

MICHIGAN

BAR JOURNAL

NOVEMBER 2025

A red square sign with white text that reads "FOR SALE" is hanging from a wooden post. The sign is in the foreground, slightly to the left. In the background, there is a blue house with white trim and a porch. A person is walking on the porch in the distance.

**FOR
SALE**

SHOULD ATTORNEYS BE REQUIRED IN RESIDENTIAL REAL ESTATE TRANSACTIONS?

ALSO IN THIS ISSUE:

- Proper billing of law firm charges
- Michigan Lawyers in History: Jacob M. Howard
- Book Review: *The Containment*: Detroit, the Supreme Court and the Battle for Racial Justice in the North
- MSBF celebrates 2025 class of fellows and foundation award recipients at annual fellows reception



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Should attorneys be required in residential real estate transactions

After the new practice changes adopted by the real estate industry?

Jason Sakis

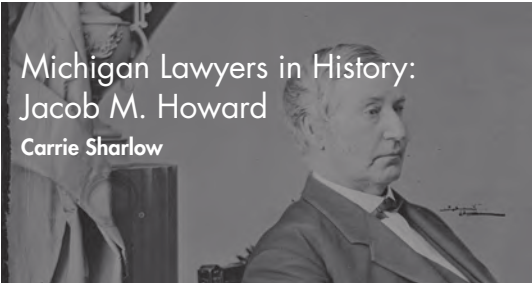
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Proper billing of law firm charges

Sheldon G. Larky

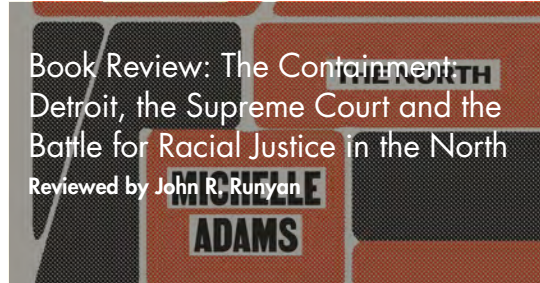
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MICHIGAN
**BAR
JOURNAL**

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- Other Personal Injuries



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.

RECENTLY RELEASED

MICHIGAN LAND TITLE STANDARDS

6TH EDITION | 8TH SUPPLEMENT (2021)

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

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

DUTY TO REPORT AN ATTORNEY'S CRIMINAL CONVICTION

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

WHAT TO REPORT:

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

WHO MUST REPORT:

Notice must be given by all of the following:

1. The lawyer who was convicted;
2. The defense attorney who represented the lawyer; and
3. The prosecutor or other authority

WHEN TO REPORT:

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

WHERE TO REPORT:

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

Grievance Administrator

Attorney Grievance Commission
PNC Center
755 W. Big Beaver Road, Suite 2100
Troy, MI 48064

Attorney Discipline Board

333 W. Fort St., Suite 1700
Detroit, MI 48226



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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



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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IN MEMORIAM

RICHARD M. AMSBAUGH, P34244, of Plymouth, died July 8, 2025. He was born in 1957, graduated from University of Detroit Mercy School of Law, and was admitted to the Bar in 1982.

MARTIN C. BASCH, P24461, of Portage, died August 29, 2025. He was born in 1945 and was admitted to the Bar in 1971.

WILLIAM DIETRICH, P12769, of Naples, Fla., died August 21, 2025. He was born in 1936, graduated from Detroit College of Law, and was admitted to the Bar in 1961.

HON. MAGGIE W. DRAKE, P35240, of Orrville, Ala., died September 19, 2025. She was born in 1944, graduated from University of Detroit Mercy School of Law, and was admitted to the Bar in 1983.

LLOYD C. FELL, P13359, of Cheboygan, died July 17, 2025. He was born in 1938, graduated from and was admitted to the Bar in 1964.

SUSAN A. HOFFELDER, P40668, of Niles, died August 25, 2025. She was born in 1947 and was admitted to the Bar in 1987.

WILLIAM C. KEMPER, P15863, of East Lansing, died December 14, 2024. He was born in 1930, graduated from University of Michigan Law School, and was admitted to the Bar in 1960.

J. MICHAEL KINNEY, P32054, of St. Joseph, died July 12, 2025. He was born in 1944, graduated from University of Detroit Mercy School of Law, and was admitted to the Bar in 1980.

TERRY J. KLAASEN, P16024, of Jackson, died September 12, 2025. He was born in

1943, graduated from University of Michigan Law School, and was admitted to the Bar in 1968.

HON. KARL E. KRAUS, P16224, of Bad Axe, died September 12, 2025. He was born in 1945, graduated from University of Michigan Law School, and was admitted to the Bar in 1972.

KENNETH EARLE LONG, P16783, of Kalamazoo, died January 15, 2025. He was born in 1929, graduated from University of Michigan Law School, and was admitted to the Bar in 1957.

HON. JOHN E. MACDONALD, P16914, of Holland, died September 28, 2025. He was born in 1934, graduated from Wayne State University Law School, and was admitted to the Bar in 1961.

SANDI ODISHO, P77386, of Dearborn Heights, died September 27, 2025. She was born in 1985, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 2013.

RICHARD B. OOLE, P26176, of Grand Rapids, died January 30, 2025. He was born in 1949 and was admitted to the Bar in 1975.

KENNETH B. PEIRCE, JR., P18752, of Grand Rapids, died August 30, 2025. He was born in 1943 and was admitted to the Bar in 1973.

GARY R. PETERSON, P31139, of Portage, died May 21, 2025. He was born in 1953, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1980.

JOHN D. SILLS, P20462, of Orlando, Fla., died August 13, 2025. He was born in

1934, graduated from Detroit College of Law, and was admitted to the Bar in 1960.

JAMES ALBERT SMITH, P20667, of Clinton Township, died September 18, 2025. He was born in 1942, graduated from University of Michigan Law School, and was admitted to the Bar in 1968.

JAMES S. TRECIK, P21551, of Jackson, died September 14, 2025. He was born in 1940, graduated from Wayne State University Law School, and was admitted to the Bar in 1964.

HON. JOHN R. WEBER, P22070, of Marquette, died December 11, 2024. He was born in 1936, graduated from Wayne State University Law School, and was admitted to the Bar in 1962.

LARRY P. WEINBERG, P22101, of Mc Lean, Va., died March 6, 2025. He was born in 1945, graduated from University of Michigan Law School, and was admitted to the Bar in 1972.

ROBERT H. WOODY, P37338, of Omaha, Neb., died November 11, 2024. He was born in 1936 and was admitted to the Bar in 1985.

REX A. ZIEBARTH, P39940, of Lapeer, died August 26, 2025. He was born in 1957, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1987.

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

CHRISTINA L. NECHIPORCHIK has joined the Ann Arbor office of Bodman PLC as senior counsel.

STACEY M. WASHINGTON has joined Wayne County Corporation Counsel, Labor, Employment and Workers' Compensation Division as Assistant Corporation Counsel.

CONOR M. BOWERS has joined the Troy office of Butzel as an associate.

DAVID B. EDERER AND ZACHARY J. BIALICK have joined Bodman PLC.

ALEXANDER WILSON has joined the Bloomfield Hills office of Plunkett Cooney.

KYLEE NEMETZ has joined the Grand Rapids office of Varnum.

JOSHUA J. TROMBLEY has joined Plunkett Cooney as a Senior attorney.

PRESENTATIONS, PUBLICATIONS & EVENTS

The Ingham County Bar Association will host its Annual Dinner on Wednesday, November 12, 2025, at the Crowne Plaza Lansing West at 6 p.m. More Information

MDTC will host its Winter Meeting on No-

vember 7, 2025, at the Sheraton Detroit Novi Hotel.

OTHER

Please Note: On September 26, 2001, the Michigan Supreme Court amended Rule 2 of the Rules Concerning the State Bar of Michigan, eliminating the requirement that members of the Bar provide their home addresses to the Bar. Under the amendment, a business address will be sufficient unless it is a mailing address only. Although Rule 2 had included a "residence address" requirement since its inception, the Bar had not requested such information for many years. [Read the full amendment.](#)

BUSINESS LAW SECTION

The 8th Annual Business Law Symposium will be held on Thursday February 12, 2026 at The Little Gem Theatre, in Detroit Michigan, from 4:30 – 8:30 p.m. The program is entitled "The Business Lawsuit" and it will focus upon the things that make the business litigator unique among lawyers and how the business lawsuit is prepared for and presented at trial. The program will begin with a one-hour social and networking hour, followed by individual presentations, panel discussions, and debate, commencing at 5:30 p.m., sharp. For further information, including agenda, presenters, and registration information, please visit: bizsymposium.com.

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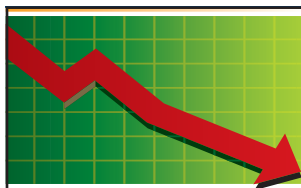
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FROM THE PRESIDENT

LISA J. HAMAMEH



State Bar of Michigan: Serving you in more ways than you probably know

After undergoing a devastating breast cancer diagnosis, a mastectomy, and chemotherapy while trying to juggle the responsibilities of a single mom, the Michigan attorney was struggling. She needed help.

Our colleagues, once alerted to her situation, responded in force, with 74 members of our Bar donating transportation for her kids, takeout meals from restaurants, gift cards for grocery stores, and more through the State Bar of Michigan's SOLACE program.

SOLACE assists members of the legal community who are in crisis — and it is just one of the many ways the State Bar of Michigan serves its purpose and accomplishes its mission.

The State Bar of Michigan was established by the Legislature in 1935 as an organization dedicated to improving the administration of justice and the delivery of legal services. Our mission today is to promote the professionalism of lawyers; advocate for an open, fair, and accessible justice system; and provide services to members to help them best serve their clients.

Unless you're an active volunteer or seasoned participant in State Bar sections, committees, events or activities, you may not know the full breadth of the value of the State Bar of Michigan. Admittedly, I was involved in State Bar leadership for many years before I began to get a true picture of the important services the State Bar provides to its members.

Did you know that the State Bar of Michigan employs more than 70 employees? This includes the standard accounting, human resources, and IT departments — but also provides three staff wholly dedicated reviewing and summarizing recent court opinions for the daily eJournal, five employees supporting the Lawyer Referral Service, and four who support the mental health and wellbeing of those in the legal profession, and much more.

Let's take a closer look at some of the ways the State Bar of Michigan plays a crucial role in supporting its members:

LICENSING AND REGULATION

At its core, the State Bar of Michigan is responsible for helping to maintain the standards of legal practice in Michigan. It works closely with the Michigan Supreme Court to administer:

- **Licensing:** SBM works closely with the Board of Law Examiners to support their work by investigating the character and fitness of prospective Michigan attorneys and by administering annual license renewal.
- **Ethics:** Through the work of the Professional Standards Committee and Judicial Standards Committee, SBM provides attorneys and judges with the information they need to know and understand their ethical responsibilities in often complex situations. In addition, SBM operates an Ethics Helpline, which can be reached by calling (877) 558-4760, to provide

guidance to lawyers and judges about specific situations.

- **Unauthorized practice of Law:** The State Bar of Michigan is responsible for the investigation and prosecution of the unauthorized practice of law in Michigan, producing communication to help protect the public and uphold the standards of the profession.
- **Certificates of Good Standing and Confirmation of Status:** A Certificate of Good Standing is official State Bar of Michigan documentation that you are a licensed attorney in Michigan. Certificates of Good Standing are available to active, voluntarily inactive, or emeritus members of the State Bar of Michigan who are not resigned or suspended and who are not subject to pending disciplinary proceedings in Michigan or another jurisdiction. Learn more at michbar.org/programs/cogs.

These functions help ensure that Michigan attorneys maintain the skills, knowledge, and professional integrity expected by clients, the courts, and the public.

PROFESSIONAL DEVELOPMENT AND SUPPORT

Helping attorneys be practice ready is a top priority of the State Bar of Michigan's Strategic Plan. As part of that work, the State Bar of Michigan provides:

- **Practice Management Resource Center:** The PMRC offers a variety of information to help attorneys from education, technology tips, checklists, and draft forms. Learn more at michbar.org/PMRC
- **Well-being resources:** The Lawyers & Judges Assistance Program (LJAP) offers confidential help to legal professionals, law school students, and their families. Services include free consultations, referrals to providers, and professional training. Their work helps attorneys dealing with substance use, mental health challenges, and stress — but even more so is helping our profession to begin to truly embrace wellbeing and understand mental health is an important component of professional competency. Learn more at michbar.org/LJAP
- **SOLACE:** As described in the example earlier, the SOLACE program helps any member of the legal community or their family when they experience a sudden, catastrophic, illness, injury, or event. The program is simple: When there is a need a call for assistance is sent to attorneys who have joined the SOLACE Network. Those who are able and willing to help are put in touch with the member in need. Learn more at michbar.org/SOLACE
- **Professionalism and Civility:** The Special Committee on Professionalism and Civility offers a speakers bureau as a resource for lawyers, judges, firms, and organizations to help promote the highest standards of personal conduct. Learn more at michbar.org/professionalism.
- **Career Center:** The SBM Career Center connects talent with opportunities through a searchable database of job post-

ings. Employers and job seekers can utilize this tool at jobs.michbar.org

- **Lawyer Referral Service:** The State Bar of Michigan's Lawyer Referral Service has been helping people find the right attorney for more than 40 years. Participation is easy and it is a great way to be directly connected to future potential clients. Sign up at lrs.michbar.org/Account-Login.

These initiatives are designed to support attorneys at all stages of their careers, from new graduates to seasoned professionals.

NETWORKING AND COMMUNITY BUILDING

With over 47,000 members, the State Bar of Michigan helps foster a strong legal community:

- **Sections and Committees:** Members can join over 40 practice-area-specific sections, such as Family Law, Criminal Law, or Environmental Law. These groups offer networking, continuing legal education, and legislative advocacy tailored to specific areas of law. Learn more at michbar.org/Sections
- **Meetings and events:** SBM hosts events where members can connect, learn, and share ideas including virtual support groups, tips and tools seminars, and lawyer trust accounts seminars. Check out the calendar at michbar.org to see upcoming events. You can also schedule a meeting at the SBM building. Learn more at michbar.org/programs/rooms
- **Local and affinity bar association support:** SBM collaborates with local bars throughout the state of Michigan so that attorneys have a variety of support options available to them.

MEMBER SERVICES AND BENEFITS

SBM offers a variety of benefits to make legal practice more manageable and cost-effective:

- **Discount programs:** Through its partnership program, Michigan attorneys are eligible for discounts for a variety of services including car rental, legal software, insurance, office supplies, practice management tools, and more. Learn more at michbar.org/Benefits.
- **Member Directory:** There are two online member directories available: ReliaGuide, which is more tailored to helping members of the public find an attorney, and the Classic Directory, often used by attorneys and judges checking the standing of a specific attorney. Both are available through the State Bar's website at michbar.org. In addition, the State Bar sells a printed directory available in the SBM Store at michbar.org/MemberArea.
- **Legal publications:** The State Bar publishes the *Michigan Bar Journal* (michbar.org/Journal) 11 times a year to help keep members informed about legal trends, decisions, and practice updates. It also publishes the eJournal (michbar.org/eJournal) featuring summaries of appeals court decisions on business days.
- **Legal Research tools:** All members of the State Bar also have

free access to vLex Fastcase, a comprehensive, nationwide law library including case law, statutes, regulations, court rules, constitutions, and law review articles. Access vLex Fastcase through the online member area at michbar.org/MemberArea.

ADVOCACY AND PUBLIC SERVICE

The SBM advocates for a fair and accessible legal system and encourages lawyers to give back through:

- **Public policy:** The State Bar of Michigan actively works for ongoing improvements to legal services in Michigan by assessing the impact of proposed legislation and administrative orders and taking public policy positions on issues as warranted.
- **Pro bono initiatives:** The State Bar of Michigan coordinates three pro bono programs focusing on patent, QDRO, and tax services and offers malpractice insurance for attorneys providing pro bono service. The State Bar also partners with many other organizations, including legal aid centers in Michigan, to connect lawyers with opportunities to provide free legal assistance to those in need.
- **Access to Justice Campaign:** Working in partnership with the Michigan State Bar Foundation, the State Bar promotes adequate funding for legal aid centers and works to address

justice gaps and bring systemic reform whenever and wherever needed.

- **Client Protection Fund management:** In cases where a client has been victimized by a lawyer who violates ethical standards and misappropriates funds entrusted to them, the Client Protection Fund can provide reimbursement for losses.

These efforts ensure the legal system in Michigan serves everyone – not just those who can afford it and help promote public confidence in the administration of justice and integrity of the legal profession.

CONCLUSION

The State Bar of Michigan is far more than a regulatory body — it's a comprehensive support system for Michigan attorneys. By offering professional development, resources, advocacy, and community, the SBM helps lawyers succeed in practice while promoting the values of integrity, competence, and service that are essential to the legal profession.

Whether you're a solo practitioner, in-house counsel, public defender, or part of a large firm, the SBM's programs and services are designed to help you thrive — and, ultimately, to help the people of Michigan benefit from a stronger, more effective legal system.

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settlement on a trip and fall on a defective carpet in an apartment complex causing partial paralysis

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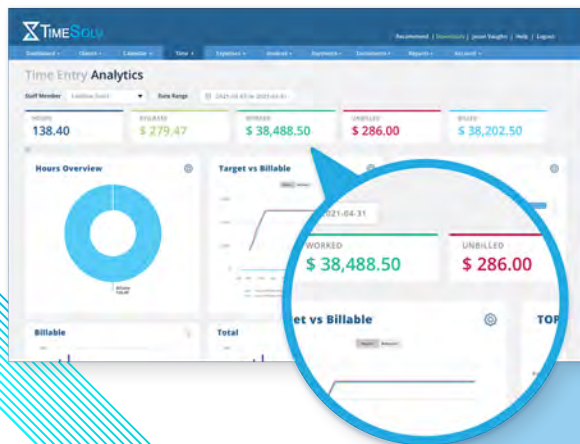


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OF INTEREST

MSBF celebrates 2025 class of fellows and foundation award recipients at annual fellows reception

On Thursday, September 18, 2025, the Michigan State Bar Foundation (MSBF) held its annual Fellows Reception at the Townsend Hotel in Birmingham. The event welcomed distinguished members of Michigan's legal community, dedicated to advancing access to justice.

During the program, Hon. Victoria A. Roberts (ret.), Chair of the Fellows Program, delivered welcome remarks and acknowledged the 2025 Class of Fellows for their professional excellence and commitment to justice. This year's Fellows roster includes:

Celeste E. Arduino - *Bodman*
 Tracie D. Boyd - *Lakeshore Legal Aid*
 Coryelle E. Christie - *Lakeshore Legal Aid*
 Louis G. Corey - *Corey Law Firm*
 Christina M. Hagen - *Olsman MacKenzie Peacock*
 James J. Harrington IV - *Fieger Law*
 Robert J. Hoard - *Sullivan, Ward, Patton, Gleeson & Felty*

Justice Noah P. Hood - *Michigan Supreme Court*
 Robert G. Kamenec - *Fieger Law*
 Shirley A. Kaigler - *Taft Law*
 Mami Kato - *Attorney at Law*
 Loren E. Khogali - *ACLU of Michigan*
 Scott R. Knapp - *Dickinson Wright*
 Katie Lynwood - *Buhl, Little, Lynwood & Harris*
 Silvia A. Mansoor - *Foley, Baron, Metzger & Juip*
 Gerard V. Mantese - *Mantese Honigman*
 Jonathan R. Marko - *Marko Law*
 Takura N. Nyamfukudza - *Chartier & Nyamfukudza*
 Daniel J. Ping - *Michigan Department of Attorney General*
 Linda J. Rawls - *State Bar of Michigan*
 Arnold E. Reed - *Arnold E. Reed & Associates*
 Kimberly L. Scott - *Miller Canfield*
 Nicole M. Smithson - *Oakland County Indigent Defense Services Office*
 Michael J. Steinberg - *University of Michigan Law School*
 Lisa W. Timmons - *Mediation Tribunal Association*
 Justice Kimberly A. Thomas - *Michigan Supreme Court*
 John M. Toth - *Sullivan, Ward, Patton, Gleeson & Felty*
 Melissa Wangler - *Michigan Indigent Defense Commission*
 Nicole Wotlinksi - *Blue Cross Blue Shield of Michigan*



From left: Julie Fershtman, SBM President Lisa Hamameh, Jennifer Greico

MSBF Board President Craig Lubben shared updates on the Foundation's continued efforts to strengthen civil legal aid and improve the administration of justice across Michigan.

The reception also celebrated the 2025 Foundation Award recipients. Former Chief Justice Marilyn Kelly received the Founders Award, honoring her outstanding contributions to the legal profession and community. Ashley Lowe was presented with the Access to Justice Award for her impactful work to expand access to justice for low-income families throughout the state.

Congratulations to the honorees and Fellows for their inspiring leadership and service.



1. From left: MSBF Board President Craig Lubben, Access to Justice honoree Ashley Lowe, Founders Awards honoree former chief justice Marilyn Kelly, Fellows Chairperson Hon. Victoria Roberts (ret.)

2. From left: Justice Elizabeth Welch, Thomas Howlett, Peter Cunningham

3. From left: Melissa Wangler, Loren Khogali, Lisa Timmons, Mami Kato, Takura Nyamfukudza



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SHOULD ATTORNEYS BE REQUIRED IN RESIDENTIAL REAL ESTATE TRANSACTIONS

After the new practice changes adopted by the real estate industry?

BY JASON SAKIS

Michigan law does not currently require attorneys to supervise real estate transactions. Should Michigan revisit its position on this issue based on the recent practice changes adopted by the real estate industry following the class action settlement in the landmark case involving the National Association of Realtors?¹ These rule changes could leave a significant number of home buyers without licensed real estate salesperson representation in real estate transactions. Although some jurisdictions require attorney oversight, is attorney involvement necessary for the protection of unrepresented buyers?

To understand why home buyers may be vulnerable after the class action settlement in the case of *Sitzer v. National Association of Realtors*,² it is necessary to briefly explain how things worked in the real estate industry prior to the class action settlement. Before

the settlement, a listing agent typically advertised homes for sale on a multiple listing service (MLS) with offers to share compensation with a buyer's agent. At closings, sellers allocated a portion of their closing proceeds to compensate listing agents, who in turn shared some of their compensation with buyers' agents. The home seller plaintiffs in the NAR class action case argued that sellers were essentially paying the buyer's commission in violation of the Sherman Antitrust Act.³

The NAR settlement mandated practice changes to be adopted by the real estate industry. One of those practice changes prohibits any reference to compensation sharing on the MLS. Another change requires NAR member agents to enter into written compensation agreements with prospective buyers before touring homes.⁴ These buyer

agreements must include the amount of compensation that buyers will pay their agents, and the amount must be objectively ascertainable.

Not knowing whether a listing agent will pay all, or share in paying some, of the buyer's agents' compensation (a practice still permitted so long as it is not broadcast over an MLS), some prospective buyers may be hesitant to contractually bind themselves to a representation agreement. Under the new rules, however, buyers' agents are required to obtain compensation commitments from their buyers before visiting properties.⁵ Importantly, a buyer's agent is now prohibited from showing homes to a prospective buyer without a written agreement in place. Because of the expense, buyers may decide to entirely forgo real estate agent representation, especially first-time buyers. These buyers may instead decide to contact listing agents directly about a particular property. Under those circumstances, a listing agent is legally obligated under MCL 339.2517 to provide unrepresented buyers with an agency relationship disclosure form explaining that a listing agent's fiduciary duties are solely with the seller-client. Without a real estate agent of their own to explain the significance of these disclosures, it is doubtful that an unrepresented buyer will fully appreciate that a friendly listing agent's interests are incongruous with the buyer's objectives. Because a "written" buyer's agency agreement is not required to form an agency relationship in Michigan, listing agents are themselves vulnerable to litigation from unrepresented buyers claiming that an implied agency relationship existed between them. To eliminate any confusion, Michigan legislators might consider revising the occupational code to make it clear that a written agreement is required to or an agency relationship in the context of real estate transactions.

With artificial intelligence powering easily accessible property listing platforms online, finding potential homes is a relatively simple task. Knowing how to navigate the entire process from start to finish is an entirely different story. In addition to preparing the required paperwork and making sure that buyers meet their contract deadlines, especially when time is of the essence, avoiding potential pitfalls such as encroachments, easements, harmful molds, structural defects, foundation problems, water intrusion into basements, infestation, degraded roof issues, title issues, equipment failures, septic fields, and condominium-specific issues are what Realtors are trained to warn their buyer-clients about. For several decades, these real estate professionals have served as reliable sources of professional recommendations, even directing clients to attorneys when needed. Not having real estate agent representation will significantly disadvantage unrepresented buyers. The new practice changes adopted by the real estate industry have not been in place long enough to determine whether post-sale litigation will increase as a result thereof, but this is certainly anticipated. Upon discovery of problems with a purchased property after moving in, what legal recourse will an unrepresented buyer have against a seller?

Michigan adheres to the common law rule of "caveat emptor," or buyer beware, aside from a few recognized exceptions for fraud that might be asserted by a home buyer against a seller. Consequently, buyers who discover property defects after closing are often left without a remedy. Although a home seller is required to furnish prospective buyers with property disclosures, Michigan's Seller Disclosure Act⁶ does not impose a legal duty on a homeowner to discover defects; a homeowner is only obligated to honestly disclose known facts.⁷ Even if the elements of fraud can be established, Michigan law does not recognize a fraud claim whenever the buyer had the means of determining that the seller's factual representations were untrue.⁸ These legal doctrines are manifestly unforgiving. Unrepresented buyers will be extremely vulnerable to the application of these laws.

From a public policy perspective, should Michigan require attorney review, participation, and/or oversight in residential real estate transactions? Would consumers and the general public benefit if attorneys were required in real estate transactions? What assistance might an attorney provide?

Real estate transactions are often intricate. Title insurance issues, for example, are thorny. It is doubtful that a person unfamiliar with them would know the difference between title policies with or without standard exceptions or appreciate the availability of enhanced title policies. At the closing table, buyers are often asked to sign documents eviscerating title insurance coverage that was bargained for in the purchase agreement. Worse yet, closing representatives regularly obtain arguably oppressive indemnification agreements from buyers and sellers. It is unlikely that an unrepresented buyer would know that failing to withhold taxes on gains realized by a foreign seller may subject that buyer to liability under the Foreign Investment in Real Property Tax Act of 1980. What type of deed will the buyer receive at closing, and how will the title be held by the buyers? Will the terms of the purchase agreement merge into the closing, or does the purchase agreement survive the closing? What significance will an "as-is" closing agreement have on the parties, and what happens to the seller's disclosure statements if they are part of the purchase agreement? These issues, and many more, are critical to understand and address when purchasing a home. Buying a home is usually the largest financial transaction / investment that a person makes in their lifetime. This is why Michigan should explore the issue of whether attorney participation must be required in real estate transactions.

Some states, South Carolina for example, require attorneys to supervise real estate closings, review title work, record documents, and disburse funds.⁹ In holding that real estate closings must be conducted by attorneys, the following was recognized by the South Carolina Supreme Court recognized the following:

Courts of other jurisdictions have recognized dangers in allowing lay persons to handle real estate closings. While some of these cases hold that lay persons may conduct closings, they note that giving advice as to the effect of the various instruments required to be executed constitutes the unauthorized practice of law. Thus, in *Coffee County Abstract and Title Co.*, supra, the title company was permitted to conduct real estate closings with the restriction that no legal advice or opinions be given. Chief Justice Torbert, concurring, gave instructions as to how such a closing should be handled: "If the parties to the transaction raise a legal question at the closing, the title company should stop the proceeding and instruct them to consult their attorneys." 445 So. (2d) at 857. We agree this approach, in theory, would protect the public from receiving improper legal advice. However, there is in practice no way of assuring that lay persons conducting a closing will adhere to the restrictions. One handling a closing might easily be tempted to offer a few words of explanation, however innocent, rather than risk losing a fee for his or her employer. We are convinced that real estate and mortgage loan closings should be conducted only under the supervision of attorneys, who have the ability to furnish their clients legal advice should the need arise and fall under the regulatory rules of this court. Again, protection of the public is of paramount concern.¹⁰

Other states, like Georgia, for example, prohibit any person other than a licensed member of the state bar from closing a real estate transaction or rendering an opinion regarding title.¹¹ A handful of states require attorneys to participate in the closing of a real estate transaction.¹² At the present time, most states do not legally require a lawyer's involvement in a real estate closing.¹³ Will the above considerations change following the NAR settlement? Should public policy require an attorney to be involved in the closing of a real estate transaction to protect the buyer in cases when the buyer does not engage the services of a licensed real estate professional? What does Michigan law say about these issues?

The State Bar of Michigan has published an Unauthorized Practice of Law Facts and Information Pamphlet that lists examples of services that might require a Michigan law license if performed in Michigan or for Michigan residents:

- Drafting documents that require legal judgment for another person.
- Giving advice tailored to the particular legal situation of another person.¹⁴

Our state bar association previously addressed whether a title company representative acting as a "scrivener" is engaged in the unauthorized practice of law.¹⁵ When confronted with the issue, State Bar of Michigan Ethics Opinion RI-298 stated that the State Bar of Michigan does not render opinions on the conduct of nonlawyers, such as title

companies and real estate closers. Are title companies and real estate agents engaged in the unauthorized practice of law when lawyers are not physically present at closings? As a matter of custom and practice, title companies in Michigan regularly draft deeds for use in real estate transactions and then simply designate the listing agent as the drafter of the deed to avoid any responsibility for drafting. Clearly, the drafting of a deed constitutes the practice of law, and the fiction of pretending that deeds have been drafted by licensed real estate agents is a disservice to the public. If two unmarried people are purchasing a property, should they hold title as joint tenants or as tenants in common? This is something that only licensed attorneys should address.

To protect vulnerable consumers, to reduce post-sale litigation from an already burdened system, and to protect the integrity of land titles, the Michigan legislature, state bar association, and/or the Michigan Supreme Court may want to revisit whether requiring some form attorney participation in residential real estate transactions is needed. In the two states that require attorney supervision of real estate transactions (Georgia and South Carolina), an attorney must be physically present at closings.¹⁶ Other states require attorneys to prepare deeds, review title work, and require attorneys for the preparation of mortgages, assignments, and discharges.¹⁷ What Michigan might decide to do is something that deserves attention. This writer takes no position on this issue.

Regardless of whether Michigan will address the issue of whether attorneys should be required in real estate transactions, attorneys should be ready to assist buyers in reviewing and drafting real estate documents. This is true because some home buyers might now decide to hire a lawyer to assist them with their transactions rather than hiring a real estate professional after the NAR settlement.



Jason Sakis is a licensed attorney in Michigan and Georgia. He holds real estate broker's licenses in Michigan and South Carolina.

ENDNOTES

1. *Sitzer et al v Nat'l Ass'n of Realtors et al*, opinion of the United States District Court for the Western District of Missouri, issued April 22, 2022 (Case No. 4:19-cv-00332).
2. *Id.*
3. 26 Stat 209, 15 USC §§ 1-7.
4. See ¶ 58(iv) of the NAR settlement agreement.
5. If the listing agent is not sharing any compensation, a buyer must pay for their agent's services out of pocket or negotiate that the seller to pay for it in the purchase agreement.

6. MCL 565.951.

7. *Roberts v Safell*, 280 Mich App 397; 760 NW2d 715 (2008).

8. *Nives v Bell Indus, Inc*, 204 Mich App 459, 464; 517 NW2d 235 (1994).

9. *State v Buyers Serv Co*, 292 SC 426; 357 SE 2d 15 (1987).

10. *Id.* (some citations omitted).

11. Official Code of Ga Annotated (OCGA) §15-19-50. See also Georgia Formal Advisory Opinion issued by the State Bar of Georgia stating that the closing of real estate transactions constitutes the practice of law as defined by O.C.G.A. §15-19-50. 1989 Ga. Formal Ethics Adv. Op. No. 86-5 (May 12, 1989).

12. The following is a list of states that legally require attorney involvement and/or participation in a closing, especially in cases when legal questions arise: Alabama (*Coffee Co Abstract and Title Co v State of Ala*, 445 So 2d 852 (Ala. 1983)), Connecticut (General Statutes §51-88a), Delaware (*Matter of Mid-Atlantic Settlement Servs, Inc*, 755 A 2d 389 (Del Super, 2000)), Georgia (OCGA §15-90-50), Massachusetts (*Real Estate Bar Ass'n v Nat'l Estate Info Servs*, 459 Mass 512 (2011)), Mississippi (Miss Code §89-5-8), New York (NY Judiciary Law § 484), North Carolina (General Statutes 10B-134.25), West Virginia (Committee on Unauthorized Practice of Law Opinion No. 2003-01).

13. The following is a list of states that do not legally require attorney participation

in real estate closings: Alaska, Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

14. *Unauthorized Practice of Law Facts and Information*, State Bar of Michigan <<https://www.michbar.org/file/professional/pdfs/uplfacts.pdf>>.

15. State Bar of Michigan, Ethics Opinion RI-298 (Aug 21, 1997) <https://www.michbar.org/opinions/ethics/numbered_opinions/ri-298>.

16. 2000 Ga. Formal Ethics Adv. Op. No. 00-3 (Feb. 11, 2000), where the State Bar of Georgia additionally explained that a lawyer must be physically present at real estate closings and finding telephone participation to be inadequate.

17. New York (NY Judiciary Law § 484). See also *Mulford v Shaffer*, 124 A.D.2d 876; 508 NYS2d 302 (NY App Div 3d Dep't 1986), where a real estate broker was determined to have been engaged in the practice of law for advising a buyer on issues pertaining to financing and by preparing legal instruments.

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Proper billing of law firm charges

BY SHELDON G. LARKY

When law firms send clients bills, clients need to be properly charged based upon what is being done. This is especially true when a legal assistant, paralegal, secretary or clerk is doing some tasks. As stated in *Missouri v Jenkins*, “[P]urely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them.”¹

Here are examples which should not be billed at attorney or paralegal rates, but rather at clerical or secretarial rates:

- Receiving and filing correspondence;²
- Delivering, picking up and photocopying documents;³
- Filing and organizing documents as well as obtaining transcripts;⁴
- Sending and receiving faxes, requesting and receiving medical records, serving papers, and hand-delivering courtesy copies of filings to the courthouse;⁵
- Faxing, emailing, filing, scanning, assembling and conforming;⁶
- Serving amended deposition notices;⁷

- Administering a complex litigation matter;⁸
- Reviewing documents and helping to prepare chart exhibits;⁹
- Reviewing and completing trial binders;¹⁰
- Unloading and organizing trial documents;¹¹
- Communicating with process servers and court reporters, preparing forms, drafting an appearance, and creating spreadsheets;¹²
- Reviewing court notices; scheduling; notifying clients and counsel of deadlines; preparing filings; maintaining files; copying, printing, labeling, and emailing documents; and communicating with court staff;¹³
- Communicating with opposing counsel's secretary;¹⁴
- Searching for an address or telephone number;¹⁵

Courts generally consider "purely clerical or secretarial tasks, performed by whomever, are overhead and customarily included in the attorney's hourly fee."¹⁶ However, this may be overcome by specifying in a retainer agreement rates for clerical and secretarial charges.

How about travel time? Generally, courts are reluctant to approve lawyer fees for traveling and have discretion to reduce or eliminate their charge whether or not the attorney actually works while traveling.¹⁷

The rationale for these tasks is none require legal knowledge.

If a law firm intends to charge for legal assistant fees, MCR 2.626 permits inclusion of a legal assistant's time and labor who contributes nonclerical legal support under the supervision of an attorney provided the legal assistant meets one of five criteria set forth in Article I § 6 of the State Bar of Michigan Bylaws.¹⁸

As stated in *Mayer*, "[T]he court rules do not allow for an attorney fee award to include fees generated by a legal assistant who, rather than doing legal work under the supervision of a lawyer, is performing run-of-the-mill clerical work."¹⁹ The legal assistant's work must be that which has traditionally been done by an attorney.²⁰ "Because wages of legal assistants are considered fixed and MCR 2.626 does not indicate otherwise, an award for the time and labor of legal assistants' fees cannot exceed the actual charge."²¹

For paralegal fees the court should ask if the work was sufficiently complex to justify the efforts of a paralegal, as opposed to an employee at the next rung lower on the pay-scale ladder. To qualify, the evidence must establish: (1) that the legal assistant is qualified through education, training, or work experience to perform substantive legal work; (2) that substantive legal work was performed under the direction and supervision of an attorney; (3) the nature of the legal work that was performed; (4) the hourly rate being charged for the legal assistant; and (5) the number of hours expended by the legal assistant.²²

An example in which legal assistant fees were approved can be found in *L&M Brikho's Market, Inc v Emerson-Prew Inc*, where the paralegal's

activities included a telephone conference with an expert witness and review and analysis of the file, the court saying the work would otherwise, in the absence of the paralegal, be performed by the attorney.²³

If legal assistant fees are challenged, the proponent must establish the legal assistant meets the criteria stated in MCR 2.626. Failure to do so will result in their rejection.²⁴ Simply arguing a legal assistant meets the criteria is not sufficient; there must be either live testimony or admissible documentary evidence.²⁵

What about sole practitioners who do not have an employee and are obligated to do the activities listed above? Should they charge the same fee as when legal tasks are being performed? Probably not.

It is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work that can often be accomplished by non-lawyers but that a lawyer may do because he has no other help available. Such non-legal work may command a lesser rate. Its dollar value is not enhanced just because a lawyer does it.²⁶

Being aware of proper legal, paralegal, legal assistant, secretarial and clerical charging is the safest way for fees being sustained and not reduced or eliminated if later challenged.

Sheldon G. Larky is a West Bloomfield ADR provider. Larky acts as a fee dispute arbitrator for the Attorney Grievance Commission and as an expert witness for justification in legal fee matters. For the State Bar of Michigan, he is a member of the Standing Committee of the Client Protection Fund, a member of the Representative Assembly and a representative to the American Bar Association's House of Delegates.

ENDNOTES

1. *Missouri v Jenkins*, 491 US 274, 299, n 10; 109 S Ct 2463; 105 L Ed 2d 229 (1989) (quotation marks and citation omitted).
2. *B & G Mining, Inc v Director, Office of Workers' Compensation Programs*, 522 F3d 657, 666 (CA 6, 2008).
3. *In re Meese*, 907 F2d 1192, 1203 (CA DC, 1990).
4. *Nadarajah v Holder*, 569 F3d 906, 921 (CA 9, 2009).
5. *Lilly v City of New York*, 934 F3d 222, 234 (CA 2, 2019).
6. *McKenna v City of Philadelphia*, 582 F3d 447, 457 (CA 3, 2009).
7. *Miller v Kenworth of Dothan, Inc*, 117 S Supp 2d 1247 (MD Ala, 2000).
8. *In re Armored Car Antitrust Litigation*, 472 F Supp 1357 (ND Ga, 1979).
9. *Hall v Lowder Realty Co*, 263 F Supp 1352, 1365 (MD Ala, 2003).
10. *Id.*
11. *Id.*
12. *Segovia v Fuelco Energy LLC*, memorandum opinion and order of the United States District Court for the Western District of Texas, issued May 28, 2021 (Case No. SA-17-CV-1246-JKP).
13. *Meadows v Latshaw Drilling Co, LLC*, memorandum opinion and order of the United States District Court for the Northern District of Texas, issued Jan 21, 2020 (Case No. 3:15-CV-1173-N).
14. *Trotter v Columbia Sussex Corp*, order of the United States District Court for the South-

ern Division of Alabama, issued Jan 29, 2010 (Case No. 08-0412-WS-M), slip op at 17.
 15. *Minter-Smith v Mukasey*, order of the United States District Court for the Southern District of Mississippi, issued May 22, 2008 (Case No. 3:03CV1-1057-DPJ-JCS)
 16. *Martin v Mabus*, 734 F Supp 1216, 1226 (SD Miss, 1990).
 17. *Caplin & Drysdale Chartered v Babcock & Wilcox Co*, 526 F3d 824, 828 (CA 5, 2008).
 18. *BJ's & Sons Constr Co v Van Sickle*, 266 Mich App 400, 411; 700 NW2d 432 (2005); *Mayer v Gregerson*, unpublished per curiam opinion of the Court of Appeals, issued June 26, 2018 (Docket No. 336850), slip op at 4.
 19. *Mayer*, *supra* n 18 at 5.
 20. *Joerger v Gordon Food Serv, Inc*, 224 Mich App 167, 182; 568 NW2d 365 (1997).
 21. *RVP Dev Corp v Furness Golf Const, Inc*, unpublished per curiam opinion of the

Court of Appeals, issued Aug 3, 2024 (Docket Nos. 241125 and 241126), slip op at 10.
 22. *Joerger*, *supra* n 20 at 82-183, quotation marks and citations omitted.
 23. *L&M Brikho's Market, Inc v Emerson-Prew, Inc*, unpublished per curiam opinion of the Court of Appeals, issued Nov 13, 2007 (Docket No. 269806), slip op at 5.
 24. *Martin v Martin*, unpublished per curiam opinion of the Court of Appeals, issued May 20, 2021 (Docket No. 352210), slip op at 7.
 25. See, e.g., *Wexford Parkhomes Condo Ass'n v Kajma*, unpublished per curiam opinion of the Court of Appeals, issued Feb 6, 2020 (Docket No. 345611); *Farming-ton Square Condo Ass'n v Mitan* (Mitan II), unpublished per curiam opinion of the Court of Appeals, issued August 11, 2025 (Docket No. 366946) slip op at 12-13.
 26. *Johnson v Georgia Hwy Express, Inc*, 488 F2d 714, 717-718 (CA 5, 1974).

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MICHIGAN LAWYERS **IN HISTORY**



Jacob M. Howard

BY CARRIE SHARLOW

Did you know that U.S. Sen. Jacob M. Howard — a man who worked closely with Abraham Lincoln to craft the 13th Amendment, was the source of a key phrase in the citizenship clause of the 14th Amendment and helped lead the adoption of the 15th Amendment — wore a size 7¾ hat?¹

This particularly random fact is included in Robert Ross' biographical sketch of Howard in *The Early Bench and Bar of Detroit: From 1805 to the End of 1850*. Also noted were Howard's height (5 feet 11 inches), weight (just over 200 pounds), chest circumference (44 inches), eye color (hazel), hair color (blue-black), and the presence of a "prominent Roman nose."²

By the time Howard was floor manager for the 14th Amendment in May 1866, his hair was probably more gray than blue-black, and, given that he had been in the Senate for the majority of the Civil War, he'd probably lost some of those 200 pounds. It had been a long road up to that point. Frankly, it was remarkable that Howard was representing Michigan in the Senate at all.

When Howard left his native Vermont in his late 20s to travel west, his planned destination was St. Louis, Missouri. Michigan Territory wasn't even on his radar, but for some reason, he ended up in Detroit. Perhaps it emerged as a natural terminus; perhaps he ran out of money; or perhaps the chance to study law with famed Gen. Charles Larned, who, like Howard, was a graduate of Williams (Mass.) College, was too good to pass up.³ Howard had initially studied law at Williams and later apprenticed with a New England attorney.⁴ In Detroit, he completed his legal studies and was subject to "a severe examination, lasting three days."⁵ Upon successfully passing the bar, he threw a party.⁶

Howard joined a robust legal community. The volume of *The Transactions of the Supreme Court of the Territory of Michigan* covering the 11 years from 1825-36 lists more than 50 attorneys practicing before the territorial court at various points during that span.⁷ There are legends like Henry T. Backus (hat size 8),⁸ who eventually became a judge in the Arizona Territory, and William A. Fletcher, who later became the first chief justice of the Michigan Supreme Court.⁹ Of course, Howard is there as well, serving as attorney in 11 cases before the

Supreme Court in a two-year span, covering everything from divorce to foreclosure to counterfeiting to property seizure.¹⁰

Shortly after Michigan achieved statehood, Howard entered politics. He was elected to the state House of Representatives in 1838, where he served with Kingsley S. Bingham, who beat him in the election to become house speaker.¹¹ Howard would later replace Bingham in the U.S. Senate. As a state representative, Howard served on the judiciary, education, banks and incorporations, and enrollment committees and was a member of Gov. Stevens T. Mason's select committee on the state geological survey.¹²

In 1840, Howard was elected to the U.S. House of Representatives and served one term before returning home. Throughout his political ventures, he continued to practice law and was wellknown as an excellent lawyer. Years later, it was noted that "he gained many a verdict which never could have been secured by ordinary members of the bar."¹³ That's not to say he always won; he lost in *Bacon v. The County of Wayne*,¹⁴ a case involving a colleague who was stiffed by the county on a payment after it appointed him as counsel for an indigent client, the focus of a previous article in this series.

Howard did win in *Timberlake v. Osborn*,¹⁵ at least in a roundabout way, which was arguably the most important case of his early career. Given that Michigan was a free state and Detroit was a station on the Underground Railroad, it was just a matter of time before a case regarding the fugitive slave law arose in Michigan courts. Though several other attorneys and states were involved, the chief participants were Thornton Timberlake, a Kentucky slaveholder, and Josiah Osborn, a Michigan man who helped the enslaved individuals escape,¹⁶ a situation mirroring the greater division across the country. The case ended with a split jury, the judge declared a mistrial, and the matter against Osborn was eventually dismissed.¹⁷

Howard's views on slavery were well-known. In fact, the Detroit Daily Free Press published an article in 1840 proclaiming "Jacob M. Howard an Abolitionist" and quoted Howard's support of both the *Emancipator Journal* and the "power of Congress to abolish slavery in the District of Columbia and in the Territories."¹⁸ Eventually Howard abandoned the Whig Party and — along with legis-

lative colleague Austin Blair (who wore a size 7¼ hat) — became involved in the creation of a new party focused on anti-slavery and abolitionist matters. It's said that Howard even came up with the name for the new party: the Republican Party.¹⁹

The following year, Howard was elected to serve as state attorney general; over a six-year tenure in office, he would go before the Michigan Supreme Court nearly 40 times. In 1858 alone, he argued before the high court on 14 occasions — several murder cases, a matter of judicial salary, money counterfeiting, and marriage in “the prohibited degrees of consanguinity.”²⁰ Like before, he didn't always win, but he was “always devoted to his clients, yet never unfair toward an opponent; well prepared on the law and the facts of his cases, he was second to no one at the bar as an effective advocate and convincing lawyer.”²¹ He was “famous for the integrity of his character” and known as a “sincere man, who would not, and even could not, feign a sentiment he did not feel.”²²

Howard's last case before the Michigan Supreme Court as attorney general involved a judicial vacancy. The case was heard and decided May 1, 1861, less than a month after the first shots of the Civil War were fired at Fort Sumter, a few days before President Lincoln (who famously wore a size 7½ hat) called for troops to defend the Union, and five months before Sen. Kinsley Bingham's unexpected death.

While considering options for Bingham's replacement at a time of great upheaval, officials in Lansing reminded people that “Howard has proved himself to be a self-possessed, clear, calm, and solid man — one whom the lust of office, nor the fear of mortal can swerve from his conscientious convictions of Right and Justice.”²³ Howard was elected and arrived in Washington, D.C., in early 1862. The events of the next decade required his legal expertise and capabilities as “an effective advocate and convincing lawyer.”²⁴

Jacob M. Howard died on April 2, 1871. His role in history was secure. He helped found a new political party, presided over the impeachment of President Andrew Johnson, played an important role in amending the U.S. Constitution, and assisted in ending slavery.

In preparation for his eventual death, he drafted his will in the winter of 1868, at the height of Reconstruction and about six months after the 14th Amendment had been ratified. The first thing he mentioned as his legacy to his children was his “law books [and] law papers,” which he left to them so they might succeed in the “honorable profession” of law and achieve a “higher fame” than him.²⁵

He also left them his hats.²⁶

Special thanks to Professor John Mogk for his assistance in review and revisions.

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

ENDNOTES

1. Ross, *The Early Bench and Bar of Detroit: From 1805 to the End of 1850* (Detroit: Joy & Burton eds, 1907).
2. *Id.* at 89.
3. “In his day Charles Larned was the most popular citizen in Detroit.” He himself studied law under the brilliant Henry Clay before moving to Detroit during the War of 1812. He was chums with Lewis Cass, served as the Michigan territory U.S. attorney, Wayne County Probate judge, Ross. *Id.* at pp 113-116.
4. *Id.* at 89.
5. *Id.*
6. Blume, *Transactions of the Supreme Court of the Territory of Michigan, 1825-1836* (Ann Arbor: University of Michigan Press, 1940), p 41.
7. *Id.*
8. Ross, *supra* n 1 at p 17.
9. *Id.*
10. Blume, *supra* n 6 at p 41.
11. 1838 House Journal 10.
12. 1838 House Journal 37-38.
13. *Death of Hon. Jacob M. Howard*, The Grand Traverse Herald (April 13, 1871).
14. *Bacon v Wayne Co*, 1 Mich 461 (1850).
15. *Timberlake v Osborn*, opinion of the United States 7th Circuit Court for the District of Michigan (Issued Jan 10, 1849) <<https://catalog.archives.gov/id/12562895?objectPage=2>>.
16. Chardavoyne, *The United States District Court for the Eastern District of Michigan: People, Law, and Politics* (Detroit: Wayne State University Press, 2012), p 45-46.
17. *Id.* at p 46.
18. *Jacob M. Howard an Abolitionist*, Detroit Daily Free Press (October 6, 1840), p 2.
19. Ross, *supra* n 1 at p 90.
20. *People v Jenness*, 5 Mich 305 (1858).
21. Howard, *In Memoriam: Jacob M. Howard of Michigan* (Washington, DC, 1906), p 14 <<https://archive.org/details/inmemoriamjacob00howagoog/page/n14/mode/1up>>.
22. *Hon. Jacob M. Howard: The Last Earthly Rites of the Dead Senator*, Detroit Free Press (April 08, 1871), p 1.
23. *The Senatorial Question*, Lansing State Republican (December 4, 1861), p 2.
24. Howard, *supra* n 21.
25. Howard, *Probate Estate Packets 6353-6400, 1797-1901*, Probate Court Wayne County, Michigan, US Wills and Probate Records, 1784-1980, p 1 (Accessed via Ancestry.com).
26. *Id.* at p 2 of the will: “I also give to them all the household furniture and plates I may leave, and all my wearing apparel, bedding, clothing, pictures, pamphlets, tools and implements of all kinds...”

BOOK REVIEW

The Containment: Detroit, the Supreme Court and the Battle for Racial Justice in the North

REVIEWED BY JOHN R. RUNYAN



Desegregation is not and was never expected to be an easy task. Racial attitudes ingrained in our Nation's childhood and adolescence are not quickly thrown aside in its middle years. But just as the inconvenience of some cannot be allowed to stand in the way of the rights of others, so public opposition, no matter how strident, cannot be permitted to divert this Court from the enforcement of the constitutional principles at issue in this case. Today's holding, I fear, is more a reflection of a perceived public mood that we have gone far enough in enforcing the Constitution's guarantee of equal justice than it is the product of neutral principles of law. In the short run, it may seem to be the easier course to allow our great metropolitan areas to be divided up each into two cities—one white, the other black—but it is a course, I predict, our people will ultimately regret. I dissent.
Milliken v. Bradley, 418 US 717, 814-815 (1974) (Marshall, J., dissenting)

On April 7, 1970, the Detroit Board of Education took the courageous step of adopting a voluntary integration plan. The so-called “April 7 plan” was both surgical and ingenious. It would have brought about meaningful integration of a dozen racially identifiable high schools by simply changing the elementary or junior high school feeder patterns, affecting only 9,000 out of the District’s 300,000 students. No elementary or junior high students would have been involved; moreover, the plan would have been implemented incrementally — only students entering the 10 grade would have been integrated in September 1970, those entering the 10 and 11 grades during the second year of the plan, and finally, by the 1972-73 school year, all high school classes would have been integrated.

However, the Michigan legislature, which had prompted adoption of the April 7 plan by mandating the Board decentralize gover-

Written by Michelle Adams

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Hardcover | 528 Pages | \$35.00

nance of the Detroit Public Schools, exercised its constitutional authority over local school districts like Detroit's by enacting Act 48 of the Public Acts of 1970, signed by Governor Milliken on July 7, 1970, which effectively barred implementation of the April 7 voluntary integration plan. Indeed, Section 12 of Act 48 went further, providing that "(i)n reviewing, confirming, establishing or modifying attendance provisions the first class school district boards established under the provisions of this amendatory act shall have a policy of open enrollment and shall enable students to attend a school of preference but providing priority acceptance, insofar as practicable, in cases of insufficient school capacity, to those students residing nearest the school and to those students desiring to attend the school for participation in vocationally oriented courses or other specialized curriculum."

These events triggered the litigation that is the subject of Michelle Adams' comprehensive new book *The Containment*, which chronicles the Detroit school desegregation case from start to finish. The product of 10 years of research and writing, Adams' book is not only rich in detail with respect to every stage of the litigation but places those events in their historical and philosophical contexts: from Jim Crow to *Brown v. Board of Education*; from the nonviolent *satyagraha* of Mohandas Gandhi to Martin Luther King's "soul force" to the "Clash in Midtown" between Black Nationalist Albert Cleage and future Board President Abraham Zwerdling, an outspoken integrationist; from the 1967 civil unrest in Detroit to the report of the Kerner Commission; from the construction of the Birwood Wall in northwest Detroit to the presidential candidacy of segregationist George Wallace; from the ascendancy of Irene McCabe to the Pontiac bus bombings; from King's assassination to the passage of the Fair Housing Act; and from the school desegregation case in Richmond, Va., to a similar case in Wilmington, Del.

Adams' book explores the difficulty of transporting the *Brown* decision to segregated school districts in the north and the tragedy of the Supreme Court's decision 20 years later, which effectively ensuring continued segregation of both schools and neighborhoods in metropolitan areas like Detroit's. Unlike the county-wide school districts in the south, school districts in the north were small and fragmented, often gerrymandered to include property that could augment a district's tax base. The Supreme Court's decision to cabin desegregation plans to a single district except in the most egregious circumstances therefore brought to a halt most efforts to bring about meaningful desegregation of the nation's major metropolitan areas.

Adams' book is not only exceedingly well researched but carefully written. She traces the evolution of Justice Warren Burger's opinion for the majority from his initial draft, attacking the Dis-

trict Court's supposed preoccupation with racial balance, to later drafts reflecting his majority colleagues' view that suburban school districts could not be included in a desegregation remedy where the constitutional violation took place solely within the city. Adams correctly emphasizes the fallacy of this argument on the record before the District Court, where (1) the State of Michigan's enactment of Act 48 was central to the constitutional violation found by the District Court; and (2) under Article VIII of the Michigan Constitution of 1963, "education in Michigan belongs to the State" and (t)he school district is a State agency." Accordingly, contrary to the majority opinion, the record evidence before the District Court met the very standard that the majority enunciated as the predicate for interdistrict relief: "Specifically, it must be shown that racially discriminatory acts of the State or local school districts, or of a single school district have been a substantial cause of interdistrict segregation."¹

In her epilogue, Adams returns to the city of her birth and laments the current state of Detroit. She compares the city with metropolitan Louisville, Ky. One of the few jurisdictions in which plaintiffs were able to meet *Milliken's* almost impossible standard for obtaining interdistrict desegregation. In the early 1970s, both Louisville and Detroit had roughly the same number of Black and white students in their school systems and similar levels of neighborhood and school segregation. However, after desegregation, the combined Louisville-Jefferson County School District and Detroit were on very different trajectories:

While Detroit's schools were falling further into decline, the combined [Louisville] school district boasted some of the nation's most racially integrated schools, and its school and regional population rose. Louisville enjoyed a high-quality bond rating, its neighborhoods became more racially integrated, and the tax base and job opportunities expanded....Black students in Louisville performed much better—sometimes two to three times better—on reading, math, and science tests at both the fourth- and eighth-grade levels than black students attending school in Detroit. The metropolitan school desegregation plan also had a synergistic effect on housing, promoting stable residential integration. Louisville was so enamored with metropolitan desegregation that it kept the plan in place even after a federal court said it was no longer legally required to do so.²

Moreover, research has shown that these gains did not come at the expense of the educational achievement of white students. To the contrary, research has shown that white as well as Black students benefit from being educated in racially and socioeconomically integrated schools. As Adams points out, racially diverse schools

facilitate cross-racial friendships, which reduce prejudice based on biased stereotypes. She also cites research showing that white students who have attended racially diverse schools routinely report a better understanding of different viewpoints and enhanced cultural competency, leading them to seek out diverse colleges, work environments and neighborhoods later in life.

Milliken v. Bradley was an inflection point in school desegregation jurisprudence, and Michelle Adams has written the definitive work on the subject. Those of us who live in the Detroit metropolitan area owe her a debt of gratitude for laboring for over a decade to help us revisit that tumultuous time in our history and to imagine how our lives might be different today, 50 years later, if just one more justice had envisioned the long-term consequences of the Court's decision.

ENDNOTES

1. *Milliken v. Bradley*, supra at 746.

2. *The Containment*, supra at 385. Sadly, as Adams notes, a few disaffected white parents later successfully sued to kill the Louisville metropolitan desegregation plan which the school districts defended all the way to the Supreme Court. See *Parents Involved in Community Schools v. Seattle School District*, 551 US 701 (2007).



John Runyan served as law clerk to United States District Judge Stephen J. Roth, who presided over *Bradley v. Milliken*, the Detroit school desegregation case. He is a recipient of the SBM John W. Cummiskey Pro Bono Award, the SBM Labor and Employment Section's Distinguished Service Award and the Federal Bar Association's Cook Friedman Civility Award. Runyan currently serves as chair of the SBM standing committee that oversees publication of the *Michigan Bar Journal*.



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ALTIOR LAW

PLAIN LANGUAGE

Some points of punctuation

BY JOSEPH KIMBLE

I've recently finished editing an anthology called *Gems from The Scribes Journal of Legal Writing—Volumes 1–20*. The *Scribes Journal*, founded in 1990, was the first scholarly journal devoted exclusively to better legal writing. There were three chief editors for the first 20 volumes: Bryan Garner (volumes 1–7), me (volumes 8–14), and Mark Cooney (volumes 15–20). Each of us is (or tries to be) punctilious about formatting, usage, and style.

While editing the anthology, I was reminded of some of the punctuation guidelines that the *Journal* adheres to — perhaps not invariably over time, but certainly in almost all instances. And I thought that a handful of them might be of interest to readers of this column. Of course, these are only some of the many punctuation choices that any writer needs to make.

All the bulleted examples below are from the anthology. (I'll forgo the citations.)

—Don't use a comma after a sentence-starting conjunction. When you start a sentence with *And*, *But*, or *So* — as you should with some regularity — don't follow with a comma. Using one after *So* seems especially common, perhaps because Word's style-checker highlights it as a possible error. But they are all the same part of speech — coordinating conjunctions — so they should all be treated the same.

- And using more words often makes things more ambiguous.
- But perhaps things are changing.
- So here are the studies, which you can read and assess for yourself.

—Normally, use a comma after an introductory word or phrase, even a short one. The comma provides a structural cue to the reader that the main clause, the independent clause, is probably coming up.

- In formal legal writing, occasional colloquialisms may give the prose variety and texture; in moderation, they are entirely appropriate, even in judicial opinions.
- With that, I rest my case.
- In law school, one of my favorite professors taught me that when I write, I should communicate effectively, not sound like a lawyer.

But this is not a hard-and-fast rule. Sometimes (as in this sentence) you might not want the very brief pause that the comma provides. For consistency, though, and to avoid having to decide in each instance, consider using the comma virtually every time.

—Hyphenate phrasal adjectives, also called compound adjectives. Probably no legal journal anywhere is as fastidious about this as the *Scribes Journal*. Some authorities would not hyphenate common compounds like *real estate* (as in *real estate contract*) and *law school* (as in *law school curriculum*), because readers will easily grasp them as a unit.¹ But we think writers should not have to decide with each one how well established it is or whether a hyphen is needed to prevent a possible miscue. (There are standard exceptions for *-ly* adverbs (*highly regarded attorney*), proper nouns (*New York style*), and foreign phrases (*in camera proceedings*).)²

- That distinction is now embedded in law-school legal-writing programs.
- Here are some lists of plain-English principles from the advocates.
- A credit-card account was once covered by a page, but now by about 25.

—Don't hesitate to use contractions. Some legal journals still frown on contractions, but we think they contribute to the relaxed, conversational, readable, idiomatic style that the *Scribes Journal* aims for. We use them liberally.

"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.

- Such an opening can't possibly advance the client's cause.
- When I'd finished, I was sure that I'd done my duty.
- It's actually mild when compared with what writers do when coupling parentheticals with citations.

—Normally, don't capitalize the first word after a colon. (Obvious exceptions: the first word is a proper noun or a quoted sentence.) Again, some authorities would capitalize if what follows the colon is an independent clause, but our practice is generally not to.

- Now for the good news: things are slowly but steadily changing.
- The quotation that opened this piece carries a subtle message: to succeed at consumer drafting, you may have to think like an advertising copywriter.
- The evidence is overwhelming: plain language, taken as a whole, is more clear and comprehensible than legalese.

—Use em-dashes liberally. As I've recently said in this column: "[An em-dash] can be used to provide structure to a lengthy sentence, to tuck an aside in the middle, to add emphasis, or to do any combination of these. What it sets off may explain, expand on, qualify, clarify, or restate — almost anything, really."³ Legal writers should make greater use of it than they tend to do.

- But the effect of addressing one's documents primarily to some mythical judge — and not the ordinary person on the street — is that the meaning becomes more obscure to judges and lawyers as well as to ordinary people.
- We ought to be drafting "workable" documents — contracts, say, that our clients can both understand and apply in everyday life.
- All writing — even the best — can benefit from good editing.

—Use en-dashes — the shorter dashes — in their proper places. Bryan Garner nicely summarizes the three primary uses of the en-dash: (1) in spans from one date, page, or amount to another (e.g., the Great Depression, 1929–1939); (2) in scores and votes (e.g., the Tigers won, 6–3); and (3) with items of equal weight (as in the

examples below).⁴ Although some authorities and publications allow a hyphen in these circumstances, the *Scribes Journal* keeps the en-dash.

- There is inherent interest in a car–pedestrian collision on a foggy evening.
- It can be tricky to champion an American Fortune 500 company over the little guy in the typical David–Goliath showdown.
- The Dunning–Kruger effect in action: "lawyers on the whole . . . have no clue that they don't write well."

—Use slashes sparingly. Although the slash has several limited uses (in alternatives like *either/or*, for instance),⁵ it is rarely called for or used in the *Journal*. In particular, we don't use the much-maligned *and/or* or *he/she*.⁶

Consider these eight recommendations the next time you sit down to write.



Joseph Kimble taught legal writing for 30 years at Cooley Law School. His fourth and latest book is *Essentials for Drafting Clear Legal Rules* (with Bryan Garner). He is a senior editor of *The Scribes Journal of Legal Writing*, editor of the Redlines column in *Judicature*, and a drafting consultant on all federal court rules. He led the work of redrafting the Federal Rules of Civil Procedure, Federal Rules of Evidence, and Michigan Rules of Evidence. In 2023, he won a Roberts P. Hudson Award from the State Bar of Michigan. Last year, he won the Golden Pen Award from the Legal Writing Institute.

ENDNOTES

1. See, e.g., Sabin, *The Gregg Reference Manual* (New York: McGraw–Hill, 11th ed, 2011), p 265.
2. For more on this point, see Cooney, *Are You a Hyphen-Happy Lawyer?*, 90 Mich B J 38 (May 2011).
3. Kimble, *The Wonderfully Versatile Em-Dash*, 104 Mich B J 40, 40 (June 2025).
4. Garner, *The Redbook: A Manual on Legal Style* (Eagan: West Academic, 5th ed, 2023), pp 45–47.
5. See *id.* at 62.
6. See *id.* at 61 (calling them "grammatical abominations").

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Accessibility for all?

BY JESSICA PASQUALE

There are new Americans with Disabilities Act requirements for state and local governments, so as employees of the University of Michigan, my colleagues and I have been preparing to meet them for over a year.¹ Recently, I began wondering about the accessibility of websites for law firms in Michigan, so I conducted a brief and informal survey of randomly selected firms based on affiliations listed in the State Bar of Michigan's 'Find a Lawyer' directory.² I ran each site through the automated tool offered by AccessibilityChecker.org and found that 100% of the sites I checked were rated as noncompliant with the new web accessibility standards.³ In addition to that, consider the fact that in Michigan at least 14.5% of the population lives with a disability.⁴ Since it's likely that lawyers will be representing clients in cases related to the inaccessibility of state and government web content, doesn't it seem reasonable for the websites of the firms representing them to meet those standards as well?

THE NEW STANDARDS

Last year's changes to Title II of the ADA mean that web content and mobile apps provided by state and local governments must soon meet WCAG 2.1 AA standards.⁵ WCAG, or Web Content Accessibility Guidelines, are a set of internationally agreed-upon recommendations published by the Web Accessibility Initiative (WAI) and the World Wide

Web Consortium (W3C).⁶ The version (2.1) and level (AA) detail specific conformance standards and outline the technical requirements content must meet to be considered accessible.⁷ Accessibility, in this context, means ensuring there are no barriers to interacting with or accessing web content, specifically for people with disabilities, including, but not limited to, visual or auditory disabilities, motor/mobility impairments, and cognitive or intellectual disabilities.⁸

PICTURE THIS

Let's say someone has a temporary disability, such as a broken arm and wrist, which they sustained in a car accident, and they're looking for an attorney on your firm's website. If the broken arm and wrist are on their dominant side, they would likely have a hard time navigating a website without help. They may not know they can use assistive technology to read webpages for them, or maybe they can't afford to purchase that software.⁹ Instead, they might spend hours trying to learn to use a mouse with their non-dominant hand or clicking the tab or arrow keys to try and move up and down a webpage, only to become frustrated because the navigation menu isn't designed in a way to make this possible.¹⁰ How long do you think it would take this person before they gave up and went to a website for a different law firm? How long would it take you?

THAT'S NOT ALL

It's not just your website that needs to be accessible. One of the most frequently used document types in any workplace, the PDF, also requires some additional steps to be truly accessible.¹¹ Headings, a table of contents, and bookmarks are just a few of the navigation elements that sighted people often don't think about adding but which are immensely helpful for anyone using a screen reader.¹² What about online forms? Maybe your firm uses one to gather potential client data. That's another type of web content that is often not truly accessible to screen readers or people navigating a webpage without the use of a mouse.¹³ When you add it all up, if most of the web content for your law firm isn't accessible, it can create additional (and preventable) barriers to equal access to justice for your current and potential clients, something all lawyers have an ethical obligation to avoid.¹⁴

EQUAL OPPORTUNITIES

Making web and mobile content accessible benefits not only individuals, but businesses and society at large.¹⁵ This means one could easily make a business case for accessibility. Both Apple and Google already did. Since the early 2000s they've each spent time focusing on enhancing different products for users with disabilities.¹⁶ Research has shown that companies that integrate accessibility are more likely to inno-

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vate and reach more people.¹⁷ Now, most Michigan law firms aren't competing on a global scale like Apple or Google, but that doesn't mean reaching these accessibility standards is out of reach. There are many services that can evaluate your content and provide recommendations and/or fixes.¹⁸ Something to keep in mind, however, is that although automated tools like the one I used to conduct my experiment can quickly identify straightforward technical issues, they can't address fixes that require human judgment, such as whether the flow of navigation menu items is logical, or the clarity of error messages in an online form.¹⁹

WILL YOU BE AN A11Y?20

Now that you're aware of the barriers inaccessible web content can create, what can you do? Your best course of action is to talk to the person or team in charge of your firm's web content about what can be done to make it accessible. You can let your clients know that you're aware of the standards and what action steps you will be taking to meet them. You can make a point to continue to monitor changes to the Web Content Accessibility Guidelines and evolve along with them. Ultimately, unless you generate web content for a state or local government body or court, you don't have to do any of this. But I hope you will. I hope you strive to meet these standards and make your corner of the web more usable, for everyone.

Jessica Pasquale is the Assistant Director for Scholarly Publishing and Information Services at the University of Michigan Law Library.

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BEST PRACTICES

The law in the movies

BY GERARD V. MANTESE AND BRIAN P. MARKHAM

The legal profession is a high-stakes world with no shortage of drama and intrigue. Attorneys regularly deal with matters of high import for their clients. Personal rights and freedom. Personal livelihood. The public welfare. Big-money corporate battles. Even life and death.

It is no wonder that courtroom dramas make for some of the most compelling cinema. Movies like *12 Angry Men*, *Primal Fear*, *The Firm*, and *The Rainmaker* have riveted audiences for decades.

As Oscar Wilde famously observed, “Life imitates art far more than art imitates life.”¹ There is truth to this in the practice of law; the hyperbole of high drama in film can make stark that which we might miss in our more nuanced day-to-day practice. Lawyers can draw inspiration from the movies, as movies explore people’s experiences and how the law intersects their lives. Finding inspiration in the arts allows for new perspectives and unique approaches to helping clients. Studying movies can activate a lawyer’s creativity and assist in achieving a client’s goals even more effectively.

The following movies are examples of how films give insight into the actual impact that the legal system can have in business, in fortunes, and in life.

THE SOCIAL NETWORK

In the following scene from *The Social Network*, characters Mark, Cameron, Tyler, and Divya discuss forming a business relationship to create a social networking website:

CAMERON: *We’d love for you to work with us, Mark. I mean, we need a gifted programmer who’s creative.*

TYLER: *And we know you’ve been taking it in the shins.*

DIVYA: *The women’s groups are ready to declare a fatwa, and this could help rehabilitate your image.*

MARK: *Wow. You’d do that for me?*

DIVYA: *We’d like to work with you.*

CAMERON: *Our first programmer graduated and went to work at Google. Our second programmer just got overwhelmed with schoolwork. We would need you to build the site and write the code and we’ll provide —*

MARK: *I’m in.*

CAMERON: *— the money. What?*

MARK: *I’m in.*

TYLER: *Awesome.*²

Despite this agreement, Mark delays working on the project to secretly create his own website, Facebook. Mark’s website goes on to become wildly successful, and he excludes the others from the business.³

This hallway discussion is filled with legal implications. Was it enough to form a partnership? As in many states, Michigan law defines a partnership as “an association of two or more persons, which may consist of husband and wife, to carry on as co-owners a business for profit.”⁴ Partnerships may be formed by express, written agreements, which clearly define the partners’ roles, rights, and duties. They also may be formed by oral agreement. Or, partnerships may be implied from the parties’ conduct, even if the parties never used the word “partner” or “partnership” to describe their relationship.⁵

Lesson: When possible, formalize your business relationship in writing. Doing so can avoid major implications down the road,

such as the billion-dollar legal dispute dramatized in *The Social Network*. But even if your partnership is not memorialized in writing, you should investigate whether the parties nonetheless created a partnership by their conduct.

WOMAN IN GOLD

*Woman in Gold*⁶ is the fascinating movie about Maria Altmann's legal efforts to retrieve Gustav Klimt's famous painting, *Woman in Gold*. Altmann, herself an artist, battled the Austrian government for a decade to reclaim Klimt's iconic painting of her aunt, which the Nazis stole from her relatives in Vienna at the onset of World War II. She first sued the Austrian government in 2000 in federal court in Los Angeles. However, after defeating a motion to dismiss, she and the Austrian government agreed to arbitration in Austria in 2005, at which Altmann prevailed in 2006. *Woman in Gold* now sits in the Neue Gallery in Manhattan.

Lesson: Choose your venue wisely. Which state to file in? State court or federal court? Arbitration or litigation? Altmann's decision to switch to arbitration in Austria was a gutsy move, as she gave up home court advantage. However, arbitration can be quicker and less costly — but not always — and here, it led to a just result.

OPPENHEIMER

Oppenheimer,⁷ the dramatic film about the development of the atomic bomb, dramatized a jealous politician's efforts to undermine J. Robert Oppenheimer and his political influence in the runup to the Cold War. In one scene, documents are used against Oppenheimer at a hearing to question his loyalty to the United States. However, these documents had not been shared with Oppenheimer or his attorney beforehand, giving him no opportunity to prepare. Oppenheimer's attorney objected, but the panel ruled that the documents

were top-secret and could not be shared outside the panel members. After the hearing, Oppenheimer was stripped of his security clearance, damaging his reputation and influence.

Lesson: To prepare for events like mediation or trial, attorneys must be able to share almost every document with their clients. Attorneys should obtain all documents beforehand and challenge the improper designation of documents as confidential or attorneys' eyes only (AEO).

Parties often broadly and without basis designate materials as Confidential — or worse, as AEO, so they cannot be shared with clients or experts. This requires motion practice to undo and causes increased expense and loss of time.⁸ The author has seen numerous instances of counsel improperly designating documents and then, later in the litigation, forgetting how sacrosanct the documents allegedly were and attaching them to briefs without hesitation. This shows that the initial designation of the documents as confidential or AEO was improper.

THE SOCIAL NETWORK (AGAIN)

Another riveting scene in *The Social Network* shows Mark presenting Eduardo with documentation to memorialize his 30% ownership interest, which he had been promised for his role as CFO.⁹ Eduardo signs of the agreements without the benefit of counsel and thereafter finds that the documents allowed for infusion of capital and a corresponding dilution of ownership by existing owners. Eduardo finds that Zuckerberg diluted his ownership to less than 1% pursuant to the agreement, which leads to litigation and a settlement.

Lesson: Read all documents carefully and be on guard for dilution clauses. A shareholder agreement or operating agreement may allow



From *The Social Network*, 2010

for capital calls and a corresponding dilution of owners who do not inject more needed capital. However, issuance of capital calls, without a legitimate need to do so — i.e., solely to dilute a fellow owner — can constitute oppression. A party's contractual ability to do something, such as dilute an owner by injecting more capital, does not mean that such a right may be exercised oppressively.¹⁰

THE FOUNDER

*The Founder*¹¹ tells the agonizing story of the creation and development of the McDonald's hamburger empire. It portrays Ray Kroc's manipulative scheme to increase his wealth at the expense of the McDonald brothers. Among other things, Kroc decides to buy the real estate for McDonald's franchises all over the country without sharing the opportunity with the McDonalds. Lacking counsel, the brothers do nothing about it.

The story ends tragically, with Kroc acquiring all intellectual property of the company, such that the McDonald brothers could not even operate their sole remaining hamburger shop — their original McDonald's location — under their own name.

Lesson: Related party transactions, whereby some of the owners establish outside companies that transact business with the company, can be the source of significant abuse that injures the other owners. These transactions must be investigated for oppressive features. Under the doctrine of usurpation of corporate opportunities, certain opportunities must be offered first to the company and disclosed to the other owners before an owner can pursue them personally.¹²

THE HUDSUCKER PROXY

In the cult classic *The Hudsucker Proxy*,¹³ the founder and president of Hudsucker Industries unexpectedly passes away, leaving his controlling shareholding interest for sale to the public pursuant to the company's bylaws. Sensing an opportunity in tragedy, an unscrupulous company director schemes to purchase the controlling interest on the cheap by temporarily depressing the company's stock price. To do so, he promotes a mailroom employee to serve as president. In the ensuing absurdity, we are reminded of how change-of-control events — such as an owner's passing — can result in disputes and upheaval for businesses. This issue is especially salient today as Baby Boomers enter retirement and transfer their businesses to the next generation.¹⁴

Lesson: Business owners must plan for the future. Succession planning considerations include: distribution of shares upon an owner's death; buy-sell life insurance; procedures for an owner to exit a company and obtain liquidity for her shares; dispute resolution for deadlocked owners; tax planning; and estate planning. To this end, there are contractual provisions to consider when drafting a company's governing agreement, such as: buy-sell provisions; shotgun provisions (i.e., an auction procedure for a forced buy-out); valuation provisions; non-compete issues, and restrictions on share transfers.¹⁵



From *The Founder*, 2016

CONCLUSION

Legal disputes lend themselves to fascinating storytelling and make for highly entertaining and compelling movies. But beyond entertainment value, movies often include valuable legal lessons for businesspeople and attorneys. They show how the work we do profoundly affects people's lives and may serve as a portal to creative solutions to clients' issues.



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ETHICAL PERSPECTIVE

Ethical duties of a law firm when a lawyer leaves

BY ALECIA CHANDLER

Leaving a law firm is a little like getting divorced. As professionals, we often spend more time with our coworkers than our own family. So, when the relationship breaks up due to a lawyer leaving the firm, it can take an emotional toll. However, we are professionals and must act in accordance with the Michigan Rules of Professional Conduct. When a lawyer departs, the firm remains obligated to uphold professional standards that prioritize the interests of clients above all else. The Standing Committee on Professional Ethics published the SBM Ethics Guidebook: *Changing Firms: Ethical Responsibilities for Lawyers and Law Firms*.¹ This article focuses on the responsibilities of the firm outlined in the guidebook.

The paramount consideration must be on the client's rights. Neither the law firm nor the departing lawyer "owns" the client; instead, the client has the right to choice of counsel.² Too often, transitions are treated as internal matters. However, the client has the greatest stake in what happens when their lawyer leaves, and the Michigan Rules of Professional Conduct place the client's autonomy, confidentiality, and continuity of service at the center of the firm's duties.

CLIENT NOTIFICATION

Clients must be promptly informed when a lawyer significantly involved in their matter leaves the firm.³ Proactive communication reflects respect for the client's interests and maintains trust during a potentially unsettling time. The failure to notify clients interferes with their right to make informed decisions about their legal representation. MRPC 1.4 and MRPC 1.16(d) require lawyers and firms to keep clients reasonably informed and to take steps to protect client interests upon termination.

Law firms often advise the departing attorney that they cannot contact clients; this is false.⁴ Instead, it is the responsibility of either

the law firm or the departing lawyer, preferably both, to notify the affected clients.⁵ A joint letter is the most ethical approach.

RESPECT FOR CLIENT CHOICE

The lawyer may leave the firm, but the client does not automatically stay or go. Clients have the unfettered right to remain with the firm, follow the departing lawyer, or choose new counsel.⁶ The firm's responsibility is to respect that right, not to influence it.

The Michigan Ethics Opinion RI-86 makes clear that client freedom of choice is paramount, and any effort to impede it is inconsistent with professional obligations.⁷ Firms should communicate with clients and explain the situation, but those communications must not be coercive or misleading. It is improper to lead clients to believe that their matter will be jeopardized if they do not remain with the firm, nor should they be discouraged from reaching out to the departing lawyer for continuity.⁸

CONTINUITY OF SERVICE WHEN THE CLIENT REMAINS WITH THE FIRM

If the client elects to remain with the firm, the firm must ensure that representation continues competently and without interruption. Firms must review affected matters and reassign attorneys who can take over seamlessly. Where possible, outgoing lawyers should help prepare new firm counsel for the handoff. Transitions that leave a matter unattended or assigned to an unqualified attorney risk harming the client and violating ethical duties. MRPC 1.1, the duty of competence, and MRPC 1.3, the duty of diligence, are as applicable during transitions as at any other time.

CONTINUITY OF SERVICE WHEN THE CLIENT LEAVES THE FIRM

When a client elects to follow the departing lawyer or transition to

"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.

a new lawyer, the firm must transfer information from the client's file and any trust funds promptly upon receiving authorization. There is no ethical basis for delay. Holding files hostage is impermissible. MRPC 1.15 governs property handling, while 1.16(d) requires that upon termination, the client's papers and property be surrendered in a timely and cooperative manner. Firm convenience is not an excuse for delay.

The law firm must ensure that all client matters are effectively transitioned. To do so, the firm must provide the departing lawyer with enough information to continue representing the client, including notice of all upcoming hearings, necessary correspondence, and all other parts of the file required to continue representation.⁹ Best practice is to provide the departing lawyer with a full copy of the client file, including notes, to seamlessly continue representation. Firms should retain a complete copy in the event that the client requests a copy¹⁰ until the expiration of the firm's file retention policy¹¹ and in the event of a malpractice claim or Attorney Grievance Commission request for information.

Where there is a valid attorney lien¹² for unpaid fees or costs, the law firm must weigh the rights of the client under MRPC 1.16(d) to determine what may be retained and what must be provided. Ethics Opinion RI-203 provides: "a lawyer may not ethically exercise a retaining lien on client property if the client needs the property to pursue the client's legal rights or when a refusal to turn over the file would prejudice the client's case."¹³

CONFIDENTIALITY MUST REMAIN INTACT

Lawyers have an absolute duty to maintain a client's confidences and secrets.¹⁴ MRPC 1.6 does not pause simply because firm dynamics have changed. The firm and the departing lawyer must ensure that departing lawyers leave with only those materials authorized by the client or necessary to carry out the client's transition. Any sharing of information must serve the client's interest, not internal firm concerns.

PROFESSIONALISM AND CIVILITY

Both the firm and the departing lawyer must avoid disparaging each other in communications with clients, opposing counsel, or the public.¹⁵ Negative framing, insinuations, or exaggerated concerns about a departing lawyer's competence are inappropriate and may also violate MRPC 8.4(c) and 4.1. Similarly, misleading clients to suggest they are better off remaining with the firm undermines informed consent. It is acceptable to explain that a lawyer has left and that the firm is prepared to continue representation. But speculation, judgment, or subtle attacks have no place in that conversation.

There are times when the departing lawyer has engaged in ethical misconduct leading to the departure. In this event, it is still not proper to disparage the departing lawyer. Instead, if the conduct is a significant violation of the rules, that raises a question as to the departing lawyer's honesty, trustworthiness or fitness to practice law, the conduct must be reported to the Attorney Grievance Commission pursuant to MRPC 8.3.

MRPC 5.6: NO RESTRICTIVE COVENANTS

Agreements that restrict a lawyer's right to practice after termination, except in connection with retirement benefits, violate MRPC 5.6, as such restrictions interfere with client autonomy and right to counsel of choice. For example, it is unethical to include financial penalties for servicing former clients of the firm and unreasonably long predeparture notice periods.¹⁶

This also means firms must not retaliate against lawyers who leave and take clients with them. Any attempt to use compensation, bonuses, or firm culture to deter client movement must be measured against this core principle.

ADVERTISING

Advertising may not be false or misleading.¹⁷ Therefore, the timely removal of the departing lawyer from the law firm marketing materials is critical. The firm's website, letterhead and print and video advertising should be timely updated to remove the departing lawyer's name and likeness.

CONFLICTS OF INTEREST AND PROVIDING NECESSARY INFORMATION

Law firms also have a duty to provide the departing lawyer with enough information to identify potential conflicts of interest when a lawyer departs. To facilitate proper conflict checks at the new firm, client-identifying information should be ethically shared.¹⁸ Often, this is a list of all clients for whose matters the lawyer was significantly involved, including opposing parties and necessary witnesses, with enough identifying information to differentiate a client with a common name from another with the same name. For example, John Smith might include the client's middle name, birth date, or other information to differentiate one John Smith from another John Smith.

This exchange should happen promptly to avoid delays in advising clients about their options and ensuring uninterrupted representation. Firms play a critical role in this process by providing sufficient information to departing lawyers and cooperating in good faith to ensure that transitions uphold confidentiality, client choice, and the integrity of conflict rules.

TAKEAWAYS

The client's interest must be at the forefront of representation. Firms should take the following steps for a seamless transition:

- **Notification:** Timely notify impacted clients in writing, preferably via joint letter.
- **Seamless transition:** Obtain enough information from the departing lawyer to continue representation or transition the file appropriately.
- **Conflict Information:** Promptly provide enough information to the departing lawyer to ensure proper conflict checks may be conducted.
- **Do not violate the MRPC or law.** Recently, a number of callers to the ethics helpline who are departing firms have stated that

members of the law firm signed pleadings with the lawyer's name without their knowledge or consent. This is both unethical and improper. Additionally, restrictive covenants are unethical.

- **Advertising:** Remove the lawyer's information and likeness from marketing materials.

Failure to put the client's interest at the core of the decision making when a lawyer leaves a firm frequently leads to requests for investigation filed with the Attorney Grievance Commission and sometimes leads to litigation. Avoid these issues by being civil and focusing on the rights of the clients, not the interoffice dynamics or personal feelings.

CLIENTS' RIGHTS ARE PARAMOUNT

A lawyer's departure may raise complex administrative and emotional issues within a firm. But ethically, the analysis is simple: The client's interests come first. The firm's response must reflect professionalism, preparedness, and adherence to the Michigan Rules of Professional Conduct.

Firms that embrace this approach build trust with both clients and colleagues. They model ethical leadership and demonstrate that even in moments of change, client care remains the top priority.

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

ENDNOTES

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2. MRPC 5.6; State Bar of Michigan, Ethics Opinion RI-86 (May 22, 1991) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-086>.
3. For discussion regarding which clients should be notified, see *Changing Firms*, *supra* n 1.
4. Ethics Opinion RI-49 (May 11, 1990) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-049>.
5. *Id.*
6. Michigan Ethics Opinion RI-86, *supra* n 2.
7. *Id.*
8. See generally MRPC 7.1.
9. Ethics Opinion R-19 (Aug 4, 2000) <https://www.michbar.org/opinions/ethics/numbered_opinions/r-019>.
10. *Id.*; Ethics Opinion R-5 (Dec 15, 1989) <https://www.michbar.org/opinions/ethics/numbered_opinions/r-005>; Ethics Opinion R-12 (Sept 27, 1991) <https://www.michbar.org/opinions/ethics/numbered_opinions/r-012>.
11. *File Retention*, State Bar of Michigan (March 2022) <<https://www.michbar.org/opinions/ethics/recordretention/home>>.
12. *Fee Collection by LEIN Quick-Reference Guide*, State Bar of Michigan <<https://www.michbar.org/file/opinions/ethics/lienchart.pdf>> (last updated November 2016); Ethics Opinion RI-203 (March 29, 1994) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-203>; Ethics Opinion RI-040 (Dec 14, 1989) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-040>.
13. Ethics Opinion RI-203, *supra* n 13.
14. MRPC 1.6.
15. See MRPC 7.1.
16. See Ethics Opinions RI-86, *supra* n 2 and Ethics Opinion RI-245 (Nov 15, 1995) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-245>.
17. MRPC 7.1 *et seq.*
18. *Formal Ethics Opinion 09-455 Disclosure of Conflict Information When Lawyers Move Between Law Firms*, American Bar Association (Oct 01, 2009) <<https://www.americanbar.org/products/ecd/chapter/220017/>>.

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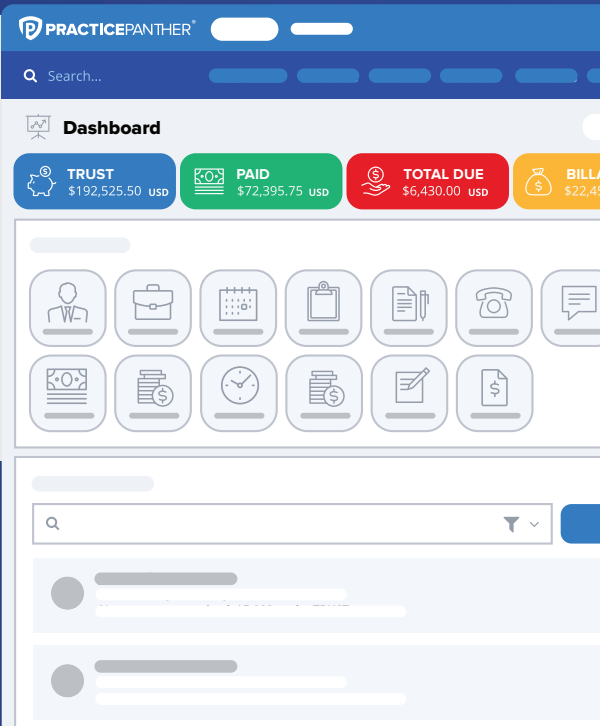


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PRACTICING WELLNESS

Navigating incivility

BY THOMAS J GRDEN

There's a popular theory circulating amongst armchair psychologists that the rise in popularity of social media is actively contributing to a decline in civil discourse, the idea being that the safety of the keyboard empowers people to speak in a way that they might not otherwise in person. No less than the Michigan Supreme Court has taken notice of this trend, and has responded with an administrative order intended to curb the pattern of incivility insidiously seeping into legal communications. This renewed emphasis on civility mirrors the NBA's increased scrutiny of traveling violations:¹ The rules remain unchanged, and their enforcement has now shifted from theoretical to imminent. Unfortunately, some won't get the message.

As you might imagine, we at the Lawyers and Judges Assistance Program (LJAP) have experienced our fair share of boorish behavior. One function of LJAP is to work with lawyers facing some sort of disciplinary action against their license, and it shouldn't surprise anyone that the Venn diagram of lawyers shows significant overlap between those who commit ethical violations and those who ignore their obligation to civility. Some of the highlights include statements such as "I could learn your job in 45 minutes" (spoken to the director), "You're just an assistant" (said to the program coordinator), and my personal favorite, "Not an honest broker," which was written in an angry letter to yours truly. Even though it isn't taken personally, behavior like this needs to be addressed immediately, lest your silence give the offender the idea their behavior is acceptable. Therein lies the tricky part: What do you say to someone who is disrespectful, unreliable, vain or prone to outbursts?

While those statements aimed at LJAP are relatively benign, many lawyers have undoubtedly heard worse. Unfortunately, new court rules and professional conduct standards do a fat lot of good while another person is bellowing, bullying, or boasting. During these encounters with individuals, which I'll call *challenging* (at least until 2030, when the arbiters of language deem it taboo), it's obviously important to maintain composure. Whether client, colleague or supervisor, there are certain lines that shouldn't be crossed. But when they inevitably are, here are some ideas that should inform how you react. The goals of this process are to manage your reactions effectively and discourage the behavior from occurring again.

- 1. Remember it's (usually) not about you.** There's a rule in fiction that the best villains don't view their actions as "bad." Very rarely do real human beings see themselves as cartoon-esque evildoers in the style of Dick Dastardly or the Joker. Even more rarely do human beings endure the rigors of law school with the aspiration of someday committing ethical violations. Unfortunately, the back of this journal stands as proof that these incidents are happening. The reason, more often than not, is that the individual either believes their behavior is justified in the moment or is grappling with underlying issues that make it nearly impossible for them to behave any other way. In any case, with very few exceptions, the problem is them, not you.
- 2. Check in with yourself.** One of the most important skills to develop in the pursuit of well-being is the ability to identify how you're feeling *while you're feeling it*. This is difficult to accom-

plish in relatively benign situations, let alone when you're the target of uncivil behavior. At the very least, try to remember to reflect after the encounter — for example, you might ask yourself, *How did I feel when that happened? What was it about their behavior that made me feel that way?* Indulge your inner wordsmith and be as specific as possible — “mad” and “sad” are hardly precise.

3. **De-escalate the situation.** One important caveat: You don't owe an uncivil person anything, especially if you begin to feel physically unsafe. If you do choose to try, keeping in mind you aren't their real problem, a little empathy can go a long way. It's astounding to watch the wind leave someone's sails the moment they receive the validation for which they're clearly starving. And because validation is so foreign to modern conversation, simple templates such as “You felt ____ because ____” and “You have every right to feel that way” can be used to great effect. Validation done correctly sends the message that you understand without condoning poor behavior.
4. **Follow up.** Not immediately, mind you — only once you're confident both of you have returned to a baseline emotional level. As anyone who has ever spent more than five minutes with a child can attest, their ability to exercise reason and think logically is inversely proportional to their level of stimulation. If neither of you are on the precipice of an outburst, you'll both be able to think more clearly, and the other party will be more receptive to your thoughts. Regardless of how long it takes to reach this point, you cannot eschew addressing uncivil behavior. Doing so would amount to turning your back on Yogi

Bear while he inventories the contents of your picnic basket — you're openly inviting it to happen again. Resist the urge to rescue the other person by excusing their behavior. Instead, call attention to the behavior, and clearly state your expectations for professional communication moving forward.

The preceding suggestions are broadly applicable and surprisingly useful across a variety of problematic personality types and insolent behavior patterns. Naturally, there are more specific ways to engage that can help discourage challenging conduct, but as 21st-century philosopher Alton Brown often quipped, “That's another show.”² If that's something that would pique your interest, or if you'd like a more customized consultation on how to handle your toxic coworker, feel free to contact me directly at 517-346-6306. You might also consider joining the State Bar of Michigan's Virtual Support Group, facilitated by this writer, to share with other attorneys your own horror stories of incivility.

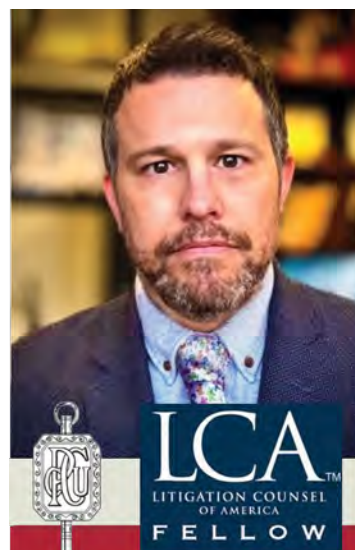
Thomas J. Grden is a clinical case manager with the State Bar of Michigan Lawyers and Judges Assistance Program.

ENDNOTES

1. Bontemps, *What's behind the NBA's new focus on traveling, and how players and teams are adjusting* (Dec 5, 2022) ESPN <https://www.espn.com/nba/story/_/id/35174596/nba-new-focus-traveling-how-players-teams-adjusting> (visited Sept 18, 2025).
2. Brown, *Good Eats*, Food Network (1999-2011).

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FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by February 1, 2026. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes amending two existing instructions, M Crim JI 11.38 (Felon Possessing Firearm or Ammunition: Nonspecified Felony) and M Crim JI 11.38a (Felon Possessing Firearm or Ammunition: Specified Felony), to account for recent legislative changes to MCL 750.224f. Deletions are in ~~strike through~~, and new language is underlined. The Committee also proposes creating M Crim JI 11.38b (Prohibited Person Possessing Firearm or Ammunition: Misdemeanor Involving Domestic Violence), an entirely new instruction based on the same statute.

[AMENDED] M Crim JI 11.38

Felon Possessing Firearm or Ammunition: Nonspecified Felony

- (1) The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (~~1~~2) First, that the defendant knowingly [possessed / used / transported / sold / distributed / received / carried / shipped / purchased¹] [a firearm / ammunition²] in this state.³
- (~~2~~3) Second, that at that time, the defendant had previously been convicted of [*name felony*].⁴

[Use the following paragraph only if the defendant offers some evidence that more than three years had ~~has~~ passed since completion of the sentence on the underlying offense:.]

- (1) (~~3~~4) Third, that less than three years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].⁵

Use Notes

1. "Purchase" or receipt of ammunition is not barred under the statute.
2. "Ammunition" *Ammunition* is defined in MCL 750.224f(~~9~~10)(a) as "any projectile that, in its current state, may be propelled expelled from a firearm by an explosive."
3. The prosecutor need not prove that the firearm was "operable." *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).
4. The judge, not the jury, determines whether the charged prior felony offense is a "felony" as defined in MCL 750.224f(~~9~~10)(b),

a "misdemeanor involving domestic violence" as defined in MCL 750.224f(~~10~~)(c), or a more serious "specified felony" as defined in MCL 750.224f(~~10~~)(d). The jury determines whether the defendant has in fact been convicted of that charged prior felony offense. For prosecutions involving a "specified felony," use M Crim JI 11.38a. For prosecutions involving a "misdemeanor involving domestic violence," use M Crim JI 11.38b. The defendant may stipulate that he or she was convicted of ~~a felony~~ an offense to avoid the court identifying that specific felony offense and the prosecutor offering proof of that felony offense. See *People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997); [citing *Old Chief v United States*, 519 US 172 (1997)].

5. The judge's determination of the character of the felony offense as explained in Use Note 4 will determine whether the prohibition extends for three years, or five years, or eight years. Under subsections (1) and (3) of the statute MCL 750.224f, the three-year period applies to crimes defined in subsection (~~9~~10)(b) as felonies; Under subsections (2) and (4), the five-year ban applies to crimes defined as "specified" felonies in subsection (10)(d). Under subsection (5), the eight-year ban applies to crimes defined in subsection (10)(c) as misdemeanors involving domestic violence.

[AMENDED] M Crim JI 11.38a

Felon Possessing Firearm or Ammunition: Specified Felony

- (1) The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a specified felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) (~~1~~2) First, that the defendant knowingly [possessed / used / sold / distributed / received / carried / shipped / transported / purchased¹] [a firearm / ammunition²] in this state.³
- (3) (~~2~~3) Second, that at that time, the defendant had previously been convicted of [*name specified felony*].⁴

[Use the following paragraphs only if the defendant offers some evidence that more than five years had ~~has~~ passed since completion of the sentence on the underlying offense and that his or her firearm rights have been restored, MCL 28.424:.]

- (~~3~~4) Third, that less than five years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].⁵
- (~~4~~5) Fourth, that the defendant's right to [possess / use / transport / sell / purchase / carry / ship / receive / distribute] [a firearm / ammunition] has not been restored pursuant to Michigan law.⁶

Use Notes

1. “Purchase” or receipt of ammunition is not barred under the statute.
2. “Ammunition” *Ammunition* is defined in MCL 750.224f(910)(a) as “any projectile that, in its current state, may be propelled expelled from a firearm by an explosive.”
3. The prosecutor need not prove that the firearm was “operable.” *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).
4. The judge, not the jury, determines whether the charged prior felony offense is a “felony” as defined in MCL 750.224f(910)(b), a “misdemeanor involving domestic violence” as defined in MCL 750.224f(10)(c), or a more serious “specified felony” as defined in MCL 750.224f(10)(d). The jury determines whether the defendant has in fact been convicted of that charged prior felony offense. For prosecutions involving a “nonspecified felony,” use M Crim JI 11.38. For prosecutions involving a “misdemeanor involving domestic violence,” use M Crim JI 11.38b. The defendant may stipulate that he or she was convicted of a felony offense to avoid the court identifying that specific felony offense and the prosecutor offering proof of that felony offense. See *People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997); [citing *Old Chief v United States*, 519 US 172 (1997)].
5. The judge’s determination of the character of the felony offense as explained in Use Note 4 will determine whether the prohibition extends for three years, or five years, or eight years. Under subsections (1) and (3) of the statute MCL 750.224f, the three-year period applies to crimes defined in subsection (910)(b) as felonies. Under subsections (2) and (4), the five-year ban applies to crimes defined as “specified” felonies in subsection (10)(d). Under subsection (5), the eight-year ban applies to crimes defined in subsection (10)(c) as misdemeanors involving domestic violence.
6. This paragraph is to be given when the court determines that some evidence relating to restoration was admitted at trial. See *People v Henderson*, 391 Mich 612; 218 NW2d 2 (1974); [addressing the burden of going forward and the burden of proof where a defendant submits evidence that he or she was licensed to carry a concealed weapon].

[NEW] M Crim JI 11.38b**Prohibited Person Possessing Firearm or Ammunition: Misdemeanor Involving Domestic Violence**

- (1) The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a misdemeanor involving domestic violence. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant knowingly [possessed / used / sold / distributed / received / carried / shipped / transported / purchased]¹ [a firearm / ammunition²] in this state.³
- (3) Second, that at that time, the defendant had previously been convicted of [name specified misdemeanor involving domestic violence].⁴

[Use the following paragraph only if the defendant offers some evidence that more than eight years had passed since completion of the sentence on the underlying offense:]

- (4) Third, that less than eight years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].⁵

Use Notes

Although MCL 750.224f(5) prohibits the “purchase” or “receipt” of ammunition, MCL 750.224f(7) does not indicate the penalty for this conduct.

1. *Ammunition* is defined in MCL 750.224f(10)(a) as “any projectile that, in its current state, may be expelled from a firearm by an explosive.”
2. The prosecutor need not prove that the firearm was “operable.” *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).
3. The judge, not the jury, determines whether the charged prior offense is a “felony” as defined in MCL 750.224f(10)(b), a “misdemeanor involving domestic violence” as defined in MCL 750.224f(10)(c), or a more serious “specified felony” as defined in MCL 750.224f(10)(d). The jury determines whether the defendant has in fact been convicted of that charged prior offense. For prosecutions involving a “nonspecified felony,” use M Crim JI 11.38. For prosecutions involving a “specified felony,” use M Crim JI 11.38a. The defendant may stipulate that he or she was convicted of an offense to avoid the court identifying that specific offense and the prosecutor offering proof of that offense. See *People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997) (citing *Old Chief v United States*, 519 US 172 (1997)).
4. The judge’s determination of the character of the offense as explained in Use Note 4 will determine whether the prohibition extends for three years, five years, or eight years. Under subsections (1) and (3) of MCL 750.224f, the three-year period applies to crimes defined in subsection (10)(b) as felonies. Under subsections (2) and (4), the five-year ban applies to crimes defined as “specified” felonies in subsection (10)(d). Under subsection (5), the eight-year ban applies to crimes defined in subsection (10)(c) as misdemeanors involving domestic violence.

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PROPOSED

The Committee proposes a new instruction, M Crim JI 15.18b (Moving Violation in a Work Zone or School Bus Zone Causing Death or Injury), for the offense of committing a moving traffic violation in a work zone or school bus zone that results in death or injury, as defined in MCL 257.601b. This instruction would serve as a companion to M Crim JI 15.18a, which applies to offenses committed before certain statutory changes took effect on April 2, 2025. The proposed new instruction would apply to offenses committed on or after that date.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

[NEW] M Crim JI 15.18b**Moving Violation in a Work Zone or School Bus Zone Causing Death or Injury [Use for Acts Occurring on or After April 2, 2025]**

- (1) [The defendant is charged with the crime / You may consider the lesser charge¹] of committing a moving traffic violation in a [work / school bus] zone that caused [the death of / an injury to] a person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant operated a motor vehicle.² To operate means to drive or have actual physical control of the vehicle.
- (3) Second, that, while operating the motor vehicle, the defendant committed a moving violation by [describe the moving violation that carries a 3 or more point penalty under MCL 257.320a].
- (4) Third, that when [he / she] committed the violation, the defendant was in a [work / school bus] zone:

[Select from the following:]

- (a) A work zone is a portion of a street or highway that is open to vehicular traffic, adjacent to a [barrier / berm / lane / shoulder] where [construction / maintenance / public utility work / reconstruction / repair / resurfacing / surveying] is being conducted by one or more individuals, and is between a “work zone begins” sign and [an “end road work” sign / the last temporary traffic control device before the normal flow of traffic resumes].³
- (b) A work zone is a portion of a street or highway that is open to vehicular traffic, adjacent to a [barrier / berm / lane / shoulder] where [construction / maintenance / public utility work / reconstruction / repair / resurfacing / or surveying] is being conducted by one or more individuals, and is between a “begin work convoy” sign and an “end work convoy” sign.
- (c) If construction, maintenance, surveying, or utility work activities were conducted by a work crew using a moving or stationary vehicle exhibiting a rotating beacon or strobe light, a work zone is a portion of a street or highway that is open to vehicular traffic, adjacent to a [barrier / berm / lane / shoulder] where [construction / maintenance / public utility work / reconstruction / repair / resurfacing / surveying] is being conducted by one or more individuals, and is between the following points:
 - (i) 150 feet behind the rear of the vehicle or the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle, whichever is the point closest to the vehicle, and
 - (ii) 150 feet in front of the front of the vehicle or the point from which the beacon or strobe light is first visible on the street or highway in front of the vehicle, whichever is the point closest to the vehicle.
- (d) A “school bus zone” is the area within 20 feet of a school

bus that has stopped and is displaying two alternately flashing red lights at the same level.⁴

- (5) Fourth, that by committing the moving violation, the defendant caused [the death of (name deceased) / (name injured person) to suffer an injury⁵]. To cause [the death of (name deceased) / such injury to (name injured person)], the defendant’s moving violation must have been a factual cause of the [death / injury], that is, but for committing the moving violation, the [death / injury] would not have occurred. In addition, the [death / injury] must have been a direct and natural result of committing the moving violation.
- (6) Fifth, that the [death / injury] was not caused by the negligence of [(name deceased) / (name injured person)] in the work zone or school bus zone.

Negligence is the failure to use ordinary care like a reasonably careful person would do under the circumstances. It is up to you to decide what a reasonably careful person would or would not do.⁶ ⁷

Use Notes

1. Use when instructing on this crime as a lesser offense.
2. The term *motor vehicle* is defined in MCL 257.33.
3. The term *work zone* is defined in MCL 257.79d.
4. A *school bus zone* is defined in MCL 257.601b(5)(c) and does not include the opposite side of a divided highway per MCL 257.682(2).
5. The word *injury* is not statutorily defined.
6. This definition of *negligence* is drawn generally from M Civ JI 10.02 (Negligence of Adult – Definition).
7. Read this paragraph only where the defense has introduced evidence of negligence by the deceased or injured person. This appears to be an affirmative defense.

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PROPOSED

The Committee proposes two new instructions, M Crim JI 11.45 (Engaging in Computer-Assisted Shooting) and M Crim JI 11.45a (Providing or Offering to Provide Animals, Equipment, or Facilities for Computer-Assisted Shooting), to address the crimes set forth in MCL 750.236a and MCL 750.236b. These instructions are entirely new.

[NEW] M Crim JI 11.45**Using Computer Assistance for Shooting an Animal**

- (1) The defendant is charged with the crime of computer-assisted shooting of an animal. To prove this charge, the prosecutor must

prove each of the following elements beyond a reasonable doubt:

- (2) First, that the defendant used a [firearm / bow / crossbow]¹ to kill an animal. It does not matter whether the animal was located in Michigan.
- (3) Second, that the defendant used a computer or any other device, equipment, or software to remotely control the aiming and discharge of the [firearm / bow / crossbow].²

Use Notes

1. Use “firearm” if the defendant is charged with violating MCL 750.236a(1)(a). Use “bow” or “crossbow” if the defendant is charged with violating MCL 750.236b(1)(a).
2. MCL 750.236a(2)(a) and MCL 750.236b(2)(a) define *computer-assisted shooting* identically.

[NEW] M Crim JI 11.45a

Providing or Offering to Provide Animals, Equipment, or Facilities for Computer-Assisted Shooting

- (1) The defendant is charged with the crime of providing or offering to provide animals, equipment, or facilities for computer-assisted shooting. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
 - (2) First, that the defendant
 1. [Select from the following according to the charges and evidence:]
 - (a) provided or offered to provide an animal to serve as a target for computer-assisted remote shooting.
 - (b) provided or offered to provide equipment specifically designed or adapted for computer-assisted shooting. Such equipment does not include general-purpose computers, software,¹ devices for accessing the Internet,² cameras, fencing, building materials, or [firearms / bows / crossbows].³ The equipment must be specially designed or adapted to aim and discharge a [firearm / bow / crossbow] remotely at an animal.
 - (c) provided or operated facilities for computer-assisted remote shooting that are equipped to facilitate computer-assisted shooting of animals, including real estate and buildings, hunting blinds, and offices or rooms that have equipment specifically designed or adapted for computer-assisted shooting.
 2. It does not matter whether or not the defendant was going to be paid for providing the [animal / equipment / facilities].
 - (3) Second, that the defendant intended to provide the [animal / equipment / facilities] to facilitate the killing of [the / an] animal by a [firearm / bow / crossbow] that could be aimed and discharged remotely using a computer or any other device, equipment, or software.

Use Notes

1. Under MCL 750.236a(1)(c)(ii) and MCL 750.236b(1)(c)(ii), a person is not prohibited from providing or offering to provide “[g]eneral-purpose computer software, including an operating system and communications programs.”

2. Under MCL 750.236a(1)(c)(iii) and MCL 750.236b(1)(c)(iii), a person is not prohibited from providing or offering to provide “[g]eneral telecommunications hardware or networking services for computers, including adapters, modems, servers, routers, and other facilities associated with internet access.”
3. Use “firearm” if the defendant is charged with violating MCL 750.236a(1)(b)-(d). Use “bow” or “crossbow” if the defendant is charged with violating MCL 750.236b(1)(b)-(d).

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PROPOSED

The Committee proposes amending M Crim JI 20.10 (Personal Injury-Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless), M Crim JI 20.11 (Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority), and M Crim JI 20.22 (Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless) to reflect a recent change to the statutory definition of “mentally incapacitated.” See MCL 750.520a(k), as amended by 2023 PA 65. Deletions are in ~~strike through~~, and new language is underlined.

[AMENDED] M Crim JI 20.10

Personal Injury-Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

- (1) [Second / Third], that the defendant caused personal injury to [name complainant].
- (2) “Personal injury” means bodily injury, disfigurement, chronic pain, pregnancy, disease, loss or impairment of a sexual or reproductive organ, or mental anguish. “Mental anguish” means extreme pain, extreme distress, or extreme suffering, either at the time of the event or later as a result of it.
- (3) Here are some things you may think about in deciding whether (name complainant) suffered mental anguish:
 - (a) Was (name complainant) upset, crying, or hysterical during or after the event?
 - (b) Did (he / she) need psychological treatment?
 - (c) Did the incident interfere with (name complainant)’s ability to work or lead a normal life?
 - (d) Was (name complainant) afraid that (he / she) or someone else would be hurt or killed?
 - (e) Did (he / she) feel angry or humiliated?
 - (f) Did (he / she) need medication for anxiety, insomnia, or other symptoms?
 - (g) Did the emotional effects of the incident last a long time?
 - (h) Did (name complainant) feel scared afterward about the possibility of being attacked again?

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

- (i) Was the defendant (*name complainant*)'s parent?
- (4) These are not the only things you should think about. No single factor is necessary. You must think about all the facts and circumstances to decide whether (*name complainant*) suffered mental anguish.²¹
- (5) [Third / Fourth], the prosecutor must prove that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless]²² at the time of the alleged act.
- (a) [Choose one or more of (6a), (7b), or (8c):]
- (6a) "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.
- (7b) "Mentally incapacitated" means that [*name complainant*] was unable to understand or control what [he / she] was doing because of ~~[drugs or alcohol given to (him / her) / something done to (him / her)]~~ without [his / her] consent. [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)).]²³
- (8c) "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.
- (9b) [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

*Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271, 380 NW2d 11 (1985).

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) Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271; 380 NW2d 11 (1985).
- (2) MCL 750.520a provides the definitions of *mentally incapable*, *mentally incapacitated*, and *physically helpless*.
- (3) This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.

[AMENDED] M Crim JI 20.11**Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority**

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

[Choose one or more of (2a), (3b), (4c), or (5d):]

- (1) 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.
- (2) b) "Mentally disabled" means that [*name complainant*] had a mental illness, was intellectually disabled, or had a developmental disability. "Mental illness" is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary demands of life. "Intellectual disability" means significantly subaverage intellectual functioning that appeared before [*name complainant*] was ~~eighteen~~ 18 years old and impaired two or more of [his / her] adaptive skills.²² "Developmental disability" means an impairment of general thinking or behavior that originated before the age of ~~eighteen~~ 18, had continued since it started or can be expected to continue indefinitely, was a substantial burden to [*name complainant*]'s ability to function in society, and was caused by [intellectual disability as described / cerebral palsy / epilepsy / autism / an impairing condition requiring treatment and services similar to those required for intellectual disability].
- (3) c) "Mentally incapacitated" means that [*name complainant*] was unable to understand or control what [he / she] was doing because of ~~[drugs, alcohol or another substance given to (him / her) / something done to (him / her)]~~ without [his / her] consent. [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)).]²³
- (4) d) "Physically helpless" means that [*name complainant*] was unconscious, asleep, or ~~physical incapable~~ physically unable to communicate that [he / she] did not want to take part in the alleged act.

[Choose the appropriate option according to the charge and the evidence:]

- (5) (2) [Third / Fourth], that the defendant and [*name complainant*] were related to each other, either by blood or marriage, as [state relationship, e.g., first cousins].²⁴
- (6) (63) [Third / Fourth], that at the time of the alleged act, the defendant was in a position of authority over [*name complainant*]; and used this authority to coerce [*name complainant*] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

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 developmental disability, intellectual disability, mental illness, mentally disabled, mentally incapable, mentally incapacitated, and physically helpless.
12. The court may provide the jury with a definition of *adaptive skills* where appropriate. The phrase is defined in MCL 330.1100a(3); and means skills in 1-one or more of the following areas:
- (a) Communication.
 - (b) Self-care.
 - (c) Home living.
 - (cd) Social skills.
 - (e) Community use.
 - (f) Self-direction.
 - (fg) Health and safety.
 - (h) Functional academics.
 - (i) Leisure
 - (hj) Work.
- (3) This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.
- (4) 24. The following are relatives of a person to the fourth degree of consanguinity:

First degree of consanguinity:

Parents

Children

Second degree of consanguinity:

Brothers and Sisters

Grandchildren

Grandparents

Third degree of consanguinity:

Great Grandchildren

Great Grandparents

Aunts and Uncles

Nephews and Nieces

Fourth degree of consanguinity:

Great-great Grandchildren

Great-great Grandparents

Grand Aunts and Uncles

First Cousins

Grand Nephews and Nieces

[AMENDED] M Crim JI 20.22

Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

- (1) [Fifth / Sixth], that [name complainant] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.¹

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

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

(b) "Mentally incapacitated" means that [name complainant] was unable to understand or control what [he / she] was doing because of ~~[drugs or alcohol given to (him / her) / something done to (him / her)]~~ without [his / her] consent [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) [Sixth / Seventh], 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 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

- (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.

MICHIGAN

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FROM THE MICHIGAN SUPREME COURT

ADM File No. 2025-11**Amendments of Rules 2.105, 2.614, 6.610, 7.203, 7.305, 7.308, 7.312, 7.313, and 7.314 of the Michigan Court Rules, Rule 7.1 of the Michigan Continuing Judicial Education Rules, and Rule 15 of the Rules Concerning the State Bar of Michigan**

On order of the Court, the following amendments of Rules 2.105, 2.614, 6.610, 7.203, 7.305, 7.308, 7.312, 7.313, and 7.314 of the Michigan Court Rules and Rule 15 of the Rules Concerning the State Bar of Michigan are adopted, effective immediately. On further order of the Court, the following amendment of Rule 7.1 of the Michigan Continuing Judicial Education Rules is adopted, effective immediately with retroactive effect to January 1, 2024.

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

Rule 2.105 Process, Manner of Service

- (A)-(C) [Unchanged.]
- (D) Private Corporations, Domestic and Foreign. Service of process on a domestic or foreign corporation may be made by
- (1)-(3) [Unchanged.]
- (4) sending a summons and a copy of the complaint by registered mail to the corporation or an appropriate corporation officer and to the Michigan Corporations, Securities & Commercial Licensing Bureau of Commercial Services, Corporation Division if
- (a)-(c) [Unchanged.]
- (E)-(L) [Unchanged.]

Rule 2.614 Stay of Proceedings to Enforce Judgment

- (A)-(C) [Unchanged.]
- (D) Stay on Appeal. Stay on appeal is governed by MCR 7.108, 7.209, and 7.305~~(J)~~. If a party appeals a trial court's denial of the party's claim of governmental immunity, the party's appeal operates as an automatic stay of any and all proceedings in the case until the issue of the party's status is finally decided.
- (E)-(G) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

- (A)-(E) [Unchanged.]
- (1) (F) Pleas of Guilty and Nolo Contendere. Before accepting a plea of guilty or nolo contendere, the court shall in all cases comply with this rule.

(1)-(8) [Unchanged.]

(9) The State Court Administrator shall develop and approve forms to be used under subrules ~~(EE)~~(4)(b) and (c) and ~~(EE)~~(7)(b).

(G)-(I) [Unchanged.]

Rule 7.203 Jurisdiction of the Court of Appeals

- (A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:
- (1) A final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(6), except a judgment or order of the circuit court
- (a)-(b) [Unchanged.]
- An appeal from an order described in MCR 7.202(6)(a)(iii)-(vi) is limited to the portion of the order with respect to which there is an appeal of right.
- (2) [Unchanged.]
- (B)-(F) [Unchanged.]

Rule 7.305 Application for Leave to Appeal

- (A)-(B) [Unchanged.]
- (B) When to File.
- (1) Unchanged.]
- (2) Application After Court of Appeals Decision. Except as provided in MCR 1.112~~subrule (C)(4)~~, the application must be filed within 42 days in civil cases, or within 56 days in criminal cases, after:
- (a)-(d) [Unchanged.]
- (3)-(7) [Unchanged.]
- (D)-(J) [Unchanged.]

Rule 7.308 Certified Questions and Advisory Opinions

- (A) [Unchanged.]
- (B) Advisory Opinion
- (1) [Unchanged.]
- (2) Briefing. The governor, any member of the house or senate, and the attorney general may file briefs in support of or opposition to the enacted legislation within 28 days after the request for an advisory opinion is filed. Interested parties may file amicus curiae briefs in accordance with MCR 7.312(H)~~on motion granted by the Court~~. The party shall file 1 signed copy of the brief that conforms as nearly as possible to MCR 7.312.
- (3)-(4) [Unchanged.]

Rule 7.312 Briefs, Responses to Adverse Amicus Briefs, and Appendixes in Calendar Cases and Cases Argued on the Application

- (A)-(D) [Unchanged.]
- (E) Time for Filing. Unless the Court directs a different time for filing,
- (1) [Unchanged.]
 - (2) the appellee's brief and appendixes, if any, are due
 - (a) [Unchanged.]
 - (b) within 21 days after the appellant's brief is served on the appellee in a case being argued on the application; ~~and~~
 - (3) the reply brief is due
 - (a) [Unchanged.]
 - (b) within 14 days after the appellee's brief is served on the appellant in a case being argued on the application; and
 - (4) [Unchanged.] (F)-(K) [Unchanged.]

Rule 7.313 Supreme Court Calendar

- (A) [Unchanged.]
- (B) Notice of Hearing; Request for Oral Argument.
- (1) After the briefs of both parties have been filed or the time for filing the appellant's reply brief has expired, the clerk shall notify the parties that the calendar cases and the cases to be argued on the application under MCR 7.305(I-H)(1) will be heard at a monthly session of the Supreme Court not less than 35 days after the date of the notice. The Court may direct that a case be scheduled for argument at a future monthly session with expedited briefing times or may shorten the 35-day notice period on its own initiative or on motion of a party.
 - (2) [Unchanged.]
 - (C) -(D)[Unchanged.]
 - (D) Reargument of Undecided Calendar Cases. When a calendar case remains undecided at the end of the term in which it was argued, the parties may file supplemental briefs. In addition, by directive of the Court or upon a party's written request within 14 days after the beginning of the new term, the clerk shall schedule the case for reargument. This subrule does not apply to a case argued on the application for leave to appeal under MCR 7.305(I-H)(1).

Rule 7.314 Call and Argument Cases

- (A) [Unchanged.]
- (B) Argument.
- (1) [Unchanged.]
 - (2) In a case being argued on the application for leave to appeal under MCR 7.305(I-H)(1), each side that is entitled to oral argument is allowed 15 minutes to argue unless the Court orders otherwise.
 - (3) The time for argument may be extended by Court order on motion of a party filed at least 14 days before the session begins or by the Chief Justice during the argument.

Michigan Continuing Judicial Education Rules

Rule 7.1 Approval of Teaching Activities and Education Activities Conducted by Non-Accredited Providers

An educational activity offered by a non-accredited provider and teaching activities that are consistent with the purposes of these rules may qualify for MCJE credit as provided in this rule.

- (A) (A)-(B) [Unchanged.]
- (C) Requests for Approval. Except as otherwise provided in this subrule, a request for approval under subrules (A) or (B) must:
- (1) be made no earlier than 60 days before completing or holding the activity,
 - (2) be made before the end of the reporting period ~~no later than 42 days after completing or holding the activity,~~
 - (3) include information required by the Board, such as a detailed description of the activity, the qualifications of anticipated speakers, and information regarding the materials or anticipated lectures.

~~All requests must be made before the end of the reporting period.~~

- (D) [Unchanged.]

Rules Concerning the State Bar of Michigan Rule 15. Admission to the Bar

Section 1 and Section 2 [Unchanged.]

Section 3. Procedure for Admission; Oath of Office.

- (1) Each applicant to whom a certificate of qualification has been issued by the board of law examiners is required to appear personally and present such certificate to the Supreme Court, the Court of Appeals, or one of the circuit courts of this state. Upon motion made in open court by an active member of the State Bar of Michigan, the court may enter an order admitting such applicant to the bar of this state. The clerk of such court is required to forthwith administer to such applicant in open court the following oath of office:

[Oath unchanged.]

- (2)-(3) [Unchanged.]

Staff Comment (ADM File No. 2025-11): These amendments update cross- references and make other nonsubstantive revisions to clarify the rules

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

ADM File No. 2025-29 Adoption of Administrative Order No. 2025-2

Until further order of the Court, if a government shutdown occurs, filing deadlines in the Michigan Supreme Court, Court of Appeals, and Court of Claims will be extended by the same number of days

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

as the government is shut down. For purposes of this order, “filing deadlines” in the Court of Claims do not include statutory deadlines for filing a notice of intent or a complaint. The extension of filing deadlines applies to any document required to be filed with the court in order to preserve or facilitate a case or an appeal. If the government shutdown ends before the business day begins, that business day is not considered a shutdown day. The business day in these courts is Monday-Friday, 8:30 a.m. – 4:30 p.m.

ADM File No. 2021-29 Proposed Amendment of Rule 6.201 of the Michigan Court Rules

The Court, having given an opportunity for comment in writing and at a public hearing, again seeks public comment regarding the proposed amendment of Rule 6.201 of the Michigan Court Rules. The Court has revised the original proposal and is interested in receiving additional comments on this revised proposal.

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.201 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

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

Rule 6.201 Discovery

- (A) [Unchanged.]
- (B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:
 - (1) [Unchanged.]
 - (2) any police report and interrogation records concerning the case, except so much of a report as:
 - (a) concerns a continuing investigation;
 - (b) contains any personal identifying information protected by MCR 1.109(D)(9)(a), which may be redacted;
 - (c) contains information otherwise protected under MCR 6.201, which may be redacted.
 - (3)-(5) [Unchanged.]
- (C)-(K) [Unchanged.]

Staff Comment (ADM File No. 2021-29): The proposed amendment of MCR 6.201 would require, before providing a police report or interrogation record to the defendant, redaction of personal identifying information and information otherwise protected under the rule.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by October 1, 2025, by clicking on the “Comment on this Proposal” link under this proposal on the Court’s Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2021-29. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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

On order of the Court, the proposed amendment of Rule 3.991 of the Michigan Court Rules having been published for comment at Mich _ (2025), and an opportunity having been provided for comment in writing and at a public hearing, the Court declines to adopt the proposed amendment.

ADM File No. 2023-35 Amendment of Canon 3 of the Michigan Code of Judicial Conduct

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Canon 3 of the Michigan Code of Judicial Conduct is adopted, effective January 1, 2026. Additionally, the proposed amendment of Rule 6.5 of the Michigan Rules of Professional Conduct published for comment on March 6, 2025, is held for further consideration by the Court.

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

Canon 3. A Judge Should Perform the Duties of Office Impartially and Diligently.

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by

law. A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities: (1)-(14) [Unchanged.]

- (1) Without regard to a person's race, gender, or other protected personal characteristic, a judge ~~shall~~should treat every person fairly, with courtesy and respect, and shall not intentionally or recklessly, in the performance of judicial duties, manifest bias or prejudice, or engage in harassment. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's direction and control to adhere to the same standard when interacting with~~provide such fair, courteous, and respectful treatment~~ to persons who have contact with the court.
- (2) The restrictions of subrule (15) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

B.-D.[Unchanged.]

Staff Comment (ADM File No. 2023-35): The amendment of MCJC Canon 3 prohibits, in the performance of judicial duties, judges and lawyers from intentionally or recklessly manifesting bias or prejudice and engaging in harassment.

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

ADM File No. 2022-34 Proposed Amendment of Rule 3.992 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.992 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

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

Rule 3.992 Rehearings; New Trial

- (A) ~~Time and Grounds.~~ Except for the case of a juvenile tried as an adult in the family division of the circuit court for a criminal

offense, and except for a case in which parental rights are terminated, a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the date of the order resulting from the hearing or trial. In a case that involves termination of parental rights, a motion for new trial, rehearing, reconsideration, or other post-judgment relief shall be filed within 14 days after the date of the order terminating parental rights. The court may entertain an untimely motion for good cause shown.

- (B) Grounds. Except for a motion that seeks relief from an order entered pursuant to MCR 3.991(A)(3), a motion will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case. A motion that seeks relief from an order entered pursuant to MCR 3.991(A)(3) must be considered.

(B)-(F) [Relettered (C)-(G) but otherwise unchanged.]

Staff Comment (ADM File No. 2022-34): The proposed amendment of MCR 3.992 would require courts to consider a motion for post-judgment relief when the underlying order was entered following a referee's recommendation and before the time for filing for judicial review under MCR 3.991 has elapsed. See MCR 3.991(A)(3).

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by February 1, 2026, by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-34. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 3.602 of the Michigan Court Rules is adopted, effective January 1, 2026.

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

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

Rule 3.602 Arbitration

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

(B)-(N) [Unchanged.]

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

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



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ORDERS OF DISCIPLINE & DISABILITY

SUSPENSION AND RESTITUTION

Angelina Cummins, P78867, Southfield, Suspension — Two Years, Effective September 26, 2025¹

After proceedings conducted pursuant to MCR 9.115, Tri-County Hearing Panel #55 found that respondent committed professional misconduct during her representation of a client in a post-divorce custody and/or support matter, and by failing to answer a request for investigation.

Respondent did not file an answer to the complaint and her default was entered by the Grievance Administrator on April 15, 2025. Based on respondent's default and the evidence presented at the hearing, the hearing panel found that respondent neglected a client matter, in violation of MRPC 1.1(c) [Count One]; failed to act with reasonable diligence and promptness in representing a client, in violation of MRPC 1.3 [Count One]; failed to keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information, in violation of MRPC 1.4(a) [Count One]; failed to expedite litigation, in violation of MRPC 3.2 [Count

One]; knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2) [Count Two]; engaged in conduct that violates the Rules of Professional Conduct, in violation of MRPC 8.4(a) and MCR 9.104(4) [Count Two]; engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation, in violation of MRPC 8.4(b) [Count One]; engaged in conduct prejudicial to the administration of justice, in violation of MRPC 8.4(c) [Count Two] 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, failed to answer a Request for Investigation, in violation of MCR 9.104(7) and MCR 9.113(A) and (B)(2) [Count Two].

The panel ordered that respondent's license to practice law in Michigan be suspended for two years and that she pay restitution in the amount of \$6,000.00. Costs were assessed in the amount of \$2,001.74.

1. On August 7, 2025, Respondent's license to practice law was suspended on an interim basis pursuant to MCR 9.115(H), for her failure to appear at the misconduct hearing. See Notice of Interim Suspension issued August 11, 2025.STATE OF MICHIGAN

2. On July 31, 2025, the hearing panel issued an order suspending respondent from the practice law based on his failure to appear at the public hearing. That suspension went into effect on August 7, 2025. Please see Notice of Interim Suspension Pursuant to MCR 9.115(H)(1), issued August 11, 2025.

REPRIMAND WITH CONDITIONS (BY CONSENT)

David M. Sinutko, P52801, Utica Reprimand, Effective September 27, 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 Tri-County Hearing Panel #102. Respondent pled no contest to the factual allegations set forth in the formal complaint, namely that respondent's IOLTA became overdrawn, after more than \$54,000 in transactions were presented without sufficient funds, resulting in overdrafts of over \$27,000 and \$26,000. Although many of the transactions were dishonored, respondent later deposited funds to cover them and self-reported the overdrafts, attributing them to a clerical error. It was later discovered that the transactions were connected to an online gambling platform, and that between January 2023 and February 2024, respondent misused his IOLTA by depositing personal funds, leaving earned fees in the account, using it to pay personal and business expenses, and engaging in gambling-related transactions.

Based on respondent's no contest pleas and the stipulation of the parties, the panel found that respondent deposited personal funds into an IOLTA, in violation of MRPC

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1.15(a)(3); deposited personal funds into an IOLTA in excess of an amount reasonably necessary to pay financial institution service charges or fees or to obtain a waiver of service charges or fees in violation of MRPC 1.15(f); engaged in conduct that is prejudicial to the administration of justice, in violation of MCR 9.104(1) and MRPC 8.4(c); 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 stipulation of the parties, the panel ordered that respondent

be reprimanded and required him to comply with conditions relevant to the established misconduct. Costs were assessed in the amount of \$935.99.

SUSPENSION (BY CONSENT)

Carl D. Winekoff, P76862, Phoenix, Arizona Suspension — 60 Days, Effective October 3, 2025

Respondent and the Grievance Administrator filed an Amended Stipulation for Consent Order of a 60-Day Suspension on September 2, 2025, which was approved by the Attorney Grievance Commission and accepted by Tri-County Hearing Panel #63. The amended stipulation contained

respondent's admission that he was convicted on May 31, 2024, of one count of aggravated assault, a misdemeanor, in violation of MCL/PACC 750.81A, in a matter titled *People v Carl Douglas Winekoff*, Wayne County Circuit Court, Case No. 23-006231-02-FH. The stipulation also contained respondent's no contest plea to the allegation that his conduct constituted professional misconduct under MCR 9.104(5) and MRPC 8.4(b).

Based on respondent's admission, no contest plea, 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 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).

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ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

In accordance with the amended stipulation of the parties, the panel ordered that respondent's license to practice law be suspended for 60 days, effective October 3, 2025. Costs were assessed in the amount of \$771.44.

1. Standard 5.11 addresses serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses.

AUTOMATIC INTERIM SUSPENSION

Christopher J. Woolf, P79877, Dewitt, Effective August 7, 2025

On August 7, 2025, respondent was convicted by guilty verdict of Child Sexually Abusive Activity, a felony under MCL 750.145C(2); Computers - Using to Commit a Crime - Maximum Imprisonment of 20 Years or More or Life, a felony under MCL 752.7973F; Children - Accosting Immoral, a felony under MCL 750.145A-A; and, Computers - Using to Commit a Crime - Max Imprisonment of Four Years or More but Less Than 10 Years, a felony under MCL 752.7973D, in State of Michigan v Christopher James Woolf, 30th Circuit - Ingham County Circuit Court, Case No. 24-000182-FH-C30. Upon respondent's conviction and in accordance with MCR 9.120(B)(1), respondent's license to practice law in Michigan was automatically suspended.

Upon the filing of a judgment of conviction, this matter will be assigned to a hearing panel for further proceedings. The interim suspension will remain in effect until the effective date of an order filed by a hearing panel under MCR 9.115(J).

REINSTATEMENT

On August 5, 2025, Upper Peninsula Hearing Panel #2 entered an Order of Suspension with Conditions in this matter suspend-

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ing respondent from the practice of law in Michigan for 30 days, effective August 27, 2025. On September 22, 2025, respondent filed an affidavit pursuant to MCR 9.123(A), attesting that he has fully complied with all requirements of the panel's order and will continue to comply with the order until and unless reinstated. The Grievance Administrator did not file an objection to respondent's

affidavit pursuant to MCR 9.123(A); and the Board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that respondent, **Nicholas A. Tselepis**, P 80909, is **REINSTATED** to the practice of law in Michigan, effective September 30, 2025.

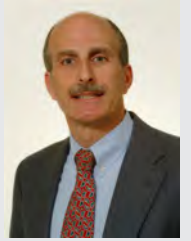
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ERICA N. LEMANSKI

elemanski@miethicslaw.com

- Member, SBM Committee on Professional Ethics
- Experienced in representing lawyers in ethics consultations, attorney discipline investigations, trials and appeals and Bar applicants in character and fitness investigations and proceedings

RHONDA SPENCER POZEHL (OF COUNSEL)

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- Experienced in all aspects of attorney discipline investigation, trials and appeals; and character and fitness matters
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JAMES R. GEROMETTA (OF COUNSEL)

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WEDNESDAY 6 PM*

Virtual meeting
Kirk in the Hills Presbyterian Church
1340 W. Long Lake Rd.
1/2 mile west of Telegraph
(This is both an AA and NA meeting.)

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.
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Stevensville

THURSDAY 4 PM*

Al-Anon of Berrien County
4162 Red Arrow Highway

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MONDAY 8 PM

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TUESDAY 8 PM

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THURSDAY 7 PM*

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THURSDAY 7:30 PM

Zoom
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Virtual

SUNDAY 7 PM*

Virtual meeting
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For a list of meetings, visit
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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*

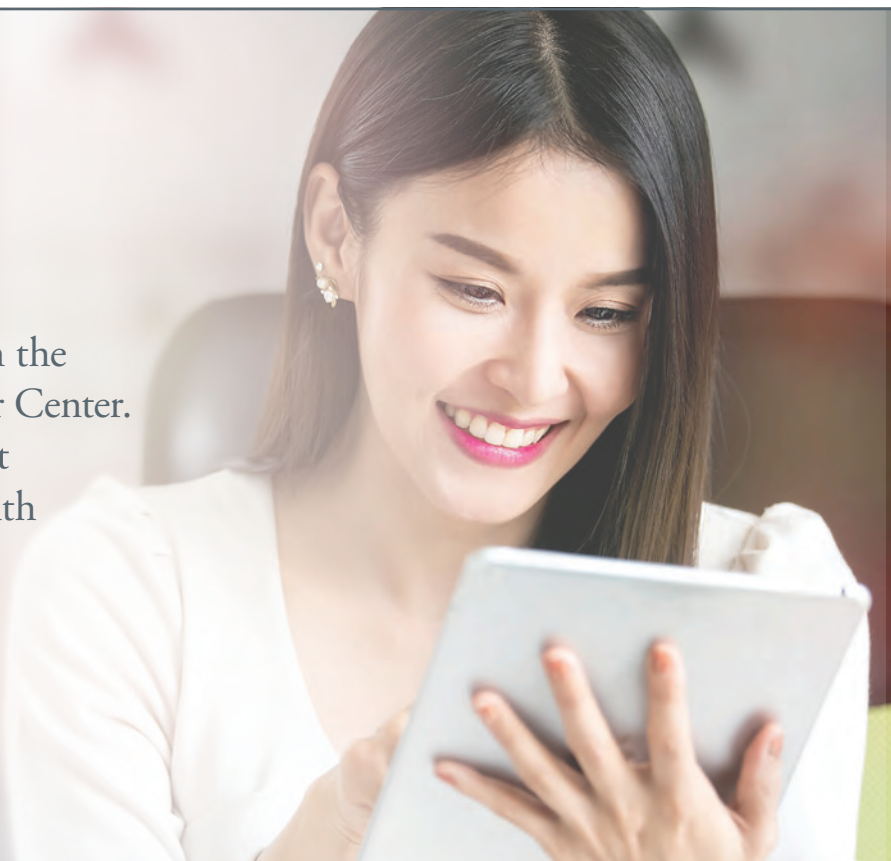
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