MICHIGAN
BAR JOURNAL
FEBRUARY 2025

In this issue

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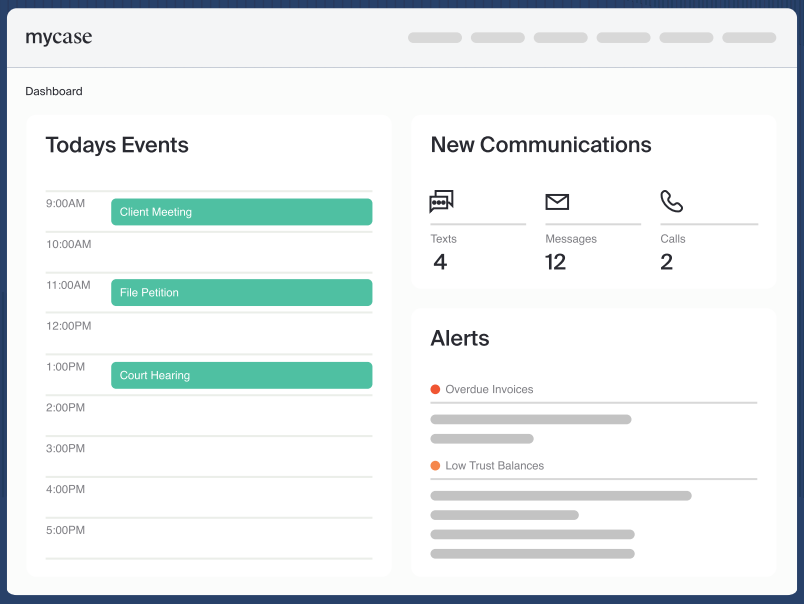

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MICHIGAN
BAR JOURNAL

FEBRUARY 2025 | VOL. 104 | NO. 02

OF INTEREST

ON THE COVER: The Grand Island ice caves near Munising in Michigan's Upper Peninsula are created when spray from Lake Superior's waves freezes as it hits the shore.

MICHIGAN
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OFFICIAL JOURNAL OF THE STATE BAR OF MICHIGAN
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COLUMNS

NOTICES

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MONEY JUDGMENT INTEREST RATE

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

For a complaint filed after Dec. 31, 1986, the rate as of January 1, 2025, is 4.016%. This rate includes the statutory 1%.

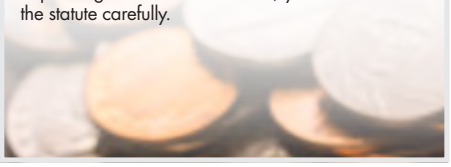
A different rule applies for a complaint filed after June 30, 2002, that is based on a written instrument with its own specific interest rate. The rate is the lesser of:

13% per year, compounded annually; or

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

For past rates, see https://www.michigan.gov/taxes/interest-rates-for-money-judgments.

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



RECENTLY RELEASED

MICHIGAN LAND TITLE STANDARDS

6TH EDITION
8TH SUPPLEMENT (2021)

The Eighth Supplement (2021) to the 6th Edition of the Michigan Land Title Standards prepared and published by the Land Title Standards Committee of the Real Property Law Section is now available for purchase.

Still need the 6th edition of the Michigan Land Title Standards and the previous supplements? They are also available for purchase.

DUTY TO REPORT AN ATTORNEY'S CRIMINAL CONVICTION

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

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

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

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

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

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

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

SBM
State Bar of Michigan

BOARD OF COMMISSIONERS MEETING SCHEDULE

MARCH 7, 2025
APRIL 25, 2025
JUNE 13, 2025
JULY 25, 2025
SEPTEMBER 2025 (TBD)

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MEMBER SUSPENSION FOR NONPAYMENT OF DUES

This list of active attorneys who are suspended for nonpayment of their State Bar of Michigan 2023-2024 dues is published on the State Bar's website at michbar.org/generalinfo/pdfs/suspension.pdf.

In accordance with Rule 4 of the Supreme Court's Rules Concerning the State Bar of Michigan, these attorneys are suspended from active membership effective Feb. 15, 2024, and are ineligible to practice law in the state.

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

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September 2025 (TBD)

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CIRCUIT 56
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Adam Hunter Strong

CIRCUIT 57
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PUBLIC POLICY REPORT

IN THE HALL OF JUSTICE

Proposed Amendment of Rule 2.003 of the Michigan Court Rules (ADM File No. 2024-03) – Disqualification of Judge (See Michigan Bar Journal December 2024, p 48).

STATUS: Comment period expires Feb. 1, 2025; Public hearing to be scheduled.

POSITION: Oppose.

Proposed Amendment of Rule 7.206 of the Michigan Court Rules (ADM File No. 2022-08) – Extraordinary Writs, Original Actions, and Enforcement Actions (See Michigan Bar Journal December 2024, p 48).

STATUS: Comment period expires Feb. 1, 2025; Public hearing to be scheduled.

POSITION: Support.

Proposed Amendment of Rule 7.306 of the Michigan Court Rules (ADM File No. 2022-23) – Original Proceedings (See Michigan Bar Journal December 2024, p 48).

STATUS: Comment period expires Feb. 1, 2025; Public hearing to be scheduled.

POSITION: Support.

Proposed Amendment of Canon 3 of the Michigan Code of Judicial Conduct (ADM File No. 2022-48) – A Judge Should Perform the Duties of Office Impartially and Diligently (See Michigan Bar Journal December 2024, p 50).

STATUS: Comment period expires Feb. 1, 2025; Public hearing to be scheduled.

POSITION: Support ADM File No. 2022-48 with the following amendments to Canon 3(A)(4):

A judge **may ~~should~~** make reasonable efforts, consistent with the law **~~and~~,** court rules, **and rules of evidence** to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

Support inclusion of the proposed comment:

The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. In the interest of ensuring fairness and access to justice, judges may make reasonable accommodations that help self-represented litigants to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. The judge should be careful that accommodations do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality. In some circumstances, particular accommodations for self-represented litigants are required by decisional or other law. In other circumstances, potential accommodations are within the judge's discretion.

Reasonable steps that a judge may take in the exercise of such discretion include, but are not limited to:

1. Construe pleadings to facilitate consideration of the issues raised.
2. Provide brief information or explanation about the proceedings.
3. Explain legal concepts in everyday language.
4. Ask neutral questions to elicit or clarify information.
5. Modify the traditional manner or order of taking evidence.
6. Attempt to make legal concepts understandable.
7. Explain the basis for a ruling.
8. Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order.
9. Inform litigants what will be happening next in the case and what is expected of them.

IN MEMORIAM

FREDERICK J. AMROSE, P10160, of Beverly Hills, died April 30, 2024. He was born in 1945, graduated from University of Michigan Law School, and was admitted to the Bar in 1972.

KARL A. H. BOHNHOFF, P10957, of Mancelona, died Dec. 9, 2024. He was born in 1940 and was admitted to the Bar in 1968.

JAMES A. CARLIN SR., P11615, of Southfield, died June 8, 2024. He was born in 1944, graduated from University of Detroit School of Law, and was admitted to the Bar in 1972.

CANDICE JANINE COSBY, P83403, of Lake Orion, died Dec. 8, 2024. She was born in 1990, graduated from Western Michigan University Thomas M. Cooley Law School, and was admitted to the Bar in 2019.

WILLIAM S. DOBREFF, P35263, of Sterling Heights, died Jan. 2, 2025. He was born in 1957, graduated from Detroit College of Law, and was admitted to the Bar in 1983.

JOHN C. EVANS, P13244, of Orchard Lake, died Jan. 7, 2025. He was born in 1933, graduated from Wayne State University Law School, and was admitted to the Bar in 1962.

ALFRED J. GEMRICH, P13913, of Delton, died Sept. 28, 2024. He was born in 1936 and was admitted to the Bar in 1963.

DANIEL S. GOLDSMITH, P14121, of Phoenix, Arizona, died Sept. 9, 2024. He was born in 1938, graduated from University of Michigan Law School, and was admitted to the Bar in 1963.

NORMAN C. HALBOWER, P14532, of Whitehall, died May 14, 2024. He was born in 1942, graduated from Detroit College of Law, and was admitted to the Bar in 1968.

CLINTON A. KRISLOV, P34043, of Chicago, Illinois, died Feb. 1, 2024. He was born in 1949 and was admitted to the Bar in 1982.

J. RUSSELL LaBARGE JR., P16321, of Clinton Township, died Aug. 29, 2024. He was born in 1944, graduated from Wayne State University Law School, and was admitted to the Bar in 1969.

THOMAS P. McKENNEY, P28535, of Holly, died Jan. 14, 2025. He was born in 1952, graduated from Detroit College of Law, and was admitted to the Bar in 1978.

DAVID W. OBERSCHMIDT, P18374, of Saginaw, died June 4, 2024. He was born in 1944 and was admitted to the Bar in 1970.

ALAN D. PENSKAR, P41759, of Bingham Farms, died Aug. 23, 2024. He was born in 1960, graduated from Wayne State University Law School, and was admitted to the Bar in 1988.

PATRICIA M. POUPARD, P40143, of Monroe, died March 27, 2024. She was born in 1954 and was admitted to the Bar in 1987.

STANLEY A. PROKOP, P19114, of Detroit, died Dec. 18, 2024. He was born in 1942, graduated from Wayne State University Law School, and was admitted to the Bar in 1969.

WARD RANDOL JR., P19216, of Troy, died May 27, 2024. He was born in 1933 and was admitted to the Bar in 1959.

CLIFFORD W. SCHIESEL, P29451, of Hartland, died June 16, 2024. He was born in 1951, graduated from University of Detroit School of Law, and was admitted to the Bar in 1978.

BRETT SCHUELKE, P81062, of Big Rapids, died June 21, 2024. He was born in 1990 and was admitted to the Bar in 2016.

LEON M. SCHURGIN, P20110, of Bloomfield Hills, died Sept. 29, 2024. He was born in 1941, graduated from Wayne State University Law School, and was admitted to the Bar in 1969.

REGINA F. SHAPIRO, P20284, of West Bloomfield, died Sept. 29, 2024. She was born in 1933 and was admitted to the Bar in 1958.

WALTER J. SKOTYNSKY, P28900, of Toledo, Ohio, died July 17, 2024. He was born in 1946 and was admitted to the Bar in 1978.

ANGELO C. TESTA, P77604, of Farmington Hills, died Dec. 24, 2024. He was born in 1987, graduated from Michigan State University College of Law, and was admitted to the Bar in 2013.

LESTER N. TURNER, P21632, of Harbor Springs, died Nov. 7, 2024. He was born in 1933, graduated from University of Michigan Law School, and was admitted to the Bar in 1960.

STEVEN S. VERNIER, P29547, of Eastpointe, died Dec. 30, 2024. He was born in 1953, graduated from University of Detroit School of Law, and was admitted to the Bar in 1978.

GEORGE E. WARD, P21970, of Canton, died Dec. 28, 2024. He was born in 1941, graduated from University of Michigan Law School, and was admitted to the Bar in 1967.

EDWARD E. WASIURA, P30555, of Muskegon, died Dec. 24, 2024. He was born in 1950 and was admitted to the Bar in 1979.

ELMER E. WHITE, P22243, of Ann Arbor, died May 11, 2024. He was born in 1940, graduated from University of Michigan Law School, and was admitted to the Bar in 1964.

JAMES A. WHITE, P22252, of Lansing, died Nov. 17, 2024. He was born in 1939, graduated from University of Michigan Law School, and was admitted to the Bar in 1964.

DANIEL ZOLKOWER, P22754, of Lathrup Village, died Dec. 25, 2024. He was born in 1933, graduated from Wayne State University Law School, and was admitted to the Bar in 1962.

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.

NEWS & MOVES

ARRIVALS AND PROMOTIONS

New associates at Varnum include **COLE ANDERSON, MARIAH DEHOOP, BRADY DILLER, ISAAC HOUSKAMP, SILAS KOK,** and **SCHUYLER PRUIS** in Grand Rapids; **DILAN KAMA** and **JULIA MORAN** in Birmingham; **CHARLOTTE JOLLY** in Novi; and **KATHLEEN LOK** in Ann Arbor.

AROOJ ANJUM, BRETT ASHER, LAURA DEMARCO CHRISTIAN GRAZIANI, BRITTANY LAWLER, FRANCISCO LOZANO, and **SAMANTHA NORRIS** with Kitch all received promotions.

NICHOLAS T. BADALAMENTI has joined Plunkett Cooney in Bloomfield Hills.

PAUL H. BEACH, **JOHN C. MUHS**, and **MICHAEL A. STONE** with Warner Norcross + Judd have been named partners. Beach is based in Grand Rapids, Muhs is based in Detroit, and Stone is based in Macomb County.

KARA DUNN BEURKENS, JULIAN J. HEIDENREICH, and **JASON D. OSBOURN** have joined Bosch Killman VanderWal in Grand Rapids.

JEFFREY BULLARD SR., JOHN M. CONWAY, DENNIS D. ALBERTS, JARED J. ANDRZEJEWSKI, and **MICHAEL A. ROSS** have joined Secrest Wardle in Troy.

DANIEL J. CANINE and **JESSICA D. VANWERT** have joined Bodman's Troy office.

JARED CHRISTENSEN, ERIN COBANE, DAVID DURELL, COLE LUSSIER, MAUREEN MOODY, ANGELIQUE NEAL, CALLIE ROOT, and **SHARAÉ WILLIAMS** with Dickinson Wright were elected members of the firm.

RONALD GARDNER has joined Howard & Howard in Royal Oak.

REGAN GLENN has joined Plunkett Cooney as an associate in its Bloomfield Hills and Flint offices.

HANNAH M. JOHNSON and **RYAN M. SEAMES** have joined Taylor Butterfield in Lapeer.

ERIC S. HYDORN has been named a shareholder at the Dobrusin Law Firm in Pontiac.

RACHEL MCRIPLEY was promoted to director of the Regional Managed Assigned Counsel Office in Dearborn.

SHANIKA A. OWENS, **BLAKE C. PADGET,** and **BLAINE A. VELDHUIS** are newly elected shareholders at Butzel.

RYAN RAMSAYER with the Barone Defense Firm in Birmingham has been named partner.

University of Detroit Mercy School of Law named **NICHOLAS SCHROECK** as its next dean.

RHONDA R. STOWERS with Plunkett Cooney in Flint has been named partner.

KLARA ZIERK has joined Klein Thomas Lee & Fresard as an associate in its Detroit office.

LEADERSHIP

JOSEPH Z. KOWALSKY has been named president of Organs for Life, Inc.

JAMES L. LIGGINS JR. with Warner Norcross + Judd in Kalamazoo was reappointed by Gov. Gretchen Whitmer to the Western Michigan University Board of Trustees.

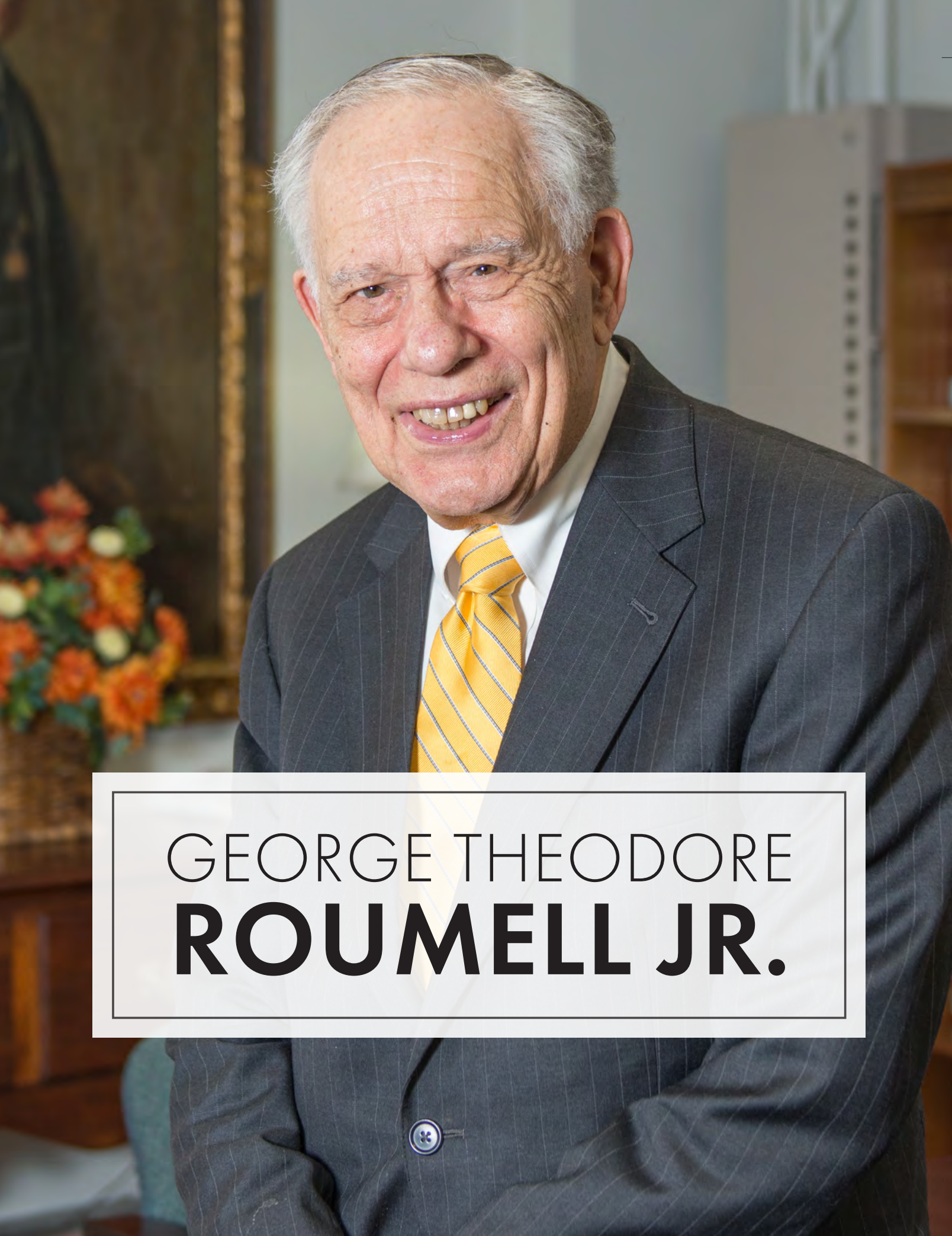
ADAM OSTRANDER with Warner Norcross + Judd in Kalamazoo was appointed to the OutFront Kalamazoo board.

ALEX THIBODEAU with Warner Norcross + Judd in Grand Rapids has been named a co-secretary and treasurer of the board of Grand Rapids Art Museum.

PRESENTATIONS, PUBLICATIONS, AND EVENTS

MDTC hosts its 9th Annual Legal Excellence Awards on Thursday, March 20 at the Gem Theatre in Detroit.

Have a milestone to announce?
Send your information to News & Moves at **newsandmoves@michbar.org.**



GEORGE THEODORE **ROUMELL JR.**

Proudly a Detroit lawyer

BY JOHN R. RUNYAN JR.

Author's note: In preparation for writing this article, I met with George Roumell on Wednesday, Aug. 28, 2024. We were originally scheduled to meet the previous week, but George emailed me to say he was in an arbitration hearing that was running late. That was George — always booked to the hilt.

Sadly, not long after I learned of the publication date for this article and telling George when it would be coming out, I received a note from arbitrator Stan Dobry saying that George had died on Tuesday, Jan. 21, 2025, at the age of 96. Not surprisingly, Dobry also indicated that at the time of his death, George was still in the midst of three undecided arbitration cases.

When he accepted the Detroit Bar Association Frank Murphy Award in 2009, George said, "When God asks at the pearly gates what I have to say for myself, I will proudly tell him I was a Detroit lawyer!" It was his way of paying tribute to the remarkable group of attorneys who practice law in Detroit. However, as I have tried to capture in my tribute, George was much more than that — he was a mentor, teacher, counselor to several generations of lawyers, and, most importantly, he was my friend.

For those of you who did not have the privilege of knowing him, here's a glimpse into the life of one of Michigan's preeminent lawyers.

— J.R.R. Jr.

Anyone who has ever practiced labor law in Michigan is familiar with George Roumell. Right up until his death the age of 96, Roumell was arbitrating labor disputes. He was the recipient of numerous awards, including the State Bar of Michigan's highest and most prestigious honor, the Roberts P. Hudson Award, which he received in 2003, and the SBM John W. Reed Michigan Lawyer Legacy Award, which he earned in 2016. Roumell was the recipient of the American Bar Association Whitney North Seymour Award in 1990 for his contributions to the field of labor arbitration, the Detroit Bar Association Frank Murphy Award in 2009, and the SBM Labor and Employment Law Section Distinguished Service Award in 1999.

George Roumell's father was a Greek immigrant who began his career shining shoes before entering the restaurant business. His mother died when he was four years old. Roumell grew up at 1207 St. Clair Street on Detroit's east side, just south of Jefferson Avenue near Water Works Park. One of his neighbors and classmates at Southeastern High School was Wallace D. Riley, who would later emerge as an important figure in his professional life.

Roumell earned his undergraduate degree at the University of Michigan and studied English literature at Oxford University. Following in the footsteps of two attorney-uncles — Stephen T. Roumell, a 1931 graduate of the Detroit College of Law, and Wayne County Circuit Judge Thomas Roumell — he graduated from Harvard Law School in 1954 and clerked for Michigan Supreme Court Justice Edward Sharpe and U.S. District Judge Theodore Levin. Roumell then joined the Detroit law firm of Armstrong, Helm and Marshall, where he was first introduced to labor law and became a partner 12 years later.

In 1968, Roumell's old high school classmate, Riley, approached him about starting a law firm; the prominent Detroit law firm of Riley and Roumell was born. Shortly thereafter, Roumell began developing his labor arbitration practice. He arbitrated upwards of 6,000 cases and served as one of the Detroit Police Officers Association's impartial umpires for more than 25 years. He also served in a similar capacity for Chicago's police force.

In addition to his arbitration and mediation work, the U.S. District Court for the Eastern District of Michigan appointed Roumell as a special master. He conducted more than 500 remedial hearings in two separate civil rights class action cases, *Schaefer v. Tannian* and *Grace v. City of Detroit.*

Roumell's practice also included advocating on behalf of management in labor relations cases. In one of his cases, he successfully

persuaded the District of Columbia Court of Appeals to hold the National Labor Relations Board in contempt because of its delay in issuing a decision in a jurisdictional dispute between millwrights and iron workers. After public employees earned the right to organize in 1965, he represented Detroit Public Schools for more than 30 years, including during the remedial phase of the *Bradley v. Milliken* school desegregation case before the U.S. Supreme Court.

In 1957, Roumell was approached by Detroit College of Law Dean Charles King to take over for a departing labor law professor. Over the next six decades, he continued to teach a variety of labor relations classes and became the longest serving faculty member in the history of the institution now called the Michigan State University College of Law. More than 3,500 students have taken his courses. In recognition of his long and distinguished teaching career, the university established the Roumell Scholars Fund and in 1986, it awarded him an honorary doctor of laws degree.

Roumell also taught at the University of Detroit Mercy Law School and the Wayne State University Institute of Labor and Industrial Relations.

An active member of the bar, Roumell served as president of the Detroit Bar Association in 1973-74 and was president of the State Bar of Michigan in 1985-1986. During his presidency, the State Bar established the Michigan Legal Milestones program, which denotes significant legal developments across the state with commemorative plaques across the state, including *Bradley v. Milliken*. Prior to stepping down to serve as SBM president, Roumell supervised publication of the Michigan Bar Journal, the State Bar's flagship publication. He was instrumental in securing rights to feature well-known works of art on the Journal's covers, including "The Scream" by Norwegian artist Edvard Munch.

Roumell was also an author and lectured across the country. His "Primer on Labor Arbitration" is considered one of the leading treatises on the subject; he was also co-author of "Absenteeism and the Impact of the Family and Medical Leave Act," and he also had a hand in helping establish Michigan's Institute for Continuing Legal Education in 1960.

John R. Runyan is a former chair of the State Bar of Michigan Labor and Employment Law Section and current chair of the SBM Standing Committee on the Michigan Bar Journal. He is a past president of the College of Labor and Employment Lawyers, the Detroit Bar Association, and the Detroit chapter of the Federal Bar Association.

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Summary: *Loper Bright Enterprises v. Raimondo*

BY CHRISTOPHER ALLMAN AND TIM GUTWALD

Loper Bright Enterprises v. Raimondo[1] was initiated by multiple family-operated fishing companies who sued the U.S. Secretary of Commerce challenging a National Marine Fisheries Service (NMFS) regulation requiring them to pay the salaries of government-mandated observers on board their vessels.

More specifically, due to past unregulated overfishing of international waters, the federal government in 1976 enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSA).[2] The MSA extended the U.S. territorial waters to 200 nautical miles and declared "exclusive fishery management authority over all fish" within that area.[3] The NMFS was charged by the Secretary of Commerce with administering the MSA, which gives broad powers to eight regional councils to formulate plans for conservation of fishing resources.[4]

As is relevant in this case, an MSA plan may require that "one or more observers be carried on board" domestic vessels "for the purpose of collecting data necessary for the conservation and management of the fishery."[5] The MSA specifies three groups that must cover costs associated with observers, including vessels within the jurisdiction of the North Pacific Fishery Management Council, where many of the largest and most successful commercial fishing enterprises in the nation operate.[6]

The MSA does not carry a similar term for Atlantic herring fishermen to bear the costs of an observer; however, the Atlantic fisheries aimed to provide observers on 50% of vessels by requiring fishermen to declare they are fishing and indicating the species they intended to harvest prior to the trip.[7] If the NMFS determined that an observer was required but declined to appoint one, the vessel must contract and pay for a government-certified observer which could cost the vessel up to 20% of the value of the harvest.[8]

Loper Bright Enterprises brought the case due to MSA silence requiring Atlantic fishermen to pay for an observer, especially given the great disparity in costs between the Atlantic and Pacific regents. Both the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the District of Columbia Circuit upheld the regulation after finding the statute's silence on the issue of observers made it ambiguous, allowing courts to legally defer to the NMFS interpretation as reasonable based on the *Chevron* doctrine.[9]

Since the 1984 U.S. Supreme Court ruling in *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, a court asked to interpret an administrative law can defer to an agency's interpretations so long as the interpretation is reasonable. This applies even when the reviewing court reads the statute differently. *Chevron* deference is based on the rationale that because agencies are staffed with experts in the field who can bring their training and knowledge to bear on open statutory questions, they are better positioned to interpret their own statutes than courts.

The Supreme Court granted certiorari in May 2023 to hear the case specifically to take up the issue of whether the *Chevron* doctrine should continue when a statute might be ambiguous.[10]

In this case, the Supreme Court disagreed with both lower courts and expressly overruled the long-standing *Chevron* doctrine on the basis that "[the] Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous."[11] As such, the Supreme Court said the lower courts were wrong to defer to the agency and remanded the case back for further evaluation.

In reaching its conclusion, the Supreme Court found that when federal agency rulemaking goes beyond administering laws as passed by Congress, the agency instead engages in legislating. The majority opinion noted that under the separation of powers doctrine, the framers of the Constitution envisioned that courts would have the final interpretation of law — not the executive branch. The courts' assessments should be *informed* by the executive branch, but not *directed* by the executive branch.

While eliminating *Chevron* doctrine deference, the Supreme Court's decision did not instruct lower courts to ignore agency expertise, allowing courts to give substantial weight to an agency's subject matter expertise and reasoned consideration of issues, particularly when the agency interpretation has been long-standing and consistent. When the reviewing court is engaged in statutory interpretation, the court may use the agency's interpretation to "help inform that inquiry."[12]

It will take years, if not decades, for the exact impact of *Loper* to become clear, but the case has already been felt in some industries. The same day as *Loper*'s publication, a New Jersey-based hospital system sued the federal Department of Health and Human Services (HHS) and the Center for Medicare and Medicaid Services (CMS) to challenge how the agencies calculate disproportionate share hospital (DSH) payments.[13] According to the plaintiff, CMS has narrowly interpreted a key metric in the DSH formula — supplemental security income fraction — in an irrational and unlawful way. The hospital system alleges the calculation cost them $400,000 in 2016 alone. *Loper* will certainly play a prominent role when the Supreme Court looks at DSH payments next term in this case, which it has agreed to review next term.[14]

Elsewhere, a federal judge in Texas cited *Loper* when staying the effective date of a non-discrimination rule found in the Affordable Care Act.[15] The Texas court cited *Loper* when it held that it was entitled to use its own methods of statutory construction to interpret the phrase "on the basis of sex" rather than defer to the agency's interpretation. The court determined that the HHS interpretation was not persuasive and created contradictions and ambiguity.[16]

Outside of the healthcare industry, the day *Loper* was published, a federal district court in Texas held that the U.S. Department of Labor rule that raises the minimum salary at which executive, administrative, and professional employees are exempt from overtime pay exceeded its authority.[17] A different federal district court in Texas[18] cited *Loper* in setting aside the Federal Trade Commission's new non-compete rule. The plaintiffs argued that while the FTC had authority to prosecute "unfair methods of competition," it did not

have authority to determine what constituted "unfair competition." The court agreed, holding that the FTC lacks rulemaking authority with respect to unfair methods of competition.[19]

The impact of *Loper* will invariably extend far beyond employment and healthcare law. Heavily regulated areas such as finance law and patent law will also feel its effects. In the finance industry, *Loper* is expected to take center stage in challenges to the Security and Exchange Commission (SEC) climate disclosure rule. Earlier this year, nine lawsuits challenging the proposed rule were consolidated and will be heard by the U.S. Eighth Circuit Court of Appeals.[20] Similarly, *Loper* is expected play a role in Google's challenge to *Suprema v. International Trade Commission*,[21] in which the circuit court gave deference to the agency's interpretation related to "articles that infringe."

CONCLUSION

The general consensus is that *Loper* will lead to more conservative rulemaking from regulatory agencies. However, the impact on existing rules remains very unclear. This is particularly true in light of another Supreme Court decision in *Corner Post v. Board of Governors*.[22] In *Corner Post*, the Court held that the six-year statute of limitations for challenging agency action begins when the challenger is harmed rather than when the regulation is adopted. As a result, new firms and companies may be able to challenge long-existing rules.

The uncertainty might not be appreciated by incumbents in these industries that have structured their operations around existing regulations and often value stability and predictability. How Congress responds is also unclear. Will new laws written by Congress include more specificity and clearer definitions, or will Congress simply include language making it clear that agencies have the authority to fill in any blanks or gaps in new and existing laws? While much remains to be determined, heavily regulated industries will no doubt continue to see changes as rules are challenged and agencies reevaluate their rulemaking and enforcement actions.

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Tim Gutwald is general counsel and chief compliance officer at Mentavi Health in Grand Rapids, a telehealth platform that diagnoses mental health disorders in all 50 states and, through its affiliated providers, offers medical treatment in 41 states. He advises the company on all legal matters with particular attention to healthcare compliance issues, HIPAA and mental health confidentiality laws, corporate practice of medicine issues, and corporate governance.

ENDNOTES

1. *Loper Bright Enterprises v Raimondo*, 603 US 369; 144 S Ct 2244; 219 L Ed 2d 832 (2024).
2. See 16 USC 90 §1801 *et seq.*; 90 Stat 331.
3. 16 USC §1811(a).
4. See 16 USC § §1852(a)-(b).
5. 16 USC §1853(b)(8).
6. 16 USC 1862(a).
7. 85 Fed Reg 26, 7417-7418 (2020); *Loper*, *supra n 1* at 382.
8. *Id.*
9. *Chevron, USA, Inc v Natural Resources Defense Council Inc*, 467 US 837; 104 S Ct 2778; 81 L Ed 2d 694 (1984), overruled by *Loper*, 603 US 369 (2024).
10. *Loper Bright Enterprises v Raimondo*, 143 S Ct 2429; 216 S Ct 414 (2023).
11. *Loper*, *supra* n 1 at 369.
12. *Id.* at 413.
13. Complaint, *HMH Hosp Corp v Becerra;* 1:2024cv01901 (D DC, 2024.)
14. *Id.*
15. *Tennessee v Becerra,* 1:24-cv-00161 (SD Miss, 2024); *Texas v Becerra,* 6:24-cv-211-JDK (ED Tex, 2024).
16. *Id.*
17. *Texas v United States Dep't of Labor*, 4:24-CV-499-SDJ (ED TX, 2024).
18. *Ryan LLC v Fed Trade Comm* 3:24-CV-00986-E (ND TX, 2024).
19. *Id.*
20. *Nat'l Legal & Policy Ctr v SEC*, 24-1685 (CA 8, 2024).
21. *Suprema v Int'l Trade Comm*, 796 F3d 1338 (CA 1, 2015).
22. *Corner Post v Bd of Governors*, 603 US 799; 144 S Ct 2240; 219 L Ed 2d 1139 (2024).

PROTECTING **REFERRAL FEES**

Recent trends regarding MRPC 1.5(E)

BY E. POWELL MILLER AND ERIC MINCH

Referral fees are ubiquitous in the legal profession and have been so for time immemorial. Referral fees create win-win opportunities. They allow referring attorneys to profit from their relationships and take care of their clients in areas where they do not have expertise. They also give receiving attorneys the opportunity to receive cases and earn a livelihood, which sometimes result in extraordinary fees. Most importantly, they ensure that clients receive representation from an attorney often better equipped to handle the matter than the referring attorney.

Unfortunately, this win-win premise too often hits roadblocks in the real world. In recent years, there has been a growing trend of disputes in trial and appellate courts about whether attorneys are obligated to pay referral fees under the circumstances of a particular case. The economic reality is that when a case is resolved, the referring attorney has an enormous interest in getting paid, but the receiving attorney may have buyer's remorse. Often, the receiving attorney pours years of hard work into the case and is rewarded with a large contingency fee — lucrative fruit sometimes in the millions of dollars. The receiving attorney may be tempted to keep all the fruits of their labor despite the referral fee agreement.

A decision not to pay a referral fee obviously has business consequences and can create a lose-lose situation — a loss to the referring attorney because the fee would not be properly paid, a loss to the receiving attorney because the referring attorney would no longer trust them for refusing to comply with the referral fee contract and may send future lucrative cases elsewhere, and a loss

for the client who may find themselves involved in a fight between attorneys over fees. This article examines the basics of referral fee agreements in Michigan, some trends in case law, and suggestions to ensure compliance with applicable ethics rules so as to avoid possible disputes.[1]

MRPC 1.5(E) AND CLIENT OBJECTIONS TO REFERRAL FEES

In recent years, Michigan courts have seen increasing instances of win-win opportunities turning into lose-lose situations. The risk-reward calculus has led to a number of instances where the receiving attorney with the alleged referral obligation has chosen to fight rather than pay. Given this trend, it is imperative for referring attorneys — who lose their leverage once they refer the client — to protect themselves in the event the referral fee agreement is not honored.

Michigan Rule of Professional Conduct 1.5(e) permits attorney referral fees and outlines the rules attorneys must follow when in making such agreements. Recent trends in the law show that some attorneys to whom cases were referred are trying to use MRPC 1.5(e) and the close relationship they develop with the underlying client as a shield to avoid paying the fee properly owed to the referring lawyer. MRPC 1.5(e) provides:

> (e) A division of a fee between lawyers who are not in the same firm may be made only if:
>
> (1) the **client is advised of and does not object** to the participation of all the lawyers involved; and
>
> (2) the total fee is reasonable. (Emphasis added.)

By the time a case resolves — often years after the referral — the receiving attorney is at an immense advantage because they have established a close relationship with the client, whereas the referring attorney generally has no contact with the client after the referral. As a result, the client often feels indebted to the receiving attorney, who they see as their champion. Some attorneys have obtained a letter or affidavit from the client objecting to paying the referral fee years later. Fortunately, courts recognize this unfair advantage, and the trend in the law is toward enforcement of referral fee obligations and recognizing that the referring attorney's rights are established at the time of retention, not when the attorney fee is eventually received.

MICHIGAN COURT OF APPEALS ON CLIENT OBJECTIONS

A Michigan Court of Appeals case, *Babi v. Estate of Herman*, is instructive.[2] In *Babi*, the plaintiff alleged that he and attorney Herman had a professional relationship wherein Babi referred clients in exchange for a fee.[3] In 2018, Babi met with the underlying client, Terri Popilchak, whose husband had recently died at a hospital under circumstances suggesting the possibility of medical malpractice.[4]

Babi referred the matter to Herman on or about the same day Mr. Popilchak died.[5] Roughly four years later at a hearing on a motion to approve a settlement, Herman solicited testimony from Mrs. Popilchak, who disputed that she had entered into an attorney-client relationship with Babi and said that Babi had not referred her to Herman.[6] Based on this testimony, Herman refused to pay Babi a referral fee, and Babi filed suit.[7]

Herman moved for summary disposition, arguing, in part, that the client's objection to paying the referral fee was dispositive and he was not ethically able to pay Babi a fee under MRPC 1.5(e).[8] Babi responded, arguing, in part, that the client's objection at the settlement hearing could not be dispositive because it came years after the referral was made.[9] The trial court granted summary disposition for the defense, agreeing that the underlying client's objection was dispositive even though it came four years after the referral, but the Court of Appeals reversed that decision in yet another example of Michigan courts protecting attorney referral fees.

Regarding the timing of a client's objection to the referral fee under MRPC 1.5(e), the Court of Appeals sided with Babi, reaffirming one of its prior decisions which was affirmed in part and reversed in part by the Michigan Supreme Court on an unrelated issue. The Court of Appeals held that *Law Offices of Jeffrey Sherbow v. Fieger & Fieger (Sherbow I)* remained binding law regarding the timing of a client's objection to a referral fee.[10] In *Sherbow I*, the Court of Appeals held that an objection to a referral fee agreement by a client must be made at the time the client was advised of the agreement. At issue in the *Babi* appeal was whether the *Sherbow I* holding remained good law because it was affirmed in part and reversed in part. In *Babi*, the Court of Appeals held that the *Sherbow I* holding on the timing of a referral fee objection by a client remained good law:

> The Supreme Court's decision in *Sherbow* [*I*] to reverse this Court was limited to the determination that an attorney-client relationship was not required under MRPC 1.5(e). Accordingly, because the Supreme Court did not reverse *Sherbow* [*I*] in its entirety, the remaining portions of that opinion remain good law and are controlling.[11]

Sherbow I and *Babi* provide important guidance on MRPC 1.5(e) regarding advising clients of referral fee agreements and the relevance or possible dispositive nature of clients' objections to such an agreement — all depending on when clients may have objected. The rulings in these cases are supported by reasons well-articulated by the U.S. District Court for the Eastern District of Michigan in *Idalski v. Crouse Cartage Co.*[12] For example, permitting an untimely client objection to be dispositive would be unwise because "[t]o allow subsequent events, such as a mere change of heart, to upset the referral arrangement is inconsistent with basic contract law."[13] Additionally, "it would be unwise as a matter of policy to permit a client by whim or fancy, or perhaps more nefarious motives, to undo a referral contract after the lawyers' work is finished but before final payment."[14]

THE REQUISITE ATTORNEY-CLIENT RELATIONSHIP

In addition to advising the underlying client of the referral fee agreement, a second critical aspect of a valid agreement is ensuring that the referring attorney has established an attorney-client relationship with the referred client. This article does not cover that issue, but the authors direct readers to begin with a review of *Sherbow II* on the requirements for establishing the necessary attorney-client relationship as a prerequisite to an enforceable referral fee agreement.[15] *Sherbow II* held, in part, that the attorney-client relationship requirement can be satisfied by limiting it "to the act of advising the individual to seek the services of the other attorney if the referring attorney and client expressly or impliedly demonstrate their intent to enter into a professional relationship for this purpose."[16]

BEST PRACTICES TO PROTECT REFERRAL FEES

Compared to many jurisdictions, Michigan's ethics rules on creating valid and enforceable referral fee agreements are more accommodating of such fees. Many jurisdictions have laws that are less favorable to attorneys and require, for example, referral agreements in writing and signed by the underlying client and have the fee amount equal an amount proportionate to the services each attorney performs.[17] Since Michigan's rules are more tolerant, Michigan attorneys often fail to give them the attention they deserve when referring matters.

As evidenced by the many referral fee dispute cases in Michigan's trial and appellate courts, attorneys who are referred matters and later have buyer's remorse may attempt to take advantage of the referring attorney's lackadaisical approach to referring a matter and ensuring compliance with MRPC 1.5(e). The authors offer the following advice to protect against disputes and ensure Michigan continues to support referral fee agreements between lawyers.

First, when a matter is referred, send the referred client and receiving attorney an email or letter outlining the agreement. The State Bar of Michigan provides a template for such a letter.[18] Second, the referring attorney is well-advised to participate in the likely engagement letter with the receiving attorney so the engagement agreement acknowledges that there was a relationship between the referring attorney and the client, the client consents to the fact of the referral fee, and the parties agree to be bound by Michigan law. Third, the referring attorney — if their involvement was only the referral itself — should nonetheless seek status updates from the client and receiving attorney.

In engaging in these specific practices, it would be very difficult for the receiving attorney, who years later obtained an outstanding result, to avoid payment of the referral fee obligation. According to Michigan Ethics Opinion RI-234, "both the referring lawyer and the receiving lawyer are responsible to see that the client is properly advised and does not object to the participation of the lawyers."[19] While RI-234 provides that the attorneys may agree that one or the other will ensure compliance, it is always in the referring attorney's best interests to personally ensure compliance to avoid possible future disputes.[20]

Lastly, if a dispute arises between the referring and receiving attorneys, RI-224 provides that the attorney holding disputed funds must keep them in a segregated trust account.[21] Specifically, "[a] lawyer who receives fees which are subject to a claim for a referral fee by another lawyer must notify the other lawyer of receipt of the fees, provide an accounting of the fees received, and keep the disputed fees in a segregated trust account pending resolution of the dispute."[22]

CONCLUSION

Regarding referral fee agreements, sellers should beware and protect themselves. MRPC 1.5(e)'s requirements are not burdensome, and complying with them will further the win-win scenarios originating from attorney referrals in Michigan.

The authors thank Kenneth M. Mogill for his assistance with this article. Mogill is an adjunct professor at Wayne State University Law School, where he teaches professional responsibility, and a former chair of the State Bar of Michigan Standing Committee on Professional Ethics.

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ENDNOTES

1. This article explores issues related to referral fee agreements in which an attorney admitted in Michigan refers a matter to be handled in Michigan to another attorney admitted in Michigan. This article does not cover the situation in which an out-of-state attorney refers a matter to an attorney admitted in Michigan. In that situation, RI-199 (1994) provides that "[t]he terms of [such] a referral fee must comport with the ethics rules of both jurisdictions."
2. *Babi v Estate of Herman*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 364375).
3. *Id.* at __; slip op at 1.
4. *Id.*
5. *Id.*
6. *Id.* at __; slip op at 2.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* at __; slip op at 5-6, citing *Sherbow I*, 326 Mich App 684; 930 NW2d 416 (2019), aff'd in part, rev'd in part by *Law Offices of Jeffrey Sherbow, PC v Fieger & Fieger, PC (Sherbow II)*, 507 Mich 272 (2021).
11. *Babi*, ___ Mich App at ___; slip op at 6.
12. *Idalski v Crouse Cartage Co*, 229 F Supp 2d 730 (ED Mich, 2002).
13. *Id.* at 739.
14. *Id.* at 730; See also *Id.* ("As the Michigan Grievance Administrator observed, '[i]t is easy to conjecture situations where the attorney to whom a case has been referred colludes with the client to deprive the referring attorney of the benefit of his bargain, and later splits the referral fee.'") (citation omitted).
15. See *Sherbow II*, 507 Mich 272 (2021).
16. *Id.* at 277.
17. See IL R S CT RPC Rule 1.5(e) and OH ST RPC Rule 1.5(e).
18. The State Bar of Michigan offers extensive resources through its Practice Manage-ment Resource Center. *Practice Management Resource Center*, SBM <https://www.michbar.org/pmrc/content> (all websites accessed January 3, 2024). Particularly rel-evant here, the State Bar offers a download of a template letter to a client confirming a referral fee. *Referral Fees (With attorney)*, SBM <https://www.michbar.org/file/pmrc/articles/0000091.pdf>.
19. RI-234 (1995). Please note, however, that "State Bar Ethics Opinions are not binding ... [but] they are instructive." *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 202; 650 NW2d 364 (2002).
20. RI-234 ("The lawyers may each advise the client as to the arrangement, jointly advise the client, or agree that one or the other lawyer shall be responsible for advising the client, as long as both ensure that the client is properly advised and given an opportunity to object.").
21. RI-224 (1995).
22. *Id.* at Syllabus.

INCREASED **PROTECTIONS**

For Michigan victims of employment retaliation for asserting civil rights claims

BY TOM R. PABST AND JARRETT M. PABST

For years, Michigan law had been misinterpreted to deny justice to worthy victims of employer retaliation for having asserted civil rights claims. That all changed in 2020, when the Michigan Court of Appeals decided the published case of *White v. Department of Transportation*.[1] How it happened, and why it should never have happened, is the subject of this article.

Michigan's civil rights law, the Elliott-Larsen Civil Rights Act (ELCRA), prohibits discrimination based on race, sex, religion, or national origin "with respect to employment, compensation, or a term, condition, or privilege of employment[.]"[2] This itemization of the type of losses that a discrimination plaintiff/victim must have suffered has come to be interpreted to requiring that person to show an "adverse employment action" involving an ultimate employment decision such as termination; a demotion; a decrease in wage or salary; a less distinguished title; a material loss of benefits; significantly diminished material responsibilities; or other indices usually requiring some type of monetary loss.[3]

The Elliott-Larsen Act also prohibits retaliation by an employer; the anti-retaliation provision does *not* expressly require a plaintiff to show monetary and/or employment losses, unlike what is required for a victim of substantive discrimination to show or prove.[4] Unfortunately, Michigan courts have judicially legislated and/or rewritten the ELCRA provisions to require victims of employer retaliation show the same employment-related economic losses that victims of substantive discrimination must show to survive a motion for summary disposition.

For example, in *Peña v. Ingham County Road Commission* in 2003, the Court of Appeals dismissed the plaintiff's retaliation claim, ruling that Pena could not prove an adverse employment action such as termination of employment, loss of promotion, reduction in salary or wages, or some other monetary loss.[5] The court decided that Pena could only show that his employer opened up a worker's compensation fraud claim against him after he filed the lawsuit, that Pena was isolated at work after filing the lawsuit, and Pena was ridiculed by his supervisor for having filed the lawsuit. Ironically, the *Peña* court relied on the 2002 U.S. Sixth Circuit Court of Appeals opinion in *White v. Burlington N & SF R Co.*[6]

Three years after *Peña* was decided, the case it relied upon, *White*, was overturned by the U.S. Supreme Court, leading to a much more favorable standard for plaintiff victims of retaliation to prove their cases.[7] In *White*, the plaintiff lost her "clean" job as a forklift driver and was reassigned to work the "dirty" job of track laborer.[8] After she complained, White was suspended for 37 days without pay. Though the employer subsequently reversed its decision and paid White for the 37 days she was suspended, she sued.

The Supreme Court ruled that the express language of the anti-retaliation law in Title VII — much like the express language of the anti-retaliation law in ELCRA — does *not* require a plaintiff to show monetary losses related to employment itself in order to have a tenable claim of retaliation.[9] The Court also adopted a new, more plaintiff-friendly standard of proof, saying that context matters in these cases and anything that would deter and/or dissuade a reasonable employee or worker from complaining is enough to be "materially adverse" to the plaintiff and constitutes an adverse action for retaliation prima facie case purposes.[10] In spite of the SCOTUS decision in *White*, *Peña* was cited and applied for the next 17 years in dismissing the retaliation claims of numerous plaintiffs in Michigan courts.

This all ended in 2020 with the Michigan Court of Appeals decision in *White v. Department of Transportation*.[11] Judge Douglas Shapiro found the U.S. Supreme Court reasoning in *White v. Burlington* to be compelling. Although he dismissed the plaintiff's failure to promote the claim, Shapiro ruled that a question of fact for the jury was presented on the retaliation claim when the plaintiff showed that after she filed her lawsuit:

(1) she received a poor evaluation for the first time in her work career with this employer,
(2) she was put on a performance improvement plan (PIP) outlining the requirement to improve her work output or face consequences,
(3) she was transferred from her work location in Detroit to a location in Lansing, and
(4) she received a "notice of formal counseling."[12]

Under *Peña*'s rationale and holding, it is doubtful that any of these acts by White's employer would have been sufficient to establish a prima facie case of retaliation. However, Shapiro found that what was normally a question for the jury to decide will be presented based on whether a particular act by an employer was "materially adverse:"

> Per *Burlington*, "it is for the jury to decide whether anything more than the most petty and trivial actions against an employee should be considered materially adverse to the employee and thus constitute adverse employment actions." *Crawford v. Carroll,* 529 F3d 961, 973 n 13 (CA 11, 2008). See also *McArdle v. Dell Products, LP,* 293 Fed Appx 331, 337 (CA 5, 2008) ("Whether a reasonable employee would view the challenged action as materially adverse involves questions of fact generally left for a jury to decide.") We conclude that the imposition of a PIP and plaintiff's effective transfer were not "trivial" acts nor a "minor annoyance," *Burlington,* 548 US at 68, and so the question of whether plaintiff was subject to an adverse employment action should be determined by a jury.[13]

Shapiro's rulings in *White v. Department of Transportation* increased protection for victims of employer retaliation in three ways. First, far more plaintiffs with retaliation claims will survive defendants' motions for summary disposition. Second, more plaintiff victims of retaliation will have a jury, sitting as the conscience of the community, decide their retaliation claims. Finally, the increased ability to avoid defendants' motions for summary disposition will allow plaintiffs to settle their cases more often and at a fair value.

The *Peña* case, with its incorrect and untenable legal standard of Michigan's retaliation law, was applied by judges for years to dismiss perfectly good claims of discriminatory retaliation. Those days are over. With Shapiro's excellent analysis in *White v. Department of Transportation,*[14] all judges and practicing attorneys recognize that monetary losses are not necessary for a plaintiff to prove a prima facie case of retaliation. Most importantly, such claims involving disputed questions of fact should now be submitted to a jury for a decision. Thus, victims of retaliation will now get their day in court as the law always intended.

Flint attorney **Tom R. Pabst** has been practicing law since 1977 and focuses his practice on civil rights law, commercial litigation, and personal injury cases. A graduate of Wayne State University School of Law, Pabst is a former president of the Genesee County Bar Association and the Flint Trial Lawyers Association.

Flint attorney **Jarrett M. Pabst** has been practicing law since 2010. A graduate of Thomas M. Cooley Law School, he is well versed in civil statutes, especially the Whistleblower Protection Act and the Elliot Larson Civil Rights Act.

ENDNOTES

1. *White v Dep't of Transp,* 334 Mich App 98; 964 NW2d 88 (2020).
2. MCL 37.2201(a).
3. *Peña v Ingham Co Rd Comm,* 255 Mich App 299; 660 NW2d 351 (2003).
4. Under ELCRA, an employer is liable if it retaliates against an employee for having engaged in protected activity, e.g., opposing a violation of the act's antidiscrimination provision. See *DeFlaviis v Lord & Taylor, Inc,* 223 Mich App 432, 436; 566 NW2d 661 (1997). ELCRA's antiretaliation provision provides: Two or more persons shall not conspire to, or a person shall not: Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act. [MCL 37.2701(a).]
5. *Peña, supra* n 3 at 314-315.
6. *White v Burlington N & SF R Co,* 310 F 3d 443, 450 (CA 6, 2002), vacated by *White v Burlington N & SF R Co,* 321 F3d 1203 (CA 6, 2003).
7. *White v Burlington N & SF R Co,* 321 F3d 1203 (CA 6, 2003).
8. *White, supra* n 6 at 447.
9. *Id.* at 451.
10. *Id.*
11. *White, supra* n 1.
12. *Id.* at 127.
13. *Id.* at 122.
14. *Id.* at 100.

BEST PRACTICES

Rescuing your IRS Form 2848

BY NEAL NUSHOLTZ

You cannot represent a client before the Internal Revenue Service without completing an IRS Form 2848 (Power of Attorney and Declaration of Representative) that designates you as a representative.[1] Occasionally, Form 2848 can be problematic. Sometimes, an attorney must list which acts are authorized for the representative to perform with limited information. Sometimes, new issues requiring authorization to perform acts not included in the original form can arise.

Under Internal Revenue Code Section U.S.C. §6103(a), no officer or employee of the United States (including former employees or officers) may disclose to a third person any tax return or tax return information unless, under §6103(e)(6), that third person is an attorney in fact authorized in writing to receive such information. Potential attorneys in fact are limited to licensed attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, people approved for temporary recognition, and people involved in rulemaking.[2] Rules for written authorization of an attorney in fact are contained in 26 CFR §601.503(a). They include specifying:

- the type of tax involved;
- the federal tax form number;
- the specific year(s)/period(s) involved;
- in estate matters, the decedent's date of death;
- a clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s); and
- a declaration that the representative qualifies as described in §601.502(c).[3]

A properly completed Internal Revenue Service Form 2848 satisfies the requirements for both power of attorney as described above in §601.503(a) and the appropriate declaration by the person representing the taxpayer.

If there is a defect in your power of attorney, the IRS will reject it and without it, you cannot represent your client for IRS purposes. If a new matter arises that is not on your power of attorney, your power of attorney will not cover it.

§601.503(b)(3) contains a special provision that allows you to unilaterally amend the power of attorney if you have a general power of attorney with two specified paragraphs (items (i) and (ii) below):

> (3) Special provision. The Internal Revenue Service will not accept a power of attorney which fails to include the information required by §§601.503(a)(1) through (5). If a power of attorney fails to include some or all of the information required by such section, the attorney-in-fact can cure this defect by executing a Form 2848 (on behalf of the taxpayer) which includes the missing information. Attaching a Form 2848 to a copy of the original power of attorney will validate the original power of attorney (and will be treated in all circumstances as one signed and filed by the taxpayer) provided the following conditions are satisfied —
>
> (i) The original power of attorney contemplates authorization to handle, among other things, federal tax matters (e.g., the power of attorney includes language to the effect that the attorney-in-fact has the authority to perform any and all acts).
>
> (ii) The attorney-in-fact attaches a statement (signed under penalty of perjury) to the Form 2848 which states that the original power of attorney is valid under the laws of the governing jurisdiction.

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

Having a short, general power of attorney that contains the two paragraphs above allows you to fix a Form 2848 should the original form signed by your client fall short of what you need.

DIGITAL SIGNATURES AND ONLINE SUBMISSIONS

While you must handwrite your signature on a Form 2848 if you file by mail or by fax,[4] a time-saving digital signature is an option if you file online. Digital, electronic, or typed-font signatures are not valid for a Form 2848 filed by mail or by fax.[5] A Form 2848 with an electronic signature image or digitized image of a handwritten signature may only be submitted online at IRS.gov/Submit2848.[6]

The digital signature is a time saver. With a handwritten signature, you must print, sign, scan, and email — and then print and scan again after the Form 2848 is signed by the client. With your digital signature already on the form, it can be immediately uploaded to the IRS after it is signed, scanned, and returned by the client. In such cases, remember to tell the client to scan and return all pages.

SPECIAL SITUATIONS

Fiduciaries

A fiduciary does not need a Form 2848 power of attorney to act on behalf of an estate or a trust. A fiduciary uses a Form 56 (Notice Concerning Fiduciary Relationship) to act on behalf of an estate or trust,[7] but a fiduciary who appoints a representative will use a Form 2848 power of attorney for that purpose.

Dissolved Business Entities

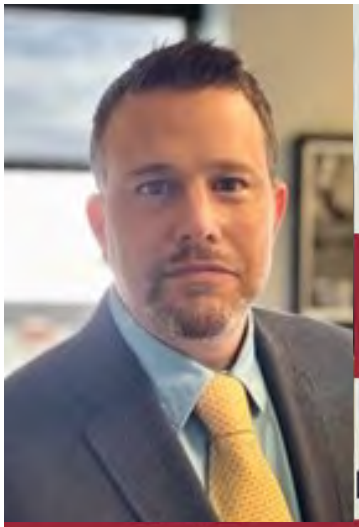
For dissolved partnerships, each former partner must execute a Form 2848 power of attorney. If a partner is deceased, the legal representative of each deceased partner — or a person having legal control over the disposition of the partnership interest and/or the share of partnership assets of the deceased partner — must execute a Form 2848 power of attorney in their place.[8]

For a dissolved corporation, IRS officials may require submission of a statement showing the total number of outstanding shares of voting stock as of the date of dissolution, the number of shares held by each signatory to a power of attorney, the date of dissolution, and a representation that no trustee has been appointed.[9]

Neal Nusholtz is a tax attorney at Kemp Klein Law Firm in Troy whose legal practice spans more than 40 years. He specializes in all areas of taxation ranging from income tax audits to litigation and state and federal appeals and assists clients with issues involving income tax, estate and gift taxation, estate planning, business transactions and planning, probate, trust administration, audits, and IRS administrative appeals.

ENDNOTES

1. *About Form 2848,* IRS <https://www.irs.gov/forms-pubs/about-form-2848> (all websites accessed January 13, 2025).
2. Treasury Dep't Circular No. 230, §10.5 (Rev June 2014); 26 CFR 301.
3. 26 CFR 601.503.
4. Addresses for mailing and fax numbers depend on the state where the taxpayer lives and can be found in the Form 2848 instructions. See *Instructions for Form 2848,* IRS <https://www.irs.gov/instructions/i2848>.
5. *Id.*
6. *Id.*
7. See *Id.* The instructions for form 2848 provide:
Form 56. Use Form 56, Notice Concerning Fiduciary Relationship, to notify the IRS of the existence of a fiduciary relationship. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer, not as a representative. A fiduciary may authorize an individual to represent or perform certain acts on behalf of the person or entity by filing a power of attorney that names the eligible individual(s) as representative(s) for the person or entity. Because the fiduciary stands in the position of the person or entity, the fiduciary must sign the power of attorney on behalf of the person or entity.
8. 26 CFR 601.503(c)(6).
9. 26 CFR 601.503(d)(1).



PLAIN LANGUAGE

A fresh look at clichés

BY D'ANN RASMUSSEN

> There are thousands for whom the only sound sleep is the *sleep of the just*, the light at dusk must always be *dim*, *religious*; all beliefs are *cherished*, all confidence is *implicit*, all ignorance *blissful*, all isolation *splendid*, all uncertainty *glorious*, all voids *aching*. It would not matter if these associated reflexes stopped at the mind, but they issue by way of tongue, which is bad, or of the pen, which is worse.
>
> — H.W. Fowler[1]

It's almost a cliché to say that writers should "avoid clichés." They are usually tired and ineffective. But not always. Sometimes they may be justified on grounds of brevity. And sometimes, given a refreshing twist, a cliché may even brighten a line.

THE DANGERS OF CLICHÉS: HOW THE TRIED AND TRUE CAN TURN ON A MOMENT'S NOTICE AND BITE THE HAND THAT FEEDS THEM

In their book on legal writing, Tom Goldstein and Jethro Lieberman say that a cliché "broadcasts the writer's laziness."[2] Bergen and Cornelia Evans say that a writer who uses clichés is a "mere parroter of musty echoes of long-dead wit. His very attempt to sound clever shows him to be dull."[3] The reader almost wants to groan to the writer, "Couldn't you come up with anything better to say?" The reader is at least bored and perhaps even insulted by the commonality of it all.

Following is a list of phrases — certainly not exhaustive — that are fairly classified as clichés. Note that their very pervasiveness can mask how trite they are.

Achilles' heel
acid test
a great deal
agree to disagree
all walks of life
at first blush
auspicious occasion
bitter end
blessing in disguise
can safely say
considered opinion
conspicuous by its absence
draw to a close
end result
every effort is being made
explore every avenue
few and far between
step in the right direction
for all intents and purposes
force and effect
force to be reckoned with
foregone conclusion
grievous error
harsh reality
height of absurdity
incontrovertible fact
inevitable conclusion
in no uncertain terms
not too distant future
null and void
of that ilk
of the first magnitude
on the books
own worst enemy
path of least resistance
pomp and circumstance
powers that be
pure and simple
rack and ruin
sour grapes
spur of the moment
stands to reason
thing of the past
time and time
again to a fault
turn the tables
wreak havoc

Perhaps the most insidious clichés that have crept into contemporary writing are what Jacques Barzun calls "adverbial dressing gowns."[4] For instance: *seriously consider*, *utterly reject*, *thoroughly examine*, *be absolutely right*, *perfectly clear*, *definitely interested*. Apparently, says Barzun, "the writer thinks the verb or adjective would not seem decent if left bare."[5] So the writer feels a need to try to provide additional emphasis — a move that backfires and weakens the effect. Compare "I reject the accusation" with "I utterly reject the accusation"; Barzun disparages the latter as "spluttering."[6]

SOMETIMES IT'S ALL RIGHT TO BE AS COMFORTABLE AS AN OLD PAIR OF SHOES

So when can we allow for clichés? Possibly when the cliché is unobtrusive and saves words. Sometimes a cliché's very familiarity can work to a writer's advantage.

"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.

Take, for example, *pride and joy*. Most of us can remember hearing it from grandparents; and the grandparents probably heard it from theirs. Standard criticism would suggest that this — one of the most trite clichés ever — must be struck. But what could go in its place? *Pride and joy* has come to express a combination of love, satisfaction, and delight. Trying to capture this in a few words would not be easy. So we can hardly criticize the lawyer who says of a client in final argument that the injured child was his *pride and joy*.

Likewise, we wouldn't object if a writer or speaker said that the apartment showed *excessive wear and tear*. Or that a deal *turned sour*. Or that someone *knuckled under*, instead of *gave in to pressure*.

Although writers must trust their good judgment, I offer these guidelines for the limited use of clichés.

First, ask yourself whether the cliché is really useful. Is it at least justified by its brevity? Most of the clichés listed earlier would flunk this test. *Blessing in disguise* is no improvement on *hidden blessing*. The *harsh* in *harsh reality* is an intensifier that doesn't intensify — like an adverbial dressing gown. *End result* and *few and far between* are redundant.

Second, in most cases, the less vivid the cliché, the better. Ironically, older clichés are less likely to draw attention to themselves by raising a picture in the reader's mind. We have become so used to some of them that we hardly notice. Hence the preference for *turned sour* over *went down the tubes*. Avoid above all the *current* clichés.

Third, generally do not try to create any effect or emphasis through a cliché. Its main virtue is brevity — not forcefulness. If you're trying to be clever, you probably aren't.

TWISTING CLICHÉS TO YOUR BENEFIT: WHERE OLD DOGS REALLY *CAN* LEARN SOME NEW TRICKS

Even the most used-up cliché can gain new life at the hands of a skilled writer. Sheridan Baker, addressing what he terms "rhetorical clichés," says they should be avoided unless the writer can find a twist.[7] Some of his examples:

Old Dogs
tried and true
sadder but wiser
in the style to which she had become accustomed

New Tricks
tried and untrue
gladder but wiser
in the style to which she wished to become accustomed

Not every writer can turn a phrase to this effect. But in the right context, the results can be potent:

- "The unwritten law" is not worth the paper it isn't written on.[8]
- I feel the spur of the moment thrust deep into my side.[9]
- Through thin and thin.[10]

With that, I rest my case. Better yet: I'm done.

Reprinted from Volume 5 of The Scribes Journal of Legal Writing *(1994–1995)*.

D'Ann Rasmussen worked as a prosecutor in the district attorney's office in Albuquerque for nearly 27 years, retiring as a deputy district attorney. She also worked for a few years as an adjunct professor at the University of New Mexico Law School.

ENDNOTES

1. Fowler, *A Dictionary of Modern English Usage* (New York: Oxford University Press, Gowers ed, 2d ed 1965), p 234.
2. Goldstein & Lieberman, *The Lawyer's Guide to Writing Well* (New York: McGraw–Hill, 3d ed 2016), p 130.
3. Evans & Evans, *A Dictionary of Contemporary American Usage* (New York: Random House, 1957), p 96.
4. Barzun, *Simple & Direct: A Rhetoric for Writers* (New York: Harper & Row, rev ed, 1985), p 100.
5. *Id.*
6. *Id.*
7. Baker, *The Practical Stylist* (New York: Harper & Row, 6th ed, 1985), pp 234–35.
8. Weihofen, *Legal Writing Style* (St Paul: West Publishing Company, 2d ed 1980), p 123.
9. *Lawyer's Guide to Writing Well*, p 130.
10. Rogers, *The Dictionary of Clichés*, introduction (New York: Ballantine Books, 1985).

LIBRARIES & LEGAL RESEARCH

Researching animal law

BY BRETT DOMANN

Animal law is a subject that we often treat as a singular field of study or discussion but, in practice, appears in many contexts across the wider legal landscape. That wide applicability and sometimes unexpected appearance in these settings can make it difficult to research, but there is help!

CLASSIC SOURCES

A cursory search of a library catalog or publisher's website may make the available practical resources appear thin. As a field, animal law draws many interested parties, and due to the nature of the legal questions involved, stakeholders are often extremely passionate. As such, a good percentage of the available resources focus on advocacy rather than day-to-day practice.

To some degree, this effect can be mitigated by changing one's approach to researching the area — instead of seeking resources on animal law with the hope of finding a source with an applicable section or chapter, it may be better to seek resources with animals being the secondary filter rather than the primary one. In other words, if a search for an animal law book with a chapter on assistance animals for disabled persons is not fruitful, seek a resource on disability law and look for a chapter on animals.

This approach can weed out a lot of search hits that are biased or focused on advocacy, and it can cut down on what the practitioner must sort through to find something concise and useful. Examples are readily available in books from great publishers that one may already have: the Institute of Continuing Legal Education's "Michigan Causes of Action Formbook" has an entire chapter on animal torts authored by Michael J. Morse.[1] Similarly, another ICLE selection, "Drafting the Michigan Trust," has a chapter on specialty trusts written by Rebecca K. Wrock and Michael G. Lichterman that includes provisions for the benefit of pets and other domestic animals.[2] Other books on elder and disability law, property, and landlord-tenant relations may include material on assistance animals and pets.

The publication that usefully collects practical animal law resources together is rare; one recommendation the author can give is David Favre's "Animal Law: Welfare, Interests, and Rights."[3] The third edition published in 2019 collects, organizes, and discusses a variety of practical matters in a way that provides excellent context and a conceptual framework for how animal law reaches into so many areas of practice. Favre teaches at Michigan State University School of Law in the areas of animal law and property.

AN UNEXPECTED BOON

The aforementioned book is not Favre's only contribution. An expert in animal law for decades, he created the Animal Legal and Historical Center at www.animallaw.info and serves as its editor-in-chief. It's a tremendous resource for information on animal law not just in Michigan, but in the United States and around the globe.

Founded more than 20 years ago and serving more than 9,000 visitors a day,[4] the Animal Legal and Historical Center hosts a collection of primary and secondary information on legal topics pertaining to animals. The center's website is designed to satisfy a variety of audiences and provides information at many levels of detail. The website's goals:

- To provide a web library of legal and policy materials as it relates to animals.
- To provide expert explanation of the materials for both the lawyer and the non-lawyer.
- To provide a historical perspective about social and legal attitudes toward animals, and how we got to our present perspective.[5]

The site serves primarily as a legal policy library. For attorneys, the Animal Legal and Historical Center has a repository of more than 1,200 modern and historical cases from the United States and the United Kingdom along with more than 1,400 state, federal, and tribal statutes. The cases and statutes are reprinted from Westlaw with permission, adding an additional layer of reliability. Other primary materials include hundreds of administrative decisions, local ordinances, pleadings, and treaties. Further, more than 1,100 law review articles and publications like toolkits are available.

Intended for attorneys doing comparative work or for members of the press, the website also provides tables of relevant state law summarizing statutory language from all 50 states on a variety of animal law topics and includes citations and links to source material in the center's repository. These tables cover issues like dangerous dog laws, animal cruelty reporting requirements, service animals, and leash laws. Annual summaries of updates to state laws are also available as is a collection of ballot measures, propositions, and citizen initiatives going back more than 25 years.

The website also houses clickable maps of state laws by animal law topic, allowing for visual representation of variations in the law and a ready reference to source material for each state. For example, the map of states with laws protecting animals in parked cars is fully clickable to relevant code sections and is color-coded for states with "good Samaritan" rescue laws, states with law enforcement rescue laws, states with laws regarding animals in parked cars but no provisions for rescue, and states without a law on the topic. It's an excellent quick reference for making comparisons between states and a tool for corroborating research results (or a lack thereof) within any particular jurisdiction.

There are also dozens of topical introductions to various aspects of animal law. Despite their stated intent as resources for students and laypersons, they are excellent guides for attorneys seeking to understand context, develop background knowledge, and build vocabulary for more effective searching and drafting. They are formatted much like library research guides and provide summary information along with linked resources — some of which are extremely thorough.

Beyond federal and state law, the center's repository also contains basic legal materials from around the world. As an impressive example, it hosts the most comprehensive collection of Latin American animal cases and supporting law in the world.

All of the above are collected and preserved in a searchable database with a robust navigation infrastructure and an extremely intuitive and helpful custom search tool. Users can search by keyword, jurisdiction, type of material, species, or even using a standardized vocabulary of animal law topics.

The breadth and depth of the Animal Legal and Historical Center collection is impressive, as is its ease of use and currency. Perhaps most remarkable, however, is that it *doesn't cost a dime to use*. This resource is completely free to the user, funded by donations and the efforts of Favre and his team.

CONCLUSION

Like many areas, animal law presents several challenges to legal researchers. Its principles are applied in many contexts and touch on a variety of subjects and types of legal questions. Moreover, it draws passionate advocates and generates its fair share of goal-oriented published material. With that in mind, it can prove difficult to find a singular resource summarizing the principles of animal law in a broader context along with more specific references and resources aimed at the practice of law.

Fortunately, our state has a local expert and organization intent on doing just that: bringing together animal law resources in a comprehensive manner and presenting them in a useable format.

Brett Domann is scholarly communications librarian at Michigan State University College of Law, where he manages the college's digital repository and helped transition its journals to a digital publishing format. A 2010 MSU Law graduate and a 2012 graduate of Wayne State University with a master's degree in library and information science, Domann also teaches courses on legal research and foundations of law at MSU Law.

ENDNOTES

1. Brown, Miller, & Philo, eds, *Michigan Causes of Action Formbook* (ICLE, 2nd ed, 2024), ch 4.
2. Savage & Mills, eds, *Drafting the Michigan Trust* (ICLE, 4th ed, 2024), ch 12.
3. Favre, *Animal Law: Welfare, Interests, and Rights* (Aspen Publishing, 3rd ed, 2019).
4. Animal Legal & Historical Center, Michigan State University College of Law <https://www.animallaw.info/site/animal-legal-and-historical-center-website> (accessed December 8, 2024).
5. *Id.*

LAW PRACTICE SOLUTIONS

Unlocking the future: ABA TECHSHOW 2025

BY JOANN L. HATHAWAY

As the legal profession embraces rapid technological change, ABA TECHSHOW remains a cornerstone event for lawyers, legal professionals, and techies seeking to stay at the forefront of innovation. Scheduled for April 2-5 at the Hyatt Regency McCormick Place in Chicago, this year's conference promises to deliver groundbreaking insights, unparalleled networking opportunities, and access to the latest legal tech solutions. Whether you're a solo or small firm practitioner, part of a large firm, a legal professional, a law student, or a legal tech enthusiast, ABA TECHSHOW offers something for everyone.

WHY ATTEND ABA TECHSHOW?

Now in its 40th year of introducing legal technology to the industry, ABA TECHSHOW remains the premier gathering for those looking to harness technology and improve their practices. Attendees learn from thought leaders, engage with cutting-edge vendors, and collaborate with peers who share a vision for the future of law.

Here's a preview of what makes TECHSHOW 2025 an unmissable event:

CUTTING-EDGE EDUCATIONAL SESSIONS

While the final agenda and list of speakers hadn't been released at the time of writing, attendees can expect a robust lineup covering topics like artificial intelligence, cybersecurity best practices, law firm automation, and the ethical implications of emerging technologies. With tracks tailored to varying levels of tech proficiency, TECHSHOW ensures that all participants leave with practical knowledge to implement immediately.

STARTUP ALLEY: THE FUTURE OF LEGAL TECH

One of TECHSHOW's most popular attractions, Startup Alley features early-stage companies and their innovative legal tech solutions. This showcase offers attendees a glimpse into the future and an opportunity to meet visionary entrepreneurs and explore tools designed to address real-world challenges in the legal industry. One highlight is the annual Startup Alley competition showcasing 15 legal startups facing off in a pitch competition — judged by TECHSHOW attendees — to pick the year's most innovative startup. Past winners have gone on to make significant impacts, making this a must-see event for anyone invested in the future of legal technology.

VENDOR HALL: YOUR LEGAL TECH MARKETPLACE

The expansive vendor hall serves as the heartbeat of ABA TECHSHOW. Here, attendees can interact with representatives from leading technology companies offering products and services tailored to legal professionals. From practice management software to document automation tools, cybersecurity solutions, and e-discovery platforms, the vendor hall is your one-stop shop for exploring the tools that can transform your practice. Attendees often cite the vendor hall as a highlight thanks to its engaging demonstrations, exclusive discounts, and hands-on opportunities with the latest tech products.

TASTE OF TECHSHOW

TECHSHOW isn't just about learning; it's about community. The Taste of TECHSHOW dinners provide intimate settings where attendees can network with like-minded professionals and speakers while exploring Chicago's renowned culinary scene. Each dinner is organized around a specific topic or theme, allowing for focused conversations and meaningful connections in a relaxed environment.

UNPARALLELED NETWORKING OPPORTUNITIES

The chance to connect with peers and industry leaders is one of TECHSHOW's biggest draws. Whether it's through informal meetups, social events, or program sessions, the conference provides

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 michbar.org/pmrc/content or call our helpline at 800.341.9715 to speak with a practice management advisor.

countless opportunities to expand your professional network. Many attendees find that these connections lead to valuable collaborations, mentorships, and friendships that last long after the conference ends.

HIGHLIGHTS

While the detailed agenda is not yet available, here are a few TECHSHOW highlights based on previous events:

Keynote speakers

ABA TECHSHOW consistently features keynote speakers who are leaders in their fields, offering visionary perspectives on the intersection of law and technology.

Workshops and hands-on learning

Interactive sessions allow attendees to dive deep into specific tools and strategies, ensuring they leave with skills they can apply immediately.

Ethics in legal tech

With technology evolving at breakneck speed, ethical considerations remain a cornerstone of TECHSHOW programming. Expect sessions addressing the ethical use of AI, data privacy, and compliance.

Small firm and solo practitioner focus

Tailored sessions provide solutions for the unique challenges faced by small law firms and solo practitioners, ensuring that technology enhances efficiency and client service without straining resources.

Other opportunities include professional development through specialized workshops and training sessions; the ability to earn continuing legal education credits while learning about the latest tech advancements; and the chance to learn about global legal trends and challenges through exposure to attendees and speakers from around the world.

MAXIMIZING YOUR EXPERIENCE

Looking to get the most out of TECHSHOW? Keep these tips in mind.

Plan ahead

Review the agenda as soon as it's posted to identify must-attend sessions and events. Many workshops and dinners have limited seating, so early registration is key.

Engage with vendors

Come with questions about the specific challenges your firm faces. Vendors are there to help you find the right solutions and often offer deals exclusive to TECHSHOW.

Network with a purpose

Take advantage of networking opportunities from the Taste of TECHSHOW dinners to informal breaks. Bring plenty of business cards, and don't hesitate to introduce yourself to speakers and panelists.

Explore Chicago

TECHSHOW is packed with activities, but don't forget to enjoy the host city. Chicago offers world-class dining, entertainment, and cultural attractions to enrich your experience.

WHAT SETS TECHSHOW APART?

Diverse programming

From AI and blockchain to practice management and e-discovery, TECHSHOW covers a wide array of topics relevant to practitioners across all areas of law. Its educational offerings are designed to provide value whether you're a tech-savvy early adopter or just beginning your journey into legal technology.

Interactive demos and hands-on experiences

Unlike traditional conferences, TECHSHOW emphasizes learning by doing. In the vendor hall and at workshops, attendees can test-drive new tools to ensure they understand how to implement solutions into their practices.

Community atmosphere

TECHSHOW thrives on collaboration. From Startup Alley to the Taste of TECHSHOW, the event fosters an environment where attendees feel encouraged to share ideas, learn from one another, and build lasting relationships.

ABA LAW PRACTICE DIVISION

While TECHSHOW is its marquee event, it's just one of the many initiatives supported by the ABA Law Practice Division, which provides resources for lawyers and legal professionals in four core areas: marketing, management, technology, and finance.

Law Practice Division membership offers benefits including top-tier publications such as Law Practice magazine and the Law Practice Today webzine and access to webinars, books, and other resources that provide practical guidance for navigating the evolving legal landscape.

Perhaps most important, the division is comprised of forward-thinking professionals. Through committees, mentorship programs, and networking opportunities, members can connect with peers who share their commitment to innovation and professional growth. If

you're passionate about improving your practice and staying on top of industry trends, ABA Law Practice Division membership is an opportunity you can't afford to overlook.

A COMMUNITY OF INNOVATORS

At its core, ABA TECHSHOW is about fostering a community of legal professionals committed to innovation. It's a place to share ideas, learn from peers, and discover the tools that will shape the future of the legal profession. Whether you're a first-time attendee or a TECHSHOW veteran, it's a unique opportunity to experience the cutting edge of legal technology.

REGISTRATION AND SBM DISCOUNT

TECHSHOW registration is quick and easy: just visit www.techshow.com. You can also explore a variety of registration options and pricing tiers. As a TECHSHOW program promoter, **the State Bar of Michigan offers its members an exclusive $100 discount off the standard registration rate with code EP2509**.

Don't miss your chance to be part of this event. Join the conversation, explore new technologies, and take your practice to the next level at ABA TECHSHOW 2025. We look forward to seeing you there!

JoAnn L. Hathaway is practice management advisor for the State Bar of Michigan Practice Management Resource Center.

PRACTICING WELLNESS

Navigating menopause in the legal profession

BY MARY PATE

About eight years into my legal career, I was getting ready to speak at a conference on employment law issues. My husband had left for work, and I planned to drop off our 6-year-old son at school on my way to the meeting. Unfortunately, our son woke up sick. I couldn't wait for my husband to come home, so we decided that I would take our son to my husband's office on my way, and he would bring him home. There's nothing like having your child throw up out the car window as you race across town so you won't be late for a commitment. Not my proudest mom moment!

Most women lawyers with families can laugh and relate to this story. But although we also have relatable stories about the impact menopause symptoms have on our work, we don't typically tell them with the same measure of honor or understanding.

As a former attorney with more than three decades of experience and now a health coach specializing in menopause, I've witnessed and experienced firsthand the challenges women lawyers face during perimenopause and menopause. While a hot flash in the middle of a meeting can sometimes be a little funny and laughed off by everyone present, other menopause symptoms can be downright frustrating and even a little frightening due to the impact on our careers.

In this article, I hope to shed light on recognizing the symptoms of menopause in a high-stress legal environment, offer strategies for symptom management, and discuss ways to break the stigma surrounding menopause in the workplace.

RECOGNIZING MENOPAUSAL SYMPTOMS IN A HIGH-STRESS LEGAL ENVIRONMENT

As we know, the legal profession is famous for its demanding nature: long hours, high-pressure situations, and the constant challenge of balancing work and family. Add the nagging symptoms of menopause to the mix and the stress can feel overwhelming. That's why it's important to distinguish between symptoms caused by menopause versus those resulting from the everyday challenges of a legal career.

According to the U.S. Department of Health and Human Services Office on Women's Health, the average age of menopause in the United States is 52 with the range for women usually entering menopause between 45 and 58.[1] However, some experience symptoms during perimenopause, which can begin in a woman's 40s and last between seven and 14 years.[2] Recognizing when menopause symptoms have begun is the first step toward managing them effectively.

Common Symptoms:

- Hot flashes and sweating.
- Fatigue and sleep disturbances.
- Mood swings and increased anxiety.
- Menstrual cycle changes.
- Difficulty concentrating and memory problems (brain fog).[3]

"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

In the legal field, these symptoms can manifest as:

- Sudden sweating during client meetings or court appearances.
- Difficulty focusing during long document reviews, meetings, or negotiations.
- Increased irritability when dealing with colleagues or opposing counsel.
- Challenges in meeting deadlines due to fatigue or concentration issues.

In a 2015 study, 85% of postmenopausal women said they had experienced menopausal symptoms during their lifetime.[4] These symptoms can be incredibly distressing — and even a bit alarming — for female lawyers who often rely on sharp mental acuity and physical stamina to succeed.

STRATEGIES FOR MANAGING MENOPAUSAL SYMPTOMS

Once you recognize your symptoms might be more than job stress, it's time to explore strategies to manage them effectively. Here are a few I found helpful.

Environment Control

Sit near an open window or in an air-conditioned room to address hot flashes. Alternatively, dress in layers and keep a desk fan nearby.[5] A small, quiet fan I could turn on and off throughout the day was a lifesaver.

Stress Management

Incorporate stress-reduction techniques into your day such as deep breathing exercises or taking short walks between tasks. One effective method is box breathing: inhaling for four counts, holding for four counts, exhaling for four counts, and holding again for four counts. This simple practice can quickly lower your stress level and is discreet enough to do even during meetings.

Stay Hydrated

Keep a water bottle at your desk and have one with you during meetings to help regulate body temperature. As you feel a hot flash coming on, a cold drink of water can help quickly alleviate it.

Prioritize Sleep

Sleep can significantly reduce fatigue, mood swings, and brain fog. Establish a consistent sleep routine and create a cool, comfortable environment to improve sleep quality. Also, avoid screens (phone, tablet, etc.) at least two hours before bedtime. Instead, enjoy an Epsom salt bath or foot soak to help you relax before sleep.

Regular Exercise

Regular moderate exercise can help alleviate symptoms and boost overall well-being. Fitting exercise into a busy day can be challenging, so try to work out in the morning when you're less likely to encounter interruptions. Schedule it in your calendar as you would an important meeting.

Nutrition and Meal Prep

Consult with a nutritionist or health coach who can help you create an eating plan supporting hormonal balance and maintaining energy levels. Avoid overly spicy foods and too much caffeine to keep hot flashes at bay. Additionally, embrace meal prepping — one of my favorite strategies to ensure healthy meals are ready throughout the week — and avoid the temptation to grab something unhealthy in a rush.

Seek Professional Help

Consult with a healthcare provider or menopause specialist to discuss treatment options including hormone therapy, if appropriate.

EMPOWERMENT AND BREAKING THE STIGMA

Despite affecting more than half the population, menopause remains a taboo topic in many workplaces, including law firms.[6] This silence often leads to unnecessary isolation and suffering. The legal profession cannot afford to lose talented women due to a lack of support during this stage of life. Shockingly, 1 in 10 women leave the workforce because of menopause, and as many as 1 in 4 consider leaving.[7]

To retain and empower women in law, consider the following strategies:

Recognize Their Value

Women attorneys navigating menopause are often at the peak of their careers, bringing decades of valuable experience and expertise. Losing talent due to a lack of support is a loss no law firm or corporate legal department can afford.

Promote Work-Life Balance

Encourage a culture prioritizing work-life balance and personal well-being. While this is especially critical for women experiencing menopause, it benefits male and female attorneys alike. Burnout rates among attorneys are already alarmingly high and affect the profession as a whole.[8]

Address Bias

Be proactive in identifying and addressing age or gender-related bias tied to menopause. If successful female attorneys are struggling due to menopause symptoms, focus on providing accommodations rather than sidelining them. Too often, women feel overlooked for raises, bonuses, or promotions during this phase of life, leading to diminished morale and career advancement opportunities.[9]

CONCLUSION

By implementing these strategies and fostering an open, supportive environment, law firms and corporate legal departments can ensure talented women lawyers continue thrive during every stage of their careers.

Mary Pate of Mustard Seed Health Coaching is a certified hormone specialist and a certified menopause specialist with practical expertise in nutrition and lifestyle coaching. Visit her website at mustardseed-health.com, connect with her at Mary@mustardseed-health.com, or sign up to receive her newsletter at www.mustardseed-health.com/newslettersignup.

ENDNOTES

1. *Menopause basics*, US Department of Health & Human Services, Office of Women's Health, available at [https://perma.cc/TL9W-8MVM] (all websites accessed December 11, 2024).
2. *Id.*
3. *Id.*
4. Sussman, et al., *Prevalence of menopausal symptoms among mid-life women: findings from electronic medical records*, 15 BMC Women's Health 58 (August 13, 2015), available at [https://perma.cc/TND7-AXM9].
5. Lim, Clayton, & Abernethy, *Menopause support within law firms: keep the conversation going*, Peppy (August 19, 2022) available at [https://perma.cc/Y3QZ-99Q8].
6. *Id.*
7. Shahzady, *Are menopausal wives short-changed on divorce?*, balance by Newsom Health (June 21, 2022), available at [https://perma.cc/EC8W-JQKR].
8. Weiss, *Surveyed lawyers report they experience burnout in their jobs more than half the time*, American Bar Association (March 9, 2022), available at [https://perma.cc/8SVV-V4AW].
9. Frumin, *The very real impact menopause has on women's advancement in the workplace*, MSNBC (Sept. 26, 2023), available at [https://perma.cc/K3WP-4ZQS].

FROM THE MICHIGAN SUPREME COURT

ADM File No. 2016-10
Amendment of Rule 2.002 of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 2.002 of the Michigan Court Rules is adopted, effective Jan. 1, 2025.

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

Rule 2.002 Waiver of Fees for Indigent Persons

(A) Applicability and Scope.

(1) [Unchanged.]

(2) Except as provided in subrule (I), for the purpose of this rule "fees" applies only to fees required by MCL 600.857, MCL 600.878, MCL 600.880, MCL 600.880a, MCL 600.880b, MCL 600.880c, MCL 600.1027, MCL 600.1986, MCL 600.2529, MCL 600.5756, MCL 600.8371, MCL 600.8420, MCL 700.2517, MCL 700.5104, and MCL 722.717.

(3)-(6) [Unchanged.]

(B)-(L) [Unchanged.]

Staff Comment (ADM File No. 2016-10): The amendment of MCR 2.002 clarifies that fees charged for transcripts in probate cases are waivable under the rule as authorized in MCL 600.880d.

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

ADM File No. 2023-12
Proposed Amendment of Rule 3.602 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rule 3.602 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 3.602 Arbitration

Applicability of Rule. Courts shall have all powers described in MCL 691.1681 *et seq.*, or reasonably related thereto, for arbitrations governed by that statute. Unless otherwise provided by statute, an action or proceeding commenced on or after July 1, 2013, is governed by MCL 691.1681 *et seq.*, and not this rule. The remainder of this rule applies to all other forms of arbitration, in the absence of contradictory provisions in the arbitration agreement or limitations imposed by statute, including MCL 691.1683(2).

(B)-(N) [Unchanged.]

Staff Comment (ADM File No. 2023-12): The proposed amendment of MCR 3.602(A) would clarify the applicability of MCR 3.602 and the Michigan Uniform Arbitration Act, MCL 691.1681 *et seq*.

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

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by May 1, 2025, 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. 2023-12. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2022-34
Proposed Amendment of Rule 3.991 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.991 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 3.991 Review of Referee Recommendations

(A) General.

(1) Before signing an order based on a referee's recommended findings and conclusions, a judge of the court mustshall review the recommendations if requested by a party in the manner provided by subrule (B). The parties may waive judicial review of the referee's recommendation by consenting in writing to immediate entry of the order.

(2) [Unchanged.]

(3) ANothing in this rule prohibits a judge must notfrom reviewing a referee's recommendation before the expiration of the time for requesting review unless the parties waived judicial review as provided in subrule (A)(1) or the court finds good cause as stated in a written orderand entering an appropriate order. 2

(4) After the entry of an order under this subrule (A)(3), a request for review may not be filed. Reconsideration of the order is by motion for rehearing under MCR 3.992.

(B) (B)-(C) [Unchanged.]

(D) Prompt Review; No Party Appearance Required. Absent good cause for delay, the judge mustshall consider the request within 21 days after it is filed if the minor is in placement or detention. The judge need not schedule a hearing to rule on a request for review of a referee's recommendations.

(E)-(G) [Unchanged.]

Staff Comment (ADM File No. 2022-34): The proposed amendment of MCR 3.991 would clarify the process for judicial reviews of referee recommendations in juvenile cases by allowing the parties to waive judicial review, limiting a judge's ability to conduct an early review, and requiring a judge to conduct a requested review in all cases within 21 days of the request.

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

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by May 1, 2025 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. 2022-34. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2025-01
Appointments to the Michigan Tribal State Federal Judicial Forum

On order of the Court, pursuant to Administrative Order No. 2014-12, Hon. Patrick J. Conlin Jr. and Hon. Steven Paciorka are appointed to the Michigan Tribal State Federal Judicial Forum for partial terms effective immediately and ending on July 1, 2026.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2025. 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 amending M Crim JI 13.1 (Assaulting, Resisting, or Obstructing a Police Officer or Person Performing Duties) and M Crim JI 13.2 (Assaulting or Obstructing Officer or Official Performing Duties) to place more emphasis on the requirement that the jury receive instructions on the legal framework for assessing whether the officers' actions were lawful. See *People v Carroll*, ___ Mich ___; 8 NW3d 576 (July 19, 2024) (Docket No. 166092). For each instruction, the proposed amendments would move the information currently conveyed in Use Note 4 into the body of the instruction. Deletions are in ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 13.1
Assaulting, Resisting, or Obstructing a Police Officer or Person Performing Duties

(1) The defendant is charged with the crime of assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [police officer/(*state authorized person*)][2] who was performing [his/her] duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered[1] [*name complainant*], who was a [police officer/(*state authorized person*)]. ["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.][3] [The defendant must have actually resisted by what (he/she) said or did, but physical violence is not necessary.][3]

(3) Second, that the defendant knew or had reason to know that [*name complainant*] was a [police officer/(*state authorized person*)] performing [his/her] duties at the time.

(4) Third, that [*name complainant*] gave the defendant a lawful command, was making a lawful arrest, or was otherwise performing a lawful act.[4] [*Provide detailed legal instructions regarding the applicable law governing the officer's or official's legal authority to act.*]

[*Use the following paragraphs as warranted by the charge and proofs:*]

(5) Fourth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [police officer/(*state authorized person*)] caused the death of [*name complainant*].

(6) Fourth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [police officer/(*state authorized person*)] caused [*name complainant*] to suffer serious impairment of a body function.[5]

(7) Fourth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [police officer/(*state authorized person*)] caused a bodily injury requiring medical attention or medical care to [*name complainant*].

Use Note

This instruction should be used when the defendant is charged with violating MCL 750.81d. A defendant could be charged under MCL 750.479 with assaulting, resisting, or obstructing an officer or duly authorized person. In that event, use M Crim JI 13.2.

1. MCL 750.81d prohibits "assault[ing], batter[ing], wound[ing], resist[ing], obstruct[ing], oppos[ing], or endanger[ing]" certain officers or officials. The court may read all of that phrase or may read whatever portions it finds appropriate according to the charge and the evidence.

2. ~~"Person"~~ *Person* for purposes of this statute is defined to include police officers, deputy sheriffs, firefighters, and emergency medical service personnel, among others. MCL 750.81d(7)(b).

3. The court may include this sentence where necessary.

4. ~~The court should provide detailed legal instructions regarding the applicable law governing the officer's legal authority to act.~~ *See People v Carroll*, ___ Mich ___; 8 NW3d 576 (2024) (holding that trial court must provide jury with "a legal framework for assessing whether the officers' actions were lawful"); M Crim JI 13.5.

5. ~~MCL 750.479(8)(b)~~ MCL 750.81d(7)(c) defines ~~"serious impairment of a body function"~~ *serious impairment of a body function* according to MCL 257.58c in the Michigan ~~vehicle~~ Vehicle ~~code~~ Code. *See* M Crim JI ~~15.12~~15.2a.

[AMENDED] M Crim JI 13.2
Assaulting or Obstructing Officer or Official Performing Duties

(1) The defendant is charged with the crime of assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [*state authorized person*][2] who was acting in the performance of [his/her] duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered[1] [*name complainant*], who was a [*state authorized person*] performing [his/her] duties. ["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.][3]

(3) Second, that the defendant knew or had reason to know that [*name complainant*] was then a [*state authorized person*] performing [his/her] duties at the time.

(4) Third, that [*name complainant*] gave the defendant a lawful command, was making a lawful arrest, or was otherwise performing a lawful act.[4] [*Provide detailed legal instructions regarding the applicable law governing the officer's or official's legal authority to act.*][4]

(5) Fourth, that the defendant's actions were intended by the defendant, that is, not accidental.

[*Use the following paragraphs as warranted by the charge and proofs:*]

(6) Fifth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [*state authorized person*] caused the death of [*name complainant*].

(7) Fifth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [*state authorized person*] caused serious impairment of a body function[5] to [*name complainant*].

(8) Fifth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [*state authorized person*] caused a bodily injury requiring medical attention or medical care to [*name complainant*].[6]

Use Note

This instruction should be used when the defendant is charged with violating MCL 750.479. A defendant could be charged under MCL 750.81d with assaulting, resisting, or obstructing an officer. In that event, ~~see~~ use M Crim JI 13.1.

1. MCL 750.479 prohibits "assault[ing], batter[ing], wound[ing], resist[ing], obstruct[ing], oppos[ing], or endanger[ing]" certain officers or officials. The court may read all of that phrase or may read whatever portions it finds appropriate according to the charge and the evidence.
2. The statute lists authorized persons as medical examiners, township treasurers, judges, magistrates, probation officers, parole officers, prosecutors, city attorneys, court employees, court officers, or other officers or duly authorized persons. MCL 750.479(1)(a).
3. ~~"Obstruct"~~ *Obstruct* is defined in MCL 750.479(8)(a), as amended in 2002.
4. ~~The court should provide detailed legal instructions regarding the applicable law governing the official's legal authority to act.~~ *See People v Carroll*, ___ Mich ___; 8 NW3d 576 (2024) (holding that trial court must provide jury with "a legal framework for assessing whether the officers' actions were lawful"); M Crim JI 13.5.
5. MCL 750.479(8)(b) defines ~~"serious impairment of a body function"~~ *serious impairment of a body function* according to MCL 257.58c in the Michigan ~~vehicle~~ Vehicle ~~code~~ Code. *See* M Crim JI ~~15.12~~15.2a.
6. This aggravating circumstance could be the charged offense or a lesser offense, if warranted by the evidence.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2025. 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 amending M Crim JI 20.6 (Aiders and Abettors – Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless) and M Crim JI 20.16 (Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless) to reflect a recent change to the statutory definition of "mentally incapacitated." See MCL 750.520a(k), as amended by 2023 PA 65. Deletions are in ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 20.6
Aiders and Abettors – Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second/Third], that before or during the alleged sexual act, the defendant was assisted by another person, who either did something or gave encouragement to assist the commission of the crime.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

(2) [Third/Fourth], that [*name complainant*] was [mentally incapable/mentally incapacitated/physically helpless] at the time of the alleged act.

[*Choose one or more of ~~(3)(a)~~, ~~(4)(b)~~, or ~~(5)(c)~~*:]

~~(3)~~ (a) "Mentally incapable" means that [*name complainant*] was suffering from a mental disease or defect that made [him/her] incapable of appraising either the physical or moral nature of [his/her] conduct.

~~(4)~~ (b) "Mentally incapacitated" means that [*name complainant*] was unable to understand or control what [he/she] was doing because of [~~drugs or alcohol given to (him/her)~~ drugs/alcohol/(*identify intoxicant*)/something done to (him/her) without (his/her) consent]. [It does not matter if (*name complainant*) voluntarily consumed the (drugs/alcohol/[*identify intoxicant*]).][1]

~~(5)~~ (c) "Physically helpless" means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he/she] did not want to take part in the alleged act.

~~(6)~~ (3) [Fourth/Fifth], that the defendant knew or should have known that [*name complainant*] was [mentally incapable/mentally incapacitated/physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

1. This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.

[AMENDED] M Crim JI 20.16
Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second/Third], that [*name complainant*] was [mentally incapable/mentally incapacitated/physically helpless] at the time of the alleged act.

[*Choose one or more of (a), (b), or (c)*:]

(a) "Mentally incapable" means that [*name complainant*] was suffering from a mental disease or defect that made [him/her] incapable of appraising either the physical or moral nature of [his/her] conduct.

(b) "Mentally incapacitated" means that [*name complainant*] was unable to understand or control what [he/she] was doing because of [~~drugs or alcohol given to (him/her)~~ drugs/alcohol/(*identify intoxicant*)/something done to (him/her) without (his/her) consent]. [It does not matter if (*name complainant*) voluntarily consumed the (drugs/alcohol/[*identify intoxicant*]).][1]

(c) "Physically helpless" means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he/she] did not want to take part in the alleged act.

(2) [Third/Fourth], that the defendant knew or should have known that [*name complainant*] was [mentally incapable/mentally incapacitated/physically helpless] at the time of the alleged act.

Use Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

1. This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2025. 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 new jury instructions for six election-related crimes found in MCL 168.931(1) and MCL 168.932(a): M Crim JI 43.1 (Offering an Incentive to Influence Voting), M Crim JI 43.1a (Bribing or Menacing an Elector), M Crim JI 43.2 (Accepting or Agreeing to Accept an Incentive Regarding Voting), M Crim JI 43.2a (Seeking an Incentive from a Candidate), M Crim JI 43.3 (Voter Coercion – Employment Threat), and M Crim JI 43.3a (Voter Coercion – Religious Threat). These instructions are entirely new.

[NEW] M Crim JI 43.1
Offering an Incentive to Influence Voting

(1) The defendant is charged with the crime of offering an incentive to influence voting. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [gave/loaned/promised] [*name valuable consideration*][1] to or for the benefit of any individual. It does not matter if the defendant did so [himself/herself] directly or did so indirectly through another person or method. A [gift of/loan of/promise to give] [*name valuable consideration*] must be specific to an individual and does not include purely political speech that promises benefits to the public in general.

(3) Second, that when the defendant [gave/loaned/promised] [*name valuable consideration*], [he/she] intended [to influence how any individual would vote/to reward any individual for not voting].[2]

Use Note

1. MCL 168.931(4) defines *valuable consideration* as including but not limited to "money, property, a gift, a prize or chance for a prize, a fee, a loan, an office, a position, an appointment, or employment."
2. This is a specific intent crime.

[NEW] M Crim JI 43.1a
Bribing or Menacing an Elector

(1) The defendant is charged with the crime of bribing or menacing an elector. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name targeted elector*] was an elector[1] who had a right to vote in [*identify location where the targeted elector would be voting*][2] in the [*date of election*] election. To be qualified as an elector, a person must be a citizen of the United States, at least 18 years of age, a resident of the state of Michigan for at least 6 months, and a resident of [*identify location where the targeted elector would be voting*] for at least 30 days.[3]

(3) Second, that the defendant attempted to [influence how (*name targeted elector*) would vote/discourage or prevent (*name targeted elector*) from voting/interrupt (*name targeted elector*) in giving (his/her) vote] in the [*date of election*] election through the use of [bribery/menacing conduct/(*describe other corrupt conduct*)].

It does not matter whether the defendant [himself/herself] directly [bribed/menaced/(*describe other corrupt conduct*)] [*name targeted elector*] or did so indirectly through another person or method.

[*Read the following paragraph when the allegation is that the defendant menaced or threatened the elector or engaged in other corrupt conduct involving speech*:][4]

[Menacing conduct includes verbal or nonverbal threats to cause any kind of harm whether physical or nonphysical. Where menacing conduct involves only spoken words, it must have been a true threat and not something like idle talk, a statement made in jest, or a political comment. It must have been made under circumstances where a reasonable person would think that others may take the threat seriously as expressing an intent to inflict harm or damage. The menacing conduct must have caused (*name targeted elector*) to reasonably believe that the person making the threat would carry out the threat or would have it carried out on (his/her) behalf.]

[*Read the following paragraph when the allegation is that the defendant's corrupt conduct against the elector consisted entirely of nonthreatening false speech*:][4]

[The defendant must have knowingly made a false statement or statements related to voting requirements or voting procedures in an attempt to deter or influence an elector's vote.]

(4) Third, that the defendant intended to [influence how (*name targeted elector*) would vote/influence whether (*name targeted elector*) would vote/interrupt (*name targeted elector*) while voting or about to vote] in the [*identify election*] by using [bribery/threatening conduct/(*identify other corrupt conduct*)].[5]

Use Note

1. In MCL 168.10 of the Michigan Election Law Act, the phrase *qualified elector* means "a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days." Mich Const 1963 art 2, §1, defines *elector* as "[e]very citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law." U.S. Const amend XXVI, §1, provides, "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."
2. E.g., "the City of Detroit" or "Ada Township."
3. Add any other requirements of local residence provided by law per Mich Const 1963 art 2, §1, if there are any such requirements.
4. See *People v Burkman*, 513 Mich 300; ___ NW3d ___ (2024), for requirements where menacing behavior is involved or the "corrupt conduct" involved speech.
5. This is a specific intent crime.

[NEW] M Crim JI 43.2
Accepting or Agreeing to Accept an Incentive Regarding Voting

(1) The defendant is charged with the crime of accepting or agreeing to accept an incentive regarding voting. To prove this

charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant received or made an agreement to receive [*name valuable consideration*][1] for [his/her] own benefit or for the benefit of someone else.

(3) Second, that when the defendant received or agreed to receive [*name valuable consideration*], the defendant did so intentionally[2] in exchange for

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

(a) voting or agreeing to vote at an election.

(b) influencing or attempting to influence someone else to vote at an election.

(c) not voting or agreeing not to vote at an election.

(d) influencing or attempting to influence someone else not to vote at an election.

(e) [*Identify other violation*.]

(f) both distributing absent voter ballot applications to voters and receiving signed applications from voters for delivery to the appropriate clerk or assistant of the clerk.

Use Note

1. MCL 168.931(4) defines *valuable consideration* as including but not limited to "money, property, a gift, a prize or chance for a prize, a fee, a loan, an office, a position, an appointment, or employment."
2. This is a specific intent crime.

[NEW] M Crim JI 43.2a
Seeking an Incentive from a Candidate

(1) The defendant is charged with the crime of seeking an incentive from a candidate. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant requested that [*identify candidate*] provide [him/her] with [*identify valuable consideration*][1]

(3) Second, that when the defendant requested that [*identify candidate*] provide the [*identify valuable consideration*], the defendant did so intentionally in exchange for the securing of votes or the influencing of voters with respect to the candidate's [nomination for/election to] the office of [*insert name of office described in the Michigan Election Law Act as stated in the complaint*]. This does not include a regular business transaction.

Use Note

1. MCL 168.931(4) defines *valuable consideration* as including but not limited to "money, property, a gift, a prize or chance for a prize, a fee, a loan, an office, a position, an appointment, or employment."

[NEW] M Crim JI 43.3
Voter Coercion – Employment Threat

(1) The defendant is charged with the crime of voter coercion by an employer. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an employee of the defendant.

(3) Second, that the defendant discharged or threatened to discharge [*name complainant*] or caused [him/her] to be discharged or to be threatened with being discharged.

(4) Third, that the defendant intended to influence [*name complainant*]'s vote at an election when [he/she] discharged or threatened to discharge [*name complainant*] or caused [*name complainant*] to be discharged or to be threatened with being discharged.[1]

Use Note

1. This is a specific intent crime.

[NEW] M Crim JI 43.3a
Voter Coercion – Religious Threat

(1) The defendant is charged with the crime of coercing a voter by religious threat. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was a [priest/pastor/curate/(*identify the office held by the defendant within the religious society*)].

(3) Second, that the defendant [(excommunicated/dismissed/expelled) (*name complainant*) from the (*name religious society*)/told (*name complainant*) that (he/she) would suffer religious disapproval/threatened that (*name complainant*) would be (excommunicated/dismissed/expelled) from the (*name religious society*)].

(4) Third, that the defendant intended to influence [*name complainant*]'s vote at an election when [he/she] [(excommunicated/dismissed/

expelled) (*name complainant*) from the (*name religious society*)/told (*name complainant*) that (he/she) would suffer religious disapproval/threatened to (excommunicate/dismiss/expel) (*name complainant*) from the (*name religious society*)].[1]

Use Note

1. This is a specific intent crime.

The Committee has adopted a new jury instruction, M Crim JI 17.26 (Unlawfully Posting a Message), for the offense set forth in MCL 750.411s. The new instruction is effective May 1, 2025.

[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 noncontinuous 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 Note

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).

The Committee has adopted amendments to six instructions defining arson-based offenses: M Crim JI 31.2 (Arson in the First Degree – Multiunit Building), M Crim JI 31.3 (Arson in the First Degree – Building and Physical Injury), M Crim JI 31.4 (Arson in the Second Degree), M Crim JI 31.5 (Arson in the Third Degree – Building/Structure/Real Property), M Crim JI 31.8 (Arson of Insured Property – Dwelling), and M Crim JI 31.9 (Arson of Insured Property – Building/Real Property). For each of these instructions, the first element

has been modified to refer not just to the burning of a structure, but also to the burning of "any of its contents." These changes have been made for internal consistency and for consistency with the controlling statutory language. Because these changes are relatively minor, the Committee voted to adopt the amended instructions without first submitting them for public comment. The amended instructions are effective May 1, 2025.

[AMENDED] M Crim JI 31.2
Arson in the First Degree – Multiunit Building

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

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*] or any of its contents. If any part of the [*describe property*] or any of its contents is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) or any of its contents is not burned if it is merely blackened by smoke. The (*describe property*) or any of its contents is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property that was burned, damaged, or destroyed was a multiunit building or structure in which one or more units of the building were dwellings. It does not matter whether any of the units were occupied, unoccupied, or vacant at the time of the fire or explosion.*

[*Building* includes any structure regardless of class or character and any building or structure that is within the curtilage of that building or structure or that is appurtenant to or connected to that building or structure.]

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is within the curtilage of that dwelling or that is appurtenant to or connected to that dwelling.]

[It does not matter whether the defendant owned the property or its contents.]

(4) Third, that when the defendant burned, damaged, or destroyed the property or any of its contents, [he/she] intended to burn, damage, or destroy the property or its contents or intentionally committed an act that created a very high risk of burning the property or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

* If the alleged arson occurs at a mine, substitute "a mine" for "a multiunit building or structure in which one or more units of the building were dwellings."

Use bracketed material when applicable. Provide a "curtilage" or "appurtenance" instruction if necessary.

[AMENDED] M Crim JI 31.3
Arson in the First Degree – Building and Physical Injury

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

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*] or any of its contents. If any part of the [*describe property*] or any of its contents is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) or any of its contents is not burned if it is merely blackened by smoke. The (*describe property*) or any of its contents is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property that was burned, damaged, or destroyed was a building, structure, or other real property or any of its contents. [It does not matter whether the defendant owned or used the property.]

[*Building* includes any structure regardless of class or character and any building or structure that is within the curtilage of that

building or structure or that is appurtenant to or connected to that building or structure.]

(4) Third, that when the defendant burned, damaged, or destroyed the property or any of its contents, [he/she] intended to burn, damage, or destroy the property or its contents or intentionally committed an act that created a very high risk of burning the property or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

(5) Fourth, that as a result of the fire or explosion, an individual was physically injured.

[*Physical injury* means an injury that includes, but is not limited to, the loss of a limb or use of a limb; loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb; loss of an eye or ear or loss of use of an eye or ear; loss or substantial impairment of a bodily function; serious, visible disfigurement; a comatose state that lasts for more than three days; measurable brain or mental impairment; a skull fracture or other serious bone fracture; subdural hemorrhage or subdural hematoma; loss of an organ; heart attack; heat stroke; heat exhaustion; smoke inhalation; a burn including a chemical burn; or poisoning.]

[*Individual* means any person and includes, but is not limited to, a firefighter, a law enforcement officer, or other emergency responder, whether paid or volunteer, performing his or her duties in relation to a violation of this chapter or performing an investigation.]

Use Note

Use bracketed material when applicable. Provide a "curtilage" or "appurtenance" instruction if necessary.

[AMENDED] M Crim JI 31.4
Arson in the Second Degree

(1) [The defendant is charged with the crime of/You may also consider the lesser charge of] arson in the second degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*] or any of its contents. If any part of the [*describe property*] or any of its contents is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) or any of its contents is not burned if it is merely blackened by smoke. The (*describe property*) or any of its contents is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning, damaging, or destroying, the property that was burned, damaged, or destroyed was a dwelling or any of its contents.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is on the grounds around that dwelling or that is connected to that dwelling.]

[A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.] [It does not matter whether the defendant owned or used the dwelling.]

(4) Third, that when the defendant burned, damaged, or destroyed the dwelling or any of its contents, [he/she] intended to burn, damage, or destroy the dwelling or its contents or intentionally committed an act that created a very high risk of burning, damaging, or destroying the dwelling or its contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable. Provide a "curtilage" or "appurtenance" instruction if necessary.

[AMENDED] M Crim JI 31.5
Arson in the Third Degree – Building/Structure/Real Property

(1) [The defendant is charged with the crime of/You may also consider the lesser charge of] arson in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*] or any of its contents. If any part of the [*describe property*] or any of its contents is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) or any of its contents is not burned if it is merely blackened by smoke. The (*describe property*) or any of its contents is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading,

or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that at the time of the burning, damaging, or destroying, the property was a building, structure, or other real property or its contents.

[*Building* includes any structure, regardless of class or character, and any building or structure that is on the grounds around that building or structure or that is connected to that building or structure.] [It does not matter whether the building was occupied, unoccupied, or vacant at the time of the fire or explosion.] [It does not matter whether the defendant owned or used the building.]

(4) Third, that when the defendant burned, damaged, or destroyed the building or any of its contents, [he/she] intended to burn, damage, or destroy the building or contents or intentionally committed an act that created a very high risk of burning, damaging, or destroying the building or contents and that, while committing the act, the defendant knew of that risk and disregarded it.

Use Note

Use bracketed material when applicable. Provide a definition of real property if appropriate. Provide a "curtilage" or "appurtenance" instruction if necessary.

[AMENDED] M Crim JI 31.8
Arson of Insured Property – Dwelling

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

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*] or any of its contents. If any part of the [*describe property*] or any of its contents is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) or any of its contents is not burned if it is merely blackened by smoke. The (*describe property*) or any of its contents is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property burned, damaged, or destroyed by fire or explosive was a dwelling or any of its contents.

[*Dwelling* includes, but is not limited to, any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is on the grounds around that dwelling or connected to that dwelling.]

[A business that is located very close to and used in connection with a dwelling may be considered to be a dwelling.] [It does not matter whether the defendant owned or used the dwelling.]

(4) Third, that at the time of the burning, damaging, or destroying, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(5) Fourth, that at the time of the burning, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7) Sixth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to defraud or cheat the insurer.

Use Note

Use bracketed material when applicable. Provide an instruction on "curtilage" or "appurtenance" if appropriate.

[AMENDED] M Crim JI 31.9
Arson of Insured Property – Building/Real Property

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

(2) First, that the defendant burned, damaged, or destroyed by fire or explosive [*describe property alleged*] or any of its contents. If any part of the [*describe property*] or any of its contents is burned, [no matter how small,] that is all that is necessary to count as a burning; the property does not have to be completely destroyed. [The (*describe property*) or any of its contents is not burned if it is merely blackened by smoke. The (*describe property*) or any of its contents is burned if it is charred so that any part of it is destroyed.]

[*Burn* means setting fire to or doing any act that results in the starting of a fire, or aiding, counseling, inducing, persuading, or procuring another to do such an act.]

[*Damage*, in addition to its ordinary meaning, includes, but is not limited to, charring, melting, scorching, burning, or breaking.]

(3) Second, that the property burned, damaged, or destroyed by fire or explosive was a structure, building, or other real property or its contents.

[*Building* includes any structure, regardless of class or character, and any building or structure that is on the grounds around that building or structure or that is connected to that building or structure.] [It does not matter whether the building was occupied, unoccupied, or vacant at the time of the fire or explosion.] [It does not matter whether the defendant owned or used the property.]

(4) Third, that at the time of the burning, damaging, or destroying, the property was insured against loss or damage by fire or explosion. [It does not matter whether this was the defendant's property or someone else's.]

(5) Fourth, that at the time of the burning, damaging, or destroying, the defendant knew that the property was insured against loss or damage by fire or explosion.

(6) Fifth, that when the defendant burned, damaged, or destroyed the property, [he/she] intended to set a fire or explosion, knowing that this would cause injury or damage to another person or to property, and that the defendant did it without just cause or excuse.

(7) Sixth, that when the defendant burned the property, [he/she] intended to defraud or cheat the insurer.

Use Note

Use bracketed material when applicable. Provide a definition of real property if appropriate. Provide a "curtilage" or "appurtenance" instruction if necessary.

The Committee has adopted two new instructions, M Crim JI 33.3 (Assaulting or Harassing a Service Animal) and M Crim JI 33.3a (Interfering with a Service Animal Performing Its Duties), for the offenses found at MCL 750.50a. The new instructions are effective May 1, 2025.

[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 Note

1. *Service animal* is defined at MCL 750.50a(5)(f) to include both the term as defined in the Code of Federal Regulations, 28 CFR

36.104, as well as a "miniature horse that has been individually trained to do work or perform tasks as described in 28 CFR 36.104 for the benefit of a person with a disability." 28 CFR 36.104 states:

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.

[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 a 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 do 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 Note

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

2. *Service animal* is defined at MCL 750.50a(5)(f) to include both the term as defined in the Code of Federal Regulations, 28 CFR 36.104, as well as a "miniature horse that has been individually trained to do work or perform tasks as described in 28 CFR 36.104 for the benefit of a person with a disability." 28 CFR 36.104 states:

3. *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.)

The Committee has adopted an amendment to M Crim JI 35.1a (Malicious Use of a Telecommunications Service to Frighten, Threaten, Harass, or Annoy), for the offense found at MCL 750.540e. The amendment (1) refines the title and first paragraph of the instruction to include the possible intents required under the statute, (2) adds language addressing the "malicious" wording in the statute that had not been included when the instruction was originally adopted, (3) reformats the second element to make it more user friendly, and (4) accounts for recent legislative changes to the statute. The amended instruction is effective May 1, 2025.

[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

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

(a) [threatened physical harm to any person or damage to any property in the course of a conversation or message.]

(b) [made a false and deliberate report by message that a person had (been injured/suddenly taken ill/died/been the victim of a crime or an accident) knowing it was false.]

(c) [deliberately refused or deliberately failed to disengage a connection between (his/her) (cellphone/[*identify telecommunication device*]) and another (cellphone/[*identify telecommunication device*]) or between a (cellphone/[*identify telecommunication device*]) and other equipment that sends messages through the use of a telecommunications service or device.][1]

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

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

(f) [made 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) [caused an interruption in ([*identify complainant*]/another person)'s telecommunications service or prevented ([*identify complainant*]/another person) from using (his/her) telecommunications service or device through the deliberate and repeated use of a telecommunications service or device.]

(4) Third, that the defendant knew [his/her] actions were wrong but acted intentionally to terrorize, frighten, intimidate, threaten, harass, molest, annoy, or disturb the peace and quiet of [*identify complainant*].

[*Read paragraph (5) only where the defendant has been charged with violating MCL 750.540e(1)(h).*]

(5) Fourth, that at the time [*name complainant*]

[*Select any of the following that apply*:]

(a) was the defendant's spouse.

(b) was the defendant's former spouse.

(c) had a child in common with the defendant.

(d) was a resident or former resident of the same household as the defendant.

(e) was a person with whom the defendant had or previously had a dating relationship. A "dating relationship" means frequent, intimate association primarily characterized by the expectation of affectional involvement. It does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

Use Note

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 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 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 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.

The malicious-use statute, MCL 750.540e(3), defines *telecommunication device* with reference to MCL 750.540c, which in turn defines *telecommunications access device* with reference to MCL 750.219a. The Committee on Model Criminal Jury Instructions is of the view that the legislature intended these two terms to be synonymous.

The Committee has adopted a new jury instruction, M Crim JI 42.1 (Misconduct in Office), for the common-law offense of misconduct in office. The new instruction is effective May 1, 2025.

[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.

(6) "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.

(7) 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. Corrupt intent 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).

ORDERS OF DISCIPLINE & DISABILITY

REPRIMAND (BY CONSENT)

Joshua C. Castmore, P76326, Trenton. Reprimand, effective Jan. 4, 2025.

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 Tri-County Hearing Panel #5. The stipulation contained the respondent's plea of no contest to both the factual allegations and allegations of professional misconduct set forth in the formal complaint, namely that during his representation of a client who was being sued for breach of contract and foreclosure of a construction lien, the respondent failed to appear for a trial despite being told that the judge intended to proceed with the trial as scheduled. The respondent's failure to appear resulted in the court granting the plaintiff's motion for directed verdict and entering a default judgment against the respondent's client.

Based upon the respondent's no contest pleas as set forth in the parties' stipulation, the panel found that the respondent failed to adequately prepare for a case under the circumstances in violation of MRPC 1.1(b); neglected a matter entrusted to him in violation of MRPC 1.1(c); failed to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.3; withdrew from representation and failed to appear on behalf of the client without an order of the court in violation of MCR 2.117(C)(2); failed to take reasonable steps to protect a client's interests upon termination in violation of MRPC 1.16(d); engaged in conduct 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. Costs were assessed in the amount of $910.45

REPRIMAND WITH CONDITION (BY CONSENT)

Norman A. Dotson Jr., P84923, Detroit. Reprimand, effective Dec. 18, 2024.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Reprimand with Condition in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel.

The stipulation contained the respondent's admission that, as set forth in the Notice of Filing of Judgment of Conviction, he was convicted by guilty plea on Sept. 23, 2022, of operating while intoxicated – occupant less than 16, a misdemeanor, in violation of MCL 257.625(7)(a)(i), in *State of Michigan v. Norman Allen Dotson Jr.*, 44th Judicial District Court Case No. 22-00132. The stipulation also contained the respondent's admission to the factual and misconduct al-

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

legations of Formal Complaint 24-39-GA, which alleged that the respondent was charged in the state of Kansas with domestic battery – physical contact in the matter of *City of Wichita v. Norman Dotson Jr.,* Wichita Municipal Court Case No. 21DV001748, and that he failed to appear at a hearing which resulted in the issuance of a bench warrant in Kansas.

Based on the respondent's conviction, admissions, and the parties' stipulation, 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); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); and engaged in conduct that is 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 be reprimanded and that he be subject to a condition relevant to the established misconduct. Costs were assessed in the amount of $771.76.

SUSPENSION

Frederick D. Johnson Jr., P36283, Muskegon. Suspension, 75 days, effective Dec. 26, 2024.

Based on the evidence presented at hearings held in this matter in accordance with MCR 9.115, Kent County Hearing Panel #4 found that the respondent committed professional misconduct in his role as the director of the Muskegon Public Defender's Office and failed to properly supervise both his lawyer and nonlawyer employees by failing to have proper conflicts of interest policies in place and failed to ensure that proper measures were in place to screen for and avoid conflicts of interest as set forth in a formal complaint filed by the grievance administrator.

Specifically, the hearing panel found that the respondent knowingly revealed a confidence or secret of a client, used a confidence or secret of a client to the disadvantage of the client, or used a confidence or secret of a client for the advantage of himself or of a third person without the client's consent obtained after full disclosure in violation of MRPC 1.6(b); having formerly represented a client in a matter, the respondent thereafter represented a person in the same or a substantially related matter in which that person's interests were materially adverse to the interests of the former client where the former client did not consent after consultation in violation of MRPC 1.9(a); having formerly represented a client in a matter, the respondent thereafter (1) used or attempted to use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known and/or (2) revealed information relating to the representation except as Rule 1.6 or Rule 3.3 would permit in violation of MRPC 1.9(c); represented a client or, after representation had commenced, failed to withdraw from the representation of a client where the representation would result in violation of the Rules of Professional Conduct or other law in violation of MRPC 1.16(a); as a partner of a law firm, the respondent failed to make reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct in violation of MRPC 5.1(a); having direct supervisory authority over another lawyer, the respondent failed to make reasonable efforts to ensure that the other lawyer conformed to the Rules of Professional Conduct in violation of MRPC 5.1(b); as a partner of a law firm, the respondent failed to make reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that the conduct of nonlawyers in the firm was compatible with the professional obligations of the lawyer in violation of MRPC 5.3(a); having direct supervisory authority over a nonlawyer, the respondent failed to make reasonable efforts to ensure that the person's conduct was compatible with the professional obligations of the lawyer in violation of MRPC 5.3(b); engaged in conduct that is prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(1); engaged in conduct that exposes the legal profession or the

courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3); and engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court in violation of MCR 9.104(4).

The panel ordered that the respondent's license to practice law in Michigan be suspended for 75 days. Costs were assessed in the amount of $3,212.62.

SUSPENSION WITH CONDITIONS

John Lawrence McDonough, P68576, Three Rivers. Suspension, two years, effective Jan. 11, 2025.

The grievance administrator filed a motion for order to show cause seeking additional discipline for the respondent's failure to comply with an order of reprimand with conditions (by consent) issued by Kalamazoo Hearing Panel #2 on June 7, 2023. The grievance administrator also filed formal complaint 24-45-GA against the respondent for his alleged mishandling of a client matter and failure to answer a request for investigation. The two matters were consolidated. The respondent failed to file an answer to either the motion for order to show cause or the formal complaint, and a default was entered.

Based on the respondent's default and as confirmed by the evidence presented at the hearing, the panel found that respondent committed misconduct as alleged in the formal complaint 24-45- GA. Specifically, the respondent neglected a legal matter entrusted to him in violation of MRPC 1.1(c) [count 1]; failed to seek the lawful objectives of a client in violation of MRPC 1.2(a) [count 1]; failed to act with reasonable diligence and promptness in violation of MRPC 1.3 [count 1]; failed to keep a client reasonably informed about the status of a matter and/or failed to comply promptly with a client's reasonable requests for information in violation of MRPC 1.4(a) [count 1]; failed to take reasonable steps to protect a client's interests upon termination of representation, such as failing to refund any advanced fees that had not been earned, in violation of MRPC 1.16(d) [count 1]; failed to make reasonable efforts to expedite litigation consistent with the interests of his client in violation of MRPC 3.2 [count 1]; failed to respond to a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2) [count 1]; 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) [count 1]; engaged in conduct that is prejudicial to the administration of justice in violation of MCR 9.104(1) and MRPC 8.4(c) [counts 1-2]; engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

MCR 9.104(2) [counts 1-2]; engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3) [counts 1-2]; failed to answer a request for investigation in violation of MCR 9.104(7) and MCR 9.113(B)(2) [count 2]; and entered into or attempted to obtain an agreement that (a) the professional misconduct or the terms of a settlement of a claim for professional misconduct shall not be reported to the administrator, (b) the plaintiff shall withdraw a request for investigation or shall not cooperate with the investigation or prosecution of misconduct by the administrator, or (c) the record of any civil action for professional misconduct shall be sealed from review by the administrator in violation of MCR 9.104(10) [count 1]. The panel also found that the respondent violated the order of reprimand with conditions (by consent) previously entered in 22-83-JC in violation of MCR 9.104(9).

The panel ordered that the respondent's license to practice law in Michigan be suspended for two years and that he be subject to conditions relevant to the established misconduct. Costs were assessed in the amount of $1,887.43.

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EVENTS, PRESENTATIONS, PUBLICATIONS

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"Pilgrim" is a new book written to motivate older teens and people in their 20s. It is frank, honest, informative, and a comfortable read. I ask that you read it and if you deem it to be worthy, pass it along to your children or grandchildren. They are not apt to buy it, but they need to read it. Clark Cumings-Johnson, author. $12.49 online at Amazon, Barnes and Noble, or your favorite e-vendor.

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Sublease (Downtown Birmingham). Executive corner office, 16′ x 16′ with picture windows and natural light, in class A building on Old Woodward at Brown Street. Amenities include shared conference room, spacious kitchen, and staff workstation. Available secured parking in garage under building. $1,975/month. Contact Allan at Nachman@WillowGP.com or 248.821.3730.

Troy. One furnished, windowed office available within second-floor suite of smaller class A building just off Big Beaver two blocks east of Somerset Mall. Includes internet and shared conference room; other resources available to share. Quiet and professional environment. $650/month each. Ask for Bill at 248.646.7700 or bill@gaggoslaw.com.

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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*
Virtual meeting
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

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.)

SUNDAY 7 PM*
Virtual meeting, WOMEN ONLY
Contact Adrienne B. at 248.396.7056 for meeting login information.

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