Diversity, Equity, and Inclusion Committee with the initial goal of exploring issues related to the demographics of the workforce that support our judiciary and training within the judicial branches. The committee's work grew to include exploration of other topics that impact our communities. On October 1, 2021, the committee presented a report to the Supreme Court that included a recommendation that the Court create an ongoing interdisciplinary commission to continue and build on the work that has been done to date. Therefore, on order of the Court, the Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary is created, effective immediately.

I.-III. [Unchanged.]

IV. Commission Membership

A. Membership shall be comprised of 25~~24~~ members from the following groups:

1.-4. [Unchanged.]

5. One member each, recommended by the following:

a.-g. [Unchanged.]

h. The Michigan Tribal State Federal Judicial Forum.

6. [Unchanged.]

B.-D. [Unchanged.]

V.-VIII. [Unchanged.]

## ADM File No. 2022-01
## Appointment to the Judicial Education Board

On order of the Court, pursuant to Administrative Order No. 2021-7 and effective immediately, Hon. Donna Robinson Milhouse (District Court Representative) is appointed to the Judicial Education Board to fill the remainder of a term ending December 31, 2025.

## ADM File No. 2022-06
## Proposed Amendment of Rule 3.101 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.101 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 each 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.

## FROM THE MICHIGAN SUPREME COURT (CONTINUED)

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

**Rule 3.101 Garnishment After Judgment**

(A)-(E) [Unchanged.]

(F) Service of Writ.

(1) The plaintiff shall serve the writ of garnishment, a copy of the writ for the defendant, the disclosure form, and any applicable fees, on the garnishee within 182 days after the date the writ was issued in the manner provided for the service of a summons and complaint in MCR 2.105, except that service upon the state treasurer may be made in the manner provided under subsection (3).

(2) [Unchanged.]

(3) Unless service is subject to electronic filing under MCR 1.109(G), service upon the state treasurer or any designated employee may be completed electronically in a manner provided under guidelines established by the state treasurer. Guidelines established under this subsection shall be published on the department of treasury's website and shall identify, at a minimum, each acceptable method of electronic service, the requirements necessary to complete service, and the address or location for each acceptable method of service. For purposes of this subsection:

(i) Electronic service authorized under the guidelines shall include magnetic media, e-mail, and any other method permitted at the discretion of the state treasurer.

(ii) Service in the manner provided under this subsection shall be treated as completed as of the date and time submitted by the plaintiff, except that any submission made on a Saturday, Sunday, or legal holiday shall be deemed to be served on the next business day.

(G)-(T) [Unchanged.]

Staff Comment: The proposed amendment of MCR 3.101 would allow writs of garnishment to be served electronically on the Department of Treasury, subject to current e-filing requirements and guidelines established by the Department of Treasury.

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.

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 September 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. 2022-06. Your comments and the comments of others will be posted under the chapter affected by this proposal.

### ADM File No. 2021-24 Proposed Amendment of Rule 5.5 and Official Comment of the Michigan Rules of Professional Conduct

On order of the Court, this is to advise that the Court is considering an amendment of Rule 5.5 and its official comment of the Michigan Rules of Professional Conduct. 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 each 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 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law**

(a)-(d) [Unchanged.]

(e) A lawyer admitted in another jurisdiction of the United States and not disbarred or suspended may remotely practice the law of the jurisdiction(s) in which the lawyer is properly licensed while physically present in the State of Michigan, if the lawyer does not hold themselves out as being licensed to practice in the State of Michigan, does not advertise or otherwise hold out as having an office in the State of Michigan, and does not provide or offer to provide legal services in the State of Michigan.

**Comment**
[Paragraphs 1-21 unchanged.]

Paragraph (e) is not meant to infringe upon any authorized practice in the federal courts. See, e.g., *In re Desilets*, 291 F3d 925 (CA 6, 2002). In addition, paragraph (e) does not authorize lawyers who are admitted to practice in other jurisdictions to maintain local contact information (i.e., contact information within the State of Michigan) on websites, letterhead, business cards, advertising, or the like.

Staff Comment: The proposed amendment of Rule 5.5 of the Michigan Rules of Professional Conduct and its accompanying comment would clarify that lawyers may practice remotely in another jurisdiction while physically present in Michigan.

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.

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 September 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. 2021-24. Your comments and the comments of others will be posted under the chapter affected by this proposal.

## ADM File No. 2021-20
## Proposed Amendment of Rule 6.001 and Proposed Addition of Rule 6.009 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.001 and an addition of Rule 6.009 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 also will be considered at a public hearing. The notices and agendas for each 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 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.009, 6.101, 6.102(D) and (F), 6.103, 6.104(A), 6.106, 6.125, 6.202, 6.425(D)(3), 6.427, 6.430, 6.435, 6.440, 6.445(A)-(G), and the rules in subchapter 6.600 govern matters in criminal cases cognizable in the district courts.

(C) Juvenile Cases. MCR 6.009 and tThe rules in subchapter 6.900 govern matters of procedure in the district courts and in circuit courts and courts of equivalent criminal jurisdiction in cases involving juveniles against whom the prosecutor has authorized the filing of a criminal complaint as provided in MCL 764.1f.

(D)-(E) [Unchanged.]

### [NEW] Rule 6.009 Use of Restraints on a Defendant

(A) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may not be used on a defendant during a court proceeding that is or could have been before a jury unless the court finds that the use of restraints is necessary due to one of the following factors:

(1) Instruments of restraint are necessary to prevent physical harm to the defendant or another person.

(2) The defendant has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.

(3) There is a founded belief that the defendant presents a substantial risk of flight from the courtroom.

(B) The court's determination that restraints are necessary must be made outside the presence of the jury. If restraints are ordered, the court shall state on the record or in writing its findings of fact in support of the order.

(C) Any restraints used on a defendant in the courtroom shall allow the defendant limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a defendant be restrained using fixed restraints to a wall, floor, or furniture.

Staff Comment: The proposed addition of MCR 6.009 would establish a procedure regarding the use of restraints on a criminal defendant in court proceedings that are or could be before a jury, and the

## FROM THE MICHIGAN SUPREME COURT (CONTINUED)

proposed amendment of MCR 6.001 would make the new rule applicable to felony, misdemeanor, and automatic waiver cases.

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.

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 October 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. 2021-20. Your comments and the comments of others will be posted under the chapter affected by this proposal.

CAVANAGH, J. (*concurring*). I concur with this Court's order publishing for comment the proposed addition of MCR 6.009 regarding the use of restraints on adult criminal defendants. As an initial matter, I'm not sure the constitutional floor set by *Deck v Missouri*, 544 US 622, 629 (2005), is as low as Justice ZAHRA claims. *Deck* reviewed American decisions dating back to 1871 and concluded that, while there was disagreement about the degree of discretion that trial judges possess, those cases "settled virtually without exception on a basic rule embodying notions of fundamental fairness: Trial courts may not shackle defendants routinely, but only if there is a particular reason to do so." *Deck*, 544 US at 627. Courts sometimes analyze whether violations of *Deck* are harmless by inquiring whether jurors saw a defendant's shackles. See *Brown v Davenport*, 596 US ___ ; 142 S Ct 1510 (2022). But that speaks to at most one of the three "fundamental legal principles" supporting the prohibition on routine shackling: the presumption of innocence, the right to counsel, and "a judicial process that is a dignified process." *Deck*, 544 US at 630-631. Even if the inquiry into whether the shackles were visible to jurors effectively analyzes the question of prejudice from unconstitutional shackling, we should strive to avoid the error in the first place, rather than knowingly commit the error while rendering it unreviewable. But, regardless of where the constitutional floor lies, we are not prohibited from considering more than the constitutional minimum, and at this point we are only publishing the proposed rule for comment. Because I would not deprive the public of the opportunity to comment on this proposal, I concur in the order publishing for comment.

ZAHRA, J. (*dissenting*). I dissent from this Court's order publishing for comment the proposed addition of MCR 6.009 regarding the use of restraints on adult criminal defendants. I would only publish for comment a rule that conforms to the constitutional requirements set by the Supreme Court of the United States' decision in *Deck v Missouri*, 544 US 622, 629 (2005) ("[T]he Fifth and Fourteenth Amendments prohibit the use of physical restraints *visible to the jury* absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial.") (emphasis added). See also *People v Arthur*, 495 Mich 861, 862 (2013) (concluding that, under *Deck*, no constitutional violation occurred where "the court sought to shield the defendant's leg restraints from the jury's view" and "the record on remand ma[de] clear that no juror actually saw the defendant in shackles"). Contrary to Justice CAVANAGH's suggestion, the holding of *Deck* only applies when the jury sees and is made aware of the restraints; otherwise, the "'inherent[] prejudic[e]'" the Court described in *Deck* would not exist. *Deck*, 544 US at 635 (citation omitted); see also *id.* at 633 ("The appearance of the offender . . . in shackles . . . almost inevitably implies to a jury, as a matter of common sense, that court authorities consider the offender a danger to the community[.]"); *id.* at 635 ("[W]here a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation."). Indeed, the published rule would extend *Deck* even to bench trials held before the very judge who would have earlier made the decision on whether to shackle the defendant. Because this Court's order, as written, goes well beyond the constitutional floor set by *Deck*, I dissent.

VIVIANO, J., joins the statement of ZAHRA, J.

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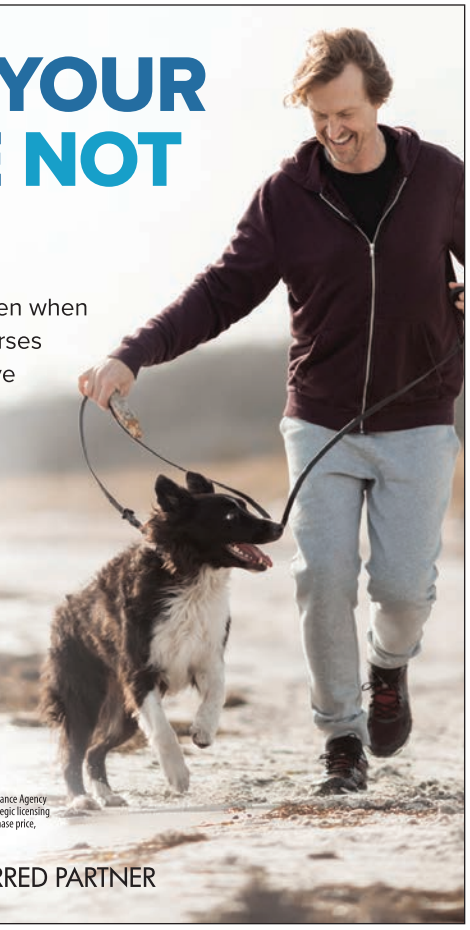

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