MICHIGAN
BAR JOURNAL
SEPTEMBER 2025

AI AND THE LAW

TWO ATTORNEYS DEBATE THE PROS AND CONS

ALSO IN THIS ISSUE

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2025

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SEPTEMBER 2025 | VOL. 104 | NO. 08

OF INTEREST

MICHIGAN
BAR JOURNAL

SEPTEMBER 2025 • VOL. 104 • NO. 08

OFFICIAL JOURNAL OF THE STATE BAR OF MICHIGAN
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COLUMNS

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DUTY TO REPORT AN ATTORNEY'S CRIMINAL CONVICTION

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

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

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

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

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

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

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

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 4.083%. This rate includes the statutory 1%.

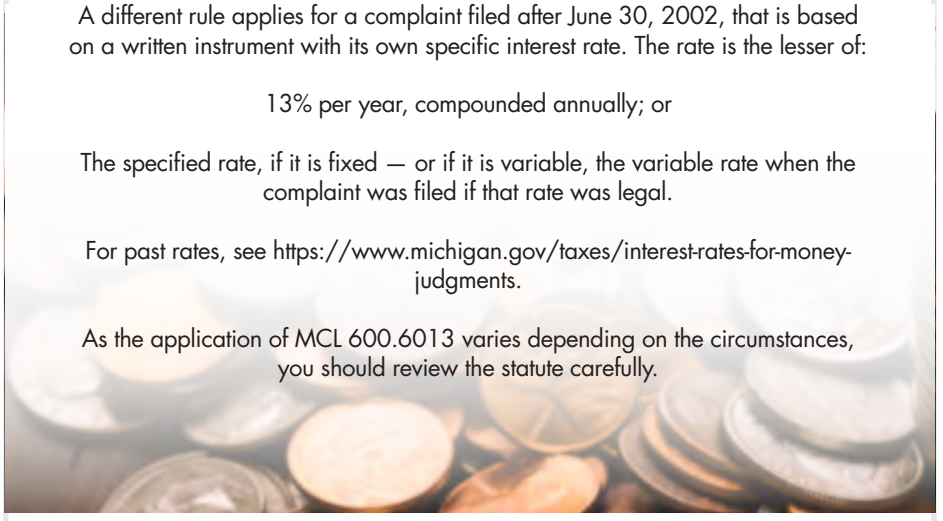
A different rule applies for a complaint filed after June 30, 2002, that is based on a written instrument with its own specific interest rate. The rate is the lesser of:

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.



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NOVEMBER 21, 2025
JANUARY 23, 2026
MARCH 6, 2026 (IF NEEDED)
APRIL 24, 2026
JUNE 12, 2026
JULY 24, 2026
SEPTEMBER 18, 2026

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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, 2025, 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 19, 2025

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LETTER TO THE EDITOR

Bar President Joseph Patrick McGill in June claimed that 46,000-plus members could change negative public opinion of our profession: "Perception vs. reality: Understanding public trust in lawyers in Michigan."

McGill's view goes in the wrong direction. He seems to ignore the reality "out there" created by President Donald J. Trump, in his contempt of the law and lawyers who twice tried to impeach him.

What can turn the public around is an aggressive strategy of protest support, test case litigation, and legislative initiatives which attract the media to worthy causes. Thankfully, nationally, many lawyers, especially Democrats who are Attorney Generals for their states, already are doing that. Republican lawyers can help by donating money to non-profits.

In the '70s, as a federally funded lawyer, I sued to: require change in use of human subjects in medical research; alter the Michigan Mental Health Code entirely; empower juveniles to sue, and force nursing homes to open their records. Youth and people said to be mentally disabled got real representation for the first time.

Today that strategy might involve the Bar supporting the NAACP and other non-profit groups soliciting lawyers and lobbying to challenge the constitutionality of life-threatening cuts to Medicaid, and food stamps.

Reality demands Bar members recognize that this is no time to worry about *pro bono* clients getting individual help in family court. We need inspiring class actions and test cases often created by solicitation of representative parties, like the NAACP. See *In re Primus*, 436 U.S. 412 (1978).

Respectfully submitted,
Gabe Kaimowitz, Gainesville, FL

IN MEMORIAM

ELLIOT B. ALLEN, P40394, of Pontiac, died June 23, 2025. He was born in 1956, graduated from Wayne State University Law School, and was admitted to the Bar in 1987.

RUSSELL C. ANDERSON, P48728, of Waterford, died August 7, 2025. He was born in 1967, graduated from Detroit College of Law, and was admitted to the Bar in 1993.

JUDITH C. AUGSPURGER, P39348, of Vestal, N.Y., died July 18, 2025. She was born in 1939, graduated from Wayne State University Law School, and was admitted to the Bar in 1986.

WILLIAM J. CAVANAUGH, P29996, of Flint, died July 16, 2025. He was born in 1949, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1979.

TIMOTHY J. CURRIER, P28939, of Glenview, Ill., died July 23, 2025. He was born in 1952, graduated from University of Detroit Mercy School of Law, and was admitted to the Bar in 1978.

VITO P. CUSENZA, P12415, of Grosse Pointe Shores, died October 6, 2024. He was born in 1930, graduated from Wayne State University Law School, and was admitted to the Bar in 1964.

ARTHUR J. FASSE, P40265, of Rochester Hills, died December 21, 2024. He was born in 1929, graduated from University of Detroit Mercy School of Law, and was admitted to the Bar in 1987.

D. CRAIG HENRY, P14878, of Grand Blanc, died July 25, 2025. He was born in 1943, graduated from Detroit College of Law, and was admitted to the Bar in 1971.

THOMAS E. HUNTER, P15280, of Clarkston, died July 19, 2025. He was born in 1935, graduated from University of Michigan Law School, and was admitted to the Bar in 1961.

WILLIAM R. MCNAMEE, P17538, of Dearborn, died July 17, 2025. He was born in 1931, graduated from Detroit College of Law, and was admitted to the Bar in 1965.

ROBERT M. MEISNER, P17600, of Bingham Farms, died July 26, 2025. He was born in 1944, graduated from University of Michigan Law School, and was admitted to the Bar in 1969.

HON. DONALD G. ROCKWELL, P26723, of Flint, died July 17, 2025. He was born in 1949, graduated from University of Detroit Mercy School of Law, and was admitted to the Bar in 1976.

MARY KATHLEEN POTOCKI SANCHEZ, P80788, of Ann Arbor, died July 5, 2025. She was born in 1989 and was admitted to the Bar in 2016.

OTIS W. STOUT, P26100, of Clio, died July 7, 2025. He was born in 1950, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1976.

HON. WILLIAM J. SUTHERLAND, P21179, of Taylor, died July 24, 2025. He was born in 1940 and was admitted to the Bar in 1968.

JAMES M. WECHSLER, P22084, of Sylvan Lake, died July 12, 2025. He was born in 1941, graduated from Wayne State University Law School, and was admitted to the Bar in 1967.

WILLIAM A. WERTHEIMER, P26275, of Jupiter, Fla., died August 12, 2025. He was born in 1947, graduated from Wayne State University Law School, and was admitted to the Bar in 1975.

FRED L. WOODWORTH, P22546, of Washington, D.C., died May 31, 2025. He was born in 1940, graduated from University of Michigan Law School, and was admitted to the Bar in 1966.

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 & PROMOTIONS

LAURA CHAPPELLE, TIM LUNDGREN, AND JUSTIN OOMS have joined the Grand Rapids office of Varnum as partners

MADELEINE C. CRAIG has joined Plunkett Cooney.

SHALINI NANGIA, a partner with Varnum (Ann Arbor), has been named president of the Washtenaw County Bar Association.

ELIZABETH M. SIEFKER has joined Butzel as an associate.

LEADERSHIP

MATTHEW BAILEY, a partner with Varnum, has been appointed to the board of directors of the Grand Rapids Bar Association Family Law Section.

PRESENTATIONS & PUBLICATIONS

The **BUTZEL** Education Industry Team is presenting its Third Annual Education Seminar and Panel Discussion from 12:30-5 p.m., on Thursday, October 9, 2025, in the firm's Troy office, located in the Columbia Center at 201 West Big Beaver, Suite 1200.

MDTC & MAJ are partnering with Detroit Police Athletic League for the Battle of Bar III softball game on August 14.

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

LEGAL NOTICE

NOTICE OF APPOINTMENT OF INTERIM ADMINISTRATOR

The Macomb County Circuit Court has ordered that:

Attorney **Justin D. Vande Vrede**, P67581
21231 Cass Avenue
Clinton Twp, MI 48036
586.469.0900

is hereby appointed Interim Administrator to serve on behalf of:

Attorney **Larry Dale Vande Vrede**, P21737
21231 Cass Avenue
Clinton Twp, MI 48036
586.469.0900

Ordered by Macomb County Circuit Court on August 27, 2025.
Case no. 2025-003545-PZ

FROM THE PRESIDENT

JOSEPH PATRICK MCGILL

Looking back, moving forward

A FAREWELL MESSAGE FROM THE 90TH PRESIDENT OF THE STATE BAR OF MICHIGAN

As I conclude my term as President of the State Bar of Michigan, I do so with deep gratitude and a profound sense of reflection. This past year has been one of progress, resilience, and transformation — not only for me personally, but for our legal community as a whole. We have navigated significant change together, advanced innovative programs, strengthened justice across our state, and deepened our commitment to the rule of law and to the public we serve.

It has been the privilege of a lifetime to represent you — the attorneys, judges, educators, and advocates who make up the fabric of Michigan's legal system. Together, we have tackled emerging challenges, championed new ideas, and laid foundations that will support the profession for years to come.

EMBRACING INNOVATION: THE STATE BAR'S AI REPORT

Among the most critical and forward-looking projects this year was the development and release of the State Bar of Michigan's **Artificial Intelligence Report**, published in June. This comprehensive document offers essential guidance on the use of AI technologies in legal practice, from generative tools like ChatGPT to predictive analytics, automated research, and client service platforms.

As AI continues to reshape the practice of law at a rapid pace, Michigan attorneys need tools to navigate the ethical, practical, and strategic implications of these changes. The report provides more than theoretical analysis—it gives actionable insights on confidentiality, bias, competence, and the balance between innovation and professional responsibility.

I encourage every Michigan lawyer to read this report, which positions our state at the forefront of the national conversation on legal technology. We must ensure that as we adopt new tools, we do so in a way that upholds our values, safeguards our clients, and enhances — not diminishes — the integrity of our work.

INVESTING IN THE PIPELINE: SUPPORTING THE NEXT GENERATION

Equally vital to the future of our profession is the work we are doing to support the **next generation of legal professionals**. This year, we expanded our **pipeline programs**, aimed at exposing students from diverse communities to careers in the law and providing them with the support and mentorship they need to thrive.

In **February and March**, we brought the **Face of Justice** program to northern Michigan, with events in **Suttons Bay** and **Marquette**. These sessions gave high school students a rare opportunity to visit courtrooms, meet with judges and attorneys, and participate in interactive discussions about law, justice, and career pathways.

In **April**, we partnered with **Wayne State University's pre-law program** to host Face of Justice events in Detroit. Students visited the **36th District Court**, observed proceedings, and then participated in mentoring sessions with legal professionals from across the city. These experiences are more than field trips—they are transformative moments that plant seeds of possibility and help create a more representative legal system.

We also continued our support for the **Michigan Center for Civic Education** and its **Mock Trial** and **We the People** programs. These civics-based competitions not only promote constitutional literacy and public speaking skills, but they introduce middle and high

school students to the legal system in action. Thanks to the volunteer efforts of Michigan lawyers and judges, these programs inspire future advocates, public servants, and legal minds. These programs were further enhanced by the celebration of **Law Day** throughout Michigan on May 1st.

CHAMPIONING JUSTICE IN WASHINGTON: ABA DAY AND FEDERAL ADVOCACY

In April, I was honored to represent the State Bar of Michigan at **ABA Day** in Washington, D.C.—a powerful reminder of the role that organized bars play in advocating for justice beyond our state borders. Alongside colleagues from across the country, we met with members of Congress to underscore the urgent need for **funding for civil legal aid**, particularly through the **Legal Services Corporation (LSC)**.

For many of Michigan's most vulnerable residents—particularly the elderly, rural, and low-income—access to a lawyer can mean the difference between safety and exploitation, housing and homelessness, stability and crisis. Federal funding is essential to the infrastructure of legal aid in Michigan. Our advocacy on this front is a vital part of ensuring that our justice system serves everyone—not just those who can afford it.

PARTNERING FOR SYSTEMIC CHANGE: MICHIGAN SUPREME COURT COMMISSIONS

Closer to home, I want to recognize the extraordinary work of the **Michigan Supreme Court's commissions**, with whom the State Bar of Michigan is proud to collaborate. These bodies are doing transformative work in areas that affect every one of us as lawyers and citizens.

The **Justice for All Commission**, the **Commission on Diversity, Equity, and Inclusion**, and the **Commission on Well-Being in the Law** are all tackling urgent, complex issues with clarity and commitment. Whether expanding access to civil justice, improving the culture of our profession, or addressing burnout and mental health, these commissions are driving change that is long overdue—and the State Bar stands firmly behind them.

Their work reflects the idea that systemic problems demand systemic solutions, and that the rule of law must be accompanied by equity, wellness, and trust.

BUILDING BRIDGES: STRENGTHENING RELATIONSHIPS WITH TRIBAL COURTS

This year, we also saw a **deepening and increasingly meaningful partnership between the State Bar of Michigan, the Michigan judiciary, and the tribal courts within our state**. These relationships are not new—but they are growing in importance, visibility, and mutual respect.

One of the most exciting developments in this area has been the **Michigan Supreme Court's Peacemaking Court Initiative**, which draws on **indigenous legal traditions of restorative justice**. The State Bar is a strong supporter of this initiative, which recognizes that healing, reconciliation, and cultural competence have an essential role in the administration of justice.

Peacemaking courts offer alternatives to adversarial legal proceedings, emphasizing dialogue, accountability, and relationship restoration. They draw from tribal wisdom and communal values—reminding us that justice can be more than punishment; it can be peace.

In working with tribal courts, we also affirm our shared commitment to **sovereignty, cooperation, and mutual understanding**. Our bar has a responsibility to recognize the legal pluralism that exists in our state and to support respectful collaboration across jurisdictions. I am proud of the progress we've made and look forward to future opportunities to learn from and work alongside Michigan's tribal legal leaders.

CONFRONTING LEGAL DESERTS: ENSURING JUSTICE EVERYWHERE

Another key issue this year has been the State Bar's ongoing focus on **legal deserts** — areas of the state, especially rural regions, where residents lack reasonable access to attorneys. This work has been spearheaded by the **Representative Assembly**, with the support of the Board of Commissioners, and will culminate in a set of **recommendations expected this fall**.

Legal deserts are not just inconvenient — they are a threat to justice. Without lawyers, people cannot resolve disputes, protect their rights, or navigate life-altering legal processes. This initiative seeks to identify practical, sustainable solutions, including financial incentives, use of remote technologies, and expansion of limited-scope representation.

The State Bar is committed to helping close this access gap. Every resident of Michigan deserves meaningful access to legal assistance, regardless of where they live.

SPOTLIGHTING YOUNG TALENT: THE NATIONAL TRIAL ADVOCACY COMPETITION

In October, the **Young Lawyers Section** of the State Bar once again hosted the prestigious **National Trial Advocacy Competition (NTAC)** in Detroit. This annual event brings together top law student teams from around the country to compete in a rigorous trial advocacy tournament judged by experienced practitioners and jurists.

The caliber of advocacy on display was nothing short of exceptional. Congratulations to this year's champions, **Harvard Law School**, and to all participating teams who demonstrated poise, preparation, and the kind of excellence that gives us confidence in the future of our profession.

The NTAC not only showcases legal skill — it fosters collegiality, professionalism, and community among the rising generation

of lawyers. My thanks to the YLS for organizing such a meaningful event.

ENHANCING CONNECTIONS: THE MEMBER-TO-MEMBER REFERRAL GUIDE

We have also focused inward, seeking to improve how members of the Bar connect, collaborate, and support one another in their daily practices. I'm particularly excited about the upcoming **Member-to-Member Referral Guide**, which will be published in the **September issue of the *Michigan Bar Journal*** alongside this farewell column.

This tool is designed to help attorneys refer business across practice areas, build new relationships, and better serve clients by finding the right lawyer for the job. In a profession that can sometimes feel isolating, this guide is a reminder that we are all stronger when we work together.

BRIDGING TRADITIONS: ENTRUSTED TO SERVE AS HONORARY CONSUL OF IRELAND

One of the most memorable and personally meaningful moments of my year (and career) came with the **official visit of Ireland's Attorney General, Rossa Fanning, to Michigan**. During his time here, we had the opportunity to strengthen the longstanding bonds between Ireland and Michigan's legal community — ties rooted in shared legal traditions, democratic values, and cultural heritage. It was during this visit that I was privileged **to be appointed as the Honorary Consul of Ireland for the State of Michigan**. To receive this appointment halfway through my term as State Bar President was deeply humbling. It underscored the importance of international collaboration and the enduring connection between our people. I look forward to continuing to serve as a bridge between Michigan and Ireland in the years ahead.

LOOKING AHEAD WITH OPTIMISM

As I prepare to pass the gavel to President-Elect Lisa Hamameh, I do so with hope and confidence as she is perfectly positioned to assume this important leadership role. The challenges facing our profession — from technology to diversity to access — are real, but so too is the energy and creativity of those working to solve them. I want to extend my heartfelt thanks to my fellow **Officers,** the **Board of Commissioners**, the **Representative Assembly**, the **Judicial and Tribal communities**, the **State Bar staff**, and most of all, to you — our members. Your resilience, your service, your commitment to justice have made this year not only successful but profoundly meaningful.

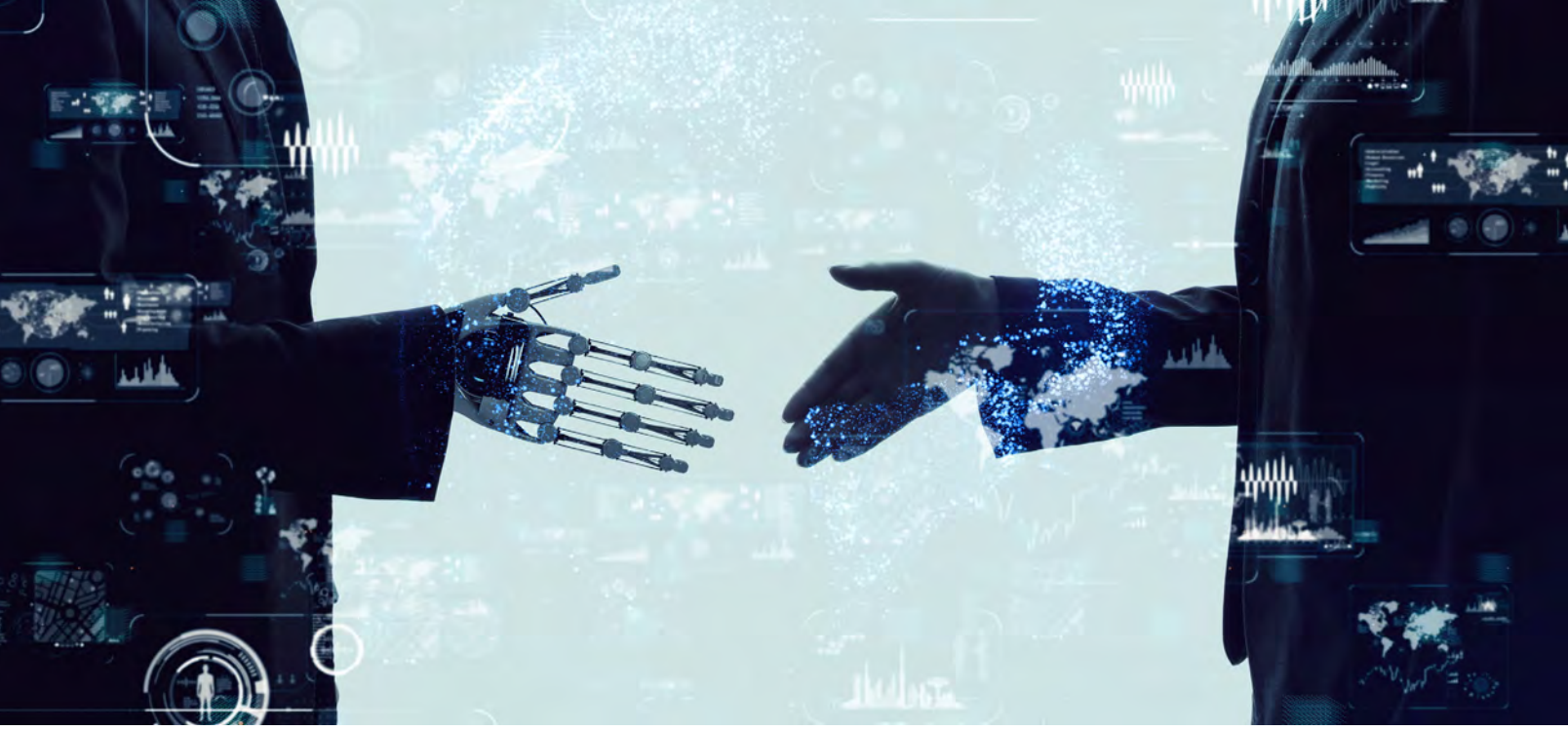
I would be remiss if I did not express my deepest gratitude to my **family** and my **colleagues at Foley, Baron, Metzger & Juip, PLLC** for their unwavering support throughout this journey. Serving as President of the State Bar of Michigan requires significant time, travel, and attention, and I could not have fulfilled these responsibilities without their encouragement, flexibility, and understanding.

To my family — thank you for your patience and love during the many nights away and long days of service. And to my law firm — thank you for carrying the load when I could not, and for believing in the importance of this work. Your support made it possible for me to serve our profession with a full heart and a clear mind.

I have learned something from every person I met this year — in courthouses and classrooms, on Zoom and at conferences, from Detroit to Mackinaw Island. We are a diverse bar united by shared values. We believe in the rule of law. We believe in service. We believe in justice.

Thank you all for allowing me to represent you, and for the privilege of a lifetime!

Hon. Joseph Patrick McGill President, State Bar of Michigan 2024–2025



AI in the law: An optimistic view

BY ENAM HOQUE

"The future is already here — it's just not evenly distributed."
— William Gibson, science fiction writer

The practice of law stands on the brink of a radical transformation. AI-powered tools promise to reshape traditional workflows, save time, and reduce costs. From incumbent giants like Westlaw or Relativity to recent efforts by iManage and Litera, along with a legion of emerging startups like Harvey, Legora, or DeepJudge, the legal tech landscape is evolving rapidly. And so is the technology itself.

This surge of innovation has captivated lawyers, technologists, entrepreneurs, and venture capitalists alike, suggesting a future of greater efficiency and new players in the legal field. Academics have already studied the potential gains in efficiency and accuracy in the law of the future.[1]

The legal industry presents a paradoxical environment for AI development, simultaneously offering the most promise and the greatest challenges.[2] The current focus on enhancing efficiency and accuracy within existing workflows, i.e. streamlining existing processes, is valuable but iterative. The drive for incremental improvements risks overshadowing AI's true potential to fundamentally reimagine the practice of law.

"Technology is neither good nor bad; nor is it neutral."[3]
— Melvin Kranzberg

We are on the cusp of what Reid Hoffman, founder of LinkedIn, called a "Cognitive Industrial Revolution" where the shift from mechanical processes to AI-enhanced systems will drive innovation and enhance human decision-making in unprecedented ways.[4]

AI's ability to process vast amounts of data and identify patterns at unprecedented speeds promises to be a powerful tool across many industries. Transformer models, the technology that underpins most frontier large language models, are designed to pattern and generate human language by analyzing vast amounts of text data at unprecedented scale.[5] Their abilities with translation, summarization, and conversational AI make them a game changer for legal applications. They will empower legal professionals, including those

with limited technical skills, to build and refine their own idiosyncratic workflows. And for the very best legal professionals, they will use these tools to laser-focus on client value, rather than efficiency.

For power users of these AI systems, it's evident that their capabilities are remarkable, often astounding, even if they don't truly think or understand in a human sense. Users experimenting with these systems frequently find themselves captivated by AI's linguistic prowess, ability to follow instructions, and interpret ambiguous requests. This fascination is not unfounded; Bill Gates considers AI one of the most revolutionary technologies he's witnessed in his lifetime.

In various use cases — from client intake, conflicts, communications and marketing, and billing guidelines to advanced research and data sorting and simulation — we are in a new age where natural language processing can drive new processes and innovation. We can tackle problems that were impossible only a short few years ago.

And this is just the beginning. Or to put it in Silicon Valley marketing parlance: What you see with today's tools truly is the worst this technology will ever be.

Startups are pouring into less-explored areas of the law such as predictive outcomes or analyzing a judge's entire corpus of opinions to detect detailed semantics, outliers, or even judicial philosophies. Imagine insights like, "This judge responds well to sports analogies" or "This judge is a legal positivist at heart."

The legal industry's penchant for precedent makes pattern-recognition and predictive machine learning tools transformative solutions to complicated problems. The main challenge? The legal field hasn't systematically prepared high-quality datasets for sophisticated legal questions or tasks. This data gap explains why benchmarking and evaluation tools will continue to proliferate in this space, becoming increasingly specialized for specific practice areas and use cases.

AI technology will revolutionize the legal profession by enabling unprecedented innovations in workflows and methodologies. While the field has previously benefited from advancements like word processing, simple document comparison tools, timekeeping tools and basic search capabilities, the impending AI-driven transformation will be far more profound.

The most sophisticated AI tools offered to lawyers in the past decade (adopted with notable hesitation) were machine-learning solutions like Kira, Eigen, and Luminance, all built on earlier-generation ML techniques. Now, amid the current AI revolution, these established platforms face pressure to rapidly integrate large language models (LLMs) into their products and workflows or risk obsolescence.

The scale of this change is likely to eclipse even the monumental impact that spreadsheet software had on finance and accounting, fundamentally reshaping how legal professionals approach their work and deliver value to clients.

> *"Any sufficiently advanced technology is indistinguishable from magic."*[6]
> *— Arthur C. Clarke, author*

Current AI systems in law primarily rely on two key technologies: natural language processing (NLP) and ML. While these tools have demonstrated impressive capabilities,[7] they fundamentally operate based on statistical correlations derived from existing data. At their current best, these systems can generalize patterns to some extent, aiding in the analysis of situations that may be at the periphery of direct training data.

This is fundamentally different from human wisdom, which is grounded in infinite context: experience, ethical considerations, and factors beyond mere rationality. The logic underpinning formal systems — such as algorithms and most machine learning models — inevitably lacks the ability to self-reference or relate to realities beyond what the system contains.[8]

Consider prominent AI researcher Andrej Karpathy's analogy: Large language models are essentially a form of lossy compression of the internet's data, much like how an MP3 compresses audio. Just as a live musical instrument produces richer resonance than any analog or digital recording, language models can only offer a degraded representation of reality. To the extent they have any concept of the "real world," it's at best a hazy, low-fidelity abstraction. The system could give you perfect turn-by-turn directions from Grand Central Terminal to JFK Airport without ever understanding the feel of pavement underfoot or the sensation of objects in motion. It knows the map, but not the territory.

But our relationship with technology is shifting, along with the technology itself. In the past, most technology operated like an on/off switch: It either worked or it didn't. The light bulb turned on or it didn't. We expected deterministic, predictable outputs at scale. The promise and peril of large language models lie in their inherently non-deterministic nature. What lawyers call "hallucinations" is what an engineer might call the model's generative nature operating without sufficient grounding — a feature, not a bug. That is, until it enters a legal context where it becomes a critical failure. Still, this is a fundamentally different relationship with technology.

Even though we anthropomorphize these systems, and the language outputs are hypnotizingly good, can we truly believe that AI comprehends emotionally charged and complex human experiences like love, compassion, forgiveness, and sacrifice? These are not merely complex equations; they are deeply human and likely resist reduction to any mathematical or "atomized" model.

More and more advanced AI systems are in development today, ranging from sophisticated prompting agents with schemas to orches-

trating different models with varying expertise. Agentic AI, for example, employs system designs that not only process information and make decisions but also operate with a degree of autonomy, setting and pursuing their own goals based on learned or pre-programmed courses or objectives. These systems, which are designed to adapt to changing circumstances and execute complex tasks without constant human oversight,[9] could theoretically come close to addressing many of law's most tedious, complicated, and time-consuming tasks.[10]

Despite their impressive capabilities, AI systems remain fundamentally distinct from human cognition. The intricacies of human thought — our ability to reason abstractly and analogously, empathize, and make nuanced judgments — extend beyond the pattern-based approaches of current AI. Probabilities and pattern-matching, no matter how sophisticated, cannot translate directly into wisdom.

Human life is inherently chaotic and unpredictable; our sense of control is often illusory. This unpredictability matters for law. When we place blind faith in legal rules as mechanical absolutes, we lose access to the underlying wisdom, integrity, and virtue that make laws just in the first place. Laws without human judgment become mere algorithms — precise perhaps, but divorced from the messy realities they're meant to govern.

This distinction becomes evident when we challenge AI with tasks requiring creative analogical thinking. Consider the prompt: 'ABC is to ABD as XYZ is to what?' The mechanical answers—XYA or YZA—simply replace the last letter. But there's a more elegant solution: 'WYZ.' This answer recognizes that just as ABC moves forward to ABD (C→D), XYZ should also shift—but since Z is at the alphabet's end, the creative insight is to shift backward instead (X→W), preserving the pattern's spirit while respecting the boundary constraint. It's easier to appreciate this visually or aesthetically. This solution embodies the type of lateral thinking long celebrated in studies of human creativity and cognition.[11] Yet current language models struggle with this leap.

Somewhat impressively, later 'thinking' versions showed progress; ChatGPT-4o's purported chain-of-thought process revealed it had considered WYZ, a remarkable leap. Yet even today's frontier models still default to more mechanical answers like XYA or YZA. When asked to generate multiple possibilities, WYZ doesn't even crack the top 10 anymore. The models can follow patterns, but they miss the creative insight that makes the answer beautiful.

For the legal profession, this underscores a crucial point: While AI will undoubtedly become an invaluable tool that revolutionizes many aspects of legal practice, it will never truly replicate the full spectrum of human judgment, creativity, and ethical reasoning that lies at the heart of the law. AI will augment and enhance legal work, but the uniquely human elements of legal practice — persuasiveness, fairness, empathy, nuanced interpretation, and principled decision-making, will remain irreplaceable and likely irreducible.

THE COMPLEXITY OF LAW AND AI'S CHALLENGES

As AI systems master physical tasks — laundry-folding robots, gardening robots, pool cleaners, autonomous vehicles — they face a far more intricate challenge: navigating our evolving and invisible legal and regulatory landscape. This gap between AI's technical and physical capabilities and law's inherent complexity presents both a critical challenge and an unprecedented opportunity.

Consider a thought experiment: Imagine an AI system with perfect memory of every law, regulation, and legal case ever decided. Could this system predict the future of law? Almost certainly not. Law is not merely a database of past decisions and rules or the dry application of IRAC (issue, rule, application, conclusion). It's a living system shaped by the infinite context of societal norms, ethical dilemmas, and human judgment. When laws conflict, someone must choose. When culture shifts, law follows (and sometimes leads or lags). An AI system would need judgment, not just memory.

AI's limitations in this domain become self-evident[12] when we consider several key factors:

- **Lack of consensus:** Lawyers and judges often disagree on what constitutes a "correct" decision, reflecting the subjective nature of legal interpretation.
- **Changing societal norms:** Legal standards evolve with societal values, making reliance on static historical data inadequate for future predictions
- **Novel situations:** The law frequently adapts to unprecedented scenarios, especially in rapidly changing fields like technology, where past precedents may offer little guidance
- **Ethical considerations:** Legal decisions often involve complex ethical tradeoffs that data alone cannot resolve, requiring nuanced human judgment to balance competing interests.

Yet algorithmic justice isn't some distant possibility. It's already here. Try generating a politically sensitive image in Midjourney, disputing an Uber charge, or returning an item through Target's app. These platforms make binding decisions through code, sometimes even offer compromises. Lime Electric Scooters automatically shut down in prohibited zones throughout the country. We're already living under algorithmic governance, whether we recognize it or not.

> *"The life of the law has not been logic; it has been experience."*[13]
> *— Oliver Wendell Holmes Jr., U.S. Supreme Court Justice.*

CURRENT APPLICATIONS AND CHALLENGES OF AI IN LAW

Law is facing unprecedented technological focus from the outside. Billions of dollars are being poured into legal technology, with some start-ups like Harvey achieving unicorn status (multi-billion valuation). There are now hundreds of start-ups focusing on e-discovery, predictive analytics, research, semantic comparison tools, novel work streams, enhanced training modules, data flywheels,

Clio-type end-to-end systems, etc.

Contract analysis is a highly promising application of AI in law. With specialized training and prompting, AI can excel at advanced tasks including outlier detection and the holy grail of "what's market?"-type analysis. This area is particularly well-suited for AI due to the following factors:

- **Self-contained nature:** Contracts primarily rely on their own content, reducing the need for extensive external knowledge.
- **Structured format:** Contracts often follow predictable templates and structures, making them easier for AI to process.
- **Repetitive nature:** Many contracts contain repetitive clauses and language patterns, which AI can readily identify and analyze.
- **Rules-based logic:** Contractual obligations and terms are typically governed by specific rules and conditions, aligning well with AI's computational, instructional and semantic capabilities.

While AI is accelerating quickly, each application faces unique challenges rooted in AI's inability to fully grasp true meaning because of the infinite context of history, ethics, and the uniquely human elements essential to legal decision making.[14]

Hallucinations (and biases) — inaccurate or nonsensical outputs from AI that occur when the technology recognizes patterns that either don't exist or are imperceptible to human observers — also plague these systems, and it is an area of active research. It is likely that this problem will decrease over time as new methods and mappings are introduced and tested, such as improved retrieval-augmented generation, better embedding models, novel tuning architectures and larger and more persistent memory and context windows.

REIMAGINING THE LEGAL SYSTEM

"The more laws a society has, the less justice."[15]
— Cicero, lawyer and philosopher

Before we reimagine possibilities, I invite readers to sit in a bit of childlike wonder at the immense potential AI systems hold for our profession and not to dwell on or fear change — even substantial change.

This is a paradigm shift, and the question to ask is not just how AI can manage the existing complexities of the legal system, but how it can help us reimagine the legal system itself with a clear focus on enhancing justice, fairness, and human dignity.

Some will say the proliferation of complex and limitless laws, regulations, and policies is an inherent and unavoidable byproduct of our society's increasing complexity, technological advancement, economic concerns, political processes, and risk-averse nature. In this view, legal frameworks will inevitably multiply and contracts will inexorably expand. Yet simply layering on more rigid rules and structures fails to address (and could exacerbate) the burden that ordinary people experience navigating today's labyrinthine legal system.[16]

One significant concern is that addressing our legal system's complexities by layering on additional AI-driven systems risks creating an ungovernable tangle of interconnected technologies. Rather than simplifying law's labyrinth, we might merely digitize its dysfunction. In the worst-case scenario, AI becomes a tool for entrenching existing power dynamics, automating bias at scale and amplifying inequities under the guise of algorithmic objectivity.

However, AI also presents us with an opportunity to reassess our legal system's efficacy. Instead of navigating the current maze of rules, we can leverage AI to discern what truly serves justice and societal needs. This could involve systematically analyzing case outcomes, business results, and the broader consequences of our laws, allowing us to refine and simplify the frameworks that govern us.

The technology also promises to inject dynamism into what are currently static legal instruments. Consider contracts that self-amend based on real-world conditions — adjusting payment terms when supply chains falter, modifying delivery obligations during natural disasters, or automatically triggering parametric insurance payouts when predefined weather events occur. These adaptive frameworks could eliminate countless technical defaults that arise not from bad faith, but from rigid contracts colliding with fluid realities.

AI could revolutionize our understanding of how contract terms evolve in response to economic conditions. For instance, do terms tighten during recessions and loosen during recovery periods? Could we simulate more flexible contract structures to adapt to these shifts? Such insights might lead us to rethink how we structure legal agreements, moving beyond traditional rigid formats.

The ad-hoc nature of law and jurisprudence itself can be refashioned with enough consensus. Why can't ordinary people read and understand a simple contract or know what is covered by their insurance? And yet law today remains, in some corners, outrageously complex and nearly indecipherable (by fellow lawyers too!).

In today's practice, contract drafting is often seen as more art than science. Yet with AI, we can apply theories from architecture and computer science — like pattern theory — to identify key terms, boilerplate provisions, and the sections that generate the most conflict or negotiation. In contracts spanning hundreds of pages, how much is truly operative? Can AI help us streamline our approach to contract creation and interpretation, focusing on what matters most?

Beyond contracts, AI could facilitate ambitious comparative studies of justice systems, contrasting punitive approaches with restorative models across jurisdictions and time periods. It could also serve as a kind of devil's advocate, surfacing unpopular or unconsidered perspectives that human advocates might overlook due to bias, convention, or institutional blind spots.

I imagine this leading to more nuanced, technologically informed decision-making that avoids the zero-sum games and rigid formalism that so often produce unjust outcomes. Consider the cautionary tale of White & Case's technical win for Disney Corporation: by enforcing arbitration clauses in Disney+'s terms of service during a wrongful death lawsuit, the firm achieved a narrow legal victory at the cost of severe reputational harm.[17] The rule-bound argument was legally correct yet revealed how mechanical application of contract law can generate morally tone-deaf, even self-defeating, results.

An AI system trained to recognize these dynamics could flag such risks, warning counsel that winning a motion might mean losing public trust, client loyalty, or the broader cause of justice. Rather than being paternalistic in dictating outcomes, such a system could feel almost maternal: nudging lawyers toward more balanced, contextual strategies that acknowledge human consequences alongside legal correctness.

Ultimately, AI could help us build simpler, more principled frameworks with clearly articulated factors rooted not in cold abstraction, but in warm lived human experience. It could move the law beyond mere technical victories toward outcomes that are sustainable, just, and truly in service of those it claims to protect.

CONCLUSION

The future will be very different.

The call to action here is to see technology as both the biggest challenge and the biggest opportunity. To see both the potential and the pitfalls.

The transformation of the legal landscape is inevitable. AI's potential to enhance efficiency, accuracy, and access to justice is undeniable. Yet we should ensure that the pursuit of technological advancement does not overshadow the fundamental principles of law — fairness, empathy, and the recognition of human dignity.

The legal profession has always been an evolving field, responding to societal changes and technological advancements. The future of law is where human judgment and AI capabilities intertwine, creating a legal system that is both more efficient and more just. This technology is not a replacement for human intellect; it is a tool to augment our capabilities, enabling us to navigate the complexities of the modern world with wisdom, compassion, and an unwavering commitment to justice — at a scale and speed previously impossible.

That's why I am truly optimistic about the future of law, because optimism in this space ultimately rests on optimism about human potential itself. If we trust our capacity for wisdom, compassion, and principled compromise, we can shape technology to amplify these qualities rather than replace them.

For lawyers who truly love the law, this technological revolution isn't something to fear—it's something to embrace.

Enam Hoque is founder of LawBeta, a cutting-edge legal and technology consultancy. A graduate of SUNY Buffalo Law School, he started his career at Cahill Gordon & Reindel in New York City, where he represented major financial institutions in complex banking and finance transactions, then moved to Moody's Investors Service, emerging as a leading voice in the leveraged loan and high-yield bond markets and developing a scoring system for legal documents.

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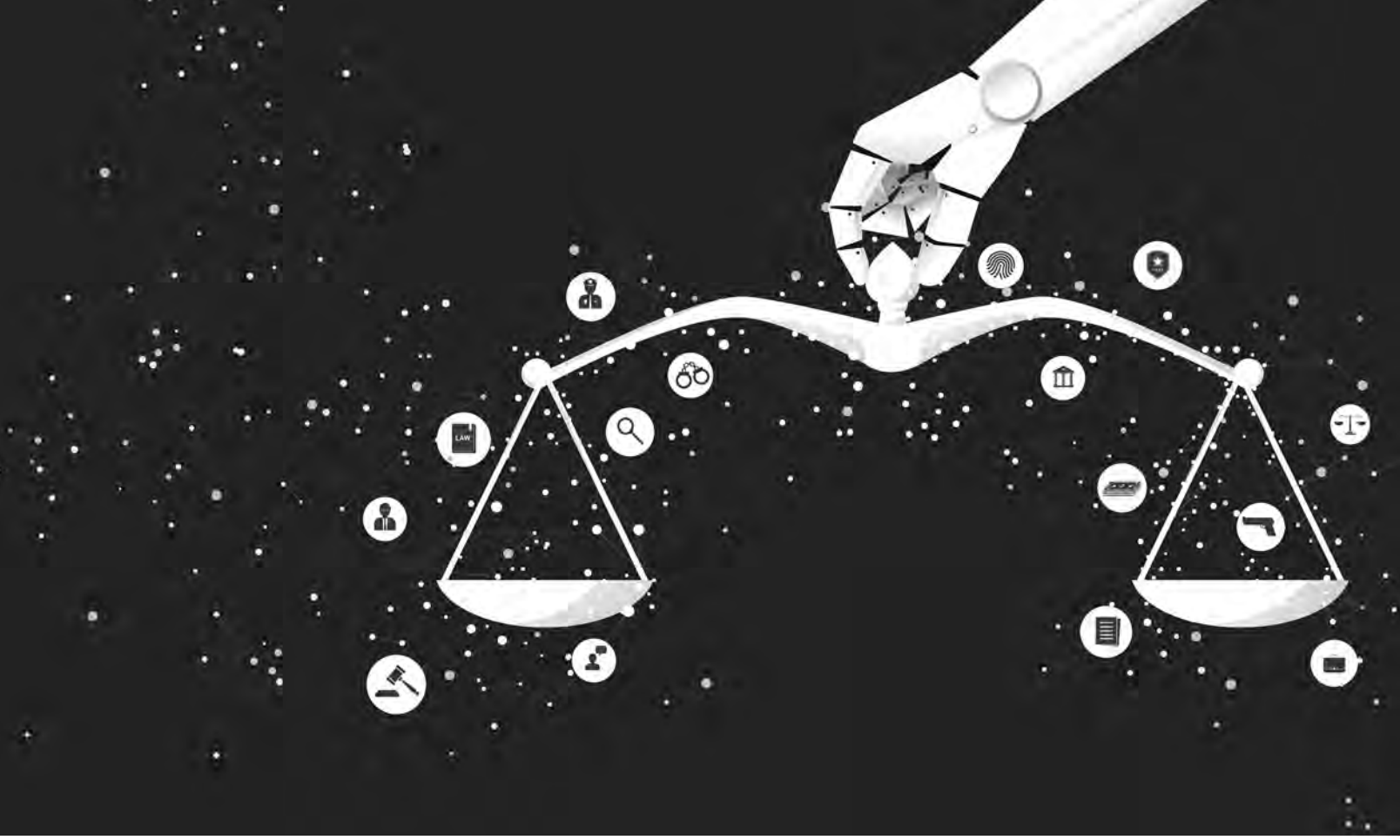

AI in the law: A pessimistic view

BY JASON Y. LEE

I love computers because they are a tool for which we have not fully appreciated the expanding potential. Among the latest of their newly discovered features (though old-timers would say "rediscovered" since the 1970s) is the promise of artificial intelligence (AI) with the advent of OpenAI's ChatGPT. Released in 2022, the program epitomizes the current zenith in AI and machine learning (ML) technology with its novel generative technology.

Since starting a legal tech software company in 2015, I have had several opportunities to work with machine learning because it is a hot sector attracting both media attention and venture capital. I have personally worked on natural language processing projects using the Python programming language to solve a problem, but after several months, I didn't commit to it, because it did not solve the problem better than existing methods. To sum up the reason, its accuracy never got high enough to be compelling.

WHAT IS MACHINE LEARNING?

The basis of ML is deferring to the computer, the programming of itself. In a way, it is a form of biomimicry, wherein we borrow from biology the concept of evolution: We inject a bit of randomness to force changes in the next generation, and if the change produces a better result, we adopt the newly evolved method and iterate that further. In practice, what we provide are inputs and outputs, asking the computer to learn the patterns so when we give similar inputs, it gives us similarly corresponding outputs.

For example, an input could be a credit agreement, and the output could be a summary of key terms of that agreement. An accurate dis-

tillation of a lengthy contract in an automated form — a CliffsNotes on demand — would be a useful tool, and there's no denying there is demand for it in multiple industries, including insurance, compliance, and capital markets. But as I found out the hard way, the devil is in the details. And here, the primary relevant lessons involve the ever-elusive accuracy of AI and the law of diminishing returns.

WHY MACHINE LEARNING SEEMS AWESOME AT FIRST

The aphrodisiac of ML is that with very minimal initial effort, you can get tantalizing and promising results. For instance, if you put in two dozen samples of credit agreements and a matching set of term sheets, it would generate a believable summary term sheet with, say, 60% accuracy.

The natural expectation is that if we continue to work on this, it will generate amazing results. One thinks, "This only took us a week to do. Let's see what happens if we work on it for a few months." And spending several months with more inputs and outputs, the accuracy may increase to 70%. That's when you would naturally commit and pour resources into it; but alas, that's also when you realize that progression is not linear. Two years pass with a 75% accuracy, and five years go by with 80% accuracy, ultimately plateauing.

DEALING WITH LIMITATIONS

Even though 80% seems pretty good — it's a B-minus after all, a passing grade — when you are paid to do work, an error rate of one in four or one in five would result in a reputation hit for your company. So naturally, AI companies responsible for generating deliverables hired a legion of quality assurance (QA) personnel to take the 80% accuracy rate and make it 100% via human intervention. At first, this was OK because it was expected that accuracy would improve over time, just like how Uber planned to use drivers as temps until it built a fully self-driving taxi. Unfortunately, that 80% never flirted with 90%, let alone 99%.

Others took a different approach, which is to let you, the customer, build out the ML model. Their premise is: *We will provide the platforms and technical assistance; if it never reaches 100%, that's not our fault.* Over time, though, customers figured out that the technology never delivered on its promise, and if it did near 100% accuracy, its scope had to be narrowed substantially, which converted the issue to another problem: selecting the right model.

What that means is that model A only worked on documents created using form A (say, the institution's form), and model B (perhaps the latest market deal) only worked on documents created using form B. In this context, the genealogy of the documents becomes important, and the system fails if a document was created by merging the two, which happens often in real life. The accuracy dropped to unacceptable levels until model C could be custom-made for that scenario. Soon, there were multiple competing models, and resources had to be spent to keep track of all this.

I believe the dream of AI will be realized when it actually reduces the headcount of those developing or using it. The whole purpose of AI is increasing efficiency so less human involvement is required for a computer to program itself well. What we have is a system that merely replaces programmers with so-called "AI trainers" who review the integrity of inputs and desired outputs and QA folks who intervene to correct data. Generative platforms like Copilot do indeed claim that they will reduce programmer headcount, but let's not forget Elon Musk cut 80% of Twitter prior to any AI implementation, and it turned out OK.[1]

PROBLEMS WITH AI-GENERATED CONTENT

What are some common problems with AI-generated output? The first is what people call hallucinations. In my projects, hallucinations were akin to random numbers/words or streams of thought that had been injected into the output, an error a human would never make. It was so bizarre that I was initially taken aback, but I have gotten used to it.

Newer systems are better at guarding against hallucinations, but, unfortunately, progress is tied to randomness, meaning mutants and deviations are the driving force behind advancement. If perfection in a given model had been reached, we might never know, since it may train itself out of perfection in the name of progress. I believe this inherent design of following in the footsteps of evolution to create "accurate" (low error rate) systems may be flawed — perhaps because evolution is not expected to end, and there's no correct solution to the problem.

There are practical problems, too. AI can't backstop a lawyer's or any other professional's responsibilities. Anyone getting paid to pass off AI's work as their own will have a rude awakening by failing to meet their professional obligations, as people have already found out.[2] If you have to reread everything AI generates, maybe it is nothing more than a tool to help you out with writer's block in the first draft. I remember using ChatGPT to draft a contract that I was unfamiliar with. The end result looked nothing like the beginning, but I admit that the program was helpful at the start. It's just not what it is advertised to be.

PROFESSIONAL TAKE

When Linus Torvalds, the creator of the Linux operating system, was asked about AI, he scoffed at the thought of being replaced by AI anytime soon.[3] Dirk Hohndel, head of Verizon's open-source program office, summarized the current iteration of generative AI as "autocorrect on steroids."[4]

I agree. Only with human ingenuity — like ChatGPT typing out an answer even though it fully knows what it will say — can the computer continue to expand its bag of tricks to impress us. Professional programmers are not impressed, because it is their job to create the illusion of competence.

This is the ultimate critique of the current generation of AI. It doesn't read or understand; it just looks for patterns and generates a pattern of a string of characters in response. Themes, morals, and

insights, all of which require understanding and the ability to feel them, cannot be registered because they are drowned out by more numerous noises. In this respect, if the current iteration of ChatGPT were asked to generate a book-length text, I believe it would have trouble making a coherent story, let alone an interesting one with character development or plot twists.

As attorneys, we certainly remember that our law professors and mentors drilled into us that a comma can change the meaning of a text. *A comma*. Of course, the words "not" and "and/or" can have tremendous consequences. I would argue that even using "the" versus "a" could result in a different meaning in certain contexts, and I know of no computer language model that assigns the words "the" or "a" more than a zero value in weight. The nuances require understanding, and that's simply not what AI does.

AI'S STRENGTHS

So, is AI useless? Absolutely not. I long pondered about where AI will be the most useful and concluded that it will be useful in places where 80% accuracy is good enough, in a context where the error itself would be drowned out by the proximity of "good enough" data. Take image processing and generation, for example, where an error shows up as a wrongly colored pixel. In the context of a high-resolution image, a pixel essentially is invisible without zooming in. Likewise, in audio processing and generation, an error shows up as an imperceptible blip so short in duration that it will be dwarfed by the intended sounds. MP3s showed that most sounds don't matter, only the loudest,[5] allowing for its magical compression rate for audio files to take root in the 1990s and become the bedrock behind one of the first viral apps, Napster.[6]

In a domain where the collage matters and individual units don't, I think AI will flourish. This may be related to the degree in which each unit of data is independent from the others and how much damage an error could impact those around it. A pixel by definition is confined to a rectangle and does not naturally pollute the next pixel, and neither does sound in frequency X at time Y. But in text, a word impacts words that come before and after it. And in law, every word matters, and legal language is rife with examples where certain language trumps others, such as "notwithstanding the foregoing," or ambiguous situations, like citing an overruled case for dicta.

If I could summarize my thoughts into a single statement about its applicability, it would be that AI will excel in domains where a lossful (rather than lossless) compression is permissible, like JPEG, MP3, and MP4 corresponding to image, audio, and video. If, on the other hand, only lossless compression is permissive, such as with text, then I would argue the probabilistic nature of AI will limit its applicability in such domains.

SHORT TERM VS. LONG TERM

In the short term, AI will be an unbelievable tool for animation[7] and music[8] studios. It might also be able to generate short fiction stories or summaries that carry few consequences.[9] For the public, it may mean lowering the cost of design services, whether for logos or websites, and improved translation services. On the other hand, it will also be a boon for scam artists and others not bound by ethics. Phishing emails will look ever closer to real ones, fake landing pages will look like real web pages, and people will have a harder time discerning the difference.[10] All sorts of member-created communities, like Facebook and LinkedIn, and especially the less prominent ones, will be polluted with fake accounts and more sophisticated scams (such as "pig butchering" cryptocurrency scams) preying on the unwary.[11]

Generative AI will help by giving us new inductive tools, but it will not help solve the problems it creates. What we'll need as a counterbalance is deductive AI that takes information and narrows it down, accurately comparing its veracity against the vast amount of knowledge we as humanity have collected and digitized, so the truth and insights can be gleaned from it, sort of like what lawyers do for their clients: simplifying complex concepts and detecting and correcting errors from multiple dimensions — not just spelling and grammar but also regulations, market conventions, and social norms. And this has to be more than 95% accurate.[12] Given this and current limitations, the best short-term use case would be the hybrid model, where the AI assists and augments humans rather than replacing them, as others have predicted it will.[13]

In the long run, I think AI will likely play an important role in programming robots. Videos of how people (or animals) perform certain acts (or signals from electrode-imbedded wearables) can provide the input, and the output is the corresponding movement in robotics judged by whether the task at hand was performed successfully. In that respect, I think we will end up preferring humanoid robots (think C-3PO) over mechanoids (like R2-D2) because having congruent body parts will better translate to more efficient self-programming, invariably leading to the creation of objects in our image rather than our imagination.

CONCLUSION

It is a peachy gimmick to ask AI to write an article like this. But you could tell that the style of this writing and the content don't feel like a ChatGPT output because the content is deeply personal — something I have been thinking about and have refined over a period of several years. Of course, publishing this article will allow AI to consume it and mimic it, but in my view, it will never truly replace the purposeful self-expression of organized thought that is writing.

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ENDNOTES

1 Toh & Liu, *Elon Musk says he's cut about 80% of Twitter's staff*, CNN (April 12, 2023) <https://www.cnn.com/2023/04/12/tech/elon-musk-bbc-interview-twitter-intl-hnk/> (all websites accessed August 26, 2025).

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11. Laverdure, *'Pig butchering' crypto scams a growing concern*, Independent Community Bankers of America (April 11, 2024) <https://www.icba.org/newsroom/blogs/main-street-matters/2024/04/11/pig-butchering-crypto-scams-a-growing-concern>.

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Don't straddle the fence when answering complaints

BY JACK J. MAZZARA

As litigators, we have seen it. Your opponent has responded to the carefully drafted allegations in your complaint by repeatedly stating: "Defendant neither admits nor denies the allegations in paragraph __." Perhaps your opponent has added the equally pointless appendage: "… and leaves plaintiff to its proofs." Maybe attorneys try this because they want to avoid acknowledging the truth of an uncomfortable allegation. Maybe they are just afraid of commitment. Whatever the motive, this response violates the court rules, and using it could result in negative consequences for the defendant.

MCR 2.111 states the requirements for pleadings. It permits *only* four ways to answer allegations in the complaint. As to each allegation, the defendant must:

"state an explicit admission;"[1]

"state an explicit … denial"[2] and "state the substance of the matters on which the pleader will rely to support the denial;"[3]

state the defendant "lacks knowledge or information sufficient to form a belief as to the truth of an allegation, which has the effect of a denial;"[4] or

"plead no contest,"[5] which "has the effect of an admission only for purposes of the pending action."[6]

The rule reflects the long-established policy in Michigan that the "primary function" of pleadings is to give notice of the claim or defense so the opposing party can take a responsive position.[7] "[A]n answer must be sufficiently specific so that a plaintiff will be able to adequately prepare his case."[8] Therefore, MCR 2.111(C) does not

permit the defendant to straddle the fence. The defendant is required to take a specific position on each allegation in the complaint.

MCR 2.111(E)(1) also states the consequence of a response that does not explicitly deny an allegation: "Allegations in a pleading that requires a responsive pleading, other than allegations of the amount of damage or the nature of the relief demanded, *are admitted if not denied in the responsive pleading*." (Emphasis added.) As a "neither admits nor denies" response is not an explicit denial, it is deemed an admission under MCR 2.111(E)(1).

The Michigan Supreme Court and Court of Appeals have long disapproved of "neither admit nor deny" as a response to allegations because it violates the pleading rules. They have also recognized that it should be deemed an admission of the allegation under those rules.[9] In *Pitcher v Pitcher*, the Michigan Supreme Court succinctly observed: "Defendant's answer to many of plaintiff's charges is that he neither admits nor denies the charges. The matters being such that he must be considered as having personal knowledge of them, his answer in practical effect stands as an admission."[10]

Blouin v Yeo illustrates the problem a defendant creates for itself by resorting to "neither admits nor denies." In a fraud action, a defendant (Sayers) gave the following response to nearly every allegation against him: "Defendant neither admits nor denies but leaves plaintiff to his proofs."[11] The plaintiff then filed a motion for summary disposition, arguing that Sayers' responses constituted admissions of those allegations. Sayers opposed the motion, and at the hearing requested in the alternative leave to file an amended answer. The trial court granted summary disposition for the plaintiff and denied Sayers leave to file an amended answer. On appeal, the Court of Appeals agreed that the responses did not comply with MCR 2.111, and the responses "Defendant neither admits nor denies" were properly viewed as admissions:

> [W]e conclude that Sayers' answers were properly viewed as admissions because they failed to comply with the court rules.
>
> * * *
>
> In this case, Sayers' responses to the plaintiff's complaint failed to comply with MCR 2.111. The majority of Sayers' responses were in the following form: "Defendant neither admits nor denies but leaves plaintiff to his proofs." Although these responses are somewhat common, they are not specifically recognized by the court rule. By failing to either admit or deny the allegations, Sayers failed to give the plaintiff notice of the nature of his defense sufficient to permit the plaintiff to take a responsive position. Therefore, Sayers' responses, "Defendant neither admits nor denies but leaves plaintiff to his proofs," were properly viewed as admissions.[12]

However, the court determined that the trial court had erred in denying Sayers leave to file an amended answer.[13]

Similarly, in *Houle v EMC Dev*, the plaintiff obtained summary disposition on most of the counts in his complaint because the defendant responded "neither admits nor denies" to most of the allegations.[14] Following trial on the remaining counts, the plaintiff sought attorney fees under the Michigan Consumer Protection Act and sanctions. The trial court granted the request for attorney fees in part and denied the request for sanctions. On appeal, the Court of Appeals agreed that the responses violated the court rule but affirmed the trial court's denial of sanctions:

> The "neither admit nor deny" responses were not specifically recognized by MCR 2.111. Under MCR 2.111(E)(1), *any allegation to which defendants replied "Neither admit nor deny" was deemed admitted*. [Citations omitted].
>
> Nonetheless, the district court did not clearly err by finding that the "neither admit nor deny" responses should not be sanctioned … *The appropriate "sanction" for such responses, as our Supreme Court indicated in Pitcher, is to deem the allegations admitted*. (Emphasis added.)[15]

The court also observed, "The 'Neither admit nor deny' responses here were akin to 'no contest' responses" under MCR 2.111(C)(2).[16]

The Court of Appeals has most recently reaffirmed that "neither admit nor deny" responses violate the court rules and constitute admissions to the allegations of the complaint. In *Twp of Imlay v Schutte*,[17] the plaintiff sought injunctive relief against the defendant for operating a "commercial kennel" in violation of a township ordinance. "Defendant filed an answer in which she responded 'Neither Admit or Deny" to virtually all of the allegations in the complaint."[18] In affirming the trial court's grant of summary disposition in favor of the township under MCR 2.116(C)(9), the Court of Appeals concluded that the pleadings showed that the township was entitled to judgment, as the defendant "replied 'Neither Admit or Deny' to the relevant allegations."[19]

> Defendant's responses are properly viewed as admissions because they failed to comply with the court rules …
>
> In this case, defendant did not explicitly admit or deny the pertinent allegations, did not plead no contest, and did not claim a lack of sufficient knowledge to form a belief as to the truth of the allegations. Instead, she simply answered, "Neither Admit or Deny." The failure to respond in accordance with the court rules results in the allegations being deemed admitted. MCR 2.111(E)(1); [citations omitted].[20]

LONGHOFER COMMENTARY

In Michigan Court Rules Practice (8th ed) (2025), the authors correctly state:

> A response stating that the pleader "neither admits nor denies the allegations, but leaves plaintiff to its proofs" is not

> a denial under the rules. Indeed, this common formulation has the effect of admitting, not denying, an allegation, since allegations are deemed admitted if they are not denied [citing MCR 2.111(E)(1)].[21]

Longhofer also correctly cautions that "[e]xtreme care should be taken in preparing an answer to a pleading seeking affirmative relief because all allegations not denied are deemed admitted."[22] However, Longhofer then inexplicitly offers this contradictory view:

> [W]hile one might arguably invoke MCR 2.111(E)(1), discussed below, to contend that a denial in a form improper under MCR 2.111(D) constitutes an admission of the allegations, since MCR 2.111(E) is not a sanctions provision, this strained reading should be avoided. In absence of bad faith or other aggravating circumstances, a motion for a more definite statement under MCR 2.115(A) would seem the most appropriate remedy, with sanctions only for disobedience of any resulting order.[23]

This view is wrong for several reasons.

Longhofer cites no case support for this view, and as to the improper "neither admits nor denies" response, it fails to acknowledge cases such as *Pitcher, Blouin*, and *Houle* which recognize that such a response *does* constitute an admission. It also ignores the express provision of MCR 2.11(E)(1) that a failure to explicitly deny an allegation admits the allegation and the well-established rules of interpretation for court rules. Court rules are interpreted under the same principles as statutes.[24] A court must apply an unambiguous court rule as written and according to its plain meaning.[25]

The plain words of MCR 2.11(E)(1) state the effect of a failure to explicitly deny allegations in a complaint: The allegations "are admitted." Deeming a "neither admits nor denies" response an admission is not a sanction — it is the express *consequence* of that violation of the court rule. Nor is it a "strained reading"; to the contrary, it is the clear and required reading of the plain words of the court rule.

Finally, while a plaintiff may have the option to file a motion for more definite statement under MCR 2.115(A), nothing in the text of MCR 2.111 requires it. A court cannot read into a court rule language or requirements that are not there.[26] Therefore, a court cannot put on the plaintiff the onus to file a motion for definite statement in order to correct the defendant's violation of the rule. The "correction" is expressly stated in MCR 2.111(E)(1).

Unfortunately, Longhofer's "suggestion" has been cited in dictum in an unpublished case by a panel of the Court of Appeals: *McPhail v Department of Educ*ation.[27] However, the court did so without any analysis or consideration of the problems with that view discussed above.[28] Therefore, that case is not authoritative or persuasive as to Longhofer's suggestion that the express provision of MCR 2.111(E)(1) should not be applied as written.

CONCLUSION

The Michigan appellate courts have long recognized that a response that the defendant "neither admits nor denies" allegations in a complaint is improper and violates the court rules. By the plain meaning of MCR 2.111(E)(1), the consequence of that non-answer is the allegations are admitted.

There is no practical advantage to resort to "neither admits nor denies" in response to allegations in a complaint. Not only does it violate MCR 2.111(C) and the fundamental purpose of pleadings, it exposes the pleader to the consequence of the violation. When the responses are challenged, the offending attorney's only recourse to avoid the allegation being deemed admitted under MCR 2.111(E)(1) is to seek leave of the court to file an amended answer (provided the grounds for amendment under MCR 2.118 are met) and then do what the attorney should have done in the first place.

Answering allegations in a complaint with one of the four forms authorized by MCR 2.111 is not difficult. It serves the purpose of the pleadings to inform the plaintiff of the defendant's position on the allegations and to inform the plaintiff and the court of what is at issue in the case and what is not. While it may be the practice among some lawyers to resort to "neither admits nor denies," it should be avoided altogether.

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ENDNOTES

1. MCR 2.111(C).
2. *Id.*
3. MCR 2.111(D).
4. MCR 2.111(C).
5. MCR 2.111(C).
6. MCR 2.111(E)(3).
7. *Stanke v State Farm*, 200 Mich App 307, 317; 503 NW2d 758 (1993).
8. *Id.* at 318.
9. *Pitcher v Pitcher*, 314 Mich 648; 23 NW2d 195 (1946); *Blouin v Yeo*, unpublished per curiam opinion of the Court of Appeals, issued Nov 15, 2011 (Docket No. 298800); *Houle v EMC Dev,* unpublished per curiam opinion of the Court of Appeals, issued May 20, 2021 (Docket No. 348480).
10. *Pitcher, supra* n 9 at 649. MCR 2.111's requirements for responses to allegations in a complaint have long been part of Michigan civil procedure. Michigan Court Rules (1945), Rule 23, § 2 cited in *Pitcher v Pitcher,* stated in pertinent part:

Every answer shall contain an explicit admission or denial of each allegation in the declaration or bill of complaint as to which the defendant has knowledge or belief. But as to matters charged in the declaration or bill as to which the defendant avers he has no knowledge sufficient to form a belief, he shall not be required to admit or deny the same, but shall state his want of such knowledge. Every material allegation in the declaration or bill to which the defendant shall not make answer shall be taken as admitted by the defendant. In connection with every denial, the answer shall set forth the substance of the matters which will be relied upon to support such denial.

Similarly, GCR 1963, 111, on which MCR 2.111 is based, provided in pertinent part:

.2 … Whenever a responsive pleading is required, the pleader shall either (1) set forth an explicit admission or denial of each averment upon which the adverse party relies, or (2) plead no contest to 1 or more of the claims of parts thereof stated against him.

* * *

.4 Form of Denials. In connection with every denial, the pleader shall set forth the

substance of the matters upon which he will rely to support such denial. If the pleader is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state, and this has the effect of a denial …

.5 Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage or the nature of relief demanded, are admitted when not denied in the responsive pleading.

11. *Blouin*, *supra* n 9.
12. *Id.* (citations omitted). The court was also critical of the affirmative denials in the answer: "Sayers did make some affirmative denials. However, he failed to explain why he was denying the allegations. Instead, he merely asserted a naked denial with no explanation. Such a denial is prohibited under MCR 2.111(D) and was therefore properly viewed as an admission." *Id.*
13. *Id.*
14. *Houle*, *supra,* 2.
15. *Id* at 14.
16. *Id*, 15.
17. *Twp of Imlay v Shutte*, unpublished per curiam opinion of the Court of Appeals, issued May 21, 2025 (Docket No. 367304).
18. *Id* at 3-4. The defendant also did not plead and defenses, but she did assert a counterclaim.
19. *Id* at 8.
20. *Id.*
21. Longhofer et al*, Michigan Court Rules Practice* (Thompson West, 8th ed) (2025), § 2111.8.
22. *Id.*
23. *Id.* Longhofer does acknowledge that "deliberate or negligent violations" of the requirements of MCR 2.111(C) or (D) could warrant sanctions under MCR 1.109(E). *Id.*
24. *Tyler v Findling,* 508 Mich 364, 369-70; 972 NW2d 833 (2021); *Acorn Investment Co v Mich Basic Prop Ins Ass'n,* 495 Mich 338, 350; 852 NW2d 22 (2014).
25. *Id.; Decker v Trux R Us, Inc,* 307 Mich App 472, 480; 861 NW2d 59 (2014) (Where the plain language of a court rule is mandatory, it must be applied as written to avoid construing it "in a manner that results in a part of the rule becoming nugatory or surplusage.").
26. *People v Cowhy*, 330 Mich App 452, 462; 948 NW2d 632 (2019) (A court cannot read into a court rule a provision not written by the Supreme Court.).
27. *McPhail v Dept of Ed*, unpublished per curiam opinion of the Court of Appeals, issued Feb 17, 2022 (Docket No. 354256). In *McPhail*, two defendants answered some allegations in the complaint with "neither admit nor deny" responses but added "for lack of information sufficient to form a belief as to the truth of the allegations contained therein" or "Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of allegations contained in this paragraph of the Complaint." The court's holding was that these additions brought the answers within the requirements of MCR 2.111(C). *Id*, 12.
28. *Maxwell v Zawlocki*, unpublished per curiam opinion of the Court of Appeals, issued Jan 04, 2024 (Docket No. 362183), lv denied , 513 Mich 974; 998 NW2d 705 (2024), in dictum also cited *McPhail* and its citation to the Longhofer passage, again without any critical review of the passage or consideration of the express provision of MCR 2.111(E)(1). *Id*, 4. In that case, the defendant in his initial answer "gave a number of responses" which stated: "Defendant neither admits nor denies but leaves the Plaintiff to her proofs." *Id*, 2. However, in the face of the plaintiff's motion in limine, the defendant obtained leave to file an amended answer which corrected those responses. The Court of Appeals held that the trial court acted within its discretion to allow the amendment, citing *Blouin v Yeo,* and that mere delay is insufficient grounds to deny a request to amend. *Id*, 3

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Dennis W Loughlin
Jack K Mahon
Giuliano D Mancini
Anita C Marinelli
Jeffrey May
Michelle L Mayfield
Audra McClure
John C Muhs
Robert W O'Brien
Jennifer Oertel
David R Padalino
Alexandra S Page
Essence C Patterson
Andrew M Pauwels
Nashara Peart
Sinéad Redmond
James R Rinck
Erika S Shadowens
Sarah Sallen
Grant E Schertzing
Emily Kwolek
Gage M Selvius
Laura H Selzer
James Sherer
Annette Skinner
Kathaleen M Smith
Alexis Smith-Scott
Ronald A Spinner
Timothy Stoepker
Lara Stojanov
Brett A Swearingen
Veronica Thronson
Maynard Timm
Matthew R Warmbir
Sarah Weberman
Thomas Worsfold
Kimberly Young
Hannah Zaskiewicz
Glen Zatz

30-49 Hours

Gerald L Aben
Celeste Arduino
Jeffrey S Aronoff
Erica L Auster
Chelsea M Austin
Alan Baldridge
N. Banu Basaran
Michael Bashir
Benjamin E Bayram
Jennifer L Beidel
Laura E Biery
Brian Boehne
Jewel Haji Boelstler
Suzanne Bolton
John Boyko, Jr
David Brake
Allyson T Bremer
John T Brown
Charlotte G Carne
Michael Carolan
Nathan M Caverly
Mary Cebula
Jennifer Charnizon
Fatmeh Cheaib
Ahmad Chehab
Hannah A Cone
Raechel T X Conyers
Emily Cross
Kevin M Cunningham
Joseph W Cunningham
Nardeen Dalli
Mike Davis
Haley D DelVecchio
Ashlee Duplessis
Mira Edmonds
Amanda Empey
Theodore Eppel
Scott Farida
Yafeez S Fatabhoy
Olivia Flower
Louis Gabel
Sarah Gabis
Brian T Gallagher
Antonia R Giles
Erika L Giroux
Joshua Goodrich
Emma N Green
Clay A Guise
Nickolas Guttman
Nicole Haelterman
R Hanson
Erika Hart
Jennifer Hetu
Joseph H Hickey
Hannah R Humes
Andrew P Hussey
Paul J Kako
Kelly Kane
Samuel R Kilberg

Amber L Kipfmiller
Eric Klein
James Kole
Kyle P Konwinski
Melissa Kopriva
Susan Kornfield
Brent Kratochvil
Timothy D Kroninger
Cairle M Kubis
James Lamb
Madelaine C Lane
Brian T Lang
Sheldon Larky
Courtney T Lee
Scott R Lesser
Douglas E Mains
Alexandra Markel
Shelby J Martinie
William McDonald
Patrick F McGow
Tara McKenzie
Jennifer K Meer
Erin Mendez
Sonal H Mithani
Thomas T Moga
Claire Moore
Michael E Moore
John D Moran
Jeff J Osment
James L Parchell II
Carsten A Parmenter
Eric Polan
Schuyler C Pruis
Stephen M Ragatzki
Victoria Remus
Robert M Riley
Traci Rink
Cameron Ritsema
Steven A Roach
Richard A Roane
E Carolina Rodriguez-Hatt
Sarah Schairbaum
Theodore W Seitz
Rebecca Shiemke
Katherine Smigelski
Kory M Steen
Dante Stella
Angela Alvarez Sujek
Kris Thavararajah
Robert P Tiplady
Carrie Trimpe
Emma Trivax
Drew Van de Grift
Ryan J Vanover
Nicholas A Vlachos
Wei Wang
Rebecca Ward Zarzecki
Hunter R Wiand
W Alan Wilk
Sarah K Willey
Susan Wilson Keener
Nick J Winters
Justin M Wolber
Robert M Zak Jr

MICHIGAN BAR JOURNAL

BOOK REVIEW

The Legal Tech Ecosystem

REVIEWED BY MATTHEW SMITH-MARIN

Written by Colin S. Levy
Ramses House Publishing (2023)
Softcover | 236 Pages | $14.99

> *"The practice of law is changing quickly. Many people do not understand the interplay between legal tech and law practice … It is up to each one of us — law schools, law students, lawyers, law firms, and in-house departments — to ensure that we are delivering legal services as optimally as we can, today and in the future. It is indisputable that technology is now playing, and will continue to play, a major role in how legal services are performed and delivered." (p. 9).*

"The Legal Tech Ecosystem" is a book by Colin S. Levy, a legal-tech expert and corporate lawyer. Levy attended Trinity College in Hartford, Connecticut, where he received his bachelor's degree in public policy and law, then attended Boston College Law School, where he earned his juris doctor degree. In addition, Levy also earned a certificate in legal innovation and technology from Suffolk University Law School.

His blog, which was named among 30 top legal-tech blogs of 2023 by social feed reader website Feedspot, provided the basis for this book — Levy wanted to share what he learned from other legal-tech thinkers, creators, and teachers. In essence, the book serves as a tour guide for readers as they begin to explore and appreciate legal technology.

Levy begins the book with a reminder about how technology has seeped into almost all aspects of our lives and, in particular, in the legal field: data management, discovery, contract management, research, project management, and process improvement. With that said, Levy then details the many barriers to technology permeating the legal field because of the skepticism of lawyers, even though 40 states have adopted some duty of technology competence for those licensed to practice law.

The book continues with an overview of what legal technology is and what it is not — for instance, it is not just artificial intelligence,

robots, or only suited for large law firms. Levy then educates readers on the difference between legal technology and legal innovation; namely, the latter can occur without using any technology. That said, he makes it clear through dialogue of others in the industry that legal technology is inherently innovative because it seeks to develop tools to improve how things have been done in the past. And while Levy clarifies that the book is not a how-to guide, he weaves in tips for innovating and provides an overview of current types of legal technology and programs, explains how they can be used to help improve workflow, avoid litigation, assist with analytics, increase access through automation, and manage contracts.

The book's final chapters describe the need for teaching legal technology, change, and the future. As Levy notes, "There is a long-standing joke that you go to law school to avoid math. The joke now could be that you go to law school to avoid data and technology" (p. 99). However, he emphasizes that nothing could be further from the truth and explains that the key values of leaders today are collaboration, cross-disciplinary learning, and empathy — areas can be enhanced by legal technology. Levy finishes with an overview of artificial intelligence and the legal field and words of wisdom on dealing with change brought on by technological advancements.

On a final note, more than 55 legal-tech thinkers, creators, and teachers' thoughts, wisdom, and musings are woven into Levy's book, providing many interesting perspectives representing an array of different viewpoints.

Overall, "The Legal Tech Ecosystem" is a book that educates readers on current and future trends of technology in the legal field. It reminds us of why a growth mindset is necessary and to the importance of embracing technology as it continues to transform the legal landscape.

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

PLAIN LANGUAGE

The big four: concrete edits for clearer prose

BY MARK COONEY

One misconception about editing is that it's simply a function of time—that if given the same document and the same block of time, everybody would make the same edits. That's not true. Effective editors train themselves to find and correct specific trouble spots. That is, they go into every editorial session knowing how wordiness usually arises and how to fix it. With practice and experience, those fixes become editorial reflexes.

Here are my "big four" edits for succinctness and readability. They're hardly unique to me. I've learned them from others. But they're my top picks for legal writers—the most impactful edits a lawyer can learn. They may seem small, but their cumulative impact is big.

EDIT 1: QUESTION EVERY *OF.*

The point: Prose suffers from needless or wordy prepositions.

The edit: When you see the word *of*, question it. You'll leave many, of course, but question each one. Often you can move the preposition's object—the word after *of* or *of the*—to serve as a possessive or adjective earlier in the sentence. (I learned this edit from my friend and mentor Joe Kimble, who helped redraft the Federal Rules of Civil Procedure and Evidence, among others, and who wrote on this topic in the September and October 2023 columns*). Once you get used to watching for *of*s, do the same for phrases like *for the*, *by the*, and more.

Example:

- The verdict **of the** jury shocked onlookers.
- *Edit*: The jury's verdict shocked onlookers. [possessive]
- *Alternative*: The jury verdict shocked onlookers. [adjective]

Real-world example:

- *Wordy*: The plan **of the** Secretary will cut the revenues **of** MOHELA, impairing its efforts to aid college students **in** Missouri.
- *Better*: "The Secretary's plan will cut MOHELA's revenues, impairing its efforts to aid Missouri college students."

—Chief Justice John Roberts, *Biden v. Nebraska*, 600 U.S. 477, 491, (2023).

Related edit:
Downsize wordy prepositions such as *in regard to* and *with respect to*:

- We spoke ~~in regard to~~ *about* possible settlement terms.
- ~~With respect to~~ *As for* the final provision, . . .

EDIT 2: AVOID WORDY NOMINALIZATIONS (I.E., BURIED VERBS OR "ZOMBIE NOUNS")

The point: Strong verbs improve flow and impact. But verbs disguised as wordy, abstract nouns—"nominalizations," as grammarians call them—turn crisp prose soggy.

The edit: *Watch for nouns ending in -ion, -ment, and -ence. If a* noun has buried a verb, unearth the verb and save words.

Example:

- The court **reached the conclusion** that the damage award was excessive.
- *Edit*: The court **concluded** that the damage award was excessive.

Real-world Example:

- The Court has never **made a determination of** the precise *mens rea* needed to impose punishment.

* The simplest way to locate all columns going back to 1984 is to search online for "Plain Language column."

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 41 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.

- *Better*: "[T]he Court has never **determined** the precise *mens rea* needed to impose punishment."[1]

  —Justice Elena Kagan, *Counterman v. Colorado*, 600 U.S. 66, 82 n.6 (2023).

EDIT 3: AVOID ROTE LAWYERSPEAK (PREFER CONFIDENT, DIRECT LANGUAGE)

The point: Legalese and lawyerisms are fool's gold. This column long ago (in October 1985) debunked the precedent myth, finding that fewer than 3% of the terms in a typical real-estate sales contract have any court-glossed meaning. And recycling the trappings of legal style—*pursuant to*, *subsequent to*, etc.—only blunts your message's impact. So don't bog down your message. Don't succumb to habit or stuffy style. Connect with your busy readers.

The edit: Be on the lookout for legalese and needlessly inflated language such as *pursuant to*, *subsequent to*, *commenced a cause of action*, and many more. Replace them (as the Supreme Court Justices usually do) with substitutes that are more direct: *under*, *after*, *sued*, etc.

Example:

- **Subsequent to** the meeting, the buyer **commenced a cause of action** for breach of contract.
- *Edit*: **After** the meeting, the buyer **sued** for breach of contract.

Real-world example:

- Attributing his illness to his **employment activities** with Norfolk Southern, Mr. Mallory **retained** Pennsylvania lawyers and **commenced a civil action against** his former employer in Pennsylvania state court **pursuant to** the Federal Employers' Liability Act.
- *Better*: "Attributing his illness to his **work** for Norfolk Southern, Mr. Mallory **hired** Pennsylvania lawyers and **sued** his former employer in Pennsylvania state court **under** the Federal Employers' Liability Act . . . ."[2]

  —Justice Neil Gorsuch, *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 126 (2023).

Breaking down the edits:

- employment activities = work
- retained = hired
- commenced a civil action against = sued
- pursuant to = under

EDIT 4: PREFER ACTIVE VOICE

The point: Active voice is clearer and more succinct than passive voice. With active voice, the actor (or logical agent) appears before the verb, performing the verb's action. Passive voice—with the actor coming *after* the action (or not at all)—is often wordy and sometimes ambiguous. Passive voice isn't always unclear or obtrusive, so you'll frequently leave it. (*Smith was served last Tuesday.*) But active voice is a good default style.

The edit: To check for passive voice, look for the actor. If the actor appears after its action (e.g., the motion *was granted* by the *court*) or doesn't appear at all (e.g., *the motion was granted*), then the clause is passive.

Example:

- The contract **was signed** [action] by the **parties** [actors] on January 15, 2020. [*passive*]
- *Again*: The contract **was signed** [action] on January 15, 2020. [*passive, with implicit actor or actors*]
- *Edit*: The **parties signed** the contract on January 15, 2020. [*active*]

Real-world example:

- At sentencing, two of Lora's arguments about his § 924(j) conviction **were rejected** by the **District Court**. [The actor appears after its action.] Most pertinent here, it **was argued** that [Who or what argued? Where is the actor?] the District Court had discretion to run the § 924(j) sentence concurrently.
- *Active voice*: "At sentencing, **the District Court rejected** two of Lora's arguments about his § 924(j) conviction. Most pertinent here, **Lora argued** that the District Court had discretion to run the § 924(j) sentence concurrently . . . ."[3] [active voice in both emphasized clauses]

  —Justice Ketanji Brown Jackson, *Lora v. United States*, 599 U.S. 453, 455–56 (2023).

Again, the passive voice is sometimes understandable and inoffensive. It might even be strategic. (See the October 2023 column.) But more often, your switch to the active voice will pay dividends.

Spotting passive voice is challenging and takes practice. In fact, each of these "big four" edits takes practice. But if you keep them in mind every time you edit, you'll quickly improve. In fact, the trouble spots will start to jump off the page at you. And you'll soon see the difference in your writing—as will your readers.

Mark Cooney is a professor at Cooley Law School, where he teaches legal writing. He is a senior editor of *The Scribes Journal of Legal Writing* and author of the books T*he Case for Effective Legal Writing* (with Diana Simon) and *Sketches on Legal Style*. He was co-recipient (with Joseph Kimble) of the 2018 ClearMark Award for legal documents and is a past chair of the SBM Appellate Practice Section.

BEST PRACTICES

Defining separate and marital property in divorce: A decision tree analysis

BY MATHEW KOBLISKA

The legal framework governing family law and divorce in Michigan is predominantly established through various state statutes. However, many areas of family law lack explicit statutory guidance, causing judges and legal practitioners to interpret and navigate the law through a complex array of published, and many more unpublished, appellate decisions.

When dividing real and personal property, MCL 552.19 requires the court to divide anything "that shall have come to either party by reason of the marriage." This followed the common law at the time of enactment in 1846. Likewise, MCL 552.23(1) allows the court to make an added property award "if the estate and effects awarded to either party are insufficient for the suitable support and maintenance" of that party or the children.

The "contribution" and "commingling" statute provides additional discretion to the court: MCL 552.401 allows the court to award one party property of the other "if it appears from the evidence that the party contributed to the acquisition, improvement or accumulation of the property" in question.[1] Frequently, "contribution" and "commingling" are used interchangeably by family law attorneys, although they are different. Finally, MCL 552.18 provides for a division of retirement[2] benefits earned during the marriage. These statutes offer an opportunity for skilled legal representation and provide significant discretion for trial courts in their adjudication of family law matters.

The division of marital and separate property is a complex area that is often misunderstood, a challenge I often encounter in my domestic relations mediation practice. Significant case law, including notable decisions such as *Sparks, Hanaway, Reeves, Dart, McNamara v. Horner* and *Pickering,*[3] and many others, are vital resources for understanding these issues. A systematic approach to analyzing cases involving separate property claims requires thoughtful consideration of various legal precedents and principles.

A decision tree or flowchart analysis may be a valuable analytical tool for conceptualizing the numerous factors and procedural steps involved in cases with separate property issues. This method facilitates a structured approach to understanding the complexities inherent in such cases. A decision tree cannot capture every nuance of every appellate decision on the topic, but it may be a useful starting point for family law attorneys.

See pg 39 for chart.

PRELIMINARY CLASSIFICATION

The analysis of property division in divorce proceedings begins with the inquiry into whether any assets held by either party — whether individually or jointly between them or with others — were acquired before the marriage or through means unrelated to the marriage itself. Such considerations include but are not limited to:

- inheritances received by one of the parties;
- gifts conferred upon one party;
- assets owned before the marriage; and
- lump-sum legal settlements awarded for future wage loss or pain and suffering.

"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

These distinctions are cruci]al because they can significantly influence the equitable distribution of property upon dissolution of the marriage. If all the parties' assets came to them because of their marital partnership, then the case should continue to a "fair and equitable" disposition between them.[4]

COMMINGLING OF SEPARATE AND MARITAL PROPERTY

Where a claim arises regarding the separate ownership of assets by one or both parties, the court may decide that the mixing or commingling[5] of marital and separate assets has occurred so much that distinguishing between the two becomes impossible. Commingling can occur through the amalgamation of separate and marital assets within a shared account and may also arise within a singular account held in one party's name, particularly when there is active management of that account by either party.[6]

The intent of the parties is a critical factor to consider, especially when assets are placed in joint names, used for communal purposes, or relied upon for future needs.[7] This intent plays a significant role in the court's assessment of asset categorization and ownership. Unpublished appellate authority went a step further in holding that distributions from a separate stock account used to pay for marital expenses and household bills (money going out) was sufficient to render the entire segregated asset to be deemed marital.[8]

"TRACING" AS A DEFENSE TO COMMINGLING

In Michigan, the body of published domestic case law addressing the legal concepts of "commingling" and "tracing" is relatively limited. Tracing invoked as a defense against claims of commingling has received even less attention in judicial opinions. The most straightforward application of the tracing defense arises when a specific sum of money is deposited or withdrawn, and that amount can be directly correlated with another transaction of equal value that occurred within a close temporal framework.

While serial transactions may complicate the analysis, showing a connection between the transactions is still workable through careful examination. It is essential to recognize, however, that each case presents unique circumstances, making it challenging to formulate a universally applicable standard that would be fair across all scenarios; such an approach could invite manipulation of the legal system. The intent of the parties involved — shown by contemporaneous documentation or oral testimony showing whether funds were designated as separate or communal — can significantly influence the outcome. Such intentions may prove to be compelling factors in judicial determinations related to the classification of assets.

ACTIVE OR PASSIVE ACCUMULATION

MCL 552.401 has interpreted the definition of "acquisition, improvement or accumulation" of the claimed separate property to include postmarital "active appreciation" of separate property. It is well established that "passive appreciation" does not automatically turn into marital property.[9] However, a considerable area of ambiguity exists between the concepts of purely passive and active appreciation. For instance, a financial account managed by a brokerage firm without direct involvement from either spouse is likely to be classified as passive.[10] But a non-owning spouse's contribution may be indirect, and the owning spouse's perceptible efforts facilitated by the non-owning spouse's performing household services and raising children, generally, probably clears the bar.[11] A thorough examination of both published and unpublished case law suggests a historical trajectory — from *Charlton*[12] to *Sparks*[13] to contemporary rulings — bends toward an increasing tendency to dismantle the barriers surrounding separate property, particularly in long-term marriages.

MARITAL PURPOSES

Absent commingling, can the inference of the intent to use separate assets for marital purposes actually convert the assets into divisible marital property upon divorce? As of this writing, governing precedent falls short of that conclusion.

Unpublished appellate opinions have held, however, for example, that when quarterly distributions were reported on marital tax returns, the parties included them in their list of marital assets for estate plan purposes, and the parties talked of retiring together with the funds, the otherwise separate asset lost that distinction when the parties treated it otherwise.[14]

Similarly, in a case in which one of the parties used separate stock distributions for payment of marital household bills, it was sufficient to render the entire segregated asset to be deemed marital.[15] Until legislative or published appellate authority clarifies this issue, a persuasive argument may be made that the intent to treat separate property as marital can be respected by the trial court.

THE *SPARKS* FACTORS

Michigan is an equitable distribution state,[16] which does not mean a precise 50/50 distribution between divorcing parties, and while this is a logical starting point, it is not necessarily the end point. Generally, the division of marital property must be equitable, just, and reasonable.[17] Courts have broad discretion in how the marital estate is divided.[18]

The Michigan Supreme Court case of *Sparks v. Sparks*[19] is a foundational case that requires the trial court to analyze and make specific findings of facts on these factors: (1) the source of the property; (2) the contribution toward its acquisition; (3) the length of the marriage; (4) the needs of each of the parties; (5) the earning ability and history of each of the parties; (6) the interruption of the personal career or education of either party; (7) the cause for the breakdown of the marriage; (8) the contribution of each of the parties toward the marital estate; (9) the age of the parties; (10) the health of the parties; (11) the life status/lifestyle of the parties; (12) the necessities and circumstances of the parties; (13) the past relations and conduct of the parties; and (14) general principles of equity.[20] An equitable division is one that is "roughly congruent,"[21] although the division of property need not be "mathematically equal," and significant departure from "congruence" must be explained.[22] A complete discussion of the application of the *Sparks* factors is far beyond the scope of this article, but it is not uncommon for a party to assert a disproportionate entitlement due to mari-

tal fault (infidelity causing the breakdown of the marriage, wasteful dissipation of marital assets, domestic violence, etc.). Many attorneys overemphasize the significance of "fault"; this is only one of many factors to be considered by the trial court. It is reversible error for the trial court to "punish" a party.

INVASION

In what may seem by some to be another bite at the apple, the two-pronged principle of invasion allows for the division of separate property under specific circumstances, despite the general principle that separate property is not subject to division in a divorce. This doctrine is statutory and has two paths: (1) the financial need exception; and (2) the contribution exception.

The financial need exception comes from MCL 552.23(1), which permits the invasion of separate property if, after dividing the marital assets, "the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party." Courts may invade separate property to ensure one party has sufficient resources for self-support.

The contribution exception allows for invasion of separate property when the other spouse "contributed to the acquisition, improvement, or accumulation of the property."[23] If one spouse significantly assists in growing or acquiring the other's separate asset(s), the court may consider this contribution as deserving of compensation.

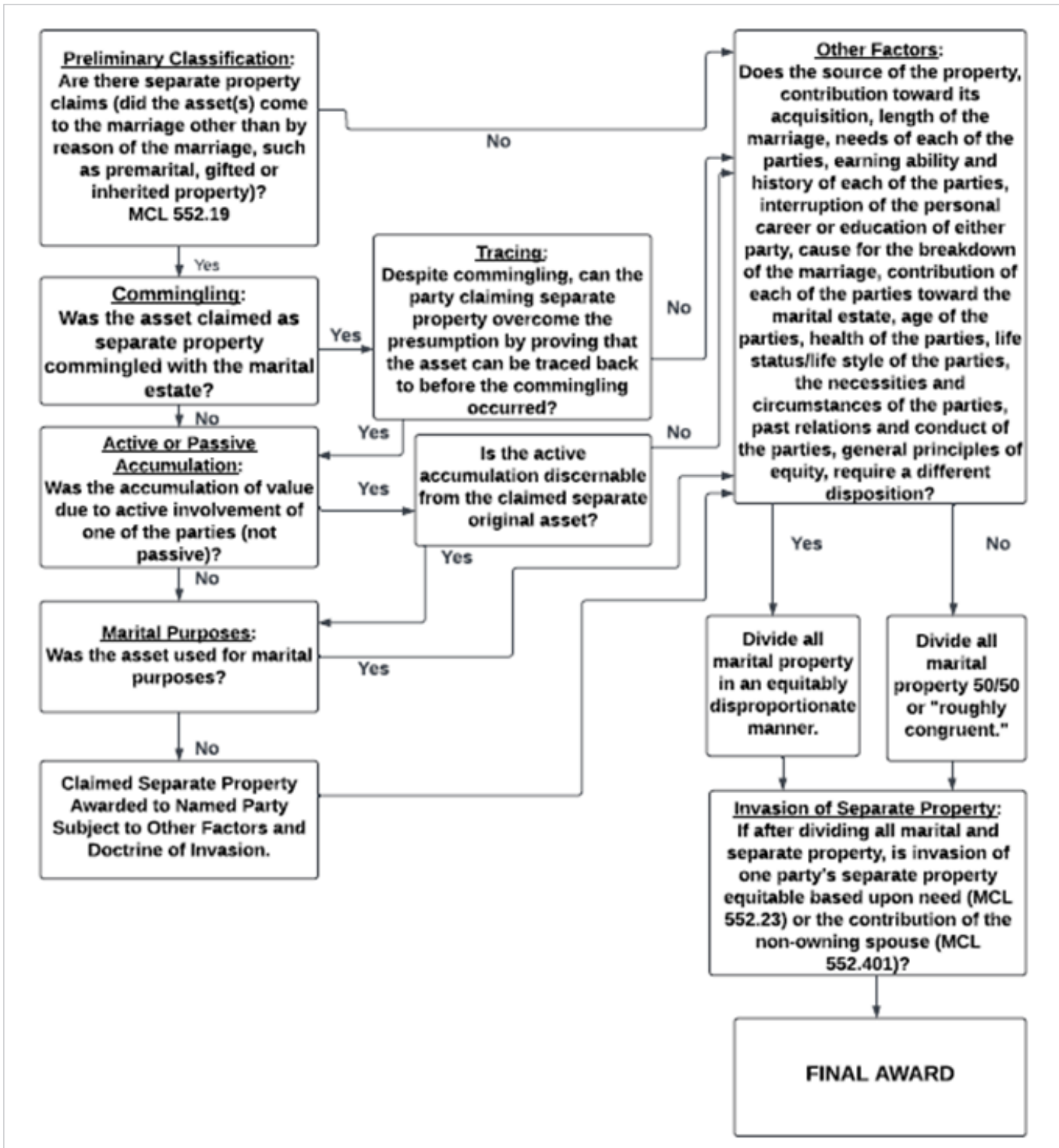
USING A DECISION TREE

The decision tree diagram in this article may be a useful tool for readers to conceptualize the process of evaluating a separate property claim. It can also provide an outline for interviewing your client and prevailing upon/defending a separate property claim. Because of the limitations of a "yes/no" format, analyzing and preparing your case for mediation, arbitration, or trial requires a deep dive into the statutes and cases, and every case is unique. It seems rare that a contested divorce case does not include a separate property claim of some type. Familiarity with this challenging area will serve your clients well.

Mathew Kobliska is a Domestic Relations Mediator and Arbitrator in Bloomfield Hills. He is a Fellow of the American Academy of Matrimonial Lawyers, Council Member of the Alternative Dispute Resolution Section of the State Bar of Michigan, and serves on the State Bar of Michigan Judicial Qualifications Committee. Special thanks to esteemed colleague James J. Harrington, III, for his review and comments to the initial draft of this article.

ENDNOTES

1. The Michigan Supreme Court noted the challenge of determining the internal consistency of these statutes, read together, in *Charlton v Charlton*, 397 Mich 84; 243 NW2d 261 (1976). The court's majority viewed each statute independently, providing for potential "invasion" of separate property in different ways.
2. Retirement benefits to include rights or contingent rights to any vested or unvested pension, annuity, or retirement benefits, or accumulated contributions in any pension, annuity, or retirement system during the marriage. MCL 552.18(1)-(2).
3. *Sparks v Sparks*, 440 Mich 141; 485 NW2d 893 (1992); *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995); *Reeves v Reeves*, 226 Mich App 490; 575 NW2d 1 (1997); *Dart v Dart*, 460 Mich 573; 597 NW2d 82 (1999); *McNamara v Horner*, 249 Mich App 177; 642 NW2d 385 (2002); *Pickering v Pickering*, 268 Mich App 1; 706 NW2d 835 (2005).
4. *Beason v Beason*, 435 Mich 791; 460 NW2d 207 (1990); *Sparks*, *supra* n 3.
5. Many other states refer to it as "transmutation by commingling."
6. *McDougal v McDougal*, 451 Mich 80; 545 NW2d 357 (1996).
7. *Polate v Polate*, 331 Mich 652; 50 NW2d 190 (1951); *McNamara*, *supra* n 3 at 392.
8. *Wolcott v Wolcott*, unpublished opinion of the Michigan Court of Appeals, issued March 11, 2021 (Docket No. 351918).
9. *Reeves*, *supra* n 3 at 497.
10. *Maher v Maher*, unpublished opinion of the Michigan Court of Appeals, issued April 20, 2010 (Docket No. 287309).
11. *Hanaway*, *supra* n 3 at 293-295.
12. *Charlton*, *supra* n 1.
13. *Sparks*, *supra* n 3.
14. *Allison v Allison*, unpublished opinion of the Court of Appeals, issued June 13, 2017 (Docket No. No. 330997), citing *Cunningham v Cunningham*, 289 Mich App 195, 209; 795 NW2d 826 (2010).
15. *Wolcott v Wolcott*, unpublished opinion of the Michigan Court of Appeals, issued March 11, 2021 (Docket No. 351918).
16. As distinguished from community property states, such as California, Arizona, New Mexico, Idaho, Louisiana, Texas, and Wisconsin.
17. MCL 552.19; MCL 552.23; MCL 552.401.
18. *Kendall v Kendall*, 106 Mich App 240, 244; 307 NW2d 457 (1981).
19. *Sparks*, *supra* n 3; *Johnson v Johnson*, 346 Mich 418; 78 NW2d 216 (1956), abrogated by *Smith v Smith*, 433 Mich 606; 447 NW2d 715 (1989).
20. *Sparks*, *supra* n 3 at 159-160.
21. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).
22. *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997).
23. MCL 552.401.


Preliminary Classification:
Are there separate property claims (did the asset(s) come to the marriage other than by reason of the marriage, such as premarital, gifted or inherited property)?
MCL 552.19
No
Yes
Commingling:
Was the asset claimed as separate property commingled with the marital estate?
Yes
Tracing:
Despite commingling, can the party claiming separate property overcome the presumption by proving that the asset can be traced back to before the commingling occurred?
No
No
Active or Passive Accumulation:
Was the accumulation of value due to active involvement of one of the parties (not passive)?
Yes
Yes
Is the active accumulation discernable from the claimed separate original asset?
No
Yes
No
Marital Purposes:
Was the asset used for marital purposes?
Yes
No
Claimed Separate Property Awarded to Named Party Subject to Other Factors and Doctrine of Invasion.
Other Factors:
Does the source of the property, contribution toward its acquisition, length of the marriage, needs of each of the parties, earning ability and history of each of the parties, interruption of the personal career or education of either party, cause for the breakdown of the marriage, contribution of each of the parties toward the marital estate, age of the parties, health of the parties, life status/life style of the parties, the necessities and circumstances of the parties, past relations and conduct of the parties, general principles of equity, require a different disposition?
Yes
No
Divide all marital property in an equitably disproportionate manner.
Divide all marital property 50/50 or "roughly congruent."
Invasion of Separate Property:
If after dividing all marital and separate property, is invasion of one party's separate property equitable based upon need (MCL 552.23) or the contribution of the non-owning spouse (MCL 552.401)?
FINAL AWARD

LAW PRACTICE SOLUTIONS

Cyber insurance basics: What every law firm needs to know

BY JOANN L. HATHAWAY

With law firms increasing their use of technology within their practices, the essential question turns to how firms keep their information and data secure, especially with the number of cyberattacks growing from day to day.

As cyber threats become more sophisticated and other industries invest heavily in data protection, law firms are increasingly seen as attractive targets for cybercriminals due to the sensitive and valuable information they manage.[1] While many firms are making progress in strengthening their defenses, the legal sector as a whole has historically lagged behind other industries in adopting advanced cybersecurity measures, often due to limited IT resources or competing business priorities.[2]

A lack of awareness about the specific cyber risks facing law firms, and the potential impact of a cyber event, has also contributed to slow adoption of dedicated cyber insurance. Some firm managers believe that their current insurance policies, especially with added cyber endorsements, offer enough protection. In reality, these policies usually provide only minimal cyber coverage compared to a comprehensive cyber insurance policy.

The best way to ensure that a law firm is as secure as it can be is to have a basic understanding of the coverage obtained and what to look for when crafting coverage. The following breaks down the essential provisions:

UNDERSTANDING CYBER INSURANCE COVERAGE — BASIC

Insurance coverage for first-party losses

First-party coverage is designed to help your firm respond to and recover from a cyber event. This protection covers costs and expenses resulting from a breach response, typically including costs incurred to investigate and remedy a security breach. Here are some examples of what first-party coverage can help with:

- Attorney and forensic examiner fees to investigate and address the breach
- Public relations firm fees to restore your reputation and mitigate damages
- Regulatory fines
- Business interruption loss if your operations are disrupted
- Payments for cyber extortion, such as ransomware
- Electronic information restoration if data is lost or corrupted
- Identity theft resolution services fees for affected individuals
- Notification of breach costs, as required by law
- Credit file monitoring costs for those impacted
- Out-of-pocket operating or replacement costs needed to keep your firm running

"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.

Insurance coverage for third-party losses

Third-party coverage is about protecting your firm from claims asserted against you by third parties. These may arise from, for example, an unintentional breach of information, network security damage, media liability, intellectual property infringement, or costs associated with regulatory proceedings and legal violations.

Common types of payments made under this coverage include:

- Payments for damage judgments or settlements
- Defense and claims administration costs
- Payments made under a consumer redress fund in a regulatory action

WORKING YOUR WAY TO COVERAGE: COST

The cyber insurance market is still less developed than most other lines of insurance, which means there isn't as much historical information available to create standard premium estimates. Because there are so many variables in coverage and options, it's difficult to quote an "average" premium for a law firm.

The good news is that many carriers are entering the cyber insurance marketplace, resulting in a softer market. This allows potential policyholders to compare carriers and find more competitive premiums.

Several factors affect your premium quote, including:

Risk management

If your firm can demonstrate strong network safeguards, both in terms of both policies and procedures and human resource support, a carrier may provide credit in its underwriting formula. This can result in a more favorable premium compared to a firm that does not have optimal technology oversight.

Liability limit and deductible

As with most insurance, the higher the liability limit you purchase, the higher your premium will be. Conversely, a higher deductible will generally result in a lower premium.

Claims history

If your firm has a history of claims, this will certainly be factored into your premium. Insurance carriers will also look at the facts and circumstances of each claim to determine if there are weaknesses or poor network security practices that need to be addressed.

Firm footprint

A firm that practices globally is subject to risks that a firm practicing only locally would not face. Different geographic locations have different exposures and privacy laws. Accordingly, a firm's geographic spread is evaluated during the underwriting process, and these variables are considered in the final premium.

THE APPLICATION: WHAT TO EXPECT

While applications may vary, completing an application for a cyber insurance policy can be a time-consuming task. The questions asked often require information not needed for other lines of insurance and can be quite technical. You may need a team to respond, including IT, HR, and management.

Here's what you may be asked:

Computer and network security

- Who in your firm is responsible for information security, and to whom do they report?
- Do you have backup systems, business continuity, and disaster recovery plans?
- Is there an incident response plan for network intrusions and virus incidents?
- Do you have up-to-date, active firewall technology?
- Are patch management procedures in place?
- Is multi-factor login required for privileged access?
- Is remote access limited to a VPN?
- Is updated anti-virus software installed on all computers and networks?
- Do you use intrusion detection software?
- Are there procedures for backing up sensitive data and testing or auditing network security controls?

Personnel policies and vendor management

- Are employees trained in security issues and procedures?
- Is computer access terminated when an employee leaves the firm?
- Are there procedures for creating and updating passwords?
- Are background checks conducted on prospective employees?
- Are service providers required to demonstrate adequate security policies and procedures?
- Do contracts with service providers include hold harmless and indemnification agreements?
- Do you use cloud service providers, and if so, which ones?

Information security

- What types of data does your firm collect, receive, process, transmit and maintain as part of its business activities? (Examples: credit and debit card data, medical information, social security numbers, employee/HR information, bank accounts and records, intellectual property of others).
- For each data type, how many unique individuals' data do you handle?

- Is your firm compliant with HIPAA and payment card industry data security standards?
- Do you encrypt data at rest, in transit and on mobile devices?

Website and content information

- Do you have a written intellectual property clearance procedure for website content?
- Is there a formal policy to avoid posting improper or infringing content?
- Are there procedures for editing or removing controversial, offensive, or infringing content?

Loss information

- Applicants need to supply information on loss history, sometimes limited to a specific period.
- Be prepared to provide documentation about each claim and any corrective measures taken to prevent similar losses in the future.
- Audited financial statements may be requested if you are seeking higher limits of protection.

Warranty statements

Cyber insurance policy applications contain warranty statements. When you sign the application, you agree that the information provided is accurate and complete. It is in your best interest to ensure that questions are answered fully and that information is current. Failure to provide accurate or complete information could result in denial of a claim, even if there would otherwise have been coverage.

DISSECTING THE CYBER INSURANCE POLICY

Understanding your policy is essential. Here's what to look for in each section:

The declarations

The Declaration Page outlines the terms of coverage, identifies the policy period, and states limits and deductibles by insurance part. It is common for there to be more than one deductible and more than one limit or sub-limit, as a result of the different types of coverage (first-party and third-party).

Insuring agreement

The Insuring Agreement section typically states that the insurer will pay, on behalf of the insured, certain expenses, damages, or losses arising from defined events (such as privacy breaches, network security incidents, or cyber extortion) that occur during the policy period and are covered by the policy. The precise language and scope can vary, but the core promise is to cover losses and claims resulting from cyber events as defined in the policy.

Definitions

The Definitions section defines the terms and phrases set forth in bold throughout the policy. It is crucial to carefully read and fully understand these definitions, as they determine what is and is not covered.

Exclusions

A cyber insurance policy will also contain an Exclusions section, which should clearly describe what is not covered. Some carriers do not list what they consider to be obvious exclusions, but fully detailed exclusions can be very helpful to prospective insureds.

Defense and settlement

The policy will describe the relationship between the insured and insurer regarding the control of the defense and settlement of a claim. Some cyber policies are written on a "non-duty to defend" basis, allowing the insured to manage and control the defense of claims, usually with the insurer having input on important decisions. Other policies require the insurer to defend, even if the claim has no perceived merit. Larger firms may prefer a non-duty to defend policy, while smaller firms may prefer the insurer to manage the defense.

Some carriers reimburse insureds for defense costs after they are incurred, while others provide advance payment. If you are not able to pay out of pocket and wait for reimbursement, make sure your policy provides for the advancement of defense costs.

It is common for a cyber insurance policy to require the written consent of the insured before settling a claim. However, there are often conditions. For example, if the insured withholds consent to settle for an amount the insurer recommends, the insured may be responsible for a percentage of defense costs and loss payments that exceed the settlement offer.

Liability limits/self-insured retention

An aggregate liability limit is provided under a cyber insurance policy, typically with sub-limits for various types of losses. There is also a deductible that may apply to each coverage part.

Conditions

This provision sets forth what the insured is required to do to remain insured and to help ensure coverage is available if there is a claim. Examples include:

- Timely payment of premiums and self-insured retentions
- Taking reasonable steps to protect against further loss or damage in the event of a loss
- Cooperating in a data breach investigation
- Timely providing the insurance carrier with proof of loss

Other insurance coverage

This provision describes how the policy will apply to a loss if there is other effective insurance coverage in place that may also apply.

Territory

The Territory section identifies where coverage would be afforded in the event of a loss. The broadest coverage provides protection for acts occurring anywhere in the world.

SEEKING AN EXPERIENCED PROFESSIONAL

Because there is no standard policy form for cyber insurance, coverage offered by one insurer may differ greatly from another. Due to the complexities and many variables contained in cyber insurance policies, it is highly recommended to consult with an experienced insurance agent or broker, and with an insurance attorney whose practice area focuses on cyber insurance policy reviews.

FINAL THOUGHTS

Taking the time to understand your exposures, working with knowledgeable professionals to review your coverage, and making informed decisions about your policy are some of the most important steps you can take to protect your firm and clients. Cyber insurance is not just about transferring risk; it's about ensuring that your firm can weather unexpected storms and continue to serve clients with confidence, no matter what challenges arise.

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

ENDNOTES

1. Up to 40% of law firms have experienced a security breach, and the average cost of a data breach for law firms in 2024 was $5.08 million. See *Law firm cyberattacks: Stats and trends for 2025*, Embroker <https://www.embroker.com/blog/law-firm-cyberattacks/> (published April 10, 2025) (all websites accessed June 20, 2025).

2. Many law firms have lagged behind in adopting top-tier security protocols, unlike financial institutions with stringent cybersecurity regulations. See *Law Firms Five Times More Likely to Be Targeted by Cyberattacks*, TPX <https://www.tpx.com/blog/law-firms-five-times-more-likely-to-be-targeted-by-cyberattacks/> (published January 17, 2025.)

ETHICAL PERSPECTIVE

MRPC 8.3 – Navigating the duty to report

BY ALECIA CHANDLER

Lawyers keep secrets – many secrets. Secrets we sometimes wish we didn't know, some that might haunt us at night. We are programed to maintain strict confidentiality for our clients. However, when we know that another lawyer has violated the Michigan Rules of Professional Conduct ("MRPC" or the "Rules"), we have an ethical duty to report them to the disciplinary authorities.[1] This duty is grounded in the necessity of self-regulation within the legal profession:

> Implicit in the concept of self-regulation is the necessity that the "regulated" play a role in policing each other. Although many find the assumption of this responsibility onerous, or even "distasteful," it still lies at the heart of professional self-regulation.[2]

BREAKING DOWN MRPC 8.3

MRPC 8.3(a) states:

> A lawyer having knowledge that another lawyer has committed a significant violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer shall inform the Attorney Grievance Commission.

Breaking 8.3 down into its elements gives you the following analysis: When a lawyer (1) **has knowledge** that another lawyer (2) has committed a **significant violation of the Rules** that raises (3) a **substantial question** as to(4) that lawyer's **honestly, trustworthiness, or fitness as a lawyer**, they (5) **shall report** to the Attorney Grievance Commission (the "AGC").

Knowledge

Knowledge[3] does not require admissible evidence. Instead, based upon the information received, it may be inferred that the underlying facts are accurate. In the Michigan Rules of Professional Conduct 1.0, knowingly, known, or knows is defined as:

> actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

Further, contrary to some lawyers' beliefs, filing a grievance does not necessitate an independent investigation by the reporting lawyer. Lawyers often think that the knowledge requirement of 8.3 requires the lawyer to independently investigate the allegations and provide all relevant evidence to the AGC. Instead, the lawyer provides the knowledge and information in their possession to the AGC who then performs its own investigation. As Ethics Opinion RI-45 explains:

> It is clear that the Attorney Grievance Commission is in a much better position, given the tools it has available to it, to judge the circumstance of the unauthorized contact and to gather evidence as it deems appropriate. The difficulty of proof should not be confused with the duty to report.[4]

Significant Violation

The term "significant" is not defined and therefore is somewhat subjective. A mistake may not require reporting, particularly if the offending attorney rectifies the situation, but even minor repeated offenses may rise to the level of being significant. There are some instances where there is no question that a violation of the Rules is a significant

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

one, like stealing client money or felony convictions.[5] More often, however, a determination must be made on a case-by-case basis. A significant violation can be one overt violation or engaging in a pattern of unethical conduct. The comments to MRPC 8.3 state:

> An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover.

This is further explained in Ethics Opinion RI-149, where the Professional Ethics Committee determined that a supervising lawyer was required to report a subordinate lawyer who engaged in a pattern of unethical conduct, even though the individual violations were not significant.[6]

Substantial Question

The Comments to MRPC 8.3 explain that the lawyer must use professional judgment in determining if the alleged violation rises to the level of implicating a substantial question as to the other lawyer's honesty, trustworthiness, or fitness to practice law. In making the determination as to whether a substantial question exists, the comments to MRPC 1.0 define "substantial" as "a material matter of clear and weighty importance." The comments to MRPC 8.3 define the term "substantial" as referring "to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware." The comments to MRPC 8.3 provide that some violations involving "moral turpitude" such as fraud, willful failure to file taxes, dishonesty, breach of trust, or serious interference with the administration of justice rise to the level of creating a substantial question about the lawyer's ability to practice law ethically. Additionally, the comments state that a "pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation," thus creating a substantial question as to the lawyer's honesty, trustworthiness, or fitness to practice law.

Honesty, Trustworthiness, or Fitness as a Lawyer

Not every ethical violation must be reported. Only "those that go to the core of what is it to be a lawyer" require reporting.[7] The Preamble, housed within the Comment to MRPC 1.0, emphasizes that all Michigan lawyers hold duties as public servants and officers of the court. Further, it provides an overview of the ethical standards each newly licensed lawyer must swear to uphold when taking the Lawyer's Oath.[8]

Violations of the Rules that involve interactions with clients, unrepresented parties, or safekeeping of client funds clearly involve the lawyer's ethical duties as a lawyer. However, there are many scenarios where conduct that is technically unethical may not necessarily implicate the lawyer's honesty, trustworthiness, or fitness to practice law. For instance, a lawyer violating a minor criminal law may not rise to the level of a requirement to report.

Most lawyers are ethical and do not intend to violate the Rules. Often violations are a mistake, the result of overzealous representation, or lack of knowledge of the rules. When discussing reporting obligations, I often ask many questions, which may initially seem irrelevant, such as how long the 'offending' lawyer has been practicing, how contentious the matter is, and what the offending lawyer's reputation is in the community. These questions assist the lawyer contemplating reporting with determining if the offending conduct really calls into question the lawyer's ability to ethically practice law. Sometimes, if the conduct does not call into question the lawyer's fitness to practice law and the conduct can be rectified, a lawyer may choose to advise the offending lawyer of the alleged misconduct, offering an opportunity to rectify before filing a request for investigation. However, the advice cannot be offered in exchange for anything other than rectification of the alleged misconduct.

Shall Report

Rule 8.3 uses the word "shall," meaning that if the previous four elements are met, a lawyer ***must*** report that violation to the AGC. Lawyers ***may*** report other violations where not all four of the previously discussed elements are satisfied. Ethics Opinion RI-88 includes an analysis of when conduct rises to the level that it requires reporting and supports the position that the lawyer may want to report, even where there is no duty.

> A lawyer may, but is not required, to report to the Attorney Grievance Commission other misconduct which (a) is not protected from disclosure by MRPC 1.6; (b) is not a significant violation of the ethics rules; or (c) does not raise a substantial question of honesty, trustworthiness or fitness.[9]

There are few opinions that assert an unequivocal duty to report. One such opinion is RI-145, which requires a lawyer to report if they have "knowledge that another lawyer has negotiated a settlement directly with a party represented by counsel but without the consent of the party's counsel or as otherwise authorized by law[.]"[10] Ethics Opinion RI-171 requires that a lawyer report another lawyer for failure to communicate a settlement offer to the client as it is a clear violation of MRPC 4.2.[11] Lastly, according to Ethics Opinion RI-88, A lawyer has a duty to report another lawyer who makes an offer to settle a matter where one condition of settlement is to refrain from reporting lawyer misconduct to the AGC.[12]

Also note that if the client files a request for an investigation, it does not absolve the lawyer of a duty to report. The duty to report exists whether someone else has reported the violation of the Rules or not.

Client Confidentiality vs the Duty to Report

Maintaining client confidentiality is paramount to the practice of law. Lawyers must balance the duty of confidentiality against the duty to report. Ethics Opinion RI-232 provides that a lawyer may not report another lawyer if the information supporting the allegations of misconduct is a client secret protected by MRPC 1.6 and instead must first seek client consent.[13] Further, RI-314 provides that a lawyer is not subject to discipline for failure to report another lawyer if the client's decision to withhold the relevant information is

made in good faith.[14] Lastly, Ethics Opinion RI-101 requires a lawyer to report a suspended attorney who continues to practice after suspension, except when the lawyer is representing the suspended attorney as MRPC 1.6 is implicated.[15]

Informing vs Threatening

Informing is legal; extortion is not.[16] Ethics Opinion RI-88 illuminates the distinction.

> [T]he lawyer must also consider the lawyer's own motivations in reporting or not reporting the possible violation. An "unwillingness to get involved" is simply not an adequate reason to fail to report a significant violation of professional rules which raises a substantial question of honesty, trustworthiness or fitness of another lawyer. On the other hand, spite, anger, vengeance, or seeking advantage for a client are not adequate motivations to report the conduct of an adversary whose conduct could not be deemed to be a significant violation of the rules raising a substantial question of the lawyer's honesty, trustworthiness or fitness.[17]

This opinion states the position that a lawyer cannot threaten or warn the violating lawyer that if the case is not resolved in favor of the reporting lawyer's client that a request for investigation will be filed. It does not prevent advising the offending lawyer and providing an opportunity to rectify when the circumstances are appropriate for rectification, if the advisement is not utilized to obtain the results desired by the reporting lawyer's client. This can be a fine line to walk, but it is for the good of the profession.

Referrals to the Lawyers and Judges Assistance Program

Sometimes, a lawyer may believe that another lawyer's conduct is due to mental health or substance use issues. If the issues presented do not rise to the level of a duty to report, one option is to refer the lawyer to the Lawyers and Judge's Assistance Program.[18] The program's goal is to assist lawyers with general wellbeing, including providing mental health and substance use assistance on a sliding fee scale. Referrals can be made by calling the helpline, email, or an online form located on the website.

Judicial Officers

Judicial officers are bound by the Michigan Rules of Professional Conduct and must report lawyers as provided herein. Moreover, MCJC 3(B)(3) states: "A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."

Alecia Chandler is the professional responsibility programs director at the State Bar of Michigan.

ENDNOTES

1. See MRPC 8.3.
2. State Bar of Michigan, Ethics Opinion RI-88 (June 10, 1991) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-088>.
3. See MRPC 1.0 Comment: "Reasonable belief" is not the same as knowledge.
4. State Bar of Michigan, Ethics Opinion RI-45 (Feb 28, 1990) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-045>.
5. See MCR 9.120(A).
6. State Bar of Michigan, Ethics Opinion RI-149 (Nov 04, 1992) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-149>.
7. State Bar of Michigan, Ethics Opinion RI-171 (Sept 17, 1993) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-171>. *See also* Greenbaum, *The Attorney's Duty to Report Professional Misconduct: A Roadmap for Reform*, 16 Geo J Legal Ethics 259 (2003)
8. *Lawyer's Oath*, State Bar of Michigan <https://www.michbar.org/generalinfo/lawyersoath>.
9. Ethics Opinion RI-88, *supra* n 2.
10. State Bar of Michigan, Ethics Opinion RI-145 (Oct 01, 1992) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-145>.
11. Ethics Opinion RI-171, *supra* n 7.
12. Ethics Opinion RI-88, *supra* n 2.
13. State Bar of Michigan, Ethics Opinion RI-232 (April 07, 1995) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-232>.
14. State Bar of Michigan, Ethics Opinion RI-314 (Oct 19, 1999) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-314>.
15. State Bar of Michigan, Ethics Opinion RI-101 (Oct 01, 1991) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-101>.
16. MCL 750.213.
17. Ethics Opinion RI-88, *supra* n 2.
18. *Lawyers and Judge's Assistance Program*, State Bar of Michigan <https://www.michbar.org/generalinfo/ljap/home>.

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
49 Abbott Rd.
Lake Michigan Room

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

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

Virtual
MONDAY 8 PM
Join using this link https://ilaa.org/meetings-and-events/

Virtual
TUESDAY 8 PM
WOMEN ONLY
Join using this link https://ilaa.org/meetings-and-events/

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

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

Virtual
SUNDAY 7 PM*
Virtual meeting
Contact Mike M. at 517.242.4792 for 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.)

Virtual
SUNDAY 7 PM*
WOMEN ONLY
Contact Lynn C. at 269.396.7056 for login information.

PRACTICING WELLNESS

Convergence of AI and well-being

BY ROBINJIT EAGLESON, JD AND MOLLY RANNS, MA, LPC, CAADC

Working within the legal field is known to be like a pressure cooker. Tight deadlines, long hours, and high stakes for clients are just a few stressors everyday attorneys oftentimes face. These stressors, among a number of other factors, contribute to the abnormal levels of anxiety, the higher likelihood of depression and substance misuse, and the increasing number of burnouts for attorneys.[1] While many feel this is par for the course when considering a career in law, with law students recognizing the high stress of law school and, eventually, within their chosen career, many don't fully understand that the rates of anxiety, depression, and stress for law students still far exceed those of their peers in other high-stress graduate programs.[2] In fact, while most enter law school with mental health statistics similar to medical students, research demonstrates that mental health difficulties take their toll by year 3, with students describing rates of depression and stress that are nearly 30% higher than those in medical school.[3] The trajectory to burnout continued as these law students began their careers, merging into employer-required billable hours, client demands, and hard and fast deadlines imposed by the courts, rules, law, and employers.

However, with the COVID-19 pandemic, the workforce, including attorneys, began to reconsider what they wanted out of their work situations. They began to pursue opportunities that allowed them to achieve the ultimate dream — the ever-evasive work-life balance. While they began to pursue options that would lead to greater overall well-being both personally and professionally, it was difficult for attorneys to determine how they were going to ultimately achieve a greater integration between work and home that so many before them had failed to find.

The difficulties in achieving improved alignment with work and home responsibilities, paired with the recognition of the vital need to ensure all responsibilities are taken care of, lead one to wonder, is there a potential change on the horizon? As AI begins to converge with the work of attorneys, might it help one find greater peace and balance? And though most of us are resistant to, and perhaps even terrified of, change, we have to acknowledge that AI has already begun to transform the way attorneys practice law. Could AI have positive impacts on well-being?

Artificial intelligence has already begun automating and bringing efficiencies to routine tasks, such as document review, legal research, and contract analysis, allowing attorneys to focus on more complex work. By using AI, attorneys are able to save hours of work per week while continuing to generate billable time. This remarkably then goes to the question working attorneys continuously ask themselves: Do I have to miss my child's recital? Can I care for my elderly parents? Can I go to the gym or engage in some form of self-care during waking hours? Many people in many professions ask themselves these questions routinely. For lawyers, it's a constant struggle every day to meet the needs of their clients, their families, and ultimately themselves. And eventually, when it comes

"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.

down to it, the needs of clients, work, and families often take a front seat, and self-care gets thrown in the trunk.

During the COVID pandemic, parents and caregivers were initially overwhelmingly stressed and working far beyond their capacity. They were trying to do it all while waiting for the pandemic to end, living in a bubble with limited support due to social distancing and not having a break from either life — whether it be professional or personal. In the short term, managing such high levels of stress may have been doable, but, over an extended period of time, lawyers, like many others, found themselves at a breaking point. There was no break, and something had to give. Constant release of the stress hormones adrenaline and cortisol were helpful in arming the body against a perceived threat, but without the body's ability to return these hormones to typical levels, the fight or flight reaction remained, and the body suffered.[4] This long-term activation of the stress response can disrupt nearly all of the body's processes and lead to anxiety, depression, digestive troubles, headaches, heart disease, and other heart-related difficulties, sleep trouble, and problems with memory and focus, among a number of other difficulties.[5] Like many others, attorneys felt burnt out and, not surprisingly, began reporting poor mental health. But then something happened to some attorneys … a shift occurred. Lawyers began to recognize that the pandemic gave a taste of what an improved work-life balance could look like. Some attorneys realized they could turn off the computer or not take a meeting and instead play a game of cards with their family, watch a movie, or take a break and practice yoga. They realized they didn't have to be on all of the time in both work and family. This is not a feeling that is easily forgotten. We see it today in more candidates demanding hybrid or remote work schedules and refusing to go back into the office on a full-time basis. Some attorneys came to the conclusion that they did not have to be at a high stress level at all times and that it was ok to have moments of calm and peace and to engage in self-care.

This feeling has continued to grow amongst attorneys as AI has entered into the legal field. Attorneys are starting to understand that, as they attempt to achieve the work-life balance their predecessors were unable to obtain, AI may be of great assistance in reducing the need to spend hours upon hours reviewing discovery, reading transcripts, and going down the rabbit hole of legal research. They found AI could boost productivity through AI-powered tools, saving hours of work, and thus time, per week. This potential could transform the way legal professionals deliver value and service to clients and help attorneys get home in time for dinner and not miss the important events in their lives.

While AI is scary for some, others have embraced it. But we cannot ignore the gap between the generations of attorneys. Currently, one may notice three different types of attorneys:

- Attorneys who remember what it was like to spend hours in the office, sometimes not making it home for dinner, and who continued that work through the pandemic and today.
- Young or new attorneys who are in practice within five to ten years of law school and are presently seeking (and perhaps even demanding) a job that leads to greater harmony between work and home life. These attorneys were new or still in law school during the pandemic.
- Attorneys who are in the middle of their careers and remember the long hours before the pandemic but also got a glimpse of improved work-life balance during the pandemic. They seek to achieve this now but are unsure how to do so, as it goes against their initial training and simply feels uncomfortable.

While the aforementioned three (3) generations of attorneys are attempting to figure out what's next, there also are employers such as law firms, legal aid clinics, corporations, and other legal organizations that employ in-house attorneys tasked with this same challenge. While the attorney may be ready for a role that promotes a greater harmony between work life and personal life and embraces the use of AI to achieve this goal, are the employers ready for this as well? For example, some employers are embracing hybrid and remote work options, while others are not. Some are recognizing the benefit of four-day work weeks when using AI and the potential of increased productivity versus employers who are not ready for anything less than five days a week using tried-and-true manual processes. Will these employers be able to recognize the value of AI, recognizing this could result in attorneys not having to be chained to their desks for hours on end? Are employers willing to encourage the use of AI, particularly with regard to how it could potentially support and even enhance self-care? Are employers willing to look at AI through the lens of competition? After all, AI is allowing, for the first time ever, solo and small firms to compete with medium- and large-sized firms. Those who do not embrace and use AI may be left behind in efficiency, productivity, and potentially staff because, whether we like it or not, AI is not leaving the legal field space. It is here to stay. And attorneys demanding or wishing for that work-life balance may not be keen on staying at a job that would require long work hours instead of trying something new to ensure employee retention.

So where does this leave us all, employees and employers alike? Whether using AI routinely, terrified of its use, or landing somewhere in between, remaining open-minded to how AI can support well-being and accepting that it's here to stay is crucial. Employing AI tools in practice is not the only use of AI that would be helpful for lawyers in their everyday lives. AI stress management tools, such as apps that offer personalized well-being services to monitor heart rate, breathing, and other mindfulness-based exercises, are readily available. AI tools can even offer prompts to take breaks or engage in longer and more effective periods of recovery, and they can even analyze work habits to promote greater efficiency. In a culture that is constantly changing, the ways in which we view and respond to that change can be critical. The lens through which we see the world is powerful, and we have the power to change that lens. Whether that

lens be how we view AI or how we view an entirely different situation, a positive mindset, a willingness to embrace change, and the enthusiasm to improve circumstances to thrive both personally and professionally can all lead to greater overall well-being.

And, as always, the State Bar of Michigan is ready and able to assist lawyers when these tasks feel daunting or guidance is needed as to where to begin:

- The Lawyers and Judges Assistance Program is here to support Michigan's legal professionals to optimize their general wellness and may be contacted at (800) 996-5522.
- The Practice Management Resource Center is available for attorneys attempting to determine what tools, including AI, may best fit their needs and may be contacted at (800) 341-9715 or pmrchelpline@michbar.org.

Robinjit Kaur Eagleson is the Director of Lawyer Services at the State Bar of Michigan overseeing the Practice Management Resource Center, Lawyer Services, Events, and Preferred Partner Programs. She also serves as the Bar's liaison to the Awards Committee and the Strategic Planning and Engagement Committee.

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

ENDNOTES

1. Krill, Johnson, & Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J of Addiction Medicine 1 (2016), pp 46-52 <https://perma.cc/K4QP-LDXP> (all websites accessed August 28, 2025).
2. Walters, *The Mental Health Landscape Amongst Law Students: Addressing the Stigma to Craft Meaningful Solutions*, Law Journal for Social Justice (posted October 27, 2024) <https://lawjournalforsocialjustice.com/2024/10/27/the-mental-health-landscape-amongst-law-students-addressing-the-stigma-to-craft-meaningful-solutions/>.
3. *Id.*
4. *Chronic Stress Puts Your Health at Risk*, Mayo Clinic (posted August 1, 2023) <https://www.mayoclinic.org/healthy-lifestyle/stress-management/in-depth/stress/art-20046037>.
5. *Id.*

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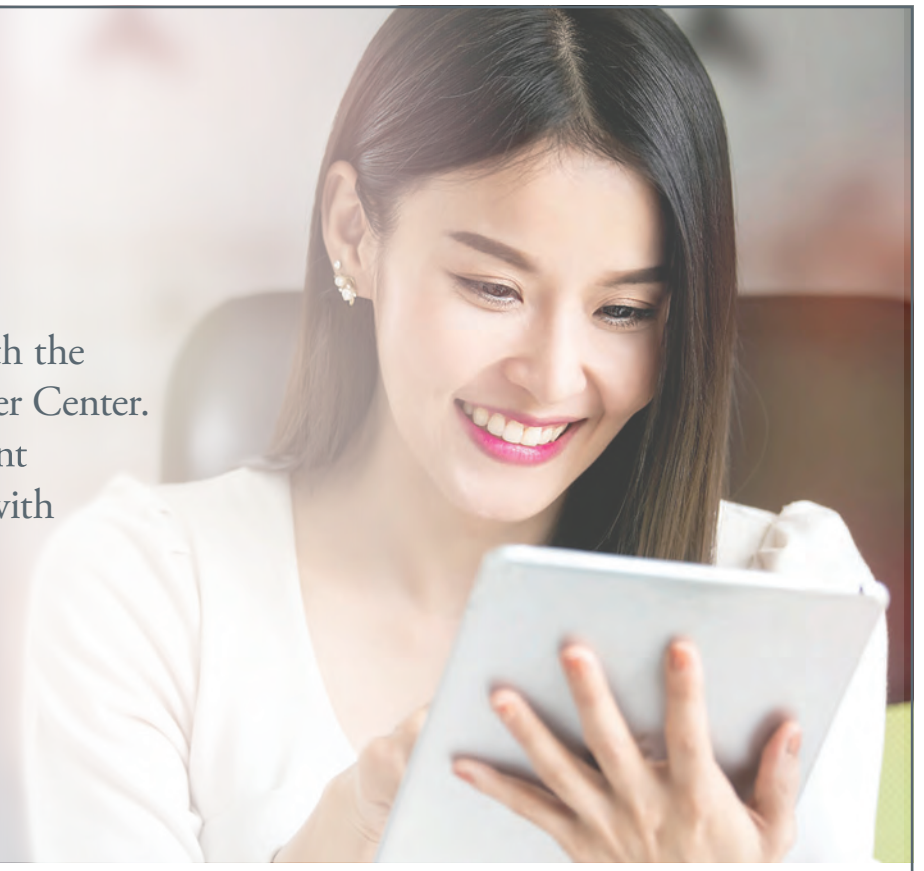

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FROM THE MICHIGAN SUPREME COURT

ADM File No. 2024-40
Amendment of Rules 2, 3, 3.3, 4, 4.1, 4.2, 6, 7, and 9 of the Michigan Continuing Judicial Education Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 2, 3, 3.3, 4, 4.1, 4.2, 6, 7, and 9 of the Michigan Continuing Judicial Education Rules are adopted immediately with retroactive effect to January 1, 2024.

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

Rule 2 Definitions

When used in these rules, the words and phrases listed below shall have the following meanings:

(A)-(C) [Unchanged.]

(D) "Judicial Officer" is a Justice, full- or part-time judge, full- or part-time circuit court referee, full- or part-time district court magistratequasi-judicial officer (including a district court magistrate or circuit court family division referee), or a formerretired judge taking assignment as a visiting judge.

(E) "Judicial Practice" includes legal knowledge of procedural and substantive lawand ability, communication, and administrative capacity.

(E)-(O) [Unchanged.]

Rule 3 Judicial Education Board

(A) [Unchanged.]

(B) Composition. The Board shall consist of 12 members appointed by the Michigan

Supreme Court as follows:

(1)-(5) [Unchanged.]

(6) 1 member selected as a formerretired judge.

(C)-(D) [Unchanged.]

Rule 3.3 Compensation and Expenses

(A) The Board shall annually submit to the Michigan Supreme Court's budget committee for its approval the Board's anticipated expenses for the next fiscal year. The Board's submission is due to the budget committee by July 1. For purposes of this subrule, the fiscal year is October 1-September 30.

(B) [Unchanged.]

Rule 4 Minimum Continuing Judicial Education Requirements

Beginning January 1, 2024, every judicial officer, except for formerretired judges taking assignment, shall complete a minimum of 24 hours of continuing judicial education every two years. Beginning January 1, 2024, formerretired judges taking assignment shall complete a minimum of 8 hours of continuing judicial education every two years.

(A) [Unchanged.]

(B) A judicial officer's credited hours shall be distributed as follows:

(1) 2 hours in the subject area of integrity and demeanor for formerretired judges taking assignment and 46 hours for all other judicial officers; and

(2) 6 hours in the subject area of judicial practice and related areas for formerretired judges taking assignment and 2018 hours for all other judicial officers.

If, during the first reporting period under these rules (2024-2025), a judicial officer obtains 5 or 6 credits under subrule (B)(1), the extra 1 or 2 credits shall apply to the credit type required by subrule (B)(2).

(C) [Unchanged.]

Rule 4.1 Fulfillment

The MCJE requirement shall be fulfilled by completing the required number of MCJE hours delivered by accredited providers, or by completing other MCJE activities.

(A) Required Courses. Every judicial officer except for former judges taking assignment must earn aAt least eighthalf of the MCJE required hours for each reporting period shall be earned through courses offered by the Michigan Judicial Institute. Former judges taking assignment must earn at least two of the MCJE required hours for each reporting period through courses offered by the Michigan Judicial Institute. Credits earned during the mandatory Michigan Supreme Court Judicial Conference count as MCJE activity offered by the Michigan Judicial Institute. Courses offered by the Michigan Judicial Institute and the State Court Administrative Office should be provided at no cost to those required to comply with the MCJE rules.

(B)-(F) [Unchanged.]

Rule 4.2 MCJE Credit for Teaching Activities

Up to 8 of the MCJE required hours for each reporting period may be earned through Board-approved teaching activities under Mich CJE R 7.1.

(A) [Unchanged.]

(B) Credit for teaching activities will be given on the basis of 2 hours credit for each hour of presentation the first-time credit is sought in any reporting period, representing 1 hour of preparation per 1 hour of instruction. Repeat presentations during the reporting period will receive 1 hour of credit per hour of instruction but will

not be eligible for the additional hour of preparation time awarded for teaching credit~~not be entitled to any further credit~~.

Rule 6 Activity Approval Standards

An MCJE Activity may be in any format, including but not limited to lectures, panel discussions, or roundtables, and shall:

(A)-(D) [Unchanged.]

(E) Be led or facilitated by individuals who~~Have program leaders or lecturers that~~ are qualified with the practical or academic experience necessary to conduct the program effectively.

(F)-(G) [Unchanged.]

Rule 7 Credit for MCJE Activities

(A)-(B) [Unchanged.]

(C) Credit Increments. Credits will be awarded in 15-minute increments, rounded up or down to the nearest 15 minutes.

(D)-(E) [Unchanged.]

Rule 9 Reporting Responsibility

(A) [Unchanged.]

(B) Form of Reporting of MCJE Activities. A judicial officer shall report MCJE activities to the Board in a manner approved by the Board. Educational providers may, but are not required to, report MCJE activity on behalf of judicial officers. If an educational provider reports MCJE activity on behalf of a judicial officer, the educational provider shall notify the judicial officer, and the judicial officer shall refrain from filing or have removed from their record a duplicate report of the same activity. Educational providers may satisfy this notice requirement in any manner reasonably calculated to provide notice.

(C) Time for Reporting. A judicial officer shall report MCJE activities prior to the close of each reporting period~~within 42 days after successfully completing the activity or receiving approval from the Board regarding credit for educational or teaching activities under Mich CJE R 7.1~~.

(D) [Unchanged.]

Staff Comment (ADM File No. 2024-40): The amendments of Mich CJE R 2, 3, 3.3, 4, 4.1, 4.2, 6, 7, and 9 implement several suggested changes including: (1) updating the definition of a "judicial officer" to clarify its scope and to replace "retired" with "former" judge, (2) reducing the number of credit hours that must come from MJI offerings, (3) redefining how teaching credit hours may be earned, (4) adjusting the number of required integrity and demeanor hours, (5) clarifying that MCJE activities may be in any format as long as the content meets the requirements of Rule 6 and any other applicable rules, and (6) clarifying reporting responsibilities.

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.

HOOD, J., did not participate in the disposition of this administrative matter because the Court considered it before he assumed office.

ADM File No. 2025-01

Appointment of Chief Judge of the On order of the Court, Honorable Joseph S. Skocelas is appointed as chief judge of the 57th District Court, for a term commencing on August 1, 2025 and expiring on December 31, 2025.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted amendments to 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). The amended instructions 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*, 514 Mich 851; 8 NW3d 576 (2024). Additionally, the references to "resisting" and "opposing" have been removed from M Crim JI 13.2, as those terms do not appear in MCL 750.479. The amended instructions are effective November 1, 2025.

[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 endangered1 [*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.][4]

(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. [*Provide detailed legal instructions regarding the applicable law governing the officer's or official's legal authority to act.*][5]

[*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.[6]

(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 Notes

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 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* 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. *Obstruct* is defined in MCL 750.81d(7)(a), as amended in 2006.

4. The court may include this sentence where necessary.

5. *See People v Carroll*, 514 Mich 851; 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.

6. MCL 750.81d(7)(c) defines *serious impairment of a body function* according to MCL 257.58c in the Michigan Vehicle Code. *See* M Crim JI 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, obstructing, 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, obstructed, or endangered1 [*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. [*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, obstructing, or endangering[1] a [*state authorized person*] caused the death of [*name complainant*].

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

Use Notes

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, use M Crim JI 13.1.

1. MCL 750.479 prohibits "assault[ing], batter[ing], wound[ing], obstruct[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. The court may include this sentence where necessary. *Obstruct* is defined in MCL 750.479(8)(a), as amended in 2002.

4. *See People v Carroll*, 514 Mich 851; 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* according to MCL 257.58c in the Michigan Vehicle Code. *See* M Crim JI 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 has adopted amendments to 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). The amended instructions account for a recent change to the statutory definition of "mentally incapacitated." See MCL 750.520a(k), as amended by 2023 PA 65. The amended instructions are effective November 1, 2025.

[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.

(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 (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.[1]

(b) "Mentally incapacitated" means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [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*]).][2]

(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.

(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 Notes

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. MCL 750.520a provides the definitions of *mentally incapable*, *mentally incapacitated*, and *physically helpless*.

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

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

[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.[1]

(b) "Mentally incapacitated" means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [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*]).][2]

(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 Notes

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. MCL 750.520a provides the definitions of *mentally incapable*, *mentally incapacitated*, and *physically helpless*.
2. 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 has adopted new instructions for five 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 43.2 (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). The new instructions are effective November 1, 2025

[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 Notes

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 43.2
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) inducing or attempting to induce someone else to vote at an election.

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

(d) inducing or attempting to induce someone else not to vote at an election.

(e) [*Identify other violation.*]

(f) both distributing absent voter ballot applications to voters and receiving signed

(g) applications from voters for delivery to the appropriate clerk or assistant of the clerk.

Use Notes

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*][1] provide [him / her] with [*identify valuable consideration*].[2]

(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 Notes

1. The question of whether a person is a "candidate" is a question of law for the judge to resolve before trial. To the extent that there are any factual disputes that affect whether a person can be considered a "candidate," the instruction should be modified.
2. 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 when the defendant did so, [he / she] intended to influence [*name complainant*]'s vote at an election.[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 voter coercion 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 when the defendant did so, [he / she] intended to influence [*name complainant*]'s vote at an election.[1]

Use Note

1. This is a specific intent crime.

ORDERS OF DISCIPLINE & DISABILITY

SUSPENSION (BY CONSENT)

Robert M. Craig, P 35139, Dearborn, Suspension - 180 Days, Effective October 15, 2024

Respondent and the Grievance Administrator filed a Stipulation for Consent Order of a 180- Day Suspension, in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by Tri-County Hearing Panel #13 by Order dated June 20, 2025. The stipulation contained respondent's admission that he was convicted on October 15, 2024, by guilty plea of Operating While Intoxicated - 3rd Offense, a felony under MCL 257.625, in *State of Michigan v Robert Michael Craig,* Wayne County Circuit Court Case No. 24-003774-01-FH; and was convicted on August 28, 2024, by guilty plea, of Operating Without License on Person, a misdemeanor under MCL 257.311, in *People v Robert M. Craig,* City of Dearborn Heights 20th District Court, Case No. C042287. In accordance with MCR 9.120(B)(1), respondent's license to practice law in Michigan was automatically suspended, effective October 15, 2024, the date of respondent's felony conviction.

Based on respondent's admission and the stipulation of the parties, the panel found that 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); and, conduct involving a violation of the criminal law, where such conduct reflects adversely on the lawyer's fitness as a lawyer, and constituted professional misconduct under MRPC 8.4(b).

The panel ordered that respondent's license to practice law in Michigan be suspended for 180 days, effective October 15, 2024, the date of respondent's automatic interim suspension from the practice of law in Michigan for his felony conviction. Costs were assessed in the amount of $832.10.

SUSPENSION

Wayne F. Crowe, P 77374, Grand Rapids, Suspension - 90 Days, effective July 19, 2025

In a reciprocal discipline proceeding under MCR 9.120(C), the Grievance Administrator filed a certified copy of an order issued by the Supreme Court of New York, suspending respondent's license to practice law in New York for three months, effective March 7, 2022, *In the Matter of Wayne F. Crowe, an Attorney,* Case No. 2021-03603.

An order regarding imposition of reciprocal discipline was served upon respondent on August 18, 2023. Respondent filed a timely objection and Kent County Hearing Panel #6 was assigned to consider the matter, pursuant to MCR 9.120(C)(3). After further briefing by the parties, the panel found that respondent failed to satisfy his burden of showing that he was not afforded due process of law in the course of the original proceedings or that the imposition of comparable discipline in Michigan would be clearly inappropriate.

The panel ordered that respondent's license to practice law in Michigan be suspended for 90 days, consistent and comparable with the suspension first imposed by the New York disciplinary system. Respondent filed a timely petition for review and a request for stay, which was granted automatically pursuant to MCR 9.115(K).

Following proceedings conducted in accordance with MCR 9.118, the Board issued an opinion and order affirming the hearing panel's order of 90-day suspension. Respondent filed a motion for reconsideration of the Board's order affirming the hearing panel's order, which was denied by the Board on March 10, 2025. Respondent then filed an application for leave to appeal to the Michigan Supreme Court, which was denied in an order issued on June 27, 2025. Total costs were assessed in the amount of $1,720.23.

REPRIMAND WITH CONDITIONS AND RESTITUTION

Fawaz, P 83664, Dearborn Reprimand, Effective July 8, 2025

Respondent and the Grievance Administrator filed an Amended 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 #6. The parties dismissed paragraph 79(v) of the formal complaint, and respondent pled no contest to the factual allegations and rule violations set forth in the balance of the formal complaint. Specifically, the stipulation for consent order of discipline contained respondent's no contest plea to allegations that he: made disparaging remarks about other attorneys before and during the representation of his clients, failed to adequately communicate with his clients, failed to properly account for client funds, charged a clearly excessive fee, and failed to appear at hearings leading to default judgments, and entered into unauthorized settlements. The stipulation for consent order of discipline further contained respondent's no contest plea to the allegation that, after his representation was terminated, respondent delayed or failed to return client files, improperly held client funds without providing an accounting, and failed to timely withdraw as attorney of record from those cases.

Based upon respondent's no contest pleas as set forth in the parties' amended stipulation, the panel found that respondent failed to provide competent representation to his client, in violation of MRPC 1.1; neglected a legal matter entrusted to him, in violation MRPC 1.1(c); failed to seek the lawful objectives of a client, in violation of MRPC 1.2(a); settled a case without the authorization of his client, in violation of MRPC 1.2(a); failed to act with reasonable diligence and promptness in representing his client, in violation of MRPC 1.3; 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); failed to promptly notify his client about settlement offers, in violation of MRPC 1.4(a); failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation, in violation of MRPC 1.4(b); entered into an agreement for, charged, and/or collected an illegal or clearly excessive fee, in violation of MRPC 1.5(a); failed to adequately communicate the basis or rate of the fee to his client, in violation of MRPC 1.5(b); entered into a contingent-fee agreement that was not in writing and/or which did not state the method by which the fee was to be determined, in violation of MRPC 1.5(c); failed to exercise reasonable care to prevent employees, associates, or others whose services are utilized by him from disclosing or using confidences or secrets of a client, in violation of MRPC 1.6(d); failed to (1) promptly notify a client or third person when funds or property in which a client or third person has an interest were received; (2) preserve complete records of such account funds and other property for a period of five years after termination of the representation; and (3) promptly pay or deliver any funds or other property that the client or third person is entitled to receive, except as stated in this rule or otherwise permitted by law or by agreement with the client or third person, and, upon request by the client or third person, promptly render a full accounting regarding such property, in violation of MRPC 1.15(b); represented a client or, after representation had commenced, failed to withdraw from the representation of a client where, (1) the representation would result in violation of the Rules of Professional Conduct or other law, (2) his physical or mental condition materially impaired his ability to represent the client, or (3) he was discharged, in violation of MRPC 1.16(a); failed to take reasonable steps to protect a client's interests upon termination of representation, including by failing to surrender papers or property to which the client is entitled and failing to refund any advance payment of fee that has not been earned, in violation of MRPC 1.16(d); filed pleadings and motions, asserting or controverting issues without a basis for doing so that is non-frivolous, in violation of MRPC 3.1; failed to make reasonable efforts to expedite litigation consistent with the interests of his client, in violation of MRPC 3.2; as a partner of a

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

law firm, he 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, 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); failed to treat with courtesy and respect all persons involved in the legal process, in violation of MRPC 6.5(a); gave something of value to a person for recommending the lawyer's services, in violation of MRPC 7.2(c); 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); 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 amended stipulation of the parties, the panel ordered that respondent be reprimanded, required him to comply with conditions relevant to the established misconduct, and to pay restitution in the amount of $12,465.00. Costs were assessed in the amount of $1,502.31.

On July 7, 2025, the complainant timely filed a petition for review pursuant to MCR 9.118. Complainant's petition for review is currently pending before the Board.

SUSPENSION REPRIMAND WITH CONDITIONS AND RESTITUTION (BY CONSENT)

Ernest Friedman, P 26642, Farmington Hills, Michigan Suspension - 180 Days, Effective October 18, 2024

Based on the evidence presented to Tri-County Hearing Panel #57 at hearings held in this matter in accordance with MCR 9.115, the hearing panel found that respondent committed professional misconduct in two separate and unrelated counts, one pertaining to management of an IOLTA and the other relating to respondent's suspension for misconduct found in *Grievance Administrator v Ernest Friedman,* 18-37-GA.

Specifically, the panel found that respondent failed to promptly pay or deliver any funds or other property that the client or third person is entitled to receive, except as stated in this rule or otherwise permitted by law or by agreement with the client or third person, and, upon request by the client or third person, promptly render a full accounting regarding such property, in violation of MRPC 1.15(b)(3) [Count One]; failed to hold property of clients or third persons in connection with a representation sepa-

rate from his own property, in violation of MRPC 1.15(d) [Count One]; deposited funds into the IOLTA in an amount in excess of the amount reasonably necessary to pay financial institution service charges or fees, in violation of MRPC 1.15(f) [Count One]; failed to notify all active clients, in writing, by registered or certified mail, return receipt requested, of his suspension, in violation of MCR 9.119(A) [Count Two]; failed to file with the tribunal and all parties a notice of his disqualification from the practice of law, in violation of MCR 9.119(B) [Count Two]; and, filed a false reinstatement affidavit, in violation of MCR 9.123(A) [Count Two]. The panel also found respondent's conduct to have violated MCR 9.104(1) [Count One]; MCR 9.104(2) [Counts One and Two]; MCR 9.104(3) [Count Two]; MCR 9.104(4) [Counts One and Two]; MRPC 8.4(a) [Counts One and Two]; and MRPC 8.4(c) [Count Two].

The panel ordered that respondent's license to practice law in Michigan be suspended for 180 days. On October 10, 2024, respondent timely filed a petition for review pursuant to MCR

9.118 and a petition for stay pursuant to MCR 9.115(K). Respondent's petition for a stay was denied by the Board on October 17, 2024. After proceedings in accordance with MCR 9.118, the Board affirmed, in part, and vacated, in part, the panel's findings of misconduct and affirmed the 180-day suspension of respondent's license to practice law in Michigan. Total costs were assessed in the amount of $3,598.59.

SUSPENSION WITH CONDITIONS

Jason Kolkema, P 55936, Norton Shores, Suspension - 90 Days, Effective July 31, 2025

Based on the evidence presented at a hearing held in this matter in accordance with MCR 9.115, Muskegon County Hearing Panel #2 found that respondent committed the criminal offense of domestic violence, to which he pled guilty, while a candidate for Muskegon County Circuit Court Judge. Specifically, the panel found that respondent failed to participate in maintaining the required standards of conduct to preserve the integrity of the judiciary, by engaging in improper conduct, and by failing to respect and observe the law, in violation of MCJC Canons 1, 2(A), and 2(B); engaged in conduct that violates a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, in violation of MRPC 8.4(b) and MCR 9.104(5); and, knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2). The panel also found respondent's conduct to have violated MCR 9.104(2)-(4).

The panel ordered that respondent's license to practice law in Michigan be suspended for 180 days and that he be subject to conditions relevant to the established misconduct, which were later modified by the panel when they granted petitioner's motion to do so.

Respondent timely filed a petition for review and motion for stay. The Board granted a stay of respondent's discipline pending completion of the review proceedings to be held in accordance with MCR 9.118. After a hearing on the matter, the Board reduced the discipline imposed from a 180-day suspension to a 90-day suspension and affirmed the conditions imposed and later modified by the hearing panel, effective July 31, 2025. Total costs were assessed in the amount of $2,663.18.

SUSPENSION AND RESTITUTION

Thomas D. Noonan, P 60450, Canton Suspension - Two Years, Effective June 30, 2025

Respondent and the Grievance Administrator filed a Stipulation for Consent Order of Discipline pursuant to MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by Tri-County Hearing Panel #10. The stipulation contained respondent's no contest pleas to the factual allegations and grounds for discipline set forth in the Two-Count formal complaint. Regarding Count One, respondent was retained to represent his clients in a breach of contract and conversion lawsuit but failed to file a response to a motion, drafted a fake settlement agreement, and in response to a request for investigation, admitted that he "dropped the ball" and was not honest with his clients. As a result, his clients later faced a garnishment. As to Count Two, respondent represented a client in a criminal case, who was incarcerated, and surveillance footage from respondent's visit to the jail showed respondent meeting with his client and smuggling cigarettes to her. Additionally, recorded jail phone calls

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

– unprotected due to respondent's failure to register his number as privileged with the phone company – revealed conversations between he and his client about bringing over-the counter medication, cigarettes, and two vape pens for respondent's next visit, as well as discussions about concealing the contraband. Respondent later admitted to bringing six to eight cigarettes to clients during the visit.

Based upon respondent's no contest pleas and the parties' stipulation, the panel found that respondent neglected a legal matter entrusted to him, in violation of MRPC 1.1(c) [Count One]; failed to act with reasonable diligence and promptness, in violation of MRPC 1.3 [Count One]; failed to keep a client reasonably informed about the status of a matter, in violation of MRPC 1.4(a) [Count One]; engaged in conduct that violates the standards or rules of professional conduct, in violation of MRPC 8.4(a) and 9.104(4) [Counts One and Two]; engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b) [Counts One and Two]; engaged in conduct prejudicial to the proper administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1) [Counts One and Two]; engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2) [Counts One and Two]; and engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3) [Counts One and Two].

The panel ordered that respondent's license to practice law in Michigan be suspended for a period of two years and that he pay restitution[1] in the amount of $2,500.00. Costs were assessed in the amount of $1,142.62.

1. On January 24, 2025, the State Bar of Michigan's Client Protection Fund made payment to complainant in the amount of $2,500.00. Respondent was ordered to reimburse the Client Protection Fund.

SUSPENSION (BY CONSENT)

James M. Poniewierski, P 73652, Southfield
Suspension - 30 Days, Effective August 1, 2025

Respondent and the Grievance Administrator filed a Stipulation for Consent Order of a 30- Day Suspension, which was approved by the Attorney Grievance Commission and accepted by Tri-County Hearing Panel #101. The stipulation contained respondent's admission that he was convicted on November 29, 2021, by guilty plea, of Operating While Intoxicated, 2nd Offense, a misdemeanor, in violation of MCL 257.625, in *State of Michigan v James Poniewierski,* 41B District Court, Case No. 21-3249SM, and that his conviction constituted professional misconduct. The stipulation also contained the parties' agreement that respondent's license to practice law in Michigan be suspended for 30 days. After its filing, the parties filed a supplement to their original stipulation, indicating that the parties were in agreement that good cause exists for the order of suspension to be effective August 1, 2025, and the panel agreed.

Based on respondent's conviction, admissions and the parties' stipulation, the panel found that respondent committed professional misconduct when he engaged in conduct that violated a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, in violation of MCR 9.104(5); and engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects ad-

versely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b).

In accordance with the stipulation of the parties, the panel ordered that respondent's license to practice law be suspended for 30 days, effective August 1, 2025. Costs were assessed in the amount of $807.26

REPRIMAND (BY CONSENT)

John R. Scheuerle, P 42933, Grand Haven Reprimand - Effective July 24, 2025

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 Kent County Hearing Panel #4. The stipulation contained respondent's admission that he was convicted by guilty plea of one count of operating while intoxicated, a misdemeanor in violation of MCL/PACC Code 257.6251-A, in *State of Michigan v John R. Scheuerle,* 58th Judicial District Court of Grand Haven, Case No. GH-22-069064-SD, and that the conviction constituted professional misconduct.

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

In accordance with the stipulation of the parties, the hearing panel ordered that respondent be reprimanded. Costs were assessed in the amount of $1,146.32.

NOTICE OF REPRIMAND (BY CONSENT)

Walter A. White, Jr., P 27792, Harrison Reprimand, Effective July 3, 2025

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 Genesee County Hearing Panel #3. The stipulation contained the parties' agreement that subparagraphs 24(d) and 24(f) of the formal complaint be dismissed, and respondent's admissions to the factual allegations and remaining allegations of professional misconduct set forth in the formal complaint, specifically that, during respondent's representation of a client in a criminal jury trial, respondent failed to object to the introduction of evidence used for impeachment of a witness that was inadmissible pursuant to the Michigan Rules of Evidence, and that respondent's failure to object prejudiced his client.

Based upon respondent's admissions and the stipulation of the parties, the panel found that respondent failed to provide competent representation to a client, in violation of MRPC 1.1; failed to seek the lawful objectives of his client, in violation of MRPC 1.2(a); failed to act with reasonable promptness and diligence in representing his client, in violation of MRPC 1.3; and engaged in conduct that exposes the legal profession or the court 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 respondent be reprimanded. Costs were assessed in the amount of $750.00.

SUSPENSION WITH CONDITIONS (BY CONSENT)

Daren Wiseley, P 85220, Hillsdale Suspension - 180 Days, effective July 9, 2025

The Grievance Administrator filed a combined Notice of Filing of Judgment of Conviction and Formal Complaint against respondent. The matter was assigned to Washtenaw County Hearing Panel #3. The notice, filed in accordance with MCR 9.120(B)(3), advised that respondent 1) was found in criminal contempt on March 24, 2023, in the matter titled *In Re Contempt of Daren A. Wiseley, People of the State of Michigan v Justin Ray Mason,* Presque Isle County, 53rd Judicial Circuit Court, Case No. 21-93168-FC; 2) was found in criminal contempt on April 3, 2023, in the matter titled *In Re Contempt of Daren A. Wiseley, People of the State of Michigan v Justin Ray Mason,* Presque Isle County, 53rd Judicial Circuit Court, Case No. 21-93168-FC; 3) was convicted on February 12, 2024, of failure to report an accident to fixtures, a misdemeanor, in violation of MCL 257.621, in the matter titled *State of Michigan v Daren Wiseley,* 3-A District Court, Case No. 2023- 0696-ST; and, 4) was convicted on March 26, 2024, of battery, a misdemeanor, in violation of F.S.S. 784.03(1)(a)(1), in the matter titled *State of Florida v Daren Andrew Wiseley,* Ninth Judicial Circuit Court for Osceola County, Florida, Case No. 22-CF-002308.

Count One of the formal complaint alleged that, after respondent was convicted of the offenses set forth above, respondent failed to notify the Attorney Discipline Board and the Attorney Grievance Commission of the convictions. Count Two involves respondent's conduct that lead to the contempt proceedings against him. Specifically, respon-

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

dent represented Justin Mason in a criminal jury trial in Presque Isle County, Michigan. On March 23, 2023, while the jury deliberated, the court ordered both the prosecuting attorney and respondent to remain at the courthouse. However, when the jury submitted a question to the court, respondent was found to be absent, being located later asleep in an apartment nearby. Following the jury's verdict, the court initiated a contempt proceeding, during which the court questioned respondent regarding his frame of mind, and respondent answered that he was merely tired but not under the influence but merely tired. The court found him in contempt for violating its order and sentenced him to 24 hours in jail. During booking, respondent's breath test registered a blood alcohol content of 0.15, prompting a second contempt hearing. At that hearing, despite admitting to drinking, respondent denied being impaired. The court found him in criminal contempt for lying about his intoxication during the earlier proceeding and ordered another 24-hour jail term, to run concurrently with the first, with credit for time already served.

On February 18, 2025, the Grievance Administrator filed a second notice of filing of judgment of conviction, Case 25-14-JC, showing that respondent was convicted by guilty plea of Domestic Violence, a misdemeanor, in violation of MCL 750.812, in *People v Daren Andrew Wiseley,* 3A District Court - Branch County, Case No. 2024-00669-FY. Case 25-14-JC was consolidated before Washtenaw County Hearing Panel #3 with 24-102-JC and 24-103-GA.

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 Washtenaw County Hearing Panel #3. The stipulation contained respondent's admissions to the convictions identified in the judgments of conviction and that these convictions constituted professional misconduct, as well as his no contest pleas to the factual allegations and allegations of professional misconduct set forth in Counts One and Two of the formal complaint.

Based on respondent's admission, no contest pleas, and the stipulation of the parties, the panel found that respondent made a knowingly false statement of material fact or law to a tribunal or failed to correct a false statement of material fact or law previously made to a tribunal, in violation of MRPC 3.3(a)(1) [Count Two]; knowingly disobeyed an obligation under the rules of a tribunal, in violation of MRPC 3.4(c) [Count Two]; failed to provide notice of his convictions, in violation of MRPC 8.1(a)(2) and MCR 9.120(A) and (B) [Count One]; engaged in conduct that is a violation of the Rules of Professional Conduct, in violation of MRPC 8.4(a) and MCR 9.104(4) [Counts One and Two]; 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) [Judgments of Conviction and Count Two]; engaged in conduct that is prejudicial to the administration of justice, in violation of 8.4(c) and MCR 9.104(1) [Counts One and Two]; engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2) [Counts One and Two]; engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3) [Counts One and Two]; and, engaged in conduct that violated a criminal law of a state of the United States, an ordinance, or tribal law, in violation of MCR 9.104(5) [Judgments of Conviction].

The panel ordered that respondent's license to practice law in Michigan be suspended for 180 days, as agreed to by the parties, effective July 9, 2025, and that he be subject to conditions relevant to the established misconduct. Costs were assessed in the amount of $1,079.76.

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I am in the business of providing high quality legal services to individuals, for-profit businesses, and non-profit organizations. My areas of practice include arbitration, commercial litigation, estate planning, family law, and probate and trust administration.

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Julie Sullivan is a Member of Miller Johnson's Family Law practice. After 33 years of family law litigation, she now engages in mediation/arbitration throughout West Michigan. Julie is recognized as an expert in assisting parties touched by the laws related to establishing and ending family relationships.

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I am a former Michigan AILA Chapter Chair, have served in many volunteer leadership capacities with AILA, and received numerous awards for my work. I have successfully litigated numerous published cases at federal circuit courts and the BIA.

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Dallo has been representing clients facing immigration consequences due to criminal convictions. Mr. Dallo has held a webinar through the OCBA and has multiple featured articles in Laches. He is here to be of service to our community.

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Alyssa Hussein guides companies and professionals through the complex U.S. immigration system, creating pathways to legal status through employment, trade, or investment. With experience working with tech giants and startups, she understands the unique challenges facing growing businesses and international founders, offering strategic, business-focused immigration solutions.

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