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SEPTEMBER 2024

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ON THE COVER: Located in Porcupine Mountains Wilderness State Park in Ontonagon County, Lake of the Clouds is nestled between two ridges in a forested valley.

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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 Feb. 15, 2024, and are ineligible to practice law in the state.

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LETTER TO THE EDITOR

TO THE EDITOR:

I am disheartened by the characterization and misdirection in From the President ("Whither law school and the bar exam?", July/August 2024). He conflates Model Rule 5.4 with movements to improve attorney admission to the bar and the two matters have no direct overlap. He claims that unnamed groups threaten to "dramatically change the definition of what it means to be a lawyer." That claim is alarmist and untrue.

As a scholar of attorney regulation, I am disappointed by his dismissive and combative stance on the well-researched decisions of other states. Surely, supreme court justices in those states have "deeply considered" and "rigorously tested" the pathways that they — in their singular authority to regulate entry into the practice of law — determined to sufficiently protect the public.[1] Sadly, the president fails to mention that the "alternative pathways" require bar candidates to practice law under the supervision of "attorneys who live in the real world" *before* becoming licensed and some add the requirement of supervised practice to successful completion of a written exam testing substantive legal rules and law practice skills.[2] Carefully vetted pathways to licensure, like those under development in Nevada, Oregon, and Washington, enhance the courts' ability to assess minimum competence and are designed to offer greater public protection.[3] Claims to the contrary are ill-informed.

The president would do well to follow his own admonition and base future columns on "more than frustration with the status quo." As lawyers, our preservation of our legal institutions must not obstruct our vision to improve the quality of justice for those who rely on it. It is our collective duty to "improve the law and the legal profession and to exemplify the legal profession's ideals of public service."[4]

Marsha Griggs
Associate Professor, Saint Louis University School of Law
President, Association of Academic Support Educators

ENDNOTES

1. KPTV Fox 12 Oregon, "Oregon Supreme Court Approves New Pathway to Practice Law" <https://www.youtube.com/watch?v=KSFfRmgo13o> [https://perma.cc/W9UH-4X33] (posted November 14, 2023; and Oregon State Bar, "Supervised Practice Portfolio Examination <https://www.osbar.org/sppe> [https://perma.cc/8AH9-HT45] (All websites accessed July 29, 2024).
2. Julianne Hill, ABA Journal, "Nevada Will Consider Three-Stage Process to Join Bar" <https://www.abajournal.com/web/article/nevada-to-consider-three-stage-process-to-join-bar> [https://perma.cc/5ZPF-QTC6](posted May 29, 2024.)
3. Washington State Bar Association, "New Licensing Pathways" <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/pathways-:~:text=On%20March%2015%2C%202024%2C%20the%20Washington%20Supreme%20Court,6%20apprenticeship%2C%20alternative%20assessments%20and%20interventions%2C%20and%20reciprocity.> [https://perma.cc/Q9EP-6J4V] (posted July 26, 2024).
4. ABA Model Rule of Professional Conduct, Preamble 7.

IN MEMORIAM

L. RAY BISHOP, P10828, of Ann Arbor, died July 19, 2024. He was born in 1934, graduated from University of Michigan Law School, and was admitted to the Bar in 1963.

DAVID C. BOURGEAU, P33869, of Naples, Florida, died Feb. 20, 2024. He was born in 1944, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1982.

ROBERT J. CAREY, P27064, of Kalkaska, died May 7, 2024. He was born in 1943 and was admitted to the Bar in 1976.

MARVIN C. DAITCH, P12447, of Farmington Hills, died May 20, 2024. He was born in 1940, graduated from University of Detroit School of Law, and was admitted to the Bar in 1967.

THOMAS E. DEW, P24050, of Ann Arbor, died Aug. 10, 2024. He was born in 1947, graduated from Detroit College of Law, and was admitted to the Bar in 1974.

RICHARD P. DURANCZYK, P23782, of Lansing, died May 19, 2024. He was born in 1948, graduated from Wayne State University Law School, and was admitted to the Bar in 1974.

NORMAN FELL, P13360, of Ann Arbor, died June 21, 2024. He was born in 1942, graduated from Wayne State University Law School, and was admitted to the Bar in 1973.

MARK W. GISTINGER, P23349, of Manchester, died March 16, 2024. She was born in 1943, graduated from Detroit College of Law, and was admitted to the Bar in 1973.

NATALIE RANKOVIC HARRINGTON, P49008, of Warren, died May 25, 2024. She was born in 1966, graduated from University of Michigan Law School, and was admitted to the Bar in 1993.

J. RUSSELL HUGHES JR., P15239, of Rose City, died July 16, 2024. He was born in 1941, graduated from Wayne State University Law School, and was admitted to the Bar in 1968.

SALLY SHAHEEN JOSEPH, P35904, of Flint, died May 26, 2024. She was born in 1932, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1983.

MARTIN P. KRALL JR., P29803, of Grosse Pointe Farms, died June 26, 2024. He was born in 1951, graduated from Detroit College of Law, and was admitted to the Bar in 1979.

JOSEPH G. LUJAN, P16846, of Mount Clemens, died April 26, 2024. He was born in 1937, graduated from Detroit College of Law, and was admitted to the Bar in 1969.

FRANK JOSEPH MACCIOCCA, P86184, of Lancaster, Pennsylvania, died June 8, 2024. He was born in 1965 and was admitted to the Bar in 2022.

JOHN A. MacNEAL, P24098, of Traverse City, died Jan. 24, 2024. He was born in 1949, graduated from Wayne State University Law School, and was admitted to the Bar in 1974.

SCOTT M. McDONALD, P38630, of Mount Clemens, died Dec. 24, 2023. He was born in 1957, graduated from University of Detroit School of Law, and was admitted to the Bar in 1986.

KIRK D. MESSMER, P34243, of Owosso, died April 12, 2024. He was born in 1957, graduated from University of Michigan Law School, and was admitted to the Bar in 1982.

KATHLEEN E. MOORE, P30265, of Northville, died May 15, 2024. She was born in 1952, graduated from Wayne State University Law School, and was admitted to the Bar in 1979.

ALAN S. MOSER, P30916, of Southfield, died May 10, 2024. He was born in 1951, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1980.

JOHN PATRICK O'LEARY, P18464, of Grand Beach, died June 26, 2024. He was born in 1939, graduated from University of Detroit School of Law, and was admitted to the Bar in 1965.

TERRANCE P. SHEEHAN, P20320, of Flint, died June 16, 2024. He was born in 1935 and was admitted to the Bar in 1964.

JOHN M. SIMMERER, P30509, of Southfield, died June 16, 2024. He was born in 1949, graduated from Detroit College of Law, and was admitted to the Bar in 1979.

H. LAWRENCE SMITH, P39640, of Troy, died April 22, 2024. He was born in 1932 and was admitted to the Bar in 1986.

RICHARD D. SULLIVAN, P21149, of Lapeer, died Aug. 11, 2024. He was born in 1932 and was admitted to the Bar in 1957.

JOHN N. THOMSON, P21424, of Troy, died July 17, 2024. He was born in 1942, graduated from University of Michigan Law School, and was admitted to the Bar in 1970.

GEORGE K. TRUCHAN, P37255, of Brooklyn, died June 27, 2024. He was born in 1955, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1985.

SHARON M. WOODS, P22542, of Detroit, died July 18, 2024. She was born in 1946, graduated from University of Detroit School of Law, and was admitted to the Bar in 1972.

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

DANIEL D. QUICK

Final memories

"Memories warm you up from the inside. But they also tear you apart."

— Haruki Murakami

I would add a third statement: And they can help guide your future.

I am 56, have spent over 31 years with the same law firm, have raised three children, and am blessed with a second marriage. All of those numbers add up to a lot of memories.

One way to face those memories is to move. In 2018, I moved homes as I became an empty nester. The basement was stuffed like a low-rent Egyptian tomb, holding an unabridged collection of kids' art projects, report cards, toys, and other ephemera. The move forced me to sort the wheat from the chaff, including (for my children) heart-rending decisions on which stuffed animals to keep and the like. I erred on the side of retention. And I so enjoyed the process.

Memories are constructs. They are not fixed; upon each remembrance, they are remade, details lost and added, narratives altered once recalled through today's lens. Those items in the basement, though, were memories cast in amber. They reflected a particular *when* but, more importantly, a particular *who*. What else offers a view into the mind of a six-year old like her own journal? Each child rages against and rejoices with their parents and siblings publicly and privately but, at the time, the parent only sees the public performance. There in the basement lie the secret thoughts, the fleeting emotions recorded, the victories memorialized. Of course, these are my children, so the memories are dear. But they also have a universality. Everyone's struggle is unique to them, but all of us struggle in the same way; our own path, in the end, is far more alike to everyone else's than it is different.

I also recently moved offices. But this wasn't any normal office move. It was a move into the office of the legend, Ed Pappas. I'd spent many, many years in that office working with Ed. Now, as he (slowly) moved toward retirement, he gave up his office and its nice large windows. I harbor no delusions that I'm an Ed Pappas, but it still gives me goosebumps to be in that space.

That move also required me to revisit memorabilia. When I had moved into my existing office, I did no culling — one drawer's contents were simply moved into a new one. This time I went through everything. I had my datebooks back to 1993. I had newspaper clippings, funny things that had happened in cases, and lots of memories from past firm events (some which preceded me). Beyond my own career, I looked back briefly at icons like Fred Freeman, Pat Ledwidge, John Scott, and Joe Marshall. The throughline of history seemed to arise out of this hodgepodge of items although this box of stuff perhaps held no value to almost anyone other than me. In that sense, history is both poignant and meaningless.

As Murakami's quote suggests, some memories haunt and shackle us (although it seems the present mind tends to color most memories toward the positive, even if incrementally). While memories of trauma or all of the lives you might have lived may haunt, they also make poignant how little time you still have to add to your personal cache. In so doing, and with introspection, those memories might help guide a person's future path, perhaps back to something lost

or forgotten, something dear yet neglected. Only in hindsight will you be able to judge the value of these memories, but one truth remains: you won't have any if you don't make any.

Alas, my time as Bar president is ending. I have so many more great memories to cherish and draw upon in the future.

I leave you with two thoughts.

First, cherish the present, even if you don't much feel like it. This includes celebrating victories *and* commiserating over losses. And it means actively keeping tidbits of memories along the way. If it were not for erring on the side of retention, so many reminders of past people, past wins and losses, and past loves and lives would be lost to nothing other than your memory. Ephemera it may be, but each is a tangible bulwark against your shifting memories and helps transport you to that specific time and place. Besides, when the time is right, you can always toss it. But periodically review these troves. Perhaps they will remind you of a part of your past, present, or future self that deserves some attention, neglected in the bustle of the everyday.

Second, the attention given to professionalism by me and others is not only for all the reasons said aloud but, in part, for the reason less said: we want a richer, more rewarding life than whatever it is we're doing in a particular brief, hearing, or case. Professionalism, as anachronistic as some believe it to be, is the value proposition for the practice of law: to serve more than yourself, to do more than what expediency demands, to leave this mess a tad better than you found it. When I led law school recruitment for the firm many years ago and was asked what "law firm culture" really means, I would often respond that no one puts their feet on the floor and goes to work for decades just to answer interrogatories. I meant to suggest that while there is the work — and, hopefully, the work matters — being a lawyer is more than that, a career which can reward not only as measured by one's individual accomplishments but by one's comrades (in and outside of the firm) and, over many years, the ability to be part of that thread of history. My drawers of memorabilia helped remind me of this, and to pay it forward.

Thanks to so many for your support, inspiration, kindness, forgiveness, and hard work during the past year. Your Bar is in great hands, but there is always room for more. I hope you join in, in some way, small or large, to build your future memories.

NEWS & MOVES

ARRIVALS & PROMOTIONS

ERIN FREERS-COLE was promoted to chief of administration at the Macomb County Office of Public Defender.

RANDI G. HERMIZ has joined Butzel in Troy.

ELISHA OAKES was promoted to chief of trials at the Macomb County Office of Public Defender.

ALISSA OETMAN has joined Kreis Enderle in Kalamazoo as an associate attorney.

RONALD R. STALLWORTH has joined Warner Norcross & Judd in Lansing as senior counsel.

KIMBERLY McLEAN and **TRACY ZAWASKI** have joined Fishman Stewart in Troy.

AWARDS & HONORS

BODMAN has been recognized as the most gender-diverse Michigan-based law firm in an annual survey conducted by the National Law Journal.

BUTZEL was recognized by Michigan Lawyers Weekly as one of its 2024 Empowering Women honorees.

EMILY E. CANTOR, a partner with Warner Norcross & Judd in Grand Rapids, was recognized by Michigan Lawyers Weekly as a Go-To Lawyer for cannabis law.

JEFFREY C. GERISH, president and chief executive officer with Plunkett Cooney in Bloomfield Hills, was named to the board of directors of the Detroit Regional Chamber.

Traverse City-based arbitrator and mediator **LEE HORNBERGER** has been appointed to the Oregon Employment Relations Board panel of arbitrators.

FRANK T. MAMAT, a partner with Plunkett Cooney in Bloomfield Hills, was reelected to the board of directors of the Jewish Bar Association of Michigan.

PAUL MERSINO, president and chief executive officer with Butzel in Detroit, was named to the board of directors of the Detroit Regional Chamber.

MITCHELL ZAJAC with Butzel in Detroit was elected chair of the Thomas M. Cooley Law School board of directors.

WARNER NORCROSS & JUDD has been ranked as one of the Top 10 Best Law Firms to Work For by Vault.com, a provider of career intelligence to job seekers in law, finance, accounting, and consulting.

OTHER

J.J. CONWAY LAW in Royal Oak celebrated its 25th anniversary on June 18.

HAVE A MILESTONE TO ANNOUNCE?

Send your information to News & Moves at newsandmoves@michbar.org.

MICHIGAN BAR JOURNAL

The State Bar of Michigan Alternative Dispute Resolution Section Announces 2024 Award Winners

The Alternative Dispute Resolution Section of the State Bar of Michigan is proud to announce that the following individuals are the recipients of the ADR Section's major awards in 2024. The award recipients will be honored at an awards ceremony on Thursday, September 26, at Saint John's Resort in Plymouth.

For more information about the section and the annual conference, visit sbmadrconference.com.

Paul F. Monicatti is the recipient of the Distinguished Service Award. The Distinguished Service Award is given in recognition of significant contributions to the field of dispute resolution. Paul has devoted his career to practicing, teaching, and mentoring in ADR. He started serving as an arbitrator in 1983 and then as a mediator in 1986, pioneering the use of mediation in Michigan. Paul then served in a myriad of roles including, a court-appointed or party-selected mediator, settlement master, arbitrator, facilitator, case evaluator, receiver, expert witness, umpire, and referee.

Paul has served as a neutral in several notable cases with a national scope including, a court-appointed Settlement Master who helped resolve the unprecedented, landmark, Flint, Michigan water contamination remediation case in federal court; the court-appointed Settlement Master who helped resolve the multi-billion-dollar Dow Corning breast implant insurance coverage litigation in state court involving 112 defendants; and the party-selected Mediator who helped resolve the largest fair housing discrimination case in U.S. history.

Paul donated hundreds of hours of his time and expertise to help establish the pro bono early mediation program for pro se prisoner civil rights cases filed in the U.S. District Court for the Eastern District of Michigan. He is also the founding member of Mediators Beyond Borders, the co-founder of the International Academy of Mediators, a charter member of the National Academy of Neutrals, and served on the Advisory Board of ACCESS ADR, promoting the advancement of diversity in ADR.

Stacey L. Rock is the recipient of the Diversity and Inclusion Award. Stacey is the Associate General Counsel of the Pokagon Band of Potawatomi Indians and Chair of the American Indian Law Section (AILS) of the State Bar of Michigan. In her role as AILS chair, Stacey has collaborated for the past few years with the Diversity and Inclusion Action Team (DIAT) of the SBM's ADR Section to hold engaging and well-attended events of interest to both the ADR and AIL Sections. This year the sections are holding a Peacemaking Circle Demonstration on Wednesday, October 16, 2024, from 12:00 - 3:00 p.m., to be held in person in Lansing and virtually over zoom.

Prior to her current role as Associate General Counsel, Stacey worked at the Pokagon Band Tribal Court for twelve years as Assistant Court Administrator where she was the lead support staff person for the Native Justice Program. Stacey has a certificate in mediation and extensive experience in the development and utilization of peacemaking programs and is a proud citizen of the Pokagon Band of Potawatomi Indians.

SBM State Bar of Michigan | ALTERNATIVE DISPUTE RESOLUTION SECTION

Lisa Okasinski is the recipient of the George N. Bashara Jr. Award. This award is given in recognition of exemplary service to the Section and its members. Lisa is a member of the SBM ADR Council, but more importantly served tirelessly as the Section's Publication's Action Team (PAT) Chair. In that role, Lisa took on the task of soliciting, reviewing, and publishing the articles for the ADR Section's The Michigan Dispute Resolution Journal and collected and edited articles for an ADR theme issue of the Michigan Bar Journal. In her private practice, Lisa has been helping people in Michigan resolve real estate and contract related issues for over a decade. She is admitted to practice in all Michigan state courts, the United States District Court for the Eastern District of Michigan, and the Sixth Circuit Court of Appeals.

Larry Saylor is the recipient of the Hero of ADR Award. Larry has been active in several positions with the ADR Section of the SBM, including the Council, Executive Committee, and Co-Chair of the Skills Action Team (SAT). Through SAT, Larry assisted with planning continuing advanced ADR skill-building programs. SAT is charged with offering the section's annual educational conference each fall, and the annual Spring Summit, which features a nationally renowned mediation trainer.

Larry is senior counsel at the law firm of Miller Canfield, where he litigates complex business disputes in state and federal courts, and in domestic and international arbitration. He handles antitrust, trade secrets, consumer protection, franchising, and dealer law matters, including class actions, injunctions, and appeals. He has resolved highly technical matters involving computer software, auto parts, pharmaceuticals, health care, and product design

Jack Brown is the recipient of the Nanci S. Klein Award, in recognition of his exemplary service in the field of community dispute resolution. Jack has mediated hundreds of Civil cases, and dozens of Domestic, Probate and Special Education cases. He began his mediation journey with Southeastern Dispute Resolution Services (SEDRS) in 2019, during the pandemic, as part of their EDP program, mediating 15 hours a week for 4 District Courts. He has since become certified in all case types offered in the state, and handles the most special education cases for the MCMA members in the state. Jack is one of the selfless volunteers who travels throughout the state covering cases for several centers, doing both in person and remote sessions. He coaches and helps evaluate new mediators and students for SEDRS, and has been a mentor mediator for SEDRS for 4 years.

Darnell Barton of the Young Lawyers Section

BY SCOTT ATKINSON

When Darnell Barton describes himself as a young lawyer, he makes a point to put air quotes around the word "young." At 42 and a 2018 graduate of the University of North Texas at Dallas, he started his legal career a bit later than the average member of the State Bar of Michigan Young Lawyer Section.

But that doesn't mean that the Young Lawyer Section, commonly referred to as YLS, hasn't played a role in helping him reach his goals. Far from it. In fact, YLS has been instrumental in helping Barton engage in and expand the service-oriented work he's always been dedicated to, not to mention his own career.

What has YLS provided him and others?

"In short: resources, resources, resources," he said.

Barton, who serves as YLS treasurer, is the founder of Barton Law, a Detroit firm that specializes in criminal and civil law, particularly for the underserved.

He is also intimately involved with The Brotherhood, a Detroit-based mentoring program for young men started by the police department's Ceasefire Detroit and the Ford Fund's Men of Courage. It

"Spotlight" features a Michigan attorney who provides important volunteer service to the State Bar of Michigan and highlights the variety of work being done to support Michigan attorneys and the administration of justice.

was that work, in fact, that motivated him to become actively involved with YLS.

During an event where Barton and other mentors were playing basketball with their mentees, he was approached by former YLS President Coleman Potts, who told him that YLS would be interested in helping The Brotherhood.

At that point, Barton had just started his career in the Wayne County Prosecutor's Office and, like a lot of new lawyers, barely knew what YLS was.

When YLS joined forces with The Brotherhood, he suddenly had a line of attorneys willing to get involved in helping people. YLS even hosted a year-end event in 2023 to provide free legal help and information to 200 families in various areas including business law, criminal law, and immigration law.

In addition to the service YLS has helped provide, it's also helped Barton expand his own network and take advantage of other opportunities. For example, a recent YLS event allowed members to meet with Michigan Supreme Court Justice Kyra Harris Bolden.

"I mean, we're in a private room with a Supreme Court justice. And the youngest one at that," Barton said.

Barton said Bolden was open about some aspects of her personal life that allowed him and other YLS members to form a bond with the justice.

"And I would have never talked to this woman, never talked to this woman, had it not been for YLS," he said.

Through YLS, Barton said, he's been able to make further connections that have led to other opportunities. He is currently YLS representative to the American Bar Association, which in turn led to his involvement with the ABA's Men of Color Project, which he now chairs.

Young (or "young") attorneys who are, as he once was, unaware of what YLS can offer are missing out on all kinds of opportunities, he said.

"Do you want to know the inner workings of the courts? Do you want to know how to be better at your craft? Do you want to know how to impress your current bosses? Do you want to know how to become your own boss? What do you want to know? I implore you to come to YLS, because if we don't have the answer, we will get you the answer," Barton said.

And sometimes what YLS offers just helps new attorneys figure out, well, how to live the life of an attorney. That might be as simple as reaching out to another member asking for advice about how to balance getting to daycare and meeting court appointments.

"We want them to know that there's a community of lawyers out here who you can talk to, that you can reach out to," he said.

Scott Atkinson is communications specialist at the State Bar of Michigan

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Q&A with Sterling Heights mayor Michael Taylor

BY MICHAEL K. MAZUR

In addition to being a partner at Kirk, Huth, Lange & Badalamenti in Clinton Township, Michael Taylor is the mayor of Sterling Heights, Michigan's fourth-largest city with a population of more than 133,000 people.

A lifelong Macomb County resident and a 2008 graduate of Wayne State University Law School, Taylor's initial foray into politics came in 2009, when he was elected to the Sterling Heights City Council. In October 2014, following the death of mayor Richard Notte, Taylor was appointed to fill out the remainder of his term. He won the ensuing mayoral election in 2015 and was subsequently reelected in 2017, 2019, 2021, and 2023.

Now in the midst of his fifth two-year term, Taylor reflected on his legal and political careers.

Editor's note: This interview has been edited for length and clarity.

Q: Why did you decide to become a lawyer?

MT: During high school I was more interested in politics than a lot of my peers. I guess I thought that if I was going to go into politics, having a law degree might be a good background. My dad was a CPA, my brother was going into financial planning ... I thought we didn't have a lawyer in the family and that might be a good fit.

And, honestly, by the time I was done with college, I wasn't ready to get a job in the real world. Law school seemed to be the best option. So I committed to that.

Q: What was your first job out of law school?

MT: My first job was with a small firm called Burket Savage. They were two attorneys looking for an associate. I was in the right place at the right time. They hired me right out of law school. I think my first day was like Sept. 1, 2008. In the summer of 2008, when I was studying to take the Bar exam, I wanted any job that would pay me. The financial system was collapsing, the real estate market was collapsing, layoffs were going through the roof, interest rates were high. I bought a house with my wife before I graduated from law school and so I wanted any job working as a lawyer that would pay me.

Q: What brought you to Sterling Heights?

MT: My wife and I were looking for houses in Macomb County. She was from Oakland County [and] I was from Macomb County. It was early 2008, we had just gotten married, and we were looking to set roots somewhere. I knew I would be staying in Macomb County and working in Macomb County, so we were looking in places like Warren and Fraser and Roseville.

I came across a house in Sterling Heights that was being foreclosed on, a very nice-looking house for a price that you didn't really see a lot of in Sterling Heights. It was a bit of a fixer-upper, but we made an offer and closed on it pretty quickly. I wasn't even looking in Sterling Heights, to be honest. It was sort of just by chance that I found this house and we bought it, and we've been here ever since.

Q. Why did you decide to run for city council?

MT: In eighth grade, I won a writing contest about what you would do if you became president of the United States. I had in my mind this idea of running for office, and my thought was I'd run for Congress — everybody hates Congress, and I can show up when I'm a young man and say, "Look, I'm an alternative. I'm not from Washington, D.C. I'm not entrenched in that." Then I started realizing what it actually takes to run for Congress and why people in Congress are so entrenched. So I was like, maybe it's not the right time to do that.

My advisor [at Kalamazoo College] was an economics professor named Hannah McKinney. At the time, she was vice mayor of Kalamazoo. A lot of her economics and public policy classes were from a local government perspective. When you think about politics, you think about what's going on in Washington, but there's so much happening at the local level.

I maintained a relationship with Dr. McKinney throughout college and was really interested in her classes. I probably took seven, eight, nine classes that she offered. Then I started thinking running for a local office [and] running for city council is something that's achievable at a young age and it was always in the back of my mind. In 2009, kind of at the last minute, I decided to try to get my name on the [Sterling Heights City Council] ballot and that's what happened.

Q: Was it a close election?

MT: Not really. There were nine candidates running for six spots — six incumbents and three non-incumbents. I came in fifth place, so I beat one of the incumbents. I had a relatively healthy cushion.

Q: How does being a lawyer help you be mayor — and vice versa?

MT: I don't often think about how being mayor helps my legal career. I think a lot about how being a lawyer helps me in my political career. The type of practice I have is complementary to being a mayor. I like to advise people, I like to counsel people, [and] I like to help them solve whatever problems they have. Most of my clients are regular folks. I have very few institutional or business clients and even the business clients, I'm dealing with the business owner. So my law practice is all about working with people, helping people, solving problems for people, and that's the job of a mayor, too.

A mayor, first and foremost, is being that person constituents can contact whether they have a sidewalk in front of their house that needs to get fixed, or their local street has some potholes, or they need help with a garbage pickup, or they have questions about their water bill. In my law practice, I like to say to my clients, "I should be your first call. Whenever you have a problem, call me and we'll fix it, and if I can't fix it, we'll get you to somebody else in my office who can or refer you to the right attorney." That's how I feel about being mayor, too.

Q: Are there situations when you need to take off your lawyer hat or your mayor hat?

MT: It's not possible to take off the mayor hat. My legal career pays the bills. It's what I do every single day. I spend most of my professional time practicing law. I have also committed to being mayor of Sterling Heights. That's not something that you can turn off and on. There are times when I have to devote time to that. I think of Sterling Heights as my biggest client, my number-one client, my top-priority

client. When the city needs me, I'm here. If the city doesn't need me, I'm focused on my law career.

Q: What achievement as a lawyer or as mayor are you most proud of?

MT: One thing that I'm very proud of is [when] I became mayor in 2014, I was the youngest mayor of any city in the country with more than 100,000 people. The mayor I dethroned from that perch was (former South Bend, Indiana, mayor and current U.S. Secretary of Transportation) Pete Buttigieg. Anytime you can get yourself in the same conversation as a guy who ran for president and has become a cabinet secretary, I think that's pretty cool. Honestly, just the fact that I've been able to win every election that I've run in. I usually do so pretty overwhelmingly and get a lot of support from the public. The fact that I've been outspoken about some national political issues that do not necessarily align with my constituents here in Sterling Heights, yet they still vote for me, I'm proud of that. I'm proud that I'm able to earn trust and serve in this role.

In my legal career, I'm not likely to argue in front of the Supreme Court, but I'm helping families every day and I've become successful at that. I've had big cases, I've had big wins, I've had big settlements, but every lawyer can recall the big cases. I'm proud that I found my way into this niche of working in probate and estate planning.

Q: What's most challenging about having these two jobs?

MT: There are 24 hours in a day, and I need to use some of those to sleep. The challenge at this time is work-life balance. I have three young children. I have a wife. I have two jobs that really demand close to full-time hours. It's tricky at times balancing all that. I'm lucky I have a very supportive wife, and my kids have always been supportive of me being involved in the city and they like that aspect of it.

I'll give you an example: I have a deposition at 12:45 p.m. today for a fairly big file I have in my office. I sent out a subpoena deuces tecum and they sent me two hours of videos and a bunch of pages of notes that I've got to read. I get this dumped on me late last night, so I get up early this morning to watch two hours of videos and take notes to prepare. And in the middle of deposition prep, I've got my office hours at city hall. It's the reality of what I deal with every single day.

Q: How much coffee do you go through in a day?

MT: I don't keep track. I start drinking coffee first thing in the morning. I'm usually the first one in my office and by the time the staff gets there, I've usually had two Keurig cups. Then the staff makes a pot and then I usually drink that until it's gone and then I'll have one or two in the afternoon.

Q: What's your advice to anybody considering running for local office?

MT: I get asked for advice from a lot of people, especially younger people. The best advice I can give them is that they have to be authentically themselves. When I ran for office the first time, I didn't have a consultant, I didn't have a media person, I didn't have somebody writing my campaign literature for me. I think if you want to get involved, you have to be authentic, you have to have an idea of what you want to do, and you have to come up with a plan for how you're going to do it. Be who you are and if you lose an election because you were authentic the whole time and genuine and people just didn't buy it, that's something that anybody can live with. I'd rather lose an election doing what I think is right in my mind than win because I had some polls that said this is what the people want.

Q: Public office isn't for everyone. For lawyers who want to get involved in their communities in other ways, what would you recommend?

MT: I would recommend applying for a board or commission. That's probably an underserved area of most cities. You can serve on the planning commission or zoning board of appeals. Every city has different types of boards and commissions that they offer. That's one way to really get involved in the actual business of the city.

Also, cities typically have a community foundation — a charitable foundation they support and work with to do good in the community. There's a big mental health crisis in the country [and] the opioid epidemic is still going on. We would love it if somebody called our city attorney or city manager and said, "Hey, I'm a lawyer. I practice in this area of law. Can I help with your drug-free coalition?" The training lawyers have is invaluable in helping cities.

Q: What do you find most rewarding about practicing law?

MT: I really enjoy the type of work that I do. You can really lean into your role as an advisor. You're dealing with regular people — you're not necessarily dealing with government entities or institutions, [but] with regular husbands and wives. A lot of times, it's widows and widowers. As lay people, they come in most of the time without very much knowledge about the estate planning process or, if they do, it's from a bad experience going through it with a loved one, so I can really lean into giving advice.

On the probate side, I do a lot of litigation. You're dealing with families that are usually in distress over the loss of a loved one, they're fighting over money, and they're bringing decades of emotions and hard feelings. It doesn't happen very often, but every now and then

we can help lead to a reconciliation. When that happens, it's very, very rewarding.

Q. Do you have a final message for readers?

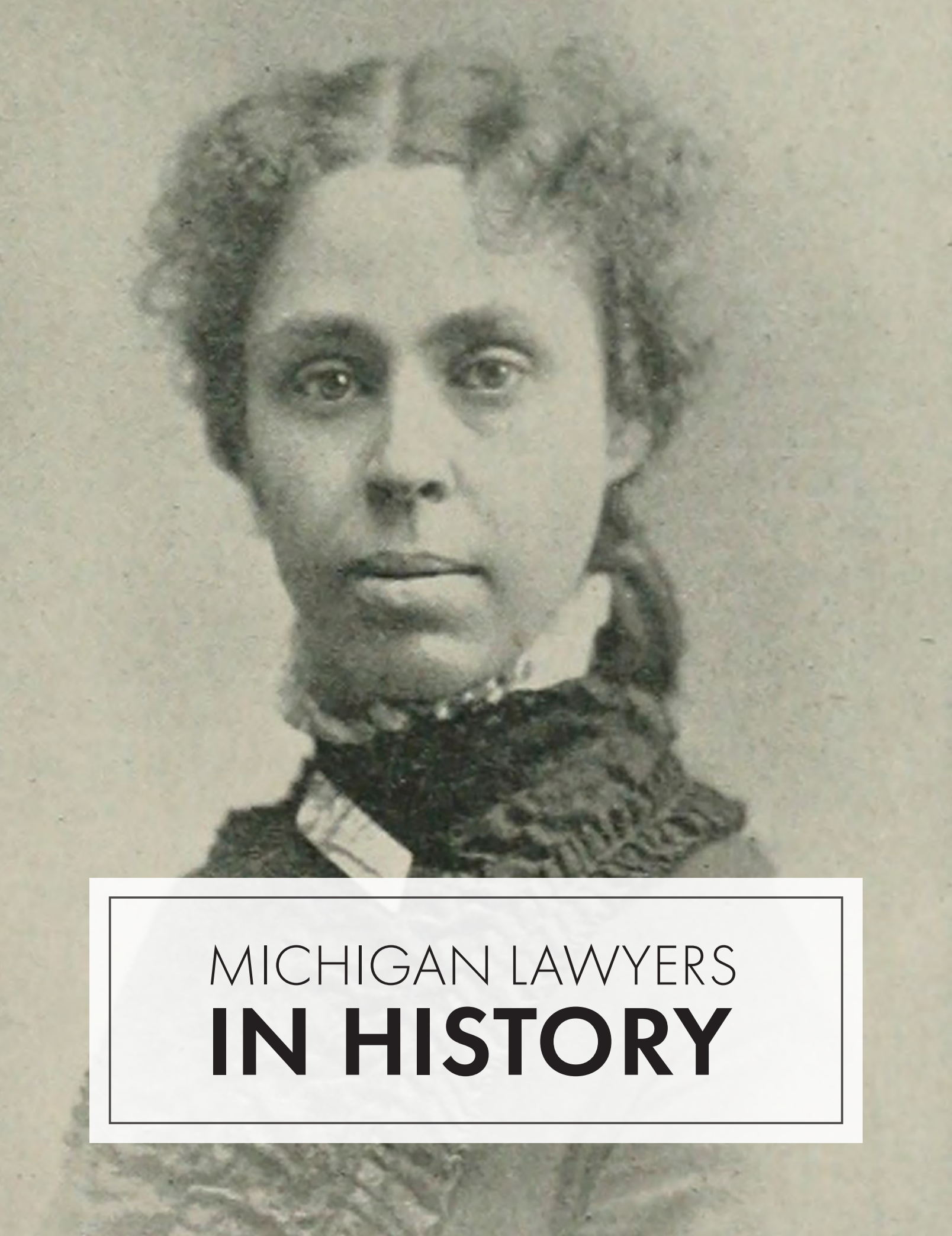
MT: Pay attention to what's going on at the local level [of government.] If you're unhappy with what's happening in Washington, D.C., and Lansing, there is an alternative. The alternative is giving more power and authority to local governments. Maybe saying "power" and "authority" isn't the right way of saying it. All of the issues that impact you, impact you right where you live.

I think cities should be empowered to fight climate change. I think cities should be empowered to work on clean energy issues. I think cities should be empowered to work on safety and security issues. I think cities should be the first and last stop for dealing with a lot of the issues that Washington and Lansing can't figure out, and lawyers have the training and expertise to help make that a reality.

Lawyers can play a big part in addressing some of the issues that plague us that are not getting solved at a national level. If we put more of an emphasis on empowering local governments to help be a part of these solutions, lawyers can play a big part in that, and I hope they will.

Michael K. Mazur is senior associate counsel with the Michigan Attorney Grievance Commission and a member of the Michigan Bar Journal Committee.

The Michigan Bar Journal Citizen Lawyer feature recognizes members who make exceptional voluntary contributions to their communities. Do you know someone fitting that description? Send their name and a brief synopsis of their accomplishments to Michael Mazur at michaelmazur@hey.com.



MICHIGAN LAWYERS
IN HISTORY

Martha Strickland

BY CARRIE SHARLOW

When a Detroit Free Press journalist interviewed attorney Martha Strickland, the reporter noted her unusual outfit. The divided skirt dress had two "immense pockets, one on each side of the dress" to store legal papers and allow Strickland to "walk along the streets and look like any other woman" without anyone wondering what she was doing with so much paperwork.[1]

Strickland made it perfectly clear that her outfit was a "concession to public opinion."[2] It was one of the rare times in her life that she made such an effort. She was not one to concede to public opinion or conventional roles out of habit or anything other than her own free choice.

Martha Helen Strickland was born just north of Lansing in Clinton County on March 25, 1853, to Randolph and Mary Ellen Strickland. She was the couple's first child and the oldest of four girls. In many ways, Martha was the son her father never had, and few people had as great of an impact on her life as he did.

Randolph Strickland was, at various point in his life, a lumberman, teacher, county prosecutor, state senator, Michigan's Civil War draft superintendent, provost marshal for the 6th Congressional District, and U.S. representative. A supporter of women's rights and suffrage, he saw no reason why his oldest daughter could not follow in his footsteps if she so desired. In fact, when he was elected to Congress in 1869 as the nation was still reeling from the aftermath of the Civil War and the ineffective Andrew Johnson presidential administration, he took 16-year-old Martha with him to Washington, D.C., as his private secretary.[3]

It was an eventful time to be in D.C. Former Union Gen. Ulysses S. Grant had been elected president and the 15th Amendment to the U.S. Constitution — guaranteeing the right to vote to all citizens regardless of race, color, or previous condition of servitude — was ratified. Four former Confederate states were readmitted to the Union, and Wyoming and Utah territories gave women the right to vote. After two years in the nation's capital, the Stricklands left D.C. just before Martha turned 18.

Upon returning home, Martha Strickland began to "read law" under her father's direction and planned to enroll in the University of Michigan Law School shortly thereafter; the law school had admitted and graduated its first female student, and she was ready to be the next. Unfortunately, a health issue forced her to shelve law school. Instead, the 20-year-old Strickland went on the lecture circuit, speaking on women's rights.[4]

At some point during her travels, Strickland met Leo Miller, a "free love and temperance apostle"[5] from New York. Once again, she did not concede to public opinion; instead, she caused a scandal. The couple entered "into a business partnership, under the name of Miller & Strickland," a conjugal contract.[6] Of all her life choices, this one went the most against public opinion and caused the biggest scandal. As the couple noted:

> [T]his simple form of conjugal union we are constrained to adopt from the deepest conscientious convictions of right and duty; and we sincerely regret that condition of society, which, if we would be true to ourselves, makes it necessary for us to oppose the opinions of a majority of our fellow-creatures; disregarding the laws and customs which they assume to make for the control of an affection between the sexes, which we believe is, and of divine right ought to be free.[7]

It was a bold decision for the 19th century and the resulting public reaction was not unexpected. Strickland's parents were terribly embarrassed — when the Fort Wayne Weekly Sentinel published news of the "civil and conjugal union" with Miller, the end of the article included a note from her parents asking for "the sympathy of our friends in our sorrow, for the course pursued by our poor, deluded, misguided and insane daughter."[8] Some critics blamed the Stricklands' suffragist views; perhaps "but for the teachings of the parent [Martha] would never have taken" such a step.[9]

It got worse. Miller and Strickland were arrested in the summer of 1876 for "lewdly and lasciviously cohabiting together without being married."[10] By that time, Strickland was pregnant — their son, Edwin Miller-Strickland, was born shortly thereafter.[11] Eventually, Miller deserted Strickland and the conjugal contract was dissolved; it turned out that Leo had a wife in the eastern U.S., and he would

later be arrested for public drunkenness.[12] The newspapers agreed that Miller received the better part of the deal as Strickland was the better character and a "very strong-minded woman, given to asserting her rights."[13]

Strickland returned to Clinton County, settling in St. Johns with her son. With her health improved, she enrolled in law school, graduated from the University of Michigan Law School in 1883. That same year, the American Law Review published her paper titled "The Common Law and Statutory Right of Women to Office."[14] About the same time, newspapers published reminders of the Miller-Strickland marriage alliance scandal.[15] Perhaps others, after enduring such a scandal, would have decided to live a quiet life and maybe even give public opinion and established norms passing consideration.

Not Strickland.

She continued her lectures, speaking on a variety of topics: women's suffrage, parliamentary law,[16] and unsatisfactory compensation received by teachers and the necessity for better pay and training.[17] She spoke for the "need of woman in politics."[18] She was hopeful and idealistic: female enfranchisement would result in arbitration replacing war and moral reeducation replacing imprisonment.[19]

Strickland also practiced law, initially setting up an office in St. Johns and working as an assistant prosecuting attorney before moving to Detroit. She had to work twice as hard to be taken seriously and earn a living, noting that when she won a case:

> "nothing [was] said about it; but if I lose — as all lawyers must do at times — it appears in print, and prejudices new clients against me as a woman lawyer."[20]

Strickland's lasting achievement is her status as the first female lawyer to practice before the Michigan Supreme Court, which made news across the state: "for the first time in the history of the Supreme Court a female attorney" argued a case.[21] Her performances before the Court were acknowledged as "concise, clear and logical."[22] People who supported women's suffrage were directed to take note of Strickland as a positive example of what enfranchisement could mean.[23]

Perhaps if Strickland had started her career in an alternative fashion — first attending law school and then going out on the lecture circuit — she would have been a lifelong lawyer with a flourishing practice. But the law wasn't her first love; she was a lecturer and a teacher, and she continued to travel across the country speaking her mind. As one might expect, her presence attracted the attention of the newspapers, whose reporters followed her. Sometimes they highlighted the wrong things, like writing that the "young and charming and graceful" Strickland was plump with deep blue eyes.[24] But she was used to it and before long she was known as an expert in parliamentary law and women's rights.

By the time Martha died in 1935, she'd been labeled as a congressional secretary; a lady lawyer; a lecturer; a "poor, deluded, misguided and insane person;"[25] and a woman of "rare legal ability."[26] In spite of all those labels, she had never been boring and rarely conceded to public opinion, sometimes at great personal cost.

Carrie Sharlow is an administrative assistant at the State Bar of Michigan.

ENDNOTES

1. *Sketches From the Street*, Detroit Free Press (February 10, 1889), p 17.
2. *Sketches From the Street*, Detroit Free Press (February 10, 1889), p 17.
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BOOK REVIEW

"Dissecting Anatomy of a Murder": The author, the crime, the novel, and the film

REVIEWED BY MATTHEW SMITH-MARIN

Written by Eugene R. Milhizer
Published by Ave Maria School of Law Press (2019)
Soft Cover | 316 pages | $29.99

> *"Throughout Voelker's works, he recognizes that the criminal justice system's central purpose is to resolve issues about guilt and punishment through reason based on principle, rather than brute force relying on power. The justice system tamps down emotion, replacing passion with order and sound judgment. Fundamental to this understanding of law and how it operates is the idea that when a jury determines guilt and a judge imposes a sentence, retribution replaces revenge as the legitimate objective of punishment." (pg. 213).*

"Dissecting Anatomy of a Murder" is a book by Eugene R. Milhizer, an attorney, academic, and author with an interesting background. Currently a professor and dean emeritus at Ave Maria School of Law in Naples, Florida, Milhizer earned a bachelor's degree in political science from the University of Michigan and later graduated from U-M Law School. After receiving an LL.M degree from the Judge Advocate General's School at the University of Virginia, he worked as an Army judge advocate, trying numerous criminal cases and participating in hundreds of appeals. Later, he joined the Ava Maria faculty, where he has taught subjects including criminal procedure, criminal law, national security law, and military law, and also served as the school's president and dean from 2010-2014.

The book begins by detailing the early years of well-known attorney, Michigan Supreme Court justice, and author John Voelker. Fans of Voelker will enjoy learning more about his youth and reading stories about his upbringing — accounts that include the time Voelker spent working in his father's saloon, unfortunate incidents chronicling his father's disinterest and abuse, and how he developed intellectual independence with the support of his mother, Annie.

The book goes on to explore Voelker's early adult life, and the love and appreciation he had for Michigan's Upper Peninsula becomes apparent. As Milhizer writes, "[Voelker] was not merely in the Upper Peninsula, he was of the Upper Peninsula." (pg. 31). He describes the importance that fly fishing played in Voelker's life — evidenced by the 5,766 trout he caught between the years of 1936-1969 — and how fishing was a common theme in Voelker's other writings such as "Trout Madness" and "Anatomy of Fisherman."

Milhizer later pivots to the events that occurred at the Lumberjack Tavern in Big Bay, Michigan, on the evening of July 31, 1952, when Mike Chenoweth was shot and killed by Lt. Coleman Peterson after Peterson's wife returned home with bruises and a torn skirt claiming that Chenoweth had raped her. From there, the book details the events of the *People v. Peterson* trial and discusses Voelker's involvement as Peterson's defense counsel before segueing into his return to writing once the case had concluded.

Voelker was determined to portray a criminal trial realistically and believably in "Anatomy of a Murder," and Milhizer describes how Voelker's experiences during the Peterson trial led him to write the book. It then follows how "Anatomy of a Murder" was subsequently developed into a feature film of the same name directed by Academy Award nominee Otto Preminger. The book depicts what it must have felt like to see famous Hollywood stars such as James Stewart and Lee Remick in Ishpeming and Marquette when they were filming on location in the Upper Peninsula. Not surprisingly, it makes the reader want to revisit Voelker's original novel and the 1959 film.

The latter half of the book juxtaposes Milhizer's thoughts with different facets of "Anatomy of a Murder" and Voelker's life. It explores the thought that Voelker put into the title of his novel, such as the intentional use of the term "murder" rather than "homicide" or "killing." It explores what Voelker refers to in his novel as "the Lecture" — the fine line between ethically advising clients and unethically helping a client concoct false versions of the facts. — and further considers additional ethical issues for prosecutors and defense attorneys, the role of the jury in criminal trials, and jury nullification. The final chapters pose thoughts on the question of whether justice was served when Peterson was acquitted and describes the later years of Voelker's life.

Finally, Milhizer uses the epilogue to express the reasons why he wrote the book. He provides personal stories from his time in practice to reinforce the importance both Voelker and "Anatomy of a Murder" have played in his life, which explains the passion in his writing on this topic that resonates throughout the book.

"Dissecting Anatomy of a Murder" is a worthwhile read for those who have knowledge of Voelker and his book. It's also a worthy pursuit for new or soon-to-be lawyers who are unfamiliar with Voelker — Milhizer reminds readers of the past, current, and future direction of the legal profession.

Matthew Smith-Marin is an associate professor and director of academic support services at the Thomas M. Cooley Law School Tampa Bay campus where he teaches courses on introduction to law, contracts, and bar exam skills. A member of the Michigan Bar Journal Advisory Committee, Smith-Marin also oversees the Cooley Dean's Fellows peer-education program and the bar assignments for Cooley's Professional Development Series.

BEST PRACTICES

A primer on estate planning for clients with international ties

BY REBECCA WROCK

In an increasingly interconnected world, attorneys must be capable of grappling with the complexities of international estate planning as more and more clients form ties across multiple jurisdictions. This overview highlights critical considerations attorneys should keep in mind when addressing the intricacies of cross-border estate planning.

ADDRESSING SCOPE OF DOCUMENTS AND WORKING WITH LOCAL COUNSEL

When a client owns assets in more than one country, it is important to work with local counsel to understand how the client's United States-based estate plan may need to be adjusted (or what opportunities may be available to them) based on their international ties. For example, it may be prudent — and in some cases, crucial — to have a separate last will and testament in each jurisdiction pertaining to only the assets located within that jurisdiction. Similarly, a client may choose to have multiple trusts and more than one durable power of attorney. These preparations help avoid conflicts between the laws of each jurisdiction and ensure the client's intentions are accurately given effect in each jurisdiction.

It is important these documents be clear about which assets they are intended to cover; for example, are they limited to only the client's U.S. assets or, if appropriate under the circumstances, does it include all worldwide assets except those located in another specified country? This specificity ensures that documents do not inadvertently revoke one another and allows for coordination across jurisdictions to apportion and provide for payment of relevant taxes.

Of course, unless an attorney is licensed in all applicable jurisdictions, it is critical to work with local counsel in the other jurisdictions. In addition to concerns regarding unauthorized practice of law, local counsel is essential because different countries have different laws regarding inheritance (notably, freedom of disposition versus forced heirship and community property laws), vehicles used to accomplish estate planning goals (for example, with few exceptions, trusts are not recognized by civil-law countries),[1] and widely varying tax regimes, which we'll discussed shortly.

Other advisors may be important; for example, unlike in the U.S., estate planners in many countries do not take an involved role in tax planning, instead relying on local tax counsel.

ESTATE AND GIFT TAX CONSIDERATIONS

In the United States, the unified credit against estate and gift tax has been at record highs in recent years, resulting in estate and gift taxes assessed to only the very wealthy. For example, the unified credit against estate and gift tax in 2024 is $13.61 million per person, with married couples allowed to pass double that amount free of estate and gift tax.[2] In addition, each person may give $18,000 per person per year in annual exclusion gifts to as many other individuals as desired without them counting towards the cumulative lifetime total.[3] However, the ability to enjoy these exemptions and other tax benefits such as the deferral achieved by a marital deduction depends upon a number of considerations including, but not limited to, the individual's citizenship and residency (which, for federal estate and gift tax purposes, is determined by domicile),[4] the citizenship of the person's spouse, where the person's property is located, and the laws of any country where the person is a citizen, resident, or owns property. Accordingly, estate and gift tax considerations play a pivotal role in international estate planning.

Attorneys undertaking estate planning work for clients with international ties must be well-versed in U.S. transfer tax rules and either licensed in and well-versed in the tax rules of the other relevant

"Best Practices" is a regular column of the Michigan Bar Journal, edited by George Strander for the Michigan Bar Journal Committee. To contribute an article, contact Mr. Strander at gstrander@yahoo.com.

jurisdictions or work with local counsel in those areas.[5] Further, in many cases, treaties governing cross-border tax matters between the U.S. and other countries need to be considered.

Estate and gift taxes are imposed on all U.S. citizens and non-citizen residents (non-citizens whose domicile is in the U.S.).[6] In most cases, a client's domicile is clear, but there are cases in which further complexities must be considered. For example, a client may have dual citizenship or satisfy the criteria to be considered domiciled in both the U.S. and another country. However, because an individual can (and must) only have one domicile, reviewing the applicable treaty or treaties to conclusively resolve the question of domicile in these situations is critical.

The applicable treaty or treaties should also provide guidance on tax treatment for dual citizens, which is necessary for careful planning to optimize tax efficiency and avoid double taxation. In the event a client owns assets in the U.S. but is neither a citizen or resident, they are generally still subject to federal estate taxes on the value of those assets.[7] Here, too, it is important to consult the relevant treaty or treaties to determine what credits may be available to avoid double taxation.

When a client owns assets in more than one country, it is important to work with local counsel to understand how the client's United States-based estate plan may need to be adjusted based on their international ties.

Note that not all taxes arising from death are ones for which a treaty or treaties may provide relief from double taxation. For example, a jurisdiction in which death results in a deemed disposition of a capital asset may not have an estate tax, while in the U.S. we have a federal estate tax; however, beneficiaries receiving capital assets from a decedent generally enjoy a date of death step-up in the tax basis of those assets resulting in little to no capital gains. In these situations, though both taxes result from death, they are two different types of taxes and there may be no available offsetting credit. Similarly, in the U.S., the federal estate tax is paid before assets are distributed to beneficiaries; other jurisdictions may impose an inheritance tax paid by beneficiaries upon receiving the assets. These, too, are considered different types of taxes for which there may be no available treaty relief.[8]

For federal estate tax purposes, U.S. residents enjoy the same unified credit against estate and gift taxes[9] and annual exclusion for gifts of a present interest[10] as U.S. citizens. However, while assets left by a non-citizen spouse to a surviving citizen spouse qualify for the unlimited marital deduction for federal estate taxes as long as they satisfy the requirements of Section 2056 of the Internal Revenue Code, this does not work in the other direction — assets left to a surviving non-citizen spouse regardless of residency do not qualify for the unlimited marital deduction.

Similar rules apply to lifetime gift transfers between citizen and non-citizen spouses. In situations where a citizen spouse leaves assets for a non-citizen spouse, a qualified domestic trust (QDT) can be used to qualify transfers exceeding the unified credit for the unlimited marital deduction and defer federal estate taxes until distributions are made.[11] The QDT, which can be created while both spouses are living or after the first death,[12] must meet all criteria generally applicable to a marital deduction trust under IRC 2056, must have a U.S. trustee,[13] must provide the trustee with the right to withhold federal estate tax due on any distribution of trust principal,[14] and must meet requirements the secretary may prescribe by regulation.[15] The executor of the deceased spouse's estate must also make an irrevocable election on the deceased spouse's U.S. estate tax return to qualify the trust property for the marital deduction.[16]

FOREIGN TRUST STATUS

The citizenship and residency of trustees must also be paid considerably more attention when clients have international ties. Inadvertent foreign trust status arises when a trustee is not considered to be a U.S. person[17] which, in turn, depends in part upon whether a trustee or other person having substantial decision-making authority over the trust (such as a trust director) is considered a U.S. person. Certain implications may arise if a trust is deemed foreign, including additional reporting requirements and tax liabilities. While there are situations in which foreign trusts are purposefully created, inadvertent foreign trust status is generally undesirable. Careful planning and drafting of trustee succession and the authority to make substantial decisions can avoid triggering foreign trust status when it is not intended.

INCOME TAX CONSIDERATIONS

Income tax planning is an important part of any comprehensive estate plan but is more complex when international ties are involved. Familiarity with U.S. income tax rules — including the extent to which they apply to the client based on citizenship, residency, location of assets, etc. — working with local counsel to advise on the income tax regimes in other jurisdictions, and reviewing applicable income tax treaties are paramount.[18]

Like with U.S. transfer tax rules, both U.S. citizens and residents are subject to federal income taxes on worldwide income. For U.S. federal income tax purposes, residency can be established by being a lawful permanent resident or meeting the criteria of the substantial presence test.[19] It is important to note, however, that

residency for federal income tax purposes is not necessarily the same as residency for federal estate tax purposes; it is possible to be a U.S. resident for federal income tax purposes and not be a U.S. resident for federal estate tax purposes.[20]

ADDITIONAL FOREIGN TAX CONCERNS

The transfer of foreign capital assets to a U.S. revocable trust can cause a deemed disposition of the asset for purposes of capital gains tax in another jurisdiction, even common-law countries that recognize trusts. Other potential effects include higher income tax rates, further deemed dispositions and the resulting capital gains taxes in future years on capital assets owned by the U.S. revocable trust, and, in the case of real estate, transfer taxes. These rules vary among jurisdictions and local counsel is best positioned to advise on such rules, their nuances, and exceptions.

OTHER CONSIDERATIONS

In addition to substantive legal analysis and drafting in the relevant jurisdiction, local counsel is invaluable to understanding local customs and cultural considerations. However, because terminology may have different meanings across jurisdictions — as it sometimes does even within different bodies of law within the same jurisdiction — increased attention and specificity may be needed to ensure mutual understanding.

Navigating international estate planning requires a nuanced understanding of how local laws and the U.S. tax code apply to U.S. citizens, residents, and non-residents, and how international ties can affect the drafting and implementation of different estate planning documents. While the considerations included here do not constitute an exhaustive list, being aware of these often-complex issues can equip attorneys to face the unique challenges involved with estate planning for clients with international ties and provide comprehensive guidance to clients seeking to create a robust and effective international estate plan.

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ENDNOTES

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2. IRC 2010(c)(3). Note that absent further legislation, the heightened unified credit provided by IRC 2010(c)(3)(C), added as part of the 2017 Tax Cuts and Jobs Act, sunsets at the end of 2025 at which time the unified credit would revert to $5,000,000, adjusted for inflation, as provided in IRC 2010(c)(3)(A)-(B).
3. IRC 2503(b)(1)-(2).
4. Treas Reg 20.0-1(b)(1), 25.2501-1(b).
5. While this article focuses on federal rules, state and local taxes may need to be considered as well, depending on the jurisdiction.
6. IRC 2001, 2501(a), 2511; Treas Reg 20.0-1(b)(1), 25.2501-1.
7. IRC 2103.
8. While beyond the scope of this summary as Michigan has neither a state level estate tax or inheritance tax, attorneys should also be aware that there are states which have a state level estate tax and others which have a state level inheritance tax, and these may need to be considered as well.
9. IRC 2010; Treas Reg 20.2010-1(a).
10. IRC 2501(a), 2503(b), 2511.
11. IRC 2056A.
12. Treas Reg 20.2056A-2(b)(2).
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14. IRC 2056A(a)(1)(B).
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17. IRC 7701(a)(30)(E).
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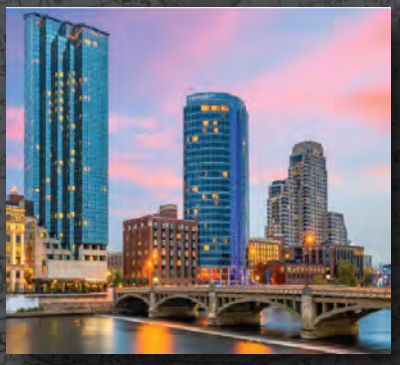

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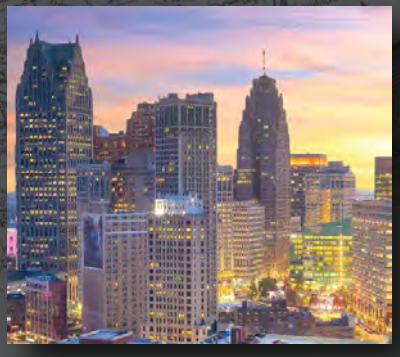

Metro Detroit

PLAIN LANGUAGE

How not to write strong active verbs

BY GEORGE HATHAWAY

To help celebrate the column's 40th anniversary, we offer this short piece by its original editor (from 1984 to 1988). George wrote many columns during those years and the years following, all of them available at the column's website, michbar.org/plainlanguage. (This piece, though, appeared elsewhere.) We salute him for starting the longest-running legal-writing column ever. — JK

Strunk and White, Wydick, and just about everybody else all say the same thing — the key to good writing is strong active verbs. But if I see another article on strong active verbs, I'll croak. Even if it's a good article, people will ignore it. And if there's anything I hate, it's a zealot on a personal crusade to get people to stop doing what they like to do.

Frankly, I think we would all be better off if some troublemaker a long time ago hadn't started bothering everyone by promoting the wheel. Besides, it's far easier to confirm people's beliefs than to change people's opinions. Thus, since the traditional legal-writing style — legalese — features lots of weak passive verbs, those who delight in legalese ought to have the key: how not to write strong active-voice verbs.

First, a little background knowledge: verbs may be active or passive, strong or weak. Several combinations are therefore possible. A verb may be (in ascending order of mushiness):

- strong active;
- weak active;
- strong passive; or
- weak passive.

Allied to weak verbs are nominalizations. Books and articles often explain these terms in laundry-list definitions. This approach guarantees that you will forget each definition as soon as you read the next one. But a figure is worth a thousand words. Ergo the chart: the Hathaway Analysis of the Verb.

	Active Voice	**Passive Voice**
Strong Verb	Judges decided it.	It was decided by judges.
Weak Verb + Nominalization	Judges made a decision on it.	A decision on it was made by judges.

In the top left-hand corner we have the strong active verb *decided*. When you use this type of verb, you usually have a clear concise subject-verb-object sentence, such as "Judges decided it." But by adding a *be*-verb, you can easily change to the passive verb *was decided*. You can then add the preposition *by,* and you have, "It was decided by judges."

With slightly more linguistic skill, you can change to the weak active verb *made* with the nominalization *decision*, and you then have, "Judges made a decision on it." Or you can go all out and do both, creating a weak passive verb. The result is, "A decision on it was made by judges."

Aim for the lower right-hand corner — passive-voice weak verbs with nominalizations — to increase wordiness without changing content. If questioned, rationalize with the erudite observation that

40 FORTY YEARS OF PLAIN LANGUAGE

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 40 years. To contribute an article, contact Prof. Kimble at 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.

passive voice is preferable when (1) the thing acted upon is more important than the actor, or (2) the actor is unknown. You can fool some of the people all of the time with these explanations. Then follow up with the clincher — no verb is inherently weak, because the weakness of a verb depends on the way it is used. You can fool all of the people some of the time with this one.

Never mind that these rationales, learned and convincing as they may be, apply to your writing about as many times as a star has risen in the east. They confuse the issue because few will ever test them. We thus have the ideal perpetual-circular-motion prestige machine. You can impress all of the people all of the time with your fine knowledge of writing. Yet you never have to venture outside your own cozy circle.

It is imperative, however, that you never work backward on this figure, identifying a weak passive verb and then converting it into a strong active verb. If you do, you will inadvertently convert the weak passive traditional language of the law into strong active plain English. This change is verboten. Strong active verbs have a lean and hungry look; such verbs are dangerous. Weak passive verbs give legalese its Prestige with a capital *P*. And deep in your heart you know that in the 400-year-old merry-go-round of legalese, the ring that everyone has been reaching for is Prestige, not clarity.

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George Hathaway retired from the DTE Energy legal department in 2006. He received his bachelor's degree from Cornell University and law degree from the University of Detroit. He coordinated the November 1983 Plain English theme issue of the *Michigan Bar Journal* and started the Plain Language column in the *Bar Journal* in May 1984.

ETHICAL PERSPECTIVE

The role of law students in the legal field

BY ROBINJIT K. EAGLESON AND LINDA RAWLS

Law students, who are often in a hurry to graduate and get to work, fill a large need providing research and assistance in drafting as law clerks. This model has been immensely helpful — it gives busy lawyers a great amount of assistance and law students a unique opportunity to gain experience in the profession.

However, this newfound urgency to leave the confines of law school and join the workforce brings challenges and mistakes that could affect law students for years to come. To understand why law students attempting to practice too soon may cause future issues, an analysis of Michigan Rule of Professional Conduct (MRPC) 5.5 is required.

When working in the legal field, law students are usually supervised by lawyers. Law students are viewed as non-lawyers possessing legal knowledge and skills — the key term being "non-lawyers" — therefore, "[a] lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer."[1] This includes ensuring compliance with MRPC 5.5, which "forbids a lawyer from assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." The comment to MRPC 5.5 specifies that it does not prohibit lawyers from employing paraprofessionals and delegating functions to them *"so long as the lawyer supervises and retains responsibility for the delegated work."*[2]

Unfortunately, lawyers sometimes forget that law students are unable to practice due to the knowledge and skills they already possess. When looking at MRPC 5.5, it is logical to connect it to MRPC 5.3 for determining what law students may do and the ethical obligations attorneys must follow. Applying MRPCs 5.3 and 5.5, even though a nonlawyer is working under the direction and control of a licensed lawyer, the lawyer is ultimately responsible for representation and ensuring that the nonlawyer's conduct is compatible with the ethical obligations.

Based on MRPC 5.5 and 5.3, it would seem that law students are not able to practice under any circumstance. However, Michigan Court Rule (MCR) 8.120 comes into play for legal aid clinics, public defenders' offices, and legal training programs. The issue that often arises when applying MCR 8.120 is that attorneys do not read it in its entirety and inadvertently facilitate the unauthorized practice of law in violation of MRPC 5.5, placing the law student at risk with Character and Fitness.

Law students and recent law school graduates are excited when they obtain internships or clerkships. These opportunities provide them with practical experience and allow them to apply principles they learned in the classroom. Conversely, these positions are invaluable to many public defenders' offices, legal aid clinics, and legal training programs because they provide additional manpower to help handle cases. The downside to these programs is when law students, recent graduates, and their supervising attorneys do not understand the limitations of MCR 8.120 and the connection to MRPC 5.5 and MCL 600.916, thereby creating the potential for an unauthorized practice of law violation.

MCR 8.120 allows law students and recent graduates to work under the supervision of a member of the State Bar at public defenders' offices and legal aid clinics organized under county bar associations or accredited law schools for the primary purpose of providing free legal services to indigent people.[3] It allows students and recent grads to participate in legal training programs organized in the offices of county prosecuting attorneys, county corporation counsel, city attorneys, municipal/township attorneys, the Attorney Grievance Commission, and the attorney general's office[4] and though they are authorized to perform similar duties as attorneys in those offices, they may not be appointed as assistant attorneys.[5] Students enrolled in American Bar Association-approved law schools who have completed their first year of studies, received passing grades in their courses, and meet the

"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.

academic and moral standards established by their law schools are eligible to participate,[6] as are those who have graduated from law schools within the last year.[7] Students and recent grads must certify in writing that they have read and are familiar with the Michigan Court Rules and Michigan Rules of Professional Conduct, and they must take an oath similar to the Michigan Lawyer's Oath.[8]

According to MCR 8.120, students and recent graduates participating in legal aid clinics are authorized to advise clients, negotiate on clients' behalf, and appear in all Michigan courts except the Michigan Supreme Court. Before representing an indigent client, they must have the client's written consent.[9] They must be supervised by a Michigan attorney, which includes the duty to examine and sign all filed pleadings.[10] However, supervising attorneys are not required to be present when students or grads advise clients, negotiate on the clients' behalf, or make courtroom appearances other than during an appellate argument or when the client faces a penalty of more than six months in jail in a criminal or juvenile case.[11] Students and recent grads may not appear in a Michigan court without the judge's approval. If the judge grants approval, he or she may suspend proceedings at any stage if they determine that the representation is professionally inadequate.[12]

Potential unauthorized practice of law issues may arise when legal aid clinics, defenders' offices, and legal training programs hire recent graduates. MCL 600.916, which governs the unauthorized practice of law in Michigan, prohibits people from practicing law, engaging in the law business, and holding themselves out as attorneys unless regularly licensed and authorized to practice law.[13] And the practice of law includes, but is not limited to, giving legal advice, using legal knowledge or discretion, and acting as an intermediate in another person's legal matter on their behalf. Recent grads can violate MCL 600.916 when in training programs and practicing law without a license while no longer covered under MCR 8.120. If someone becomes aware that the recent grad is practicing without a license and no longer eligible to practice under MCR 8.120, a complaint may be filed with the State Bar of Michigan Unauthorized Practice of Law (UPL) Department, which must investigate the matter and potentially bring the case to the Bar's UPL Standing Committee. A UPL department investigation could have implications for recent grads applying to take the bar exam and go through the character and fitness process.

Under MCR 8.120, a recent law school graduate is defined as someone who has graduated within the last year. If the graduation occurred more than a year ago, that person is not eligible to practice law under MCR 8.120. Supervising attorneys at training programs must adjust graduates' job duties after the one-year period to avoid unauthorized practice of law. If supervising attorneys do not revise job duties and allow recent grads to continue practicing, they may be violating the unauthorized practice of law[14] — MRPC 5.5a prohibits lawyers from practicing law in violation of the regulation of law and assisting another in doing so. Such violations could subject supervising attorneys to referral to the Attorney Grievance Commission (AGC) for investigation.

Another potential unauthorized practice of law issue may arise when recent law school graduates are hired at defenders' offices, legal aid clinics, and legal training programs and given titles such staff attorney, assistant public defender, assistant city attorney, assistant prosecutor, assistant corporation counsel, or assistant attorney general when they are not licensed to practice law and are no longer eligible to practice under MCR 8.120. MCL 600.916 prohibits someone from holding themselves out as an attorney when not regularly licensed or authorized to practice law, but these job titles convey to the public that the person is licensed. Therefore, not only do supervising attorneys at legal training programs need to revise recent grads' duties after the eligibility to practice law under MCR 8.120 ends, but they also need to change job titles to avoid violating MCL 600.916. Failure to do so could lead to the recent grad being subject to a UPL Department investigation and action from the SBM UPL Standing Committee, and create obstacles to taking the bar exam and going through character and fitness. Similarly, supervising attorneys can be deemed to violating the unauthorized practice of law under MRPC 5.5.[15]

If graduates are eligible under MCR 8.120, they're advised to use titles indicating their status – for example, assistant public defender practicing under MCR 8.120 – to avoid leading others to believe they are licensed to practice.

Given the interconnection between MCR 8.120, MRPC 5.5, and MCL 600.916, it is important that law students, recent law school graduates, and supervising attorneys understand these rules in order to avoid UPL investigations, character and fitness concerns, and AGC investigations. Not knowing the rules could turn great internship and clerkship opportunities into unfortunate experiences.

Robinjit K. Eagleson is ethics counsel at the State Bar of Michigan.

Linda Rawls is unauthorized practice of law counsel at the State Bar of Michigan.

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LIBRARIES & LEGAL RESEARCH

Researching name, imaging, and licensing law

BY MICHELLE M. LALONDE AND MARTIN F. WILDER

NIL refers to an amateur athlete's ability to profit from their own name, image, and likeness. NIL examples include endorsements, autograph signings, and the relaunch of the EA Sports College Football 25 video game.

College athletes were prohibited from profiting from their likenesses since the creation of the National Collegiate Athletics Association (NCAA).[1] However, that changed on July 1, 2021, in the aftermath of *O'Bannon v. NCAA*.[2] In *O'Bannon,* the NCAA's rules on amateurism were deemed an unreasonable restraint of trade that violated the Sherman Act, and member institutions must be allowed to offer full cost-of-attendance scholarships to athletes.[3]

NIL law is a combination of contract, trademark, and tax law.[4] Athletes sign contracts with third parties to make NIL deals. Trademark law impacts the athlete's ability to create their own brand or use their university's marks or colors. Under federal tax law, money from student NIL deals is taxable income with athletes considered independent contractors.[5] NIL collectives are organizations, typically run by a board of directors, that manage donations from fans, alumni, and businesses. Some collectives take donations directly to pay athletes for endorsements or attend promotional events, while others match athletes to businesses to generate NIL deals.[6] Attorneys representing clients wishing to donate to NIL collectives should be well-versed in current gift tax law.

RESEARCHING NIL LAW: PRIMARY AUTHORITY

State and federal NIL-related case dockets and opinions can be found using legal research products like Bloomberg Law, LexisNexis, and Westlaw. Other sources for opinions include Fastcase (accessible via the SBM member portal), Google Scholar (scholar.google.com), or the Cornell Law School Legal Information Institute website (law.cornell.edu).

State laws on NIL for athletes are a mix of regulatory and statutory laws, depending on the state. As of June 2024, 34 states have enacted at least one regulation and/or statute on NIL law for high school and college athletes.[7] Many states and Congress currently have pending NIL-related bills.[8] One source for NIL laws are annotated state and federal statutes in LexisNexis and Westlaw with links to related bills. However, the best resources for pending legislation are official websites like the Michigan Legislature (legislature.mi.gov) or U.S. Congress (congress.gov) for statutes, bills, and related documents. Both Govinfo.gov and the Cornell Legal Information Institute website offer free resources for legislative research.

Fifty-state survey products in Bloomberg Law, Lexis, Westlaw, and HeinOnline allow researchers to compare statutes from multiple states. However, NIL law in some states is regulatory law.[9] Best resources include official regulatory agency websites in those states; regulations databases in Fastcase, Lexis, and Westlaw; and the Cornell Legal Information Institute sites for states' current regulations and proposed rule changes. Westlaw also has a 50-state surveys tool for comparing regulations across multiple jurisdictions.

SECONDARY RESOURCES

Legal research databases have many resources that cover aspects of NIL law. For example, a search of "name image and likeness" in Bloomberg Law, LexisNexis, or Westlaw returns everything from content from dockets to news to practical resources for contract drafting clauses. However, treatise coverage is not particularly strong there, nor are there authoritative stand-alone treatises yet on NIL law.

There are many excellent websites that provide NIL news. The Athletic is the sports arm of the New York Times, covering college and professional sports and sports business. Sportico and the Sports Business Journal are excellent resources for all sports with a heavy focus on business and law. News about NIL issues is covered in local and national news sources including the Detroit Free Press, Detroit News, and the Wall Street Journal. All are in the LexisNexis news and legal news sections along with thousands of newspapers and magazines.

Bloomberg Law has excellent news coverage through its Bloomberg News product and within practice groups, such as trademark and taxation. Fastcase has many legal blogs; search *"name image likeness"* and narrow by checking the "Blogs" box under "All Primary & Secondary" documents. Social media posts by attorneys and firms with sports law practices can be found by searching LinkedIn. Lastly, podcasts are another way to keep up with NIL updates, particularly Yahoo Sports' twice-weekly College Football Enquirer.

There are many academic articles on NIL law and related issues. Google Scholar is good for searches to find citations; use terms like *"name image likeness"* football, for example. With citations, you can get articles through academic databases like HeinOnline or JSTOR, law review and journal websites, or Fastcase, LexisNexis, and Westlaw. Academic articles are sometimes available for free through university digital commons websites or by requesting them directly from an author.

Another good source of information on NIL law and rules are official NCAA and university athletic department websites. The NCAA has an excellent site that includes policies, updates, and archived resources.[10] Michigan State University's athletics department has a NIL policy page,[11] as does the University of Michigan athletics compliance services office.[12] Finally, another helpful resource are academic library research guides on sports law.[13]

CONCLUSION

There are many concerns about NIL, including it leading to greater professionalization of amateur sports. In June 2024, the NCAA approved advertisements on football fields for regular-season games.[14] Although many longstanding traditions in college athletics are starting to disappear, not all are worth keeping. College athletes are finally being more fairly compensated for the value they provide to their programs. Only time will tell what name, image, and likeness' impact will be on collegiate sports — and the law.

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LAW PRACTICE SOLUTIONS

Implementing cost accounting for law firm success

BY SUZETTE WELLING

The question of profitability is the legal industry is becoming increasingly complex. Since 1982, I've seen substantial changes in the sector. Technology has not only transformed the landscape but has reshaped the operational modalities of law firms. The large offices with personal secretaries and extensive libraries are becoming relics of the past. In their place, online research capabilities and paperless office practices are taking root, reflecting a broader alignment with contemporary business practices.

ADAPTING TO CLIENT EXPECTATIONS

In recent years, client expectations in the legal industry have shifted significantly, largely influenced by broader trends in service delivery, technology, and market competition. Clients are looking for more than just legal expertise; they seek transparency, predictability, and alignment of legal costs with their business outcomes.

DEMAND FOR PREDICTABILITY AND TRANSPARENCY

Modern clients are increasingly informed and budget conscious. They often resist traditional billing practices that lack predictability such as the open-ended billable hour without a cap. This resistance stems from a desire to better manage financial risk and outcomes. In response, clients are demanding clear, upfront communication about potential costs and outcomes. They expect billing practices that offer predictability and transparency, allowing them to plan and budget effectively.

PREFERENCE FOR VALUE-BASED PRICING

There is a growing preference among clients for value-based pricing models. These models tie legal fees to the derived value rather than time. Examples include fixed fees where the client pays a set amount for a specific service; contingency fees based on the successful outcome of a case; and success fees, which reward firms for achieving predetermined results. These models encourage efficiency and focus on outcomes, aligning the interests of the firm with those of the client.

GLOBAL COMPETITION AND ALTERNATIVE SERVICE PROVIDERS

The rise of global competition and alternative legal service providers, including legal process outsourcing and integrated full-service companies, has increased the pressure on traditional firms to modernize service delivery. These providers often use technology and innovative pricing models to deliver services more efficiently, setting new benchmarks for clients.

STRATEGIC RESPONSE TO EVOLVING NEEDS

To adapt effectively, firms must understand changing client dynamics and strategically incorporate their preferences into their service models. By doing so, they not only meet client expectations but set themselves apart in a competitive market. This shift towards client-centered service models is crucial for maintaining client loyalty and attracting new business. Firms that successfully navigate this shift will likely enjoy enhanced client relationships and sustained profitability in an increasingly client-driven market.

THE IMPERATIVE OF COST ACCOUNTING

As the legal industry evolves due to the pressures of client demands and technological advancements, adopting cost accounting practices becomes increasingly critical for firms. This shift is imperative not only for maintaining competitiveness but also for achieving sustainable profitability in a challenging market environment.

UNDERSTANDING TRUE COSTS

The core benefit of cost accounting is the detailed insight it provides into the actual costs of delivering legal services. Traditional accounting might focus on revenues and basic expenses, but cost accounting delves deeper, breaking down costs to a granular

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.

level. This includes direct costs like staff salaries and benefits and indirect costs such as administrative support, technology, and office space. By understanding these costs, firms can make informed decisions about pricing, budgeting, and financial management, which are crucial for strategic planning.

PRICING STRATEGY AND PROFITABILITY

One challenge firms face is pricing services appropriately. Cost accounting allows firms to determine the true cost of service delivery for each lawyer, practice area, and client. This information is vital in setting fees that are competitive and profitable. Without this data, firms risk underpricing their services and eroding profitability or overpricing, which could alienate potential clients. Moreover, understanding costs helps firms navigate the complexities of alternative fee arrangements by setting prices that ensure profitability while meeting client expectations for cost certainty and aligning legal fees with the value provided.

ENHANCED RESOURCE ALLOCATION

By identifying more and less profitable services, client types, or practice areas, management can make strategic decisions about where to invest resources. For example, a firm might decide to expand a highly profitable practice area or improve efficiency in a less profitable one. Strategic resource allocation ultimately leads to better overall performance and competitive positioning.

IMPROVED FINANCIAL MANAGEMENT AND REPORTING

Accurate cost accounting facilitates more precise financial management and reporting. It provides law firm leaders with a clear picture of financial performance across different segments of the business, enabling them to pinpoint issues, track progress towards financial goals, and adjust strategies as necessary. Moreover, detailed cost information enhances transparency with clients, who increasingly demand detailed and justified billing.

DRIVING EFFICIENCY AND INNOVATION

Firms face constant pressure to deliver services more efficiently, particularly in an era where technological advancements and new competitors are continuously emerging. Cost accounting helps identify inefficiencies and areas where technological investments could yield significant returns.

FACILITATING STRATEGIC DECISION-MAKING

Finally, cost accounting is not merely a financial tool, but a strategic one. It allows firm leaders to evaluate the profitability of various business models, decide whether to enter new markets, and assess the potential impact of strategic decisions such as mergers, acquisitions, or lateral hires. By providing a clear understanding of cost structures, cost accounting supports strategic decisions that align with the firm's long-term goals and market dynamics.

PRACTICAL STEPS IN IMPLEMENTING COST ACCOUNTING

Determining the cost of legal services isn't as daunting as it might seem. It begins with calculating the direct costs associated with specific task or activity — salaries, payroll taxes, insurance, and training costs. Indirect costs, or general overhead expenses, are then allocated to the same tasks based on a predefined formula. This allows the firm to determine an annual cost per task; when divided by the number of hours billed annually, it yields the cost per hour for that task. Understanding cost per hour lets firms set appropriate billable rates and consider various billing arrangements while maintaining profitability.

LEVERAGING COST INFORMATION FOR STRATEGIC ADVANTAGE

With a robust cost accounting model, firms can achieve several strategic advantages:

- By understanding the true cost of services, firms can set billing rates that align with profitability targets.
- Firms can assess profitability of individual clients based on work done and effective rates achieved.
- Enhanced cost insight allows for more accurate budgeting in client proposals, avoiding surprises and bolstering client trust.
- Knowing actual costs supports creative billing and strategic use of alternative fee agreements to outmaneuver competitors.

CONCLUSION

The imperative of adopting cost accounting cannot be overstated. As the legal industry becomes more competitive and client-driven, the ability to accurately assess and manage costs will differentiate successful firms from the rest. Firms that embrace cost accounting will be better equipped to innovate, manage their resources effectively, and make strategic decisions that enhance their value and profitability.

Suzette Welling is the visionary behind Law Practice Edge and Legal Management Exchange. With three decades of top-tier legal management experience, she has received numerous accolades, including the Tampa Bay Business Journal CFO of the Year Award. A certified Legal Lean Sigma practitioner and EOS strategic planner, Welling transforms law practices by enhancing profitability, culture, and management, making her a powerhouse in the legal sector.

PRACTICING WELLNESS

The practice (and importance) of cultivating happiness

BY MOLLY RANNS

People climb mountains in search of it. Seek out relationships for it. Travel, leave jobs, start new careers, and embark on adventures to find it. The Dalai Lama said, "The very purpose of life is to seek happiness."[1]

But in a profession known to have higher rates of depression than the general population,[2] has happiness remained elusive for many legal professionals?

Research shows that lawyers experience unhappiness at a rate more than 3.5 times that of other professionals.[3] We have come to understand that lawyer well-being is an integral part of their ethical duty of competence;[4] that well-being is defined as "thriving" and includes the ability to make healthy and positive work-life choices.[5] It seems pertinent, then, to explore not only what happiness is but, more importantly, how it's cultivated to lead a more fulfilling life.

Sonya Lyubomirsky, a researcher and psychology professor, has devoted much of her career to understanding and increasing happiness.[6] Through her work and the work of others, we've learned that about half of an individual's happiness is determined at birth and only 10% of happiness is actually derived by personal circumstances.[7] This has been explored when studying lottery winners who, just one year after their windfall, are no happier than non-winners.[8]

Instead of looking at it with dismay, we can use that information to take a more optimistic viewpoint. If 50% of happiness is set at birth and 10% is determined by life circumstances beyond an individual's control, this means 40% of a person's happiness is cultivated through intentional activity — mental and behavioral strategies that increase joy.[9] Truly happy individuals tend to interpret daily events in ways that increase (or at least maintain) their level of happiness, while unhappy people tend to do the opposite.[10]

Though happiness can be broadly defined, psychologists and other social scientists agree that happiness is made up of both positive emotions and a sense of satisfaction.[11] We can agree that what gives people satisfaction can vary widely from person to person and what makes us happy may be very different for each of us.

What fills me with positive emotions and satisfaction (and thus happiness) includes traveling with my family worldwide and taking part in activities such as sporting events, concerts, or other social engagements. It means being active and busy. What fills my sibling with happiness — someone with whom I share genetic makeup — could not be more different. He likes being a homebody, spending time with his family on several acres of land. He prefers road trips to airplanes, with his desire to travel limited to visiting a beloved family cabin in northern Michigan. Our experiences vary widely, yet we both have the same end result — what we do fills us with joy and contentment, peace and rejuvenation.

Regardless what makes people happy, there are numerous emotional, mental, and physical benefits to being so.[12] They include higher incomes and greater quality of work, more satisfying relationships and longer marriages, stronger social supports and richer social interactions and connections, lower stress levels and bolstered immune systems, and even longer lives.[13] With these benefits in mind and understanding the control we have and role we play in our

"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

own happiness, how might we go about cultivating it? To begin, try these intentional, science-backed activities.

PRACTICE GRATITUDE

Positive emotional and mental health is strongly associated with practicing gratitude, or taking the time to reflect upon the things for which you're thankful.[14] Keeping a daily gratitude journal has been linked to experiencing more positive emotions, improved sleep, increased compassion and kindness toward one's self and others, and even a stronger immune system.[15] Just one week of spending a few minutes taking a daily gratitude inventory can produce benefits that last up to six months![16] Teach yourself to focus on the positive instead of the negative and begin cultivating your own joy.

CULTIVATE STRONG RELATIONSHIPS

Research shows that having strong, positive relationships is a significant predictor of happiness.[17] Individuals who say they feel protected against stress, are in good physical health, and lead happier and healthier lives have something in common — they all spend time cultivating strong social connections. Thriving in your dimension of social well-being means creating "a sense of connection, belonging, and a well-developed support network while also contributing to groups and communities."[18] If you haven't prioritized social well-being, start by taking time to form deeper connections with important people in your life or finding meaningful ways to form new friendships.

PERFORM SIMPLE ACTS OF KINDNESS

Regarding the pursuit of happiness, popular culture tends to focus on the self, but research suggests that focusing on others consistently makes people happy.[19] Whether volunteering at a food bank, buying a cup of coffee for the person in line behind you, or complimenting a stranger, there is no question that increasing your positive emotions starts with simple acts of kindness toward others.

FOCUS ON THE POSITIVE AND REFRAME NEGATIVE THOUGHTS

Unfortunately, research indicates that our brains are more inclined to process and remember negative information versus positive information. This tendency, known as negativity bias, is even more pronounced in lawyers when compared to the average person.[20]

Consider this scenario: While researching a legal brief, you discover supporting cases that point to a favorable verdict for your client, but you realize you overlooked one case that the opposition used to its advantage. In spite of your positive development, that oversight preoccupies your thoughts. Although a pessimistic outlook can occasionally benefit legal practice, an inability to adopt a positive perspective can diminish joy and affect decision-making. It's essential to shift negative thinking towards a balanced, logical approach rather than dismissing negative aspects altogether.

CONCLUSION

Most of us would agree that happiness matters. Finding joy and satisfaction in life, experiencing positive emotions, and viewing our circumstances optimistically are things we can likely agree that we strive to achieve. Armed with the understanding that we play a large role in our own happiness — including our ability to cultivate it — we can use that knowledge for our benefit.

If your methods don't seem to be effective or you need a bit more help getting to where you want to be, don't forget about the resources available to you through the State Bar of Michigan Lawyers and Judges Assistance Program.

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

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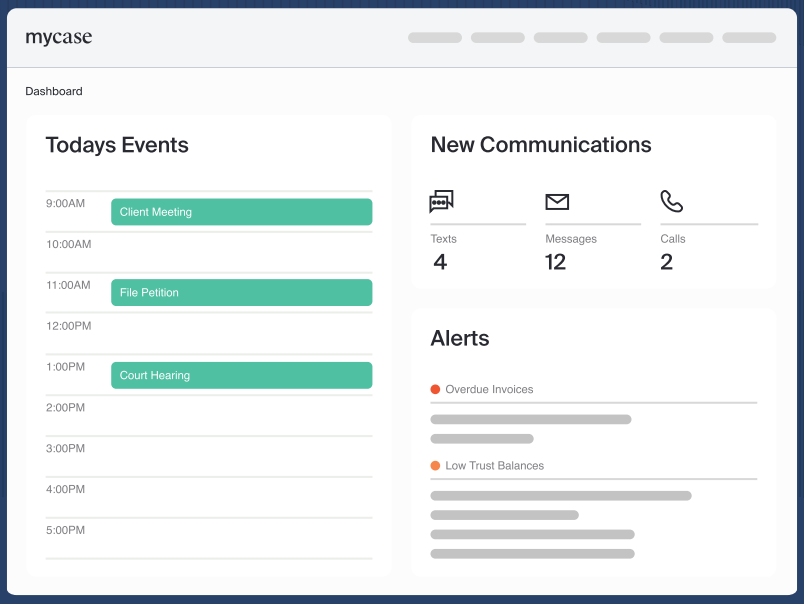

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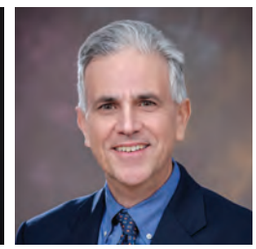

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PUBLIC POLICY REPORT

AT THE CAPITOL

HB 4746 (Steele) **Criminal procedure: mental capacity; Mental health: other.** Criminal procedure: mental capacity; outpatient treatment for misdemeanor offenders with mental health issues; provide for. Amends sec. 461 of 1974 PA 258 (MCL 330.1461) & adds sec. 1021 & ch. 10A.

POSITION: Support.

HB 5758 (Paiz) **Housing: landlord and tenants; Courts: state court administration.** Housing: landlord and tenants; form containing summary of tenant's rights; require state court administrative office to provide. Amends 1978 PA 454 (MCL 554.631 - 554.641) by adding sec. 4a.

POSITION: Support HB 5758 – HB 5760 with amendments consistent with the Board's previously adopted position on HB 5236.

HB 5759 (Hoskins) **Housing: landlord and tenants; State agencies (existing): health and human services.** Housing: landlord and tenants; form containing summary of tenant's rights; require the department to make available to the public. Amends sec. 57i of 1939 PA 280 (MCL 400.57i).

POSITION: Support HB 5758 – HB 5760 with amendments consistent with the Board's previously adopted position on HB 5236.

HB 5760 (Hoskins) **Housing: landlord and tenants; Housing: housing development authority.** Housing: landlord and tenants; form containing summary of tenant's rights; require the authority to make available to the public. Amends 1966 PA 346 (MCL 125.1401 - 125.1499c) by adding sec. 22e.

POSITION: Support HB 5758 – HB 5760 with amendments consistent with the Board's previously adopted position on HB 5236.

HB 5788 (Hope) **Civil procedure: civil actions.** Civil procedure: civil actions; lawsuits for exercising rights to free expression; provide protections against. Creates new act.

POSITION: Support.

SB 810 (Shink) **Civil procedure: personal protection orders; Crimes: domestic violence; Family law: domestic violence.** Civil procedure: personal protection orders; expiration date; prescribe. Amends sec. 2950 of 1961 PA 236 (MCL 600.2950).

POSITION: Oppose.

SB 914 (Shink) **Criminal procedure: other; Criminal procedure: evidence; Criminal procedure: trial.** Criminal procedure: other; certain requirements for the use of informants in criminal proceedings; provide for. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding secs. 36a, 36b, 36c, 36d, 36e, 36f & 36g to ch. VIII.

POSITION: Support SB 914 in concept. The legislation should both track in-custody informants and their offers of relief from the police and/or prosecutors and afford criminal defendants access to this information with appropriate safeguards for the informants.

SB 916 (Santana) **Criminal procedure: mental capacity; Mental health: other.** Criminal procedure: mental capacity; outpatient treatment for misdemeanor offenders with mental health issues; provide for. Amends sec. 461 of 1974 PA 258 (MCL 330.1461) & adds sec. 1021 & ch. 10A.

POSITION: Support.

SB 936 (Irwin) Courts: reporters or recorders. Courts: reporters or recorders; prohibited conduct of court reporter, court recorder, stenomask reporter, or owner of firm; modify. Amends sec. 1491 of 1961 PA 236 (MCL 600.1491).

POSITION: Support.

IN THE HALL OF JUSTICE

Proposed Amendment of Rule 2.625, 7.115, 7.219, and 7.319 of the Michigan Court Rules (ADM File No. 2022-38) – Taxation of Costs; Taxation of Costs, Fees; Taxation of Costs; Fees; Taxation of Costs; Fees (See Michigan Bar Journal September 2024, p 56).

STATUS: Comment period expires Oct. 1, 2024; Public hearing to be scheduled.

POSITION: Support.

Proposed Amendment of Rule 3.305 of the Michigan Court Rules (ADM File No. 2022-46) – Mandamus (See Michigan Bar Journal June 2024, p 56).

STATUS: Comment period expired Aug. 1, 2024. Public hearing to be scheduled.

POSITION: Support.

Proposed Amendment of Rule 3.306 of the Michigan Court Rules (ADM File No. 2024-06) – Quo Warranto (See Michigan Bar Journal September 2024, p 57).

STATUS: Comment period expires Oct. 1, 2024; Public hearing to be scheduled.

POSITION: Support.

Proposed Amendment of Rule 6.302 of the Michigan Court Rules (ADM File No. 2021-05) – Pleas of Guilty and Nolo Contendere (See Michigan Bar Journal June 2024, p 56).

STATUS: Comment period expired Aug. 1, 2024. Public hearing to be scheduled.

POSITION: Support.

Proposed Amendment of Rule 7.103 of the Michigan Court Rules (ADM File No. 2022-25) – Appellate Jurisdiction of the Circuit Court and Judicial Authority (See Michigan Bar Journal June 2024, p 57).

STATUS: Comment period expired Aug. 1, 2024. Public hearing to be scheduled.

POSITION: Support.

Proposed Amendment of Rule 7.118 of the Michigan Court Rules (ADM File No. 2022-12) – Appeals from the Michigan Parole Board (See Michigan Bar Journal June 2024, p 57).

STATUS: Comment period expired Aug. 1, 2024. Public hearing to be scheduled. **POSITION: Support.**

Proposed Amendment of Rule 3.7 of the Michigan Rules of Professional Conduct (2022-56) – Lawyer as Witness (See Michigan Bar Journal September 2024, p 58).

STATUS: Comment period expires Oct. 1, 2024; Public hearing to be scheduled.

POSITION: Support.

STATE BAR OF MICHIGAN

Celebrating lawyers who make a difference

2024 A LAWYER HELPS PRO BONO HONOR ROLL

The State Bar of Michigan is pleased to publish the 2024 A Lawyer Helps Pro Bono Honor Roll. The 2024 Honor Roll recognizes individual attorneys, law firms, and corporations that support access to justice efforts by providing pro bono legal services to low-income individuals and families throughout Michigan.

Law firms and corporations that submitted an Honor Roll application and achieved a per-attorney average of 30, 50, or 100+ hours pro bono legal services and firms and corporations that provided at least 100 cumulative hours of pro bono legal services in 2023 were eligible for recognition. Individual attorneys who submitted an Honor Roll application and provided 30, 50, or 100+ hours of qualifying pro bono legal services in 2023 were also eligible for recognition.

For the 2024 Honor Roll, more than 38,000 pro bono service hours provided by more than 900 Michigan-licensed attorneys in the 2023 calendar year were submitted to the State Bar. While most eligible attorneys opted to be publicly recognized for their pro bono service, many did not wish to be included in the published version of the Honor Roll. Those individuals submitted their 2023 pro bono service hours for reporting purposes only. The individual and firm applications for the 2025 Pro Bono Honor Roll recognizing eligible pro bono service hours provided in the 2024 calendar year will be available in January.

Visit www.alawyerhelps.org for more information about the Honor Roll and to find pro bono opportunities in your area.

INDIVIDUAL ATTORNEYS & SOLO PRACTITIONERS

100+ Hours

Matthew P. Allen
Chelsea Mariah Austin
Daniel Baum
Elizabeth K. Bransdorfer
John T. Brown
Charles E. Burpee
Christopher Capoccia
Fatmeh Cheaib
Richard O. Cherry
Christopher S. Chorzepa
Mark D. Chutkow
Andrew Clopton
Angela Cole
Jason P. Colvin
Dominica Convertino
Erik R. Daly
Daljit S. Doogal
Arthur Dudley
Daniel S. Elkus
Allison E. Epshteyn
Caleb Erbert
Parker J. Feldman
Breanne N. Gilliam
Leo P. Goddeyne
Arthur L. Griem
Steven H. Hilfinger
Aimee J. Jachym
Sandra L. Jasinski
Kurt Johnson
Bruce C. Johnson
Raina Korbakis
Courtney C.T. Lee
Rochelle E. Lento
Mark Lezotte
Marla Linderman Richelew
Thomas W. Linn
Michelle L. Mayfield
Michael J. McFerran
Kari Melkonian
Elizabeth S. Morales-Saucedo
Melissa L. Neckers
Julie Nichols
Eric Nicholson
Stephen J. Ott
Tyler J. Owen
Reginald Pacis
Rick Pacynski
Alexandra S. Page
Albert Pak
Emily C. Palacios
Richard L. Perez
Cameron H. Piggott
Sarah C. Reasoner
Joshua J. Reuter
Amanda Rice
Wendolyn W. Richards
Robert M. Riley
Sydney G. Rohlicek
Michael J. Roth
Kimberly L. Scott
John Sier
Khalilah V. Spencer
Christopher Tracy
Bridget L. Underhill
Catherine Villanueva
Stephen J. Van Stempvoort
Thomas J. Vitale
Wei Wang
Michael J. Watkins
Ashley L. Yuill
Maria Zografi

50-99 Hours
Ian C. Ajluni
Miriam Archibong
Jacqueline August
Gerald A. Bagazinski
Adam J. Bean
Jennifer Z. Belveal
Caroline Bermudez Jomaa
Jewel Haji Boelstler
Conor Boland
Suzanne Bolton
Sherri Bono
Barbara Bowman
Jennie Boldish Bryan
Bill Burdett
Valerie Canter
Charlotte G. Carne
Rola Chabayta
Fatme Chehadeh
Grace Connolly
Peter Conway
Abigail J. Cote
Megan S. Cottington-Heath
William R. Cowdry
Scott J. DeWeerd
A. Joseph Duffy IV
Christopher M. Dutot
Jacob G. Eccleston
Mira Edmonds
Jailah Emerson
Monique S. Eubanks
William H. Fallon
Yasmeen Farran
James P. Feeney
Patricia Felix
Matt Fleming
Jennifer France
Anthony J. Frasca
Douglas J. Fryer
Jonathan E. George
Shavonne Gilkey
Amy Glenn
Debani Gordon Lehman
Saul A. Green
Michael W. Griswold
Jewel Haji Boelstler
Erin Haney
Robert M. Harding
Jacqueline A. Hayduk
Min Huang
Yohanna Iyob
Kenneth A. Johnson
William Kalas
Paulina Kennedy
Rebecca Kimmelfield
Eric Klein
James Kresta
Mark J. Makoski
Giuliano D. Mancini
Michelle Mayfield
John T. McFarland
Raymond J. McVeigh
John Mooney
Serj Mooradian
Robert C. Okonowski
Arthur O'Reilly
Lynn Osborne
David R. Padalino
Stephen G. Palms
Robert C. Pollock
Angela Quinn
Stephen M. Ragatzki
Stephen T. Reaume
Sinead Redmond
Matthew G. Reens
Richard A. Roane
Lawrence Schneider
Theodore W. Seitz
Annette Skinner
Jamie C. Slotsema
Matthew Smith
Kathaleen M. Smith
Alexis Smith-Scott
Ronald A. Spinner
DeVaughn Swanson
Zachary Ulewicz
Bridget Underhill
Anne-Marie Voice
Kathryn Wayne-Spindler
Michael T. Woo
Mitchell Zajac
Glen Zatz
Mahja D. Zeon

30-49 Hours
Gerald L. Aben
Mark A. Aiello
Kelechi Akinbosede
Celeste Arduino
Keanen Armour
Matthew Bailey
Elizabeth B. Baker
Emily J. Barr
Danielle F. Bass
Cheyenne L. Benyi
Kent Bieberich
Kevin M. Blair
Stephanie Blumenau
Richard Bouma
Adam Brody
Darren Burmania
Megan E. Callahan-Krol
Michael Campbell
Jason Conti
Emily Conway
Thomas W. Cranmer
Michael G. Cumming
Joseph Cunningham
Corinne Curtis
Latifa H. Dabaja
Nardeen Dalli
Rian C. Dawson
Molly Dengler
Rebecca El Badaoui
Amir E. El-Aswad
Emily O. Elmer
Amanda Empey
Shelby Engelbrecht
Joseph M. Fazio
Brigid Fox
Eric Frankie
John W. Fraser
Louis Gabel
Nina Gavrilovic
Brett M. Gelbord
Gaetan E. Gerville-Reache
Antonia R. Giles
Erika L. Giroux
Jacob B. Gordon
Leonard Gorz
Joseph Haddad
Nazneen S. Hasan
Roy Hébert
Nadine Hessi
Jennifer Hetu
Ashley N. Higginson
Marcus C. Hoekstra
Ann Hollenbeck
Joslyn Iafrate
Lily Indenbaum
Laura Johnson
Alex M. Kaminski
Susan Keener

FIRMS & CORPORATIONS

AVERAGE HOURS

Recognition based on firm average hours per attorney

Tier 1
50-99 HOURS PER ATTORNEY
Jones Day

Tier 2
30-49 HOURS PER ATTORNEY
Foley & Lardner
Miller Johnson

CUMULATIVE HOURS

Tier 1
4,000-5,999 HOURS
Bodman
Miller Canfield
Miller Johnson

Tier 2
2,000-3,999 HOURS
Dykema Gossett
Jones Day
Warner Norcross + Judd

Tier 3
100-1,999 TOTAL FIRM HOURS
Butzel Long
Foley & Lardner
Honigman
Varnum
Young Basile

CONTINUED ON NEXT PAGE >

Samuel R. Kilberg
Scott R. Kocienski
Jeffrey S. Kopp
Susan Kornfield
Denise LaFave Smith
Christopher M. LeClair
Ronald C. Liscombe
Jay Long
Dennis W. Loughlin
Kelsey Lutz
Douglas E. Mains
Mark L. Maki
Trevor Mason
Audra McClure
Tara McKenzie
Vanessa L. Miller
Joslin E. Monahan
Michael E. Morden
Gary Mouw
John C. Muhs
Hannah R. Muller
Robert E. Murkowski
Miles J. Murphy III
Barbara Nectow
Carsten A. Parmenter
Francesca Parnham
Payal R. Patel
Essence C. Patterson
Leslie A. Pinney
Eric Polan
Melissa A. Powell
Teresa L. Rajala
Amanda L. Rauh-Bieri
Victoria E. Remus
John F. Rhoades
Wayne Roberts
Joseph B. Rockwell
Dan Rustmann
Reshma M. Sambare
Daniel J. Schairbaum
Rebecca Seguin-Skrabucha
Erika Shadowens
Phillip M. Shane
Julianne C. Sharp
David L.J.M. Skidmore
Matthew Slipchuk
Katherine Smigelski
Monica Stover
William Thompson
Brandon C. Tomash
Jordan Valentine
Benjamin J. VanderWerp
Andrew T. Vanegmond
Rebecca Veidlinger
Madeline C. VerHey
Sam Vitale
Sarah E. Waidelich
Tom Weeks
Keri Wigod
W. Alan Wilk
Sarah K. Willey

ORDERS OF DISCIPLINE & DISABILITY

SUSPENSION AND RESTITUTION

Brian T. Dailey, P39945, Grosse Pointe Farms. Suspension, five years, effective June 20, 2024.

The grievance administrator filed a 12-count formal complaint against the respondent. Based on the evidence presented at hearings held in this matter in accordance with MCR 9.115, the hearing panel found that the respondent committed professional misconduct during his representation of various clients in numerous cases, failed to make payments of earned wages owed to his former bookkeeper and his assistant, failed to pay other attorneys for referral fees and their portion of earned attorney fees, and failed to pay court-ordered costs to other attorneys.

Specifically, the panel found that the respondent neglected a legal matter in violation of MRPC 1.1(c) [count 6]; failed to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.3 [counts 6, 8, and 10]; failed to promptly comply with a client's reasonable request for information in violation of MRPC 1.4(a) and failed to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions about the representation in violation of MRPC 1.4(b) [counts 8 and 10]; charged or collected, or attempted to charge or collect, clearly illegal or excessive fees in violation of MRPC 1.5(a) and MCR 5.313(B) [count 6]; failed to promptly pay or deliver funds that a third person is entitled to receive and failed to promptly render a full accounting regarding such funds in violation of MRPC 1.15(b)(3) [counts 1-3 and 5-11]; failed to hold disputed property separate from the lawyer's property until the dispute is resolved in violation of MRPC 1.15(c) and failed to hold property of clients or third persons in connection with a representation separate from the lawyer's own property in violation of MRPC 1.15(d) [count 2]; asserted a frivolous position in a proceeding in violation of MRPC 3.1 [count 5]; knowingly disobeyed an obligation under the rules of a tribunal in violation of MRPC 3.4(c) [counts 1, 4-6, 8-9, and 11]; violated or attempted to violate the Rules of Professional Conduct in violation of MRPC 8.4(a) [count 5]; engaged in conduct involving dishonesty and deceit where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b) [counts 1-9 and 11]; engaged in conduct prejudicial to the administration of justice in violation of MRPC 8.4(c) [counts 2, 4-5, 8-9, and 11]; engaged in conduct that is prejudicial to the proper administration of justice in violation of MCR 9.104(1) [counts 1-2, 4-6, and 8-11]; engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2) [counts 1-2, 4-6, 8-9, and 11]; engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3) [counts 1 and 3-11]; and failed to answer a request for investigation or complaint in conformity with MCR 9.113 and 9.115(D) in violation of MCR 9.104(7) [count 12].

The hearing panel also determined the grievance administrator failed to establish that the respondent violated the following rules: MRPC 1.3 and MRPC 1.5(a) [count 7]; MRPC 8.1(a)(2) [count 12]; MRPC 8.4(b) [counts 10 and 12]; MRPC 8.4(c) and MCR 9.104(1) [counts 3, 7, and 12]; MCR 9.104(2) [counts 3, 7, 10, and 12]; MCR 9.104(3) [count 12]; and MCR 9.104(5) [count 5].

The panel ordered that the respondent's license to practice law in Michigan be suspended for a period of five years and that he pay restitution in the total amount of $24,478.85 plus interest. Costs were assessed in the amount of $13,479.86.

The respondent timely filed a petition for review and a motion for stay. In an order dated May 28, 2024, the Attorney Discipline Board granted the respondent's motion for stay on an interim basis pending further consideration by the board. On June 13, 2024, an order

was entered denying the respondent's motion for stay. The interim stay was dissolved and the hearing panel order of suspension and restitution would be effective June 20, 2024. This matter will be scheduled for a hearing on the petition for review before the Attorney Discipline Board in the near future.

SUSPENSION (WITH CONDITION)

Liza Ann Esqueda, P80588, Northville. Suspension, one year, effective July 23, 2024.

After proceedings conducted pursuant to MCR 9.115, Tri-County Hearing Panel #7 found that the respondent committed professional misconduct during her representation of a client in a matter before the 54-A District Court by failing to answer a request for investigation and for failing to appear for a sworn statement although subpoenaed to do so by the grievance administrator.

The respondent did not file an answer to the complaint and her default was entered by the grievance administrator on Nov. 1, 2023. Based on the respondent's default and the evidence presented at the hearing, the hearing panel found that the respondent neglected a legal matter entrusted to the lawyer in violation of MRPC 1.1(c) (count 1); failed to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.3 (count 1); unlawfully obstructed another party's access to evidence, unlawfully altered, destroyed, or concealed a document or other material having potential evidentiary value, or counseled or assisted another person to do any such act in violation of MRPC 3.4(a) (count 1); knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a) (count 2); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b) (counts 1-2); and failed to answer a request for investigation in conformity with MCR 9.113(A)-(B)(2) in violation of MCR 9.104(7) (count 2). The panel also found the respondent to have violated MCR 9.104(1)-(4) and MRPC 8.4(a) and (c).

The panel ordered that the respondent's license to practice law in Michigan be suspended for one year effective July 23, 2024, and that she be subject to a condition relevant to the established misconduct. Costs were assessed in the amount of $2,110.09.

REPRIMAND (BY CONSENT)

Jeffrey J. Fleury, P53884, Rochester Hills. Reprimand, effective July 18, 2024.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Reprimand pursuant to MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by Tri-County Hearing Panel #71. The stipulation contained the respondent's admission that he was convicted on Sept. 22, 2023, by guilty plea, of operating a motor vehicle while visibly impaired in violation of MCL 257.625(3), a misdemeanor, in a matter titled *State of Michigan v. Jeffrey J. Fleury,* 44th District Court Case No. 23-00833-SD, as set forth in a Notice of Filing of Judgment of Conviction by the grievance administrator.

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

In accordance with the stipulation of the parties, the panel ordered that the respondent be reprimanded. Costs were assessed in the amount of $759.68.

NOTICE VACATING INTERIM SUSPENSION

Glenn Phillip Franklin, P68263, Southfield. Effective July 16, 2024.

On July 16, 2024, the United States District Court, Eastern District of Michigan, Southern Division entered an order (1) granting defendants' motions for judgment of acquittal (ECF Nos. 533, 537) and (2) terminating defendants' motions for new trial (ECF Nos. 535, 538) as moot; and a judgment of acquittal in the matter titled *United States of America v. John Angelo* and *Glenn Phillip Franklin III*, Case No. 20-cr-20599, acquitting the respondent of the felony offense for which he was earlier convicted. Upon conviction, the respondent's license to practice law in Michigan was automatically suspended. See Notice of Automatic Interim Suspension dated Dec. 18, 2023.

In accordance with MCR 9.120(B)(1), the Attorney Discipline Board must set aside an attorney's automatic suspension upon conviction of a felony if that conviction is subsequently vacated, reversed, or otherwise set aside for any reason by the trial court or an appellate court. Pursuant to that rule, the board is hereby vacating the automatic interim suspension effective July 16, 2024, the date of the United States District Court's order.

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

AUTOMATIC INTERIM SUSPENSION

Fredric R. Gumbinner, P40279, Washington, D.C. Effective Nov. 20, 2023.

On Nov. 20, 2023, the respondent pleaded guilty to one count of Bribery Concerning Programs Receiving Federal Funds in violation of 18 USC § 666(a)(2), a felony, in *United States v. Fredric R. Gumbinner,* United States District Court for the Western District of Virginia, Charlottesville Division, Case No. 3:23CR00011-003. Upon the acceptance of the respondent's guilty plea and in accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended.

Upon the filing of a 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 under MCR 9.115(J).

SUSPENSION WITH CONDITIONS (BY CONSENT)

Teriann Marie Schmidt, P67497, Harrison Township. Suspension, 45 days, effective July 1, 2024.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline pursuant to 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 admissions that she was convicted by guilty plea of operating while intoxicated (second offense), a misdemeanor, in violation of MCL/PACC Code 257.6256B in *People v. Teriann Schmidt,* Macomb County Circuit Court Case 22-003056-FH. The stipulation also contained the respondent's admissions to the allegations in the formal complaint that she failed to report her conviction as required by MCR 9.120(A) and (B).

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent engaged in conduct that violated a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615 in violation of MCR 9.104(5); engaged in conduct prejudicial to the administration of justice in violation of MCR 9.104(1) and MRPC 8.4(c); exposed the legal profession or the courts to obloquy, contempt, censure or reproach in violation of MCR 9.104(2); MCR 9.120(A) and (B); and engaged in conduct contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3).

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 45 days effective immediately upon entry as agreed to by the parties and accepted by the panel. The panel also ordered that the respondent be subject to conditions relevant to the es-

tablished misconduct. Total costs were assessed in the amount of $1,022.72.

SUSPENSION (WITH CONDITIONS)

Dean E. Sheldon III, P58967, Traverse City. Suspension, 365 days, effective July 25, 2024.

After proceedings conducted pursuant to MCR 9.115, Grand Traverse County Hearing Panel #1 found that the respondent committed professional misconduct during his representation of three separate clients and when he separately exhibited troubling behavior to fellow litigants and the tribunal.

The respondent did not file an answer to the complaint and his default was entered by the grievance administrator on March 6, 2024. Based on the respondent's default and the evidence presented at the hearing, the hearing panel found that the respondent neglected a matter in violation of MRPC 1.1(c) [counts 1-3]; improperly limited the scope of a representation when the limitation was not reasonable under the circumstances and the client did not give informed consent in violation of MRPC 1.2(b) [count 1]; failed to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.3 [counts 1-3]; failed to keep his client reasonably informed about the status of a matter and comply promptly with reasonable requests for information in violation of MRPC 1.4(a) [counts 1-3]; failed to withdraw from the representation of a client when the lawyer's physical or mental condition materially impaired the lawyer's ability to represent the client in violation of MRPC 1.16(a)(2) [all counts]; knowingly made a false statement of material fact or law to a tribunal or failed to correct a false statement of material fact or law previously made to the tribunal by the lawyer in violation of MRPC 3.3(a)(1) [counts 1-3]; knowingly disobeyed an obligation under the rules of a tribunal in violation of MRPC 3.4(c) [counts 1-3]; sought to influence a judge or other official by means prohibited by law in violation of MRPC 3.5(a) [counts 1 and 4]; communicated ex parte with a judge or other official concerning a pending matter without being authorized to do so by law or court order in violation of MRPC 3.5(b) [counts 1 and 4]; engaged in undignified or discourteous conduct toward the tribunal in violation of MRPC 3.5(d) [count 1]; failed to treat with courtesy and respect all persons involved in the legal process in violation of MRPC 6.5(a) [counts 1, 3, and 4]; engaged in conduct that violates the Rules of Professional Conduct in violation of MRPC 8.4(a) and MCR 9.104(4) [all counts]; engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b) [counts 1 and 3]; engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure or

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

reproach in violation of MCR 9.104(2) [all counts]; and engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3) [all counts].

The panel ordered that the respondent's license to practice law in Michigan be suspended for 365 days effective July 25, 2024, and that he is subject to conditions relevant to the established misconduct. Costs were assessed in the amount of $1,838.83.

REPRIMAND (BY CONSENT)

Jeffrey A. Slocombe, P44704, Traverse City. Reprimand, effective July 20, 2024.

The respondent and the grievance administrator filed a stipulation for consent order of discipline in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by Emmet County Hearing Panel #2. The stipulation contained the respondent's no contest plea to the factual allegations and the grounds for discipline set forth in the formal complaint, namely that the respondent committed professional misconduct during his representation of a client in a criminal action by failing to file an appearance or a timely substitution of counsel prior to a hearing and failing to appear at the hearing.

Based upon the stipulation of the parties and the respondent's no contest plea to the factual allegations and allegations of professional misconduct, 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); engaged in conduct that is prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(1); and engaged in conduct that exposes 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 panel ordered that the respondent be reprimanded. Discipline in this case was also deemed to include restitution, which was paid by the respondent prior to the filing of the stipulation for consent order of discipline. Costs were assessed in the amount of $759.73.

SUSPENSION

Robert Louis Page, P70758, Highland Park. Suspension, 45 days, effective Sept. 4, 2024.

Based on the evidence presented at hearings held in this matter in accordance with MCR 9.115, Tri-County Hearing Panel #6 found that the respondent committed professional misconduct when he participated in discussions and activities that culminated with him transporting documents purportedly impregnated with a prohibited substance into a Michigan correctional facility as set forth in a one-count formal complaint filed by the grievance administrator.

Specifically, the hearing panel found that the respondent engaged in conduct that violates the Rules of Professional Conduct in violation of MCR 8.4(a) and MCR 9.104(4); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of criminal law where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b); engaged in conduct prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(1); engaged in conduct that exposed the legal profession to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); and engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3).

The panel ordered that the respondent's license to practice law in Michigan be suspended for 45 days. Costs were assessed in the amount of $3,105.73.

REINSTATEMENT PURSUANT TO MCR 9.123(A)

On July 1, 2024, Tri-County Hearing Panel #104 entered an Order of Suspension with Conditions (By Consent) suspending the respondent from the practice of law in Michigan for 45 days, effective July 1, 2024. On Aug. 12, 2024, the respondent filed an affidavit pursuant to MCR 9.123(A) attesting that she has fully complied with all requirements of the panel's order and will continue to comply with the order until and unless reinstated. The board was advised that the grievance administrator has no objection to the affidavit; and the board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that the respondent, **Teriann Marie Schmidt,** is **REINSTATED** to the practice of law in Michigan, effective Aug. 15, 2024.

FROM THE MICHIGAN SUPREME COURT

ADM File No. 2022-38
Proposed Amendments of Rules 2.625, 7.115, 7.219, and 7.319 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 2.625, 7.115, 7.219 and 7.319 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.

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

Rule 2.625 Taxation of Costs

(A)-(F) [Unchanged.]

(G) Stay of Collecting Taxed Costs. The court or the clerk must stay the enforcement of an award taxing costs to a prevailing party under subrule (F) until expiration of the time for filing an appeal in the appropriate appellate court, or if an appeal is filed, while a claim of appeal or application for leave to appeal in the appropriate appellate court is pending.

(G)-(K) [Relettered (H)-(L) but otherwise unchanged.]

Rule 7.115 Taxation of Costs; Fees

(A)-(D) [Unchanged.]

(E) Stay of Collecting Taxed Costs. The clerk must stay the enforcement of an award taxing costs until expiration of the time for filing an appeal in the appropriate appellate court, or if an appeal is filed, while a claim of appeal or application for leave to appeal in the Court of Appeals is pending.

(E) [Relettered as (F) but otherwise unchanged.]

(F) (G~~F~~) Taxable Costs and Fees. Except as otherwise provided by law or court rule, a~~A~~ prevailing party may tax only the reasonable costs and fees incurred in the appeal, including:

(1)-(6) [Unchanged.]

(7) the additional costs incurred when a party to an appeal under the Administrative Procedures Act unreasonably refused to stipulate to shortening the record as provided in MCL 24.304(2); ~~and~~

(8) costs awarded in the court below as permitted by MCL 600.2445(4); and

(8) [Renumbered as (9) but otherwise unchanged.]

Rule 7.219 Taxation of Costs; Fees

(A) [Unchanged.]

(B) Time for Filing. Within 42~~28~~ days after the dispositive order, opinion, or order denying reconsideration is mailed, the prevailing party may file a certified or verified bill of costs with the Court of Appeals clerk and serve a copy on all other parties. If the Supreme Court reverses the decision of the Court of Appeals, then within 28 days of the Supreme Court decision, the new prevailing party may file a certified or verified bill of costs with the Court of Appeals clerk and serve a copy on all other parties. Each item claimed in the bill must be specified. Failure to file a bill of costs within the time prescribed waives the right to costs.

(C)-(D) [Unchanged.]

(E) Stay of Collecting Taxed Costs. The clerk must stay the enforcement of an award taxing costs until expiration of the time for filing an appeal an application for leave to appeal in the Supreme Court, and if an appeal is filed, while an application in the Supreme Court is pending.

(E) [Relettered as (F) but otherwise unchanged.]

(G~~F~~) Costs Taxable. Except as otherwise provided by law or court rule, a~~A~~ prevailing party may tax only the reasonable costs and fees incurred in the Court of Appeals, including:

(1)-(5) [Unchanged.]

(6) taxable costs allowed by law in appeals to the Supreme Court (MCL 600.2441); ~~and~~

(7) costs awarded in the court below as permitted by MCL 600.2445(4); and

(8~~7~~) other expenses taxable under applicable court rules or statutes.

(G)-(I) [Relettered as (H)-(J) but otherwise unchanged.]

Rule 7.319 Taxation of Costs; Fees

(A) Rules Applicable. Unless this rule provides a different procedure, t~~T~~he procedure for taxation of costs in the Supreme Court is as provided in MCR 7.219.

(B) [Unchanged.]

(C) Taxation and Stay. The clerk will promptly verify the bill and tax those costs allowable. If the Supreme Court retains jurisdiction in a case, the clerk must stay the enforcement of an award taxing costs until the Supreme Court no longer has jurisdiction over the case.

(C)-(D) [Relettered as (D)-(E) but otherwise unchanged.]

Staff Comment (ADM File No. 2022-38): The proposed amendments of MCR 2.625, 7.115, 7.219 and 7.319 would: (1) require courts to stay enforcement of taxed costs while an appeal is pending or until time for filing an appeal has passed, (2) align the timeframe for filing a bill of costs in the Court of Appeals with the timeframe for filing an application for leave to appeal, (3) incorporate into MCR 7.219 the Court of Appeals internal operating procedure 7.219(B) that allows, upon reversal of a Court of Appeals decision, the new prevailing party to file a new bill of costs in the Court of Appeals, and (4) include in the lists of taxable costs those costs awarded in the lower court in accordance with MCL 600.2445(4).

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 they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by Oct. 1, 2024, 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. 2022-38. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2024-06
Proposed Amendment of Rule 3.306 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.306 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.

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

Rule 3.306 Quo Warranto

(A) [Unchanged.]

(B) Parties.

(1)-(2) [Unchanged.]

(3) Application to Attorney General.

(a) [Unchanged.]

(b) If, on proper application and offer of security, the Attorney General refuses to bring the action, the person may apply to the appropriate court for leave to bring the action himself or herself. The court must not grant leave under this subrule if the action relates to the offices of electors of President and Vice President of the United States.

(C)-(E) [Unchanged.]

Staff Comment (ADM File No. 2024-06): In accordance with MCL 600.4501(2), the proposed amendment of MCR 3.306(B)(3)(b) would prohibit a court from granting leave to a private individual who is bringing a quo warranto action that relates to the offices of electors of President and Vice President of the United States.

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 they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by Oct. 1, 2024, 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.

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2024-06. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2022-56
Proposed Amendment of Rule 3.7 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 3.7 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 3.7 Lawyer as Witness

(a)-(b) [Unchanged.]

(c) Nothing in this rule prohibits a lawyer from appearing as attorney of record in a case in which the lawyer is a party and is representing themselves.

[Official comment unchanged.]

Staff Comment (ADM File No. 2022-56): The proposed amendment of MRPC 3.7 would clarify that in accordance with Const 1963, art 1, § 13, a lawyer can appear in pro per.

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 they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by Oct. 1, 2024, 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 submitting a comment, please refer to ADM File No. 2022-56. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2023-26
Proposed Amendments of Canons 4 and 6 of the Michigan Code of Judicial Conduct

On order of the Court, this is to advise that the Court is considering amendments of Canons 4 and 6 of the Michigan Code of Judicial 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.]

Canon 4 A Judge May Engage in Extrajudicial Activities

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

A judge may engage in the following activities:

A.-D. [Unchanged.]

E. Financial Activities.

(1)-(3) [Unchanged.]

(4) Neither a judge nor a family member residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a)-(b) [Unchanged.]

(c) A judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and if the aggregate value of gifts received by a judge or family member residing in the judge's household from any source exceeds $1,000~~$375~~, the judge reports it as required by~~in the same manner as compensation is reported in~~ Canon 6~~C~~. For purposes of reporting gifts under this subsection, any gift with a fair market value of $500~~$150~~ or less need not be aggregated to determine if the $1,000~~$375~~ reporting threshold has been met.

(5)-(7) [Unchanged.]

F.-I [Unchanged.]

Canon 6 A Judge May Receive Compensation and Expense Reimbursement and Must~~Should Regularly~~ File Annual Financial Disclosure Reports ~~of Compensation Received for Quasi-Judicial and Extra-Judicial Activities and of Monetary Contributions.~~

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge in judicial duties or otherwise give the appearance of impropriety, subject to the ~~following~~ restrictions described in this canon.: A judge must file a financial disclosure report as provided in this canon.

A. Definitions. As used in this canon, the following definitions apply.

(1) "Compensation". includes earned and unearned income.

(2) "Creditor" means an entity to whom a judge owes a debt.

(3) "Earned income" means salaries, wages, tips, bonuses, commissions, or other earnings from employment during the reporting period.

(4) "Financial disclosure report" or "report" means the report described in Canon 6D, which must

(a) be on a form approved by the State Court Administrator,

(b) contain the required information from the reporting period, and

(c) be signed and dated by the judge.

(5) "Liabilities" means a debt owed to a creditor. For purposes of this canon, a debt does not include mortgages on personal residences, vehicle loans, student loans, a revolving debt, an unsecured debt that is from a financial institution or the federal government, or a debt owed by a business entity.

(6) "Real property" means all land within this state, all buildings and fixtures on the land, and all appurtenances to the land, except as expressly exempted by law.

(7) "Reporting period" means both of the following:

(a) For the first financial disclosure report required to be filed under D(1), from [DATE] to [DATE].

(b) For subsequent reports required to be filed under D(1), January 1 to December 31 of the preceding calendar year in which the report is filed.

(8) "Spouse" means an individual who is lawfully married, as described under 26 CFR 301.7701-18, to a judge.

(9) "Unearned income" means a judge's income that is not earned from employment, including, but not limited to, financial prizes, net proceeds from rental properties, unemployment benefits, annuities, deferred compensation, pension, profit sharing, or retirement income. Unearned income does not include sales of security and commodity options.

B. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

C~~B~~. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation. Any payment that does not constitute compensation under this paragraph does not need to be included on a financial disclosure report.

D~~C~~. Public Financial Disclosure Reports.

(1) Except as otherwise provided in D(2), a~~A~~ judge must~~shall~~ file with the State Court Administrative Office a financial disclosure report that includes a complete statement of all

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

of the following for the applicable reporting period: ~~the date, place, and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received.~~

(a) The judge's full name, court name, court address, court telephone number, and position(s) with the court.

(b) The name, occupation, and employer(s) of the judge's spouse.

(c) A list of all positions that the judge held as an officer, director, or trustee of any organization, educational institution, association, or governmental agency other than the judge's court. The judge does not need to report positions that are solely of an honorary nature or that are held in any religious, social, or fraternal entity. If the judge reports a position under this paragraph, the judge must include the entity's name.

(d) The source of earned income, other than income earned from the judge's personal salary, received by the judge if the judge received $10,000 or more from that source. The judge must include the nature of any activity for which the judge received earned income, the name of the payor, and the amount of earned income received.

(e) The source of unearned income received by the judge if the judge received $10,000 or more from that source. The judge must include the nature of any activity for which the judge received unearned income, the name of the payor, and the amount of unearned income received.

(f) A list of all liabilities permitted under these canons that exceed $10,000 and that are owed by the judge to a creditor at any time during the reporting period. The list must include the name of the creditor, the month and year the liability was incurred, and the type of liability.

(g) Except as otherwise provided in this paragraph, for each financial account, a list of any stocks, bonds, or other forms of securities held by the judge or held jointly with the judge's spouse, if the value of the security held at a given point in time is $10,000 or more for an individual security or $100,000 or more for aggregate securities. While a judge must list the name of all funds that exceed the required threshold set forth in this subparagraph, a judge is not required to list specific stocks in a publicly-traded index fund, mutual fund, or exchange traded fund. A judge does not need to report holdings in a pension or deferred compensation plan.

(h) A list of any real property in which the judge holds an ownership or other financial interest. For purposes of this paragraph, the judge is required to include a real property in the report only if that real property has a fair market value of $50,000 or more during the reporting period. A judge need only include the county in which the parcel of real property is situated for purposes of identifying a parcel of real property disclosed under this paragraph.

(i) A description of any gifts required to be reported by the judge under Canon 4, including the name of the donor and recipient, the relationship between the donor and recipient, the nature of the gift, the value or amount of the gift, and the date received.

(j) Whether a detailed report of campaign contributions and expenditures was filed with the Secretary of State.

(2) A judge filing a financial disclosure report may omit from the report the following:

(a) Information that the judge reported to the Secretary of State under the Michigan Campaign Finance Act, MCL 169.201 *et seq.*

(b) An item otherwise required to be reported under D(1)(g) or D(1)(h) if all of the following apply:

(i) The item is not within the control of the judge because it represents the exclusive financial interest and responsibility of the judge's spouse or another member of the judge's household.

(ii) The item is not in any way derived from the judge's income, assets, or activities.

(iii) The judge does not derive, or expect to derive, financial benefit from the item.

(c) An item that concerns a spouse who is living separate and apart from the judge with the intention of terminating the marriage or maintaining a legal separation.

(d) An item that concerns income of the judge that arises from the judge's divorce or permanent legal separation.

(e) Except for gifts reported under subdivision (1)(m), the value of any real property or property disclosed under paragraph (1).

(3) A financial disclosure report must include the following certification: "I certify that the statements I have made in this report are true, complete, and correct to the best of my knowledge and belief, and that I have not moved assets during the reporting period for the purpose of avoiding disclosure under Canon 6 of the Michigan Code of Judicial Conduct."

(4) The judge's report must~~shall~~ be made at least annually and must~~shall~~ be filed as a public document in the office of the State Court Administrator or other office designated by law. These reports will be made available by the Michigan Supreme Court upon request.

Staff Comment (ADM File No. 2023-26): The proposed amendments of Canon 4E and Canon 6 of the Michigan Code of Judicial Conduct would expand the requirements of annual financial disclosure statements by judicial officers.

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 they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by Nov. 1, 2024, 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 submitting a comment, please refer to ADM File No. 2023-26. Your comments and the comments of others will be posted under the chapter affected by this proposal.

VIVIANO, J., would have declined to publish the proposal for comment.

ADM File No. 2024-01 Appointment to the Foreign Language Board of Review

On order of the Court, pursuant to MCR 8.127(A) and effective immediately, J. Elizabeth McClain (advocate representing the interests of limited English proficiency populations in Michigan) is appointed to the Foreign Language Board of Review for the remainder of a term ending on Dec. 31, 2024.

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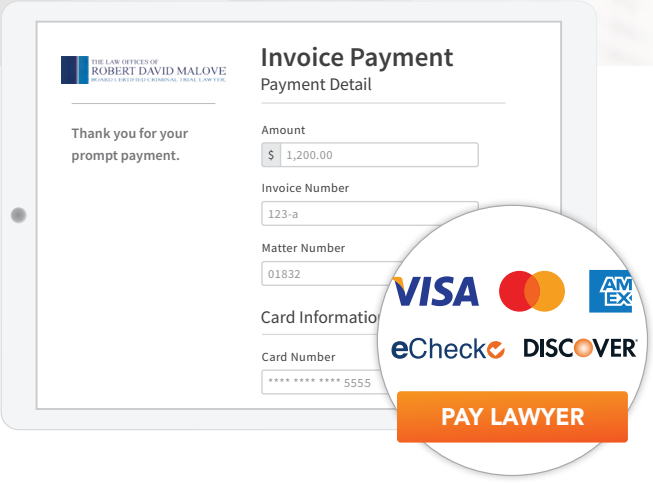

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LAWYERS & JUDGES ASSISTANCE
MEETING DIRECTORY

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

For questions about any of the meetings listed, please contact the Lawyers and Judges Assistance Program at 800.996.5522 or jclark@michbar.org.

PLEASE DO NOT HESITATE TO CONTACT LJAP DIRECTLY WITH QUESTIONS PERTAINING TO VIRTUAL 12-STEP MEETINGS. FOR MEETING LOGIN INFORMATION, CONTACT LJAP VOLUNTEERS ARVIN P. AT 248.310.6360 OR MIKE M. AT 517.242.4792.

ALCOHOLICS ANONYMOUS & OTHER SUPPORT GROUPS

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

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

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

West Bloomfield
THURSDAY 7:30 PM *
A New Freedom
Virtual meeting
(Contact Arvin P. at 248.310.6360 for Zoom login information)

Houghton Lake
SECOND SATURDAY OF THE MONTH 1 PM
Lawyers and Judges AA Meeting
Houghton Lake Alano Club
2410 N. Markey Rd.
Contact Scott with questions 989.246.1200

Lansing
THURSDAY 7 PM*
Virtual meeting
Contact Mike M. for meeting information
517.242.4792

Lansing
SUNDAY 7 PM*
Virtual meeting
Contact Mike M. for meeting information
517.242.4792

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

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

THURSDAY 7:30 PM
Zoom
(Contact Arvin P. at 248.310.6360 for Zoom login information)

GAMBLERS ANONYMOUS

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

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

OTHER MEETINGS

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

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

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

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

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

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

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

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by Nov. 1, 2024. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The committee proposes a new instruction, M Crim JI 5.14a (screening of witness), where the court has permitted a witness to be screened from viewing the defendant at trial. The instruction is entirely new.

[NEW] M Crim JI 17.26
Unlawfully Posting a Message

(1) [The defendant is charged with unlawfully posting a message./ You may consider the lesser offense of unlawfully posting a message that (was not in violation of a court order/did not result in a credible threat/was not posted about a person less than 18 with the defendant being 5 or more years older).[1]] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant posted a message through any medium of communication, including on the internet, a computer, a computer program, a computer system, a computer network, or another electronic medium of communication.[2]

(3) Second, that the message was posted without [*name complainant*]'s consent.

(4) Third, that the defendant knew or had reason to know that posting the message could cause two or more separate non-continuous acts of unconsented contact with [*name complainant*] by another person.[3]

(5) Fourth, that the defendant posted the message with the intent that it would cause conduct that would make [*name complainant*] feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(6) Fifth, that the conduct arising from posting the message is the type that would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(7) Sixth, that the conduct arising from posting the message did cause [*name complainant*] to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

[*For aggravated message posting, select any that apply from the following according to the charges and the evidence:*][4]

(8) Seventh, that the message

a. was posted [in violation of a restraining order of which the defendant had actual notice/in violation of an injunction/in violation of (a court order/a condition of parole)]; [*or*]

b. resulted in a credible threat being made to [*name complainant*], a member of [his/her] family, or someone living in [his/her] household. A credible threat is a threat to kill or physically injure a person made in a manner or context that causes the person hearing or receiving it to reasonably fear for his or her safety or the safety of another person;[5] [*or*]

c. was posted when [*name complainant*] was less than 18 years of age and the defendant was 5 or more years older than [*name complainant*].

Use Notes

MCL 750.411s(7) permits prosecution of this crime where some elements of the offense may not have occurred in the state of Michigan or in the same county. The "venue" instruction, M Crim JI 3.10 (Time and Place), may have to be modified accordingly.

1. This alternative sentence is for use as a lesser included offense where an aggravating factor is charged and the defendant challenges whether the prosecution has proven the aggravating factor.

2. Definitions for these terms can be found at MCL 750.411s(8).

3. *Unconsented contact* is defined at MCL 750.411s(8)(j) and is not limited to the forms of conduct described in that definition. If the jury requests a definition of the phrase, the court may read all of the types of contact mentioned in the statute or may select those that apply according to the charge and the evidence, or the court may describe similar conduct that it finds is included under the purview of the statute.

4. If the basis for aggravated message posting is a prior conviction, do not read this element.

5. Credible threat is defined at MCL 750.411s(8)(e). By this definition, a "credible threat" appears to meet the "true threat" standard of *Virginia v. Black*, 538 US 343, 359 (2003).

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PROPOSED

The committee proposes two new instructions, M Crim JI 33.3 (Assaulting or Harassing a Service Animal) and 33.3a (Interfering with a Service Animal Performing Its Duties), for the offenses found at MCL 750.50a. The instructions are entirely new.

[NEW] M Crim JI 33.3

Assaulting or Harassing a Service Animal

(1) The defendant is charged with the crime of assaulting or harassing a service animal. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally assaulted, beat, harassed, injured, or attempted to assault, beat, harass, or injure a service animal.

A "service animal" means a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of a person with a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by a service animal must be directly related to the person's disability.[1]

(3) Second, that the defendant knew or should have known that the animal was a service animal.

(4) Third, that the defendant knew or should have known that the service animal was used by a person with a disability. The prosecutor alleges that [*name complainant*] is a person with a disability.

A person with a disability is an individual who has a physical or mental impairment that substantially limits one or more major life activities including, but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. This includes an armed services veteran who has been diagnosed with post-traumatic stress disorder, traumatic brain injury, or another service-related disability.[2]

(5) Fourth, that when the defendant assaulted, beat, harassed, or injured the service animal, or attempted to so, [he/she] did so maliciously.

"Maliciously" means that

[*Provide any that may apply*:]

(a) the defendant knew that [he/she] was assaulting, beating, harassing, or injuring the service animal, or the defendant intended to do so, or

(b) the defendant knew that [his/her] conduct would or be likely to disturb, endanger, or cause emotional distress to [*name complainant*], or the defendant intended to do so.

(6) You may, but you do not have to, infer that the defendant acted maliciously if you find that [*name complainant*] asked the defendant to avoid or to quit assaulting or harassing the service animal but the defendant continued to do so.

You should weigh all of the evidence in this case in determining whether the defendant acted maliciously, including this inference, if you choose to make it. The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.

Use Notes

1. See the Code of Federal Regulations, 28 CFR 36.104, stating:

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. *The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.* (Emphasis added.)

2. This sentence does not need to be read where the person with a disability is not a veteran.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

[NEW] M Crim JI 33.3a
Interfering with a Service Animal Performing Its Duties

(1) The defendant is charged with the crime of interfering with a service animal performing its duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was a person with disability who used a service animal for work or tasks directly related to [his/her] disability.

A person with a disability is an individual who has a physical or mental impairment that substantially limits one or more major life activities, including, but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. This includes an armed services veteran who has been diagnosed with post-traumatic stress disorder, traumatic brain injury, or another service-related disability.[1]

A "service animal" means a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of a person with a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by a service animal must be directly related to the person's disability.[2]

(3) Second, that the service animal was performing duties for [*name complainant*].

(4) Third, that the defendant knew or should have known that the animal was a service animal being used by [*name complainant*].

(5) Fourth, that the defendant intentionally impeded or interfered with the service animal when it was performing its duties or attempted to impede or interfere with the animal when it was performing its duties.

(6) Fifth, that when the defendant impeded or interfered with the service animal's duties, or attempted to so, [he/she] did so maliciously.

"Maliciously" means that

[*Provide any that may apply:*]

(a) the defendant knew that [he/she] was impeding or interfering with duties performed by the service animal, or the defendant intended to do so, or

(b) the defendant knew that [his/her] conduct would or be likely to disturb, endanger, or cause emotional distress to [*name complainant*], or the defendant intended to do so.

(7) You may, but you do not have to, infer that the defendant acted maliciously if you find that [*name complainant*] asked the defendant to avoid or to quit impeding or interfering with the service animal as it was performing its duties, but the defendant continued to do so.

You should weigh all of the evidence in this case in determining whether the defendant acted maliciously, including this inference, if you choose to make it. The prosecutor still bears the burden of proving all of the elements beyond a reasonable doubt.

Use Notes

1. This sentence does not need to be read where the person with a disability is not a veteran.

2. See the Code of Federal Regulations, 28 CFR 36.104, stating:

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. *The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.* (Emphasis added.)

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PROPOSED

The committee proposes amendments to M Crim JI 35.1a, formerly identified as (Malicious Use of Telecommunications Service), for the offense found at MCL 750.540e. The amendments (1) refine the title and first paragraph of the instruction to include the possible intents required under the statute, (2) add language addressing the "malicious" wording in the statute that had not been included when the instruction was originally adopted, and (3) reformat the second element to make it more user friendly than the single-paragraph original format. Deletions are in ~~strikethrough~~ and new language is underlined.

[AMENDED] M Crim JI 35.1a

Malicious Use of a Telecommunications Service to Frighten, Threaten, Harass, or Annoy

(1) The defendant is charged with the crime of malicious use of a telecommunications service to frighten, threaten, harass, or annoy another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used [*identify service provider*] to communicate with [*identify complainant*].

(3) Second, that, when communicating with [*identify complainant*], the defendant, knowing it was wrong, intended to ~~[threatened physical harm or damage to any person or property/made a deliberately false report that a person had been injured, had suddenly taken ill, had died, or had been the victim of a crime or an accident/deliberately refused or failed to disengage a connection between telecommunications devices or between a telecommunications device and other equipment provided by a telecommunications service1or device/used vulgar, indecent, obscene, or offensive language or suggested any lewd or lascivious act in the course of the conversation or message/repeatedly initiated telephone calls and, without speaking, deliberately hung up or broke the telephone connection when or after the telephone call was answered/made an uninvited commercial telephone call soliciting business or contributions that was received between the hours of 9 p.m. and 9 a.m., whether the call was made by a person or recording device/deliberately engaged or caused to engage the use of (*identify complainant*)'s telecommunications service or device in a repetitive manner that caused interruption in the telecommunications service or prevented (*identify complainant*) from using (his/her) telecommunications service or device].~~

[*Provide any of the following that apply according to the charges and evidence:*]

(a) threaten physical harm to a person or damage to property in the course of a conversation or message.

(b) make a false report that a person had [been injured/suddenly taken ill/died/been the victim of a crime or an accident].

(c) refuse or fail to disengage a connection between a [*identify communication device*] and another [*identify communication device*] or between a [*identify communication device]* and other equipment that sends messages through the use of a telecommunications service or device.

(d) use vulgar, indecent, obscene, or offensive language or proposed any lewd or lascivious act during a conversation or message.

(e) repeatedly initiate a telephone call and, without speaking, deliberately hung up or broke the telephone connection when or after the telephone call was answered.

(f) make an unsolicited commercial telephone call between the hours of 9 p.m. and 9 a.m.

An unsolicited commercial telephone call is one made by a person or recording device, on behalf of a person, corporation, or other entity, soliciting business or contributions.

(g) cause an interruption in [*identify complainant*/another person]'s telecommunications service or prevented [*identify complainant*/another person] from using [his/her] telecommunications service or device by the defendant's repeated use of [his/her] telecommunications service or device.

(4) Third, that the defendant did so with the intent to terrorize, frighten, intimidate, threaten, harass, molest, annoy, or disturb the peace and quiet of [*identify complainant*].[1]

Use Notes

This is a specific intent crime.

1. If the jury has not been provided with the definition of a *telecommunications service provider,* a *telecommunications service*, or a *telecommunications access device* and the court finds that it would be appropriate to do so, the following are suggested based on the wording of MCL 750.219a:

A *telecommunications service provider* is a person or organization providing a telecommunications service, such as a cellular, paging, or other wireless communications company, or a facility, cell site, mobile telephone switching office, or other equipment for a telecommunications service, including any fiber optic, cable television, satellite, Internet-based system, telephone, wireless, microwave, data transmission or radio distribution system, network, or facility, whether the service is provided directly by

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

the provider or indirectly through any distribution system, network, or facility.

A *telecommunications service* is a system for transmitting information by any method, including electronic, electromagnetic, magnetic, optical, photo-optical, digital, or analog technologies.

A *telecommunications access device* is any instrument, including a computer circuit, a smart card, a computer chip, a pager, a cellular telephone, a personal communications device, a modem, or other component that can be used to receive or send information by any means through a telecommunications service.

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PROPOSED

The committee proposes a new instruction, M Crim JI 42.1 (Misconduct in Office), for the common law crime of misfeasance or malfeasance in office punishable under MCL 750.505. The instruction is entirely new.

[NEW] M Crim JI 42.1
Misconduct in Office

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

(2) First, that the defendant was [a/an/the] [*identify public office held by the defendant*] [on/between] [*date(s) of offense*].

(3) Second, that the defendant [*describe wrongful conduct alleged by the prosecutor*].

(4) Third, that the defendant's conduct was [malfeasance/misfeasance]. [Malfeasance is illegal or wrongful conduct/Misfeasance is a legal act but done in an illegal or wrongful manner].

(5) Fourth, that the defendant was performing [his/her] duties as [a/an/the] [*identify public office held by the defendant*] or was acting under the color of [his/her] office.

"Acting under the color of office" means that the defendant performed the acts in [his/her] role as a public officer or official or was able to perform the acts because being a public officer or official gave the defendant the opportunity to perform the acts.

(6) Fifth, that the defendant acted with corrupt intent.

The word "corrupt" is defined as depraved, perverse, or tainted.[1] Corrupt intent includes intentional or purposeful misbehavior related to the requirements or duties of the defendant as a public officer, contrary to the powers and privileges granted to the defendant as a public officer, or against the trust placed in the defendant to perform as expected as a public officer. Corrupt intent does not include erroneous acts made in good faith or honest mistakes committed or made in the discharge of duties, and it does not require that the defendant receive money or property in profit for the conduct.

Use Note

1. These three terms are further defined in *People v. Coutu* (*On Remand*), 235 Mich App 695, 706-707; 599 NW2d 556 (1999).

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