MICHIGAN
BAR JOURNAL
FEBRUARY 2026

JUDICIAL PROTECTION ACT

CONFESSIONS OF A "RETIRED" JUDGE

ALSO IN THIS ISSUE:

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- Unlocking the power of cellphone records in Michigan civil litigation
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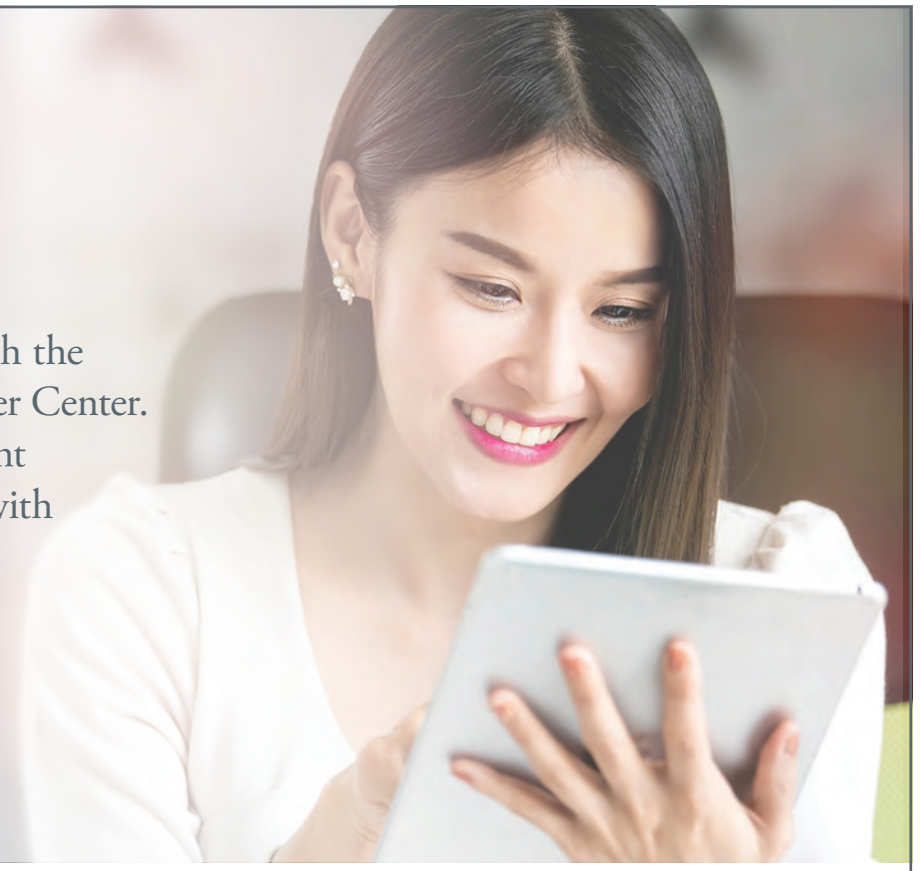

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MONEY JUDGMENT INTEREST RATE

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

For a complaint filed after Dec. 31, 1986, the rate as of January 1, 2025, is 4.083%. 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 48084

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

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MARCH 6, 2026 (IF NEEDED)
APRIL 24, 2026
JUNE 12, 2026
JULY 24, 2026
SEPTEMBER 18, 2026

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MEMBER SUSPENSION
FOR NONPAYMENT OF DUES

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

In accordance with Rule 4 of the Supreme Court's Rules Concerning the State Bar of Michigan, these attorneys are suspended from active membership effective Feb. 15, 2025, and are ineligible to practice law in the state.

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

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The State Bar of Michigan's Ethics Helpline provides free, confidential ethics advice to lawyers and judges. We're here help.

IN MEMORIAM

LORI A. BARKER, P39198, of Lake Orion, died January 3, 2026. She was born in 1961, graduated from Wayne State University Law School, and was admitted to the Bar in 1986.

HEATHER VALYNN BURNASH, P72303, of Flint, died January 5, 2026. She was born in 1975, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 2008.

FRANCISCO CARREIRA-PITTI, P34971, of Panama City, , died August 29, 2025. He was born in 1949 and was admitted to the Bar in 1983.

MARY E. CIROCCO, P41088, of Grosse Pointe Farms, died December 7, 2025. She was born in 1957, graduated from Detroit College of Law, and was admitted to the Bar in 1987.

CATHERINE BARNES ELLIS, P28665, of Grand Rapids, died November 29, 2025. She was born in 1947, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1978.

JAMES S. GOULDING, P14233, of Saint Clair Shores, died December 8, 2025. He was born in 1931, graduated from University of Detroit Mercy School of Law, and was admitted to the Bar in 1966.

ROBERTA M. GUBBINS, P39998, of Mason, died December 13, 2025. She was born in 1936, graduated from Detroit College of Law, and was admitted to the Bar in 1987.

BRIAN H. LONNERSTATER, P40505, of Novi, died November 14, 2025. He was born in 1962, graduated from Wayne State University Law School, and was admitted to the Bar in 1987.

MICHAEL T. MADDALONI, P46733, of Laingsburg, died December 10, 2025. He was born in 1961, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1997.

THOMAS M. O'LEARY, P18466, of Bonita Springs, Fla., died December 30, 2025. He was born in 1944, graduated from University of Michigan Law School, and was admitted to the Bar in 1970.

PHILIP J. OLSON, II, P26746, of Grand Blanc, died December 12, 2025. He was born in 1949, graduated from University of Detroit Mercy School of Law, and was admitted to the Bar in 1976.

ELAINE ROSATI, P40528, of Novi, died December 9, 2025. She was born in 1927, graduated from Detroit College of Law, and was admitted to the Bar in 1987.

HENRY R. SMITTER, P20723, of Grand Rapids, died December 31, 2025. He was born in 1929, graduated from University of Michigan Law School, and was admitted to the Bar in 1955.

RON R. SUMNER, P21162, of Rochester Hills, died December 13, 2025. He was born in 1934, graduated from Wayne State University Law School, and was admitted to the Bar in 1962.

KEITH S. WATSON, P56463, of Lansing, died December 23, 2025. He was born in 1964, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1997.

HARRY WEBB, P34240, of East Lansing, died December 30, 2025. He was born in 1933 and was admitted to the Bar in 1982.

MARK E. WEBB, P44688, of Ludington, died December 24, 2025. He was born in 1958, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1991.

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

DUNCAN M. BEAGLE has joined Manley & Manley, PLLC as of counsel.

CODY R. ELLWANGER has joined Plunkett Cooney.

EVAN P. IRVINE has joined the Grand Rapids office of Plunkett Cooney.

TIMOTHY M. TURKELSON has joined Manley & Manley, PLLC as a senior associate.

LEADERSHIP

LAURA CHAPPELLE, a partner with Varnum, has been appointed to the Energy Bar Association Midwest Chapter's board of directors for the 2025–2026 term.

PRESENTATIONS, PUBLICATIONS & EVENTS

The **INGHAM COUNTY BAR ASSOCIATION** will host Meet the Judges on Thursday, January 8, 2026.

JERMAINE A. WYRICK, with Fathers Justice Law PLLC, spoke at the 2025 National Microloan Conference on the subject of relationships.

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

OF INTEREST

Remembering Nancy F. Brown

BY LYNN PATRICK INGRAM

The State Bar of Michigan is mourning the passing of Nancy F. Brown, a beloved leader and colleague whose presence shaped the organization for five decades. For staff, members, and the many people who worked alongside her across generations, Nancy's death is not only a professional loss; it's deeply personal.

This year, Nancy was celebrating 50 years of service to the State Bar of Michigan, making her the longest-serving employee in SBM history. Over that span, she became one of the Bar's most enduring figures, known for her high standards, her wise counsel, and her loyalty to the institution and to the people who do its work every day.

Executive Director Peter Cunningham said Nancy's influence was felt across the organization but also in the quiet moments when decisions had to be made and when problems had to be solved.

"Although it may sound like a cliché, Nancy truly was my rock," Cunningham said. "No matter the circumstance, she provided steady, reliable counsel."

In just a few words, Cunningham captured what so many at the Bar came to rely on.

"Nancy was tireless in her commitment to making the Bar better," he said. "Her influence is woven into the fabric of the State Bar, and it will continue to be felt for many years to come."

A LASTING LEGACY

Nancy began her career at the State Bar of Michigan in 1976, starting as Assistant Editor of the Michigan Bar Journal and later serving as Editor, a role she held for 30 years. From the beginning, she was the kind of professional who didn't simply complete assignments, but instead raised the standard for how the work should be done. Over time, her responsibilities expanded in a way that reflected her unique value to the organization. She didn't just grow with the Bar; she became part of its institutional backbone.

Over nearly five decades of service, Nancy held an extraordinary range of roles, touching almost every part of the State Bar's operations. Her career advanced through senior leadership positions in publications and communications, including Senior Director of Publications, Assistant Executive Director for Publications, and Communications Division Director.

In later years, she served as Member Services & Communications Division Director, and then as Assistant Executive Director, Public and Bar Services, overseeing teams responsible for critical functions including technical services, membership services, law practice management, lawyer referral, lawyer services and outreach, the Diversity Development Program, and the Lawyers & Judges Assistance Program. Most

recently, she served as Senior Management Advisor, offering the kind of calm judgment and perspective that comes only from decades of earned trust.

Cunningham noted that the State Bar was established in 1935, and that Nancy worked at SBM for more than half of its existence.

"During that time, she left her mark on nearly every aspect of the organization," he said. "Much of what the Bar does today was either initiated by Nancy, improved by her, or shaped by her ideas and guidance."

Nancy's legacy is not confined to a title or a department. It lives in the systems she helped build, the work she strengthened, and the expectations she set, which are grounded in the belief that the Bar should always strive to serve Michigan attorneys and the public better than it did yesterday.

AN AMAZING HUMAN BEING

For all of Nancy's titles and accomplishments, those who knew her best describe a person whose influence was felt most powerfully at the human level. She had a rare ability to see someone's potential before they could see it themselves, and then to insist, with equal parts honesty and care, that they rise to meet it.

Best friend and longtime colleague Mo Hastings said Nancy led in a way that made people feel both challenged and supported.

"She had a knack for seeing the best in people, even when they couldn't see it themselves," Hastings said.

For the people who worked for her, that belief wasn't abstract.

Hastings recalled that Nancy regularly asked a simple, disarming question: "What can I do to support you? How can I help you succeed?"

That combination of direct standards paired with genuine kindness was a signature of Nancy's presence at the Bar. She was candid when candor was needed, not because she enjoyed confrontation, but because she believed the work mattered and the people doing it mattered, too. She could tell you the truth and still make you feel safe enough to keep going.

Hastings also said that behind Nancy's professionalism was a warmth that many people saw only once they were close to her.

"Something people may not know about Nancy is that she was hilarious," Hastings said. "She loved to laugh; she loved to love."

It's part of why the news of her passing has landed so heavily across the State Bar community. Nancy was admired for what she did and cherished for who she was.

AN ENDURING FORCE

Some people leave an organization with memories. Nancy left it with momentum. She was the person others relied on when the work had to be right and when the next step needed to be clear. Her influence reached beyond any single title because she had a gift for seeing what the Bar could become and then helping it move in that direction.

Cunningham said Nancy combined deep experience with a rare openness to change.

"One of Nancy's greatest strengths was her deep institutional knowledge, but she was never stuck in the past," Cunningham said. "She was constantly thinking about new and innovative ways for the Bar to better serve attorneys and the public."

Even after witnessing decades of change, he said, "Nancy was never afraid to try something new."

That is why her absence feels so large now. Nancy may no longer be here to guide the work day to day, but the work she shaped will remain. The Bar will keep moving forward, in part because Nancy spent nearly 50 years making sure it could.

As Cunningham put it, her influence will continue to be felt for decades to come.

Nancy will be remembered as a leader who gave her heart and soul to the Bar, who held nearly every kind of responsibility one can hold within an organization, and who helped build a culture of high standards paired with real support.

Hastings said the reach of Nancy's impact was bigger than she may have understood.

"She was loved by so many people and I don't think she knew the half of it," Hastings said. "She will be profoundly missed."

Lynn Patrick Ingram is eJournal Legal Editor and Development Manager at the State Bar of Michigan.

FROM THE PRESIDENT

LISA J. HAMAMEH

Service is the lesson: Why volunteering matters now more than ever

Going into the National Trial Advocacy Competition and We the People as a volunteer judge, I was prepared to help students learn more about our courts and our democratic processes. However, as so often happens with volunteering, I walked away with an invaluable lesson myself and a reminder, once again, of what it truly means to be a lawyer.

Watching those students reminded me of my own beginnings. I could see their nerves but could also sense the fierce determination driving them. I watched some of the nation's best future litigators show their mastery at the mock trial on steroids that is the National Trial Advocacy Competition, hosted by the State Bar of Michigan's Young Lawyers Section in Detroit last fall. At the state finals for the We the People civics competition in January, I watched high school students transform into legislative and constitutional experts through the Michigan Center for Civic Education's annual event.

As soon as the events began, I no longer felt like I was volunteering. I was as engaged as they were. They weren't just gaining experience by practicing rules of evidence or displaying their Constitutional scholarship, they were living, breathing examples of the rule of law in our country — now and in the future.

I left those events knowing I had contributed something meaningful. I also left with a renewed sense of purpose and a clear reminder that being an attorney is not merely a career, but a form of public service — one that must be modeled, not just taught.

It is a lesson that our profession needs to embrace now more than ever. For established attorneys, volunteering offers perspective. It pulls us out of our routines and reminds us that the law is not an abstract system — it is lived, argued, amended, and struck down by real people. Whether mentoring students, judging competitions, or speaking to groups, we are reminded that our experience has value beyond our own practices.

For new and future lawyers, the impact is even more profound because they need mentorship now, more than ever. They lived through, and continue to live through, the Covid era and its effects. They missed regular in-person Motion Calls. They missed appearing in front of that grumpy judge who demands punctuality and preparedness — and the embarrassment that followed when they were scolded in front of a courtroom fully of colleagues if they didn't meet those expectations. These are the very lived experiences that helped mold many of us into the seasoned attorneys we are today. It is incumbent upon us to share those experiences and lessons learned with young and future lawyers through mentorship. We can provide mentorship in many ways, including providing one-on-one guidance, speaking to groups, and judging competitions. When new and future lawyers see experienced attorneys volunteer their time — not for recognition or compensation, but because it matters — they learn something no textbook can teach. They see, in real time, that success in the legal profession includes responsibility to others.

EDUCATING THE PUBLIC

Today, our responsibility to serve extends beyond mentoring and professional development. It includes educating the public about the rule of law itself.

As attorneys we take for granted that the rule of law means that no one is above the law, that legal principles — not people, no matter how powerful or influential — govern outcomes of the courts. It's easy to forget just how fragile the rule of law can be, and that it doesn't happen on its own. To survive, it requires us, but also the trust and understanding of the public.

Many people encounter the legal system only at moments of crisis — either their own or witnessing it via the news in troubling or uncertain times. If their only exposure to the law is negative or confusing, confidence in the system erodes.

That is why public legal education is not a luxury. It is a necessity.

As attorneys, we are uniquely positioned to explain how the system works, why it works the way it does, and what protections it is designed to provide. When we volunteer to educate students and community members, we help demystify the law. We replace suspicion with understanding and cynicism with context. And in doing so, we strengthen not only public trust, but democracy itself.

VOLUNTEERS NEEDED

We've got billable hours, work and home demands, not to mention our own health and well-being to deal with. It's easy to sit back and think that perhaps our help isn't needed. We have our roles and responsibilities, and it's easy to assume that surely someone else is stepping up to help where it is needed. Of course, many of us already volunteer in some way (and thank you for your service and commitment!), but the fact is that **more help** is desperately needed. As president of the State Bar of Michigan, I have had the opportunity to step out of my routine circle of friends, events, and volunteering. At every turn, I have been shocked to see how few of my colleagues have answered the call when volunteers are needed. Here's the other fact: Volunteering isn't hard. Often it is just a few hours of your time that can make a world of difference.

I urge all attorneys to step up and live our values to support the rule of law in tangible ways. Here is a look at a few opportunities:

YOUNG LAWYERS SECTION

The Young Lawyers Section of the State Bar — commonly referred to simply as YLS — is a powerhouse of outreach, events and activities. They host the National Trial Advocacy Competition in the fall and always need volunteers. Plus, they host a holiday party offering giveaways and legal guidance to families in Detroit as well as various other section events designed to help new lawyers connect with each other and seasoned attorneys to allow for ongoing professional development and casual mentorship. There also is the opportunity to get more involved with YLS specifically. YLS now includes Michigan attorneys for 10 years after they are admitted to the Bar. Some of you are likely already members of YLS and just don't realize it. Get involved; you won't regret it. Learn more at connect.michbar.org/yls.

PRACTICE AREA SECTIONS

The State Bar of Michigan offers 43 practice area sections for members to stay up to date on legal issues, network, and advance issues of jurisprudence. These volunteer opportunities are central to our work as attorneys as officers of the court. Working with a State Bar of Michigan section provides you with the opportunity to provide input on proposed rules and legislation impacting your practice area. Sections also take a leadership role in continuing legal education and often produce journals and events to keep members up to date on legal developments in their field. They also are the breeding grounds for lifelong friendships, job opportunities, and mentorship. Just being involved in a section can serve as a constant reminder that as an attorney, you're part of something bigger than your own practice. Learn more at michbar.org/Sections

FACE OF JUSTICE

The State Bar of Michigan's Face of Justice program, featured in last month's Michigan Bar Journal, is another opportunity to have a direct and personal impact on the next generation of lawyers, judges, paralegals, police officers, and more. Volunteering is easy and often takes just a few hours. Volunteers from throughout the legal profession meet with high school and law school students who are filled with questions and eager to learn more about our real-world experiences. Volunteers meet one-on-one or in small groups of students for speed mentoring sessions. The events typically last just a few hours and are hosted throughout the year. For attorneys, it's a chance to demystify the profession and pass on their own experiences and lessons. Email program director Gregory Conyers at gconyers@michbar.org for more information.

MOCK TRIALS

The Michigan Center for Civic Engagement is a State Bar of Michigan partner that provides mock trial opportunities to students. Mock trial is an immersive courtroom experience and a wonderful opportunity to recruit young people into the legal profession. There are opportunities to volunteer a little or a lot, and the mock trial season continues through May. For volunteers, it is an opportunity to help students learn advocacy skills while reinforcing professionalism, fairness, and respect for the judicial process. For students, these interactions are formative — and often unforgettable. Learn more at mimocktrial.tabroom.com.

WE THE PEOPLE

The Michigan Center for Civic Education also hosts the annual We the People competition, which essentially functions as mock legislative hearings. Students testify before panels of volunteer attorneys,

educators, and civic leaders to present their interpretation of the Constitution, particularly the Bill of Rights, to advocate on a particular issue. After the students present, volunteer judges then discuss the issue more in depth regarding the content, history, and applicability of the Constitutional relevancy. The season runs from November to January. Learn more at miciviced.org/programs/we-the-people.

YOUR TURN

As attorneys, we are custodians of the rule of law. That role carries privileges, but it also carries responsibilities — to educate, to model, and to serve. When we volunteer, we honor those responsibilities in the most direct way possible.

Getting involved does not require a dramatic commitment or a complete overhaul of one's schedule. It starts with a single yes to judge a round, speak to a class, mentor a student, or explain the system to someone encountering it for the first time.

The example opportunities I provided are just a few of many: Local bar associations, local courts, and local schools also offer additional ways for you to get involved to both support your community and the legal profession. I encourage you to consider how you might get involved — for the first time, once again, or in a new way. Volunteering is a tangible reminder of what drew you to the law and why you dedicated your life to it — and you might just inspire someone else to do the same.

MICHIGAN'S NAME CHANGE LAW AMENDMENTS

Simplification of the legal name change process is ahead

BY HEIDI NAASKO AND JAY KAPLAN

On January 17, 2025, Governor Whitmer signed House Bills 5300 and 5302 which streamlined Michigan's name change laws for people seeking to change their names in circumstances other than marriage.[1] The laws will go into effect on April 2, 2025. This article explains what will stay the same, what will change and how we anticipate these changes to impact Michiganders seeking to change their names.

Carrying over from the former law, every person seeking a name change must be a resident of the county in which they are filing for one year and affirm that they are not seeking to do so with 'fraudulent intent'.[2] In addition, previously, individuals over the age of 22 were required to submit fingerprints and complete a FBI background check at a cost ranging from $45 to over $83.[3] If the petitioner filed an application with a criminal background, Michigan law required a petitioner overcome a presumption that they were doing so with fraudulent intent.[4] Because the law indicated that a court could not act until the results of the background check had been provided to the court, this process added months to the processing times.[5] With the new law, fingerprinting and formal background checks are no longer required by statute.[6] Instead, petitioners must disclose in their initial petition whether or not they have criminal conviction or pending charges.[7] In addition, the new statute explicitly permits courts to confirm the petitioner's records by reviewing ICHAT or the LIEN system, which will contain all nonpublic criminal records including that have been expunged, juvenile records, convictions from other states and outstanding charges.[8] Importantly however, the revisions have done away with the prior presumption of fraudulent intent simply because someone has a criminal record.[9]

Although many states do not require a hearing for name change petitions, Michigan has always required a hearing to grant a name change.[10] However, for adults seeking a name change, the new law permits a name change to be granted without a hearing.[11]

Under the new law, if a court decides to move forward with a hearing, the petitioner still must publish notice.[12] In the law's former iteration, all petitioners were required to publish the hearing date with the petitioner's chosen and former or "dead" name, unless courts granted a request to waive the publication requirement.[13] The conditions for waiving the publication were generalized, allowing courts discretion to broadly (or narrowly) interpret the grounds for waiving the requirement.[14] Where publication occurred (or it wasn't waived), in the hundreds of name change petitions our coalition has filed we have never seen an objection lodged from the public, petitioners routinely paid more than $100 per petition to comply with the requirement.[15] This process added time and additional paperwork for the courts and petitioners.

However, the new law will allow petitioners to receive a "presumption of good cause to waive the publication" if petitioners seek a name change because of the individual is a victim of an assaultive

crime, domestic violence, harassment, stalking, human trafficking[16] or to affirm one's gender.[17] We anticipate that the State Court Administrator's Office will create a form for those that seek a name change for these statutorily designated reasons so that the Courts will quickly and seamlessly waive publication. For all others whose petitions are set for hearing and do not qualify for or seek a waiver, the publication requirement remains.[18]

With the elimination of the background check, publication and hearing requirement, name changes in Michigan should be streamlined and could be granted in a matter of days or weeks rather than months. Once a petitioner's final order is granted a petitioner can update names with an employer, bank, and treating physicians. Once the order is certified by the County Clerk, petitioners can legally begin the process to change additional identity documents, such as their social security card, driver's license and passport.

The simplification of this name change process has been the goal for many community members, activists and attorneys working in this space, and is the culmination of several years of incremental changes and work leading up to this statutory update.

The authors are part of a larger coalition of activists and attorneys who have coordinated a name change clinic at Corktown Health in Detroit, Michigan for low-income transgender individuals in Wayne, Oakland and Macomb counties since 2019. Together, with pro bono attorneys from law firms and corporate legal departments, it has served over 300 clients.

Heidi Naasko is a member at Dykema Gossett PLLC, and its National Pro Bono Counsel. She connects community members and legal aid with Dykema attorneys and corporate legal departments across the country. Together, they design and implement pro bono projects where legal teams can have the most significant impact. She is the 2020-1 Cummiskey Award winner for the State Bar of Michigan.

Jay Kaplan has been the staff attorney for the ACLU of Michigan's LGBTQ+ Project since its founding in 2001. He has worked on cases including challenging undercover sting operations targeting gay men, fighting Michigan's constitutional amendment prohibiting same-sex couples from marrying, defending the validity of second parent adoptions granted in Michigan, and recently advocating for a transgender high school student to be able to run for prom court.

ENDNOTES

1. MCL 711.1-3, as amended by 2024 PA 229.
2. Former MCL 711.1(1).
3. *Id.*
4. *Id.*
5. Former MCL 711.1(2).
6. Former MCL 711.1(1), compared to, and as amended by 2024 PA 229 § 1(1).
7. *Id.*
8. *Id.*
9. *Id.*
10. Compare Tex Fam Code §45.00 *et seq* to former MCL 711.1(1).
11. 2024 PA 229 §1(2).
12. *Id.* and MCR 3.613.
13. Former MCL 711.1(1) and former MCL 711.3(1).
14. Former MCL 711.3(1) and MCR 3.613.
15. See, e.g., *Essential Links Family Domestic*, Third Judicial Circuit Court of Michigan <https://www.3rdcc.org/forms/family-domestic> (accessed Jan 09, 2026).
16. 2024 PA 229 §3(1)(b)(*i*).
17. 2024 PA 229 §3(1)(b)(*ii*).
18. 2024 PA 229 §1(2).

The Judicial Protection Act and the confessions of a "retired" judge

BY ROBERTS A. KENGIS

As 2024 drew to a close, there were bills pending in the state senate (SB 871) and house of representatives (HB 5724) that were being cited as "The Judicial Protection Act" (JPA). The purpose of these bills was to protect the physical safety and personal information of judges and their families. The senate passed a substitute for the house bill, but the house did not take action before adjourning for the year. I had hoped and assumed that the bills would be reintroduced in the 2025 legislative session, which they were, but to no avail. The senate passed the bill in April 2025, and the House Judiciary unanimously passed the JPA out of committee six months later. But as the year came to a close, the bill never made it to the governor's desk.

This column will describe my own negative experiences as a judge, and the invasions of privacy that my family endured. I will describe the proposed legislation, express my support, but also acknowledge that it is not without valid criticism and concerns.

HARASSMENT AND INVASION OF PRIVACY

I retired from the circuit court bench in June of 2023. The reason that I put the word "retired" in quotation marks in the title of this article is that when I left the bench, I wasn't actually ready to retire. I was 55 years old and had school-age children who still needed to be supported. When I announced my retirement, I stated publicly that I was retiring in order to

spend more time with my family and that the extremely busy court docket did not allow me the freedom I desired to attend my children's events and activities. Many friends and colleagues were shocked, (some even mad) and suspected that there was either a health concern or some other "secret" reason for my retirement. In reality, the reasons I cited were valid and true, but there was another reason that I did not publicly share: the fact that my family and I had been subjected to very disturbing behavior and actions aimed at us by litigants.

Before taking the bench, I was a prosecutor for 25 years. During this time, not one person issued a credible threat or engaged in harassment of me or my family. This was in spite of the fact that I prosecuted thousands of cases involving the most heinous crimes and dangerous criminals, including murder, felonious assault, armed robbery, home invasion, and criminal sexual conduct.

That all changed when I became a circuit court judge in 2018. My docket included every case type cognizable by the circuit court, including criminal, civil, PPOs, and all domestic cases. I quickly learned that the most volatile and angry litigants were not the criminal defendants, but divorce/custody litigants who did not get their way. Some of these litigants decided to vent or protest by altering photos (aka creating memes) of myself and my family and posting them on social media. One litigant started numerous social media pages and websites in my name, all with the goal of posting lies, altered photos and memes about myself and my family. On his webpage, he also sold clothing items with my likeness on the backside. He was later placed on probation and his probation officer told me that the probationer had an altered photo of me hanging above his bed. Several social media posts included veiled threats indicating that everyone would be better off if I were dead. Another litigant sued me no less than four times based on my actions as a judge. (All cases were eventually dismissed.) He also publicly (and falsely) accused me of trafficking my wife for sexual purposes.

All of these actions were disturbing, but the event that impacted my decision to retire the most was when a litigant came to our house at 10:30 p.m. with a process server to serve me with a lawsuit. The litigant stayed in the driveway outside their vehicle while the process server came to the front door and loudly banged it several times with his fist. My wife and children had already been asleep, and of course this woke everyone and had a lasting negative impact on my family. The incident was recorded on our security cameras. I did not answer the door but instead called the police, who addressed the situation by issuing a trespass warning to the litigant. The litigant then posted my home address in a message on a community Facebook page indicating that it was a great place to serve me with lawsuits. I know that this litigant obtained my address by looking at records from the county Register of Deeds office, because in another post, he falsely accused me of transferring property in order to avoid it being subject to a potential judgment against me from his lawsuits.

IN PERSPECTIVE

ROBERTS A. KENGIS

I am sure that I am not the only judge who has experienced or is experiencing this type of behavior. I know of at least two incidents in the last few years where judges or their families were attacked and killed in their homes. My goal in disclosing my experience is not to garner sympathy, but to explain why I support the Judicial Protection Act.

THE PROPOSED LEGISLATION

The proposed bills largely mirror federal law that allows judges to request that persons or public bodies not publish, or remove, the personal identifying information, of the judge and their immediate family members. Personal identifying information includes date of birth, residential and other property addresses, phone numbers, e-mail addresses, financial information, license plate numbers, and school information of family members. "Persons" includes individuals and other legal entities. If a person or public body does not remove the personal identifying information within five days of a request, the judge or their immediate family member may commence an action for injunctive relief in the circuit court.

EXCEPTIONS

The version of the Judicial Protection Act last passed by the state senate includes exceptions. One broad exception applies to information published as part of a news story, commentary, editorial, or other speech on a matter of public concern. There are also several exceptions related to use of personal identifying information for commercial, financial, and investigative purposes.

CONCERNS

I acknowledge that there are several valid concerns regarding the legislation. Some are concerned that it will impose an undue burden on public bodies. Other critics feel that it is not fair to other public officials, i.e., "Why only protect judges?" Some feel that the legislation is too broad in that it allows family members to commence civil actions for non-compliance. All of these concerns are valid and should be considered by the legislators.

CONCLUSION

Based upon my own experience, the benefits of this proposed legislation outweigh the concerns. Both the bar and the public at large expect and deserve a highly qualified judiciary that is not hampered by threats and harassment. The behavior that I and other judges have experienced may lead qualified candidates to choose not to pursue election to the bench and may cause excellent judges to resign or retire early. This legislation would ease the concerns of qualified judicial candidates, especially those with young families, regarding their safety if they become a judge. For these reasons, I applaud any effort to protect judges and their families. I encourage all members of the bar to express their feelings on this bill to their representatives in the legislature.

Judge Kengis retired from the circuit court bench in Allegan County in June of 2023, after 31 years of public service as a prosecutor and circuit court judge. Mr. Kengis was the chief judge of the Allegan County Circuit Court in 2022 and 2023. He currently works in a of counsel role with the Lennon Miller law firm in Kalamazoo, engaging in mediation and arbitration services, as well as insurance defense, church law and general civil litigation.

LAWYERS & JUDGES ASSISTANCE
MEETING DIRECTORY

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

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

PLEASE DO NOT HESITATE TO CONTACT LJAP DIRECTLY WITH QUESTIONS PERTAINING TO VIRTUAL 12-STEP MEETINGS. FOR MEETING LOGIN INFORMATION, CONTACT LJAP VOLUNTEERS ARVIN P. AT 248.310.6360 OR MIKE M. AT 517.281.9507.

ALCOHOLICS ANONYMOUS & OTHER SUPPORT GROUPS

Bloomfield Hills
WEDNESDAY 6 PM*
Virtual meeting
Kirk in the Hills Presbyterian Church
1340 W. Long Lake Rd.
1/2 mile west of Telegraph
(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*
Virtual meeting
Lawyers and Judges AA
St. John's Episcopal Church
26998 Woodward Ave.
(This is both an AA and NA meeting.)

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

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

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

Virtual
THURSDAY 7 PM*
Contact Mike M. at 517.281.9507 for information.

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

Virtual
SUNDAY 7 PM*
Virtual meeting
Contact Mike M. at 517.281.9507 for information.

GAMBLERS ANONYMOUS

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

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

OTHER MEETINGS

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

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

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

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

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

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

Virtual
SUNDAY 7 PM*
WOMEN ONLY
Contact Lynn C. at 269.491.1836 for login information.

Unlocking the power of cellphone records in Michigan civil litigation

BY KEVIN R. HORAN

WHY CELLPHONE RECORDS ARE RESHAPING CIVIL LITIGATION

Until relatively recently, cellphone data was used primarily in criminal investigations. In Michigan civil litigation today, however, such data frequently plays a central role in resolving disputed timelines, testing credibility, and assessing liability in cases involving distracted driving, employment practices, contractual performance, and family law issues. Modern smartphones continuously generate network and usage data, including communication metadata, location-related information, and cloud-based records. When lawfully obtained and properly interpreted, these records can corroborate or contradict testimony and provide objective context for contested events. Their use, however, is constrained by the SCA, Michigan's discovery framework, and judicially recognized privacy interests, all of which require careful attention by practitioners.

WHAT'S OUT THERE — AND WHY IT MATTERS

The term "cellphone records" encompasses multiple categories of information, each with distinct evidentiary value and legal limitations:

- Call Detail Records (CDRs): Metadata reflecting calls and SMS messages, including the originating and terminating numbers, date and time, and duration. Message content is excluded.

Once appropriate consent is obtained, these records are often the most readily accessible carrier data and are commonly retained for extended periods.

- Cell Site Location Information (CSLI): Records identifying the cellular site and sector that handled a communication. CSLI may indicate a device's general location within a coverage area but does not provide precise, GPS-level tracking.
- Timing Advance (TA): A network-based measurement estimating the distance between a device and its serving cell site. When available, TA can meaningfully refine location analysis, particularly in rural or semi-rural environments.
- App and Cloud-Based Data: Data generated or stored by application and platform providers, such as Google, Apple, messaging services, and social media platforms. These sources may be highly probative but are often subject to short retention periods and provider-specific legal requirements.

Because retention practices vary widely, counsel should identify relevant data sources early and take prompt steps to preserve potentially discoverable information.

THE LEGAL HURDLES — AND HOW TO CLEAR THEM

The federal Stored Communications Act[1] generally prohibits service providers from disclosing non-public subscriber records in response to civil subpoenas absent lawful consent or a statutory exception. Michigan courts recognize these constraints, which frequently shift the focus of discovery from compelling provider compliance to compelling party cooperation.

Common mechanisms employed in Michigan civil cases include:

- Subscriber Consent: Voluntary execution of carrier-specific consent forms remains the most efficient method for obtaining carrier records.
- Court-Compelled Consent: When the subscriber is a party, courts may order execution of consent forms pursuant to MCR 2.302 and related discovery provisions.
- Third-Party Discovery: Employers or other entities that possess relevant phone-related data may be subject to traditional discovery rules, although SCA limitations may still apply.
- Preservation Orders: Courts increasingly expect parties to take reasonable steps to preserve electronically stored information once litigation is pending or reasonably foreseeable.

KEY MICHIGAN AUTHORITIES ON CSLI & THE SCA

Michigan practitioners should understand how federal and state authority frames privacy interests in electronic location data and how those principles inform civil discovery disputes.

CARPENTER V. UNITED STATES[2]

In *Carpenter*, the United States Supreme Court recognized that individuals have a legitimate expectation of privacy in historical CSLI, given its capacity to reveal detailed patterns of movement over time. Although decided in the criminal context, *Carpenter* has influenced civil discovery by reinforcing the need for courts to scrutinize requests for location data and to ensure that such requests are appropriately limited in scope and duration.

PEOPLE V. SKINNER[3]

In *Skinner*, the Michigan Supreme Court acknowledged the heightened privacy interests associated with electronic and digital data. While arising from a criminal prosecution, the decision reflects a broader judicial awareness of the sensitivity of electronically derived information, including location data. In civil litigation, this perspective often manifests in discovery orders that balance relevance against privacy through temporal, geographic, or subject matter limitations.

STORED COMMUNICATIONS ACT[4]

The SCA governs the disclosure of non-content and content records held by electronic service providers. For civil litigators, ths SCA's most significant feature is the absence of a mechanism permitting providers to comply with ordinary subpoenas for subscriber records. As a result, courts typically direct parties to obtain discovery through consent-based processes rather than provider compulsion.

MICHIGAN COURT RULE 2.302

MCR 2.302 authorizes discovery of non-privileged matters relevant to a party's claims or defenses and proportional to the needs of the case. Applied to cellphone records, the rule frequently serves as the basis for orders compelling party consent, limiting the temporal scope of production, or imposing protective measures to address privacy concerns.

LITIGATION HOLDS AND THE DUTY TO PRESERVE ELECTRONIC DATA

In cases involving cellphone evidence, disputes frequently arise regarding when the duty to preserve electronically stored information attaches and what steps are required to satisfy that obligation.

In Michigan civil litigation, the duty to preserve generally arises when a party knows or reasonably should know that litigation is pending or reasonably foreseeable.[5] Once triggered, parties are expected to take reasonable and proportionate steps to preserve relevant data within their possession, custody, or control.

Several practical considerations are particularly relevant:

- Triggering Events: Demand letters, pre-suit notices, or the filing of a complaint commonly trigger preservation obligations.
- Scope of Preservation: The duty extends to information reasonably related to the claims or defenses at issue and does not require preservation of all digital data indiscriminately.
- Carrier-Held Records: Although parties may lack direct control over carrier records, they are generally expected to act promptly to seek preservation through consent requests or court intervention before routine deletion occurs.
- Potential Consequences: Failure to preserve relevant electronic data may result in sanctions, including adverse-inference instructions or evidentiary limitations.

Early, narrowly tailored preservation efforts are often more effective — and more defensible — than broad or delayed requests.

FROM DATA TO PERSUASION

Obtaining cellphone records is only the initial step. To be persuasive, technical data must be translated into evidence that is both accurate and comprehensible.

EFFECTIVE PRACTICES INCLUDE:

- Mapping CSLI to illustrate general movement patterns rather than precise location claims.
- Correlating phone activity with GPS data, surveillance footage, or testimonial evidence.
- Presenting expert testimony to explain cellular network operation and to clarify the limitations of the data.

Michigan courts continue to require proper authentication and satisfaction of applicable evidentiary rules, including the business records exception, before admitting such evidence.

BALANCING PRIVACY AND RELEVANCE — A MICHIGAN HYPOTHETICAL

Consider a Michigan motor vehicle negligence action in which distracted driving is alleged. Defense counsel seeks the plaintiff's carrier records, but a subpoena alone is insufficient under the SCA. The court orders the plaintiff to execute a consent form while limiting production to a narrowly defined time window surrounding the collision. The resulting records show no messaging activity during that period, supporting the plaintiff's account.

This scenario illustrates how Michigan courts often balance legitimate discovery needs against privacy interests through targeted and proportionate discovery orders.

Practical Takeaways for Michigan Litigators

- Civil subpoenas alone will not overcome SCA restrictions; consent-based strategies are essential.
- Prompt preservation efforts are critical given varying retention periods.
- Narrowly tailored requests are more likely to be approved and enforced.
- Expert interpretation is frequently necessary to present cellular records accurately and persuasively.

Kevin R. Horan is a retired FBI Supervisory Special Agent and former Assistant Prosecutor. He co-founded Precision Cellular Analysis, specializing in historical cellphone record analysis, expert testimony, and legal training. He has investigated and testified in hundreds of cases involving cellular data, location analysis, and digital evidence. He regularly trains attorneys and law enforcement and has authored numerous reports and articles on the use of cellphone data in litigation.

ENDNOTES

1. 18 USC §§ 2701 *et seq.*
2. *Carpenter v United States*, 585 US 296; 138 S Ct 2206; 201 L Ed 2d 507 (2018).
3. *People v Skinner*, 502 Mich 89; 917 NW2d 292 (2018).
4. 18 U.S.C. §§ 2701–2712.
5. See *The Duty to Preserve Evidence*, American Bar Association <https://www.americanbar.org/content/dam/aba-cms-dotorg/products/inv/book/214612/Chapter%201.pdf> (accessed Jan 12, 2026).

Intoxilyzer 9000 replaces Datamaster DMT for breath tests

BY PATRICK T. BARONE AND JEFF CRAMPTON

Michigan's evidentiary breath alcohol testing system has undergone a significant and historically uncommon transition. The Intoxilyzer 9000, manufactured by CMI, Inc.,[1] is now the evidentiary breath testing instrument in use across Michigan, replacing the DataMaster DMT and concluding a lineage of breath testing technology that has been in continuous service in Michigan since the 1980s.[2] While updates to breath testing instruments are familiar to most practitioners, the adoption of the Intoxilyzer 9000 represents a departure of unusual institutional and legal significance.

The replacement of the DataMaster platform with the Intoxilyzer 9000 marks the first time in nearly half a century that Michigan has adopted an evidentiary breath testing instrument produced by a different manufacturer.[3] The result is not merely new hardware but the introduction of a structurally different yet strikingly similar technological architecture.

Any transition of this magnitude carries practical and jurisprudential implications for courts and practitioners. With the adoption of a new and different evidentiary platform, Michigan's Administrative Rules had to be updated; the DMT caselaw is now subject to renewed examination, and longstanding doctrines may require reconsideration or refinement.

This transitional period represents a unique moment for the Michigan legal system, one in which courts, prosecutors, and defense

counsel alike will play a role in determining how existing precedent applies to the new technology and whether portions of that jurisprudence will endure, adapt, or give way to revised legal frameworks governing the admission and evaluation of breath test evidence in OWI litigation going forward.

INTRODUCING HISTOGRAMS: ENHANCING TRANSPARENCY WHILE CHALLENGES PERSIST

The Intoxilyzer 9000 (I-9000) promises greater subject sample transparency largely due to its ability to generate a histogram of the subject's breath testing sequence. The histogram visually represents the subject's breath flow rate on one vertical axis and the breath alcohol content (BrAC) on the other, with elapsed time shown on the horizontal axis. Ideally, the histogram provides practitioners with an additional tool to assess the validity of the test results and identify potential issues.

In practice, however, defense attorneys must scrutinize these histograms for inconsistencies or anomalies. This is often difficult due to the small size and poor clarity of the printed histograms, which apparently cannot be provided on a larger scale. A proper histogram typically shows the subject's breath flow rate increasing, leveling off, and then decreasing.[4] Deviations from this expected pattern, such as a failure to level off, may indicate the presence of mouth alcohol.

Although histograms are generally produced for each test attempt, defense attorneys have observed exceptions where histograms of all sample delivery attempts are not provided. There is an important distinction between the device generating a histogram and the defense receiving access to it. In some cases, attorneys report not receiving histograms for all attempts, raising questions about whether the missing data could reveal issues with the testing process. When additional histograms are believed to exist, they can be requested and individually printed directly from the I-9000 itself, as the full test sequence is stored in the instrument's internal memory. This process requires cooperation from law enforcement, as these histograms will not be automatically collected through the MSP's "COBRA" data, which is discussed below.

In other cases, the histogram appears to start in the middle of several attempts, so the breath flow does not start from zero on the y-axis. This makes it difficult to determine whether there is a spike in breath flow or an indication of mouth alcohol. When MSP was asked whether the I-9000 had the ability to go back and show the entire attempt, it said it could not do so.[5]

Further complicating matters, histograms do not always reflect the expected patterns. For instance, there are cases where the histogram suggests the presence of mouth alcohol, as evidenced by a BrAC peak followed by a rapid decrease, yet an ethanol reading is still reported.[6] Conversely, there are also instances where the histogram appears consistent with an acceptable sample, but the breath test ticket indicates that the sample was rejected with the status code "unacceptable sample." This is unsurprising, as the MSP training materials and the Operator Guide[7] acknowledge that this "exception message" can result from several potential causes, including residual mouth alcohol, yet it cannot definitively confirm or refute its presence.

These discrepancies highlight the importance of thoroughly examining the histograms to determine whether external factors, such as residual mouth alcohol, environmental contaminants, or internal errors, such as calibration or operational issues, could explain the inconsistencies. Ultimately, while the I-9000's introduction of histograms marks a step toward greater transparency, defense attorneys must remain vigilant. Gathering all the histograms and carefully reviewing them, corroborating evidence such as video recordings of the breath test sequence, and the existence of potential outside influences is essential to ensure accurate and fair outcomes for defendants.

DIFFERENCES IN PROVIDING ACCESS TO DATA

In addition to the newly included histogram, the I-9000 BrAC printout will provide more information than was available on the DMT printout. The I-9000 is intended to provide easier access to this information, as the MSP have purchased Computer Online Breath Alcohol (COBRA) software, a data-management system designed to collect, archive, and retrieve detailed electronic records generated by Intoxilyzer breath-testing instruments. While the MSP plans to link all the machines into a local area network so that it can obtain the data from all machines, this has not happened in the two plus years since the I-9000's rollout. Other states like Texas,[8] Arizona,[9] and Georgia have not only linked the machines in a network but have provided defense attorneys with the ability to directly access the data from any machine online. For now, Michigan practitioners will have to request the data through FOIA.

DIFFERENCES IN ACCURACY CHECK PROTOCOLS

The I-9000 represents a significant departure from the accuracy verification framework used with the DataMaster DMT. Under the DMT system, evidentiary reliability was supported by multiple layers of periodic testing, including weekly dry-gas accuracy checks and quarterly wet-bath calibration checks. Those protocols have now been replaced.

Rather than relying on separate weekly or quarterly calibration procedures, the Intoxilyzer 9000 verifies calibration by running a dry-gas standard check as part of each subject test sequence. The I-9000 will continue using the same dry-gas standard as the DMT, sourced from Guth Laboratories with a nominal target rate of 0.080.[10] However, the acceptable range for a dry-gas test to be deemed acceptable is increasing from 0.076-0.084 (+/- 0.04 either way) for the DMT to 0.074-0.084 (+/- 0.06 below and +/- 0.04 above) for the I-9000.[11] No studies have been presented, and no explanation has been given for the increase in the acceptable range for the same dry-gas standard that was being used with the DMT or for why the total acceptable range is now an asymmetrical 12.5% rather than 10%, with 5% each way.

Because the Intoxilyzer 9000 no longer undergoes separate weekly accuracy checks, review of an instrument's performance necessarily

depends on examination of dry-gas checks embedded within subject test sequences. In practice, this means also evaluating the dry-gas results associated with tests conducted before and after the defendant's test on the same instrument, which are obtainable through FOIA.

Another accuracy-related change to the rules governing breath tests is that the I-9000 will not have to undergo the 120-day maintenance and accuracy testing to which the DMT was subjected. Instead, the machines will be required to undergo the maintenance and accuracy testing "not less than two times annually."[12] The I-9000 printout will list the date of its most recent 182-day test, which should be obtained by defense attorneys via FOIA request to the MSP. One would assume that those records will be a required foundation to the admission of the I-9000 test results, but that remains to be determined by the courts at *Daubert*[13] hearings.

There is nothing in the new rules stating what type of tests must be run during these 182-day inspections. Rather, the rules require only that the machines "be inspected, verified for accuracy, and certified as to their proper working order." However, in December 2025, the MSP finally issued the protocol[14] for the biannual inspections, and it is similar to the prior protocol for the DMT.

Regardless, the new rules require only that a dry-gas sample with a target of 0.080 be run with each subject test and that the machines be inspected twice per year.[15] There is no requirement for testing at targets above 0.080, such as the 0.17 threshold for OWI–High BAC, but the biannual inspections require testing at 0.040, 0.080, and 0.200. Still, since the I-9000 is testing only a 0.080 within each subject test, questions remain about how the MSP will ensure the accuracy of tests above 0.080 in between the two annual inspections. The diminished testing requirements suggest that the MSP has placed unwarranted confidence in the I-9000's ability to maintain accuracy without additional oversight, a concerning assumption given the potential implications for high-BAC cases and overall reliability.

DIFFERENCES IN OFFICER TRAINING AND CERTIFICATION

All law enforcement officers operating the I-9000 originally completed training and certification on the device. The training process included a two-step program: Officers first reviewed an online PowerPoint presentation and passed an online test to demonstrate their understanding, and then they completed hands-on demonstrations on an actual I-9000 machine.[16] Michigan has also published an official Intoxilyzer 9000 Operator Guide, providing officers with detailed instructions on the use and interpretation of the device, including guidance on breath graph analysis, exception messages, and operational procedures.[17]

Another change from the DMT is that officers are required to be recertified on the I-9000 every two years, and the officer's certification date appears on the I-9000 ticket.[18] The recertification process requires the officer to view a slide show and take a written test, but it does not require the officer to demonstrate proficiency with a hands-on test. If the officer's certification has lapsed, the I-9000 is not supposed to allow the officer to proceed with the test. However, the officer could manually enter a different certification date. It has been more than two years since the I-9000 was rolled out, so Defense counsel should either obtain a copy of the officer's certification date independently from the I-9000 ticket or require the officer to produce his or her training certificate at a hearing or trial to verify that the officer did not incorrectly enter the date of his or her training.

NO DIFFERENCES IN DEPRAVATION-OBSERVATION PROTOCOL

Something that did not change with the I-9000 is one of the most litigated areas concerning breath tests: the 15-minute observation-deprivation period.[19] The I-9000 has the capability to require the officer to start the testing sequence and then lock them out for 15 minutes to satisfy the observation-depravation requirement. However, the MSP chose to disable this feature, allowing officers to begin the 15-minute observation period before the I-9000's clock starts tracking, thereby avoiding an additional 15-minute wait when another officer and subject are still completing their testing.[20] This decision was made despite the MSP's stated "best practices," which recommend that officers rely on the I-9000's clock to determine the start of the observation period.[21]

DIFFERENCES IN CALCULATING AND DISCLOSING MEASUREMENT UNCERTAINTY

Unlike the DMT, where the MSP calculated only an "average" uncertainty budget using just a few machines, the measurement uncertainty of each I-9000 machine is calculated after being placed in the field.[22] However, that uncertainty budget is not included on the breath test printout and should be obtained from MSP or the local law enforcement agency. It is uncertain what factors go into the measurement uncertainty calculation, whether the individual making that calculation is qualified to do so, and whether the calculation includes both Type A uncertainty and Type B uncertainty.[23] In addition, it is unclear how often the uncertainty budget is updated after the initial calculation and who is responsible for ensuring that the update occurs. All of this is fertile grounds for cross examination at a *Daubert*[24] hearing on the admissibility of the I-9000's test results.

COMPREHENSIVE DISCOVERY STRATEGIES FOR THE INTOXILYZER 9000

The transition to the Intoxilyzer 9000 has introduced new challenges and opportunities for defense attorneys handling DUI cases in Michigan. The Michigan Forensic Breath Alcohol Analytical Report (MFBAAR), which replaces the OD-80 used with the DataMaster DMT, is now the foundational document provided at the conclusion of a breath test. This report includes the subject's Breath Alcohol Content (BrAC), duration of the blows, dry-gas calibration accuracy test, number of attempts, and total breath volume. For practitioners, obtaining and carefully examining this document is the first step in discovery.

The MFBAAR alone rarely tells the entire story. Each Intoxilyzer 9000 machine stores a wealth of additional data within its internal memory,

much of which may someday be accessible through the COBRA software. This data includes calibration checks, exception messages, and historical test results. While direct access to COBRA data is not yet available online in Michigan, it is an invaluable resource for identifying patterns or irregularities in the machine's operation. Defense attorneys should routinely request this information through both discovery and FOIA submissions to the MSP. Specificity in these requests is crucial; attorneys must include details such as the machine's serial number, the MFBAAR report number, location of the instrument, operator's name and certificate number, the date given, and the location of the test.

Histograms provide a valuable tool for correlating visual data with the numerical results in the MFBAAR. As previously discussed, when additional histograms are believed to exist, such as for aborted or rejected test attempts, they can be requested and individually printed from the I-9000's internal memory. Ensuring access to this data is critical for constructing a comprehensive defense.

Attorneys should request calibration data for the specific test sequence in question, including the dry gas standard's certification of analysis. This certification ensures the accuracy and reliability of the gas used in calibration. The absence of a valid certification may undermine the foundation for admissibility of the test results and should be carefully examined. Attorneys should also request records of historical subject tests from before and after their clients' tests to review the dry gas calibration checks on those tests as well.

Exception messages, printed on the MFBAAR, document conditions under which the Intoxilyzer 9000 determines that a subject sample, instrument function, or testing environment falls outside acceptable parameters. As defined in the MSP Operator Guide, these include, among others, deficient or unacceptable samples that fail minimum requirements for pressure, duration, volume, or slope; purge failures and ambient failures indicating contamination of room air; calibration checks out of tolerance; detection of interferents or radio frequency interference; and diagnostic failures reflecting internal system checks that did not pass. These messages do not identify the root cause, but they record that the instrument detected a deviation sufficient to interrupt, reject, or qualify the testing sequence.[25]

Historical exception-message data for the specific instrument, obtainable through FOIA, must therefore be carefully evaluated in context. Attorneys should examine whether an instrument exhibits an unusually high number of multiple attempts, repeated deficient or unacceptable samples, deviations from typical breath volumes, frequent purge or ambient failures, or repeated detections of radio frequency interference or other interferents. Patterns of such events, particularly when clustered over time, may indicate environmental conditions, overly restrictive or unstable sample-acceptance parameters, or declining instrument performance rather than isolated subject behavior.[26]

Critically, exception-message patterns should be correlated with maintenance and service records. Where repeated exception messages appear without corresponding service calls, diagnostic intervention, or corrective maintenance, the data may suggest that known performance issues were not addressed in a timely manner. Under the MSP framework, service is initiated only when reported, and the absence of service activity despite recurring exception conditions may bear directly on reliability, foundation, and admissibility.[27]

Finally, maintenance and certification records for the I-9000 must not be overlooked. As previously noted, the I-9000 follows a biannual certification schedule rather than the 120-day inspection requirement of the DMT. The dates and results of these inspections are foundational to the admissibility of test results and should be requested as part of any discovery demand. Additionally, records of software updates or repairs performed on the device may reveal potential sources of error that could impact the reliability of test results. In the absence of direct online access to COBRA data, discovery best practices for the I-9000 require thoroughness and persistence.

Accordingly, until centralized COBRA access is implemented, effective defense practice in I-9000 cases demands a deliberate and methodical discovery approach, one that combines persistent use of FOIA, targeted prosecutorial demands, and rigorous examination of MFBAARs, histograms, video recordings, and all associated maintenance, certification, and software records to ensure that breath test evidence admitted in OWI litigation is both scientifically reliable and legally sound.

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ENDNOTES

1. *Intoxilyzer 9000*, CML Intoxilyzer <https://www.alcoholtest.com/intoxilyzer-9000/> (all websites last visited February 03, 2026).
2. Barone, *Defending Drinking Drivers* (James Publishing, 2025), § 2.33 <https://jamespublishing.com/product/defending-drinking-drivers/>.
3. Barone, *The Intoxilyzer 9000: Michigan's New Breath Test Machine*, Michigan State Appellate Defender Office (April, 2023) <https://www.sado.org/Articles/Article/1034>.
4. *MSP Intoxilyzer 9000 Operator Guide For Law Enforcement* (January 2026), pp 6-9 <https://msp.qualtraxcloud.com/ShowDocument.aspx?ID=71664>.

5. This comes from a discussion with Mark Fondren, former head of the breath testing program.
6. Labianca, *Non-foolproof nature of slope detection technology in the Dräger Alcotest 9510*, 26 Forensic Toxicology 22-224 (2017) <https://doi.org/10.1007/s11419-017-0373-x>.
7. The Michigan State Police have published the *Intoxilyzer 9000 Operator Guide for Law Enforcement*. (See *supra* n 4). In testimony, the former director of the MSP Breath Testing Program refused to call the "Operating Guide" a "Manual" and said that despite the Guide's instruction to "Re-check the subject's mouth and conduct another 15-minute observation period" when receiving an Unacceptable Sample exception message, this was only a "guide" for law enforcement and not a required action.
8. *BAL Records Search*, Texas Department of Public Safety Breath Alcohol Lab <https://www.dps.texas.gov/apps/ballab/>.
9. *Intoxilyzer COBRA Data*, Arizona Department of Public Safety Crime Lab, <https://www.azdps.gov/intoxilyzer_results>.
10. The Intoxilyzer 9000 reports BrACs to the third digit instead of truncating at the second digit like the DMT.
11. R 325.2655 (j): "If the instrument analyzes a known ethanol standard during a subject's breath test, the results of that analysis must be no lower than 0.074 g/210L and no higher than 0.084 g/210L of the nominal value of the standard."
12. R 325.2653(4). The rules do not specify how far apart the two tests per calendar year must be. Thus, they could theoretically be only a day apart or 364 days apart. The authors assume MSP will attempt to ensure that the accuracy tests are as close to 182 days apart as possible, so they will be described as the "182-day tests" for the remainder of this article.
13. *Daubert v Merrell Dow Pharm, Inc*, 509 US 579; 113 SCt 2786; 125 L Ed 2d 469 (1993).
14. *BA-PM 2.1 Intoxilyzer 9000 Biannual Inspection*, Michigan State Police Forensic Science Division (Dec 05, 2025) <https://msp.qualtraxcloud.com/ShowDocument.aspx?ID=54484>.
15. R 325.2653(4): "(4) Approved evidential breath alcohol test instruments that examine a known alcohol standard with each subject test must be inspected, verified for accuracy, and certified as to their proper working order not less than 2 times annually by either an appropriate class operator who has been certified in accordance with R 325.2658, or a manufacturer-trained representative approved by the department."
16. This is based on personal knowledge from an officer who received the initial training and the two-year updated training.
17. *MSP Intoxilyzer 9000 Operator* Guide, *supra* n 4.
18. R 325.2658(1): "To maintain a class III certification, each class III operator certified after January 1, 2022 is required to re-certify every 2 years."
19. The training materials that law enforcement reviews prior to hands-on training on the I-9000 state the following: "NOTE: The 15-minute observation period is one of the most challenged procedures of an OWI arrest by defense attorneys. DO IT RIGHT!" Those materials further advise, "Best practice: Use the clock on the breath instrument to track your 15-minute observation period."
20. This comes from Mark Fondren, former director of the program.
21. *Id.*
22. *Id.*
23. See, Barone & Vosk, *Breath and Blood Tests in Intoxicated Driving Cases Why They Currently Fail to Meet Basic Scientific and Legal Safeguards for Admissibility*, Michigan Bar Journal (July 2015); Vosk & Emery, *Forensic Metrology Scientific Measurement and Inference for Lawyers, Judges, and Criminalists* (Rutledge Press, 1st ed, 2021).
24. *Daubert, supra*, n 14.
25. See *MSP Intoxilyzer 9000 Operator* Guide, *supra* n 4, pp 12–15 (defining exception messages including Ambient Fail, Deficient Sample, Unacceptable Sample, Interferent Detected, Radio Frequency Interferent Detected, Calibration Check Out of Tolerance, and Diagnostic Fail).
26. Id. at pp 15–16 (defining breath volume, number of attempts, incomplete tests, and the operational meaning of rejected or incomplete samples and clarifying that exception messages reflect deviations from programmed acceptance criteria rather than causation).
27. *Id.* at p 17 (describing the procedure for requesting service and the requirement that service is initiated by reporting observed errors or failures, with records retained accordingly).

BEST PRACTICES

Best practices for obtaining enforceable patent protection

BY MICHAEL TURNER AND TIFFANY FIDLER, PHD

The US patent system was initiated within the US Constitution: "The Congress shall have Power … To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[1] The exclusive right of inventors was then codified in the patent system.[2] In exchange for an enabling disclosure of an invention,[3] a patentee is granted the exclusive right from issuance to a term of twenty years from the original filing date.[4] Patents are assets[5] for inventors and businesses to protect their technology with a limited monopoly while commercializing their inventions. The patent system provides this limited monopoly in exchange for inventors publicly disclosing their inventions, thereby promoting the future development of technologies.

Patents vary in scope and strategy, and not all patents are created equal. Before seeking patent protection, an applicant should understand their goals for a patent. A patent's goals may be tailored based on an understanding of the applicant's business strategies and objectives. Some patents are obtained as commodities on developing technologies, which may be employed for protection of future products, as potential licensing strategies, or as assets on a balance sheet. Other patents protect a particular product that has an expected commercial success and a high risk of copying by others. When protecting a product, it is beneficial to also obtain protection on potential alternative designs. Patents may also be obtained as a defense (or counter-offense) against a competitor's patents. Patents are often effective marketing tools with consumers — patents are associated with innovation, ingenuity, authenticity, and government-certified exclusivity.

Utility patents conclude with claims, which define the scope or metes and bounds of the exclusive property right.[6] Patent claims are drafted with an eye toward the goals or strategies for the patent and underlying business. In 1892, the US Supreme Court acknowledged the complexity of drafting patent claims: "claims of a patent … constitute one of the most difficult legal instruments to draw with accuracy."[7] During examination at the United States Patent & Trademark Office, a patent examiner examines the claims, conducts a prior art search, and issues an office action rejecting or allowing the claims.[8] The patent applicant is given an opportunity to amend the claims and argue for the patentability of the claims.[9]

An invention (and the corresponding patent claims) may be directed to a process, a system, an article of manufacture, or a composition of matter.[10] Many inventions may be protected by more than one of these statutory classes. While preparing a patent application, an initial determination is to identify which of these categories to pursue. Article and composition claims may be more financially beneficial — permitting a patentee to seek royalties on an entire article, product, or composition. In contrast, patent royalties for method claims may be potentially limited to a portion of an overall process, such as a subset of steps to manufacture a good or provide a service. System claims often include method steps, which may face the same enforcement limitations.

The patent applicant should consider the potential detectability of their claims. For example, a competitor's apparatus (product) may be readily available to obtain and inspect to detect whether the competitor is infringing a patent. Conversely, with method and system claims, it may be difficult to detect infringement. For example, if the patent

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claims are directed to a method of manufacturing, a competitor's manufacturing process may not be publicly available for inspection. Likewise, if the patent claims are directed to an internal system, a competitor's internal systems may not be available for inspection.

A patent applicant may desire to pursue claims of varying invention categories or statutory classes. Apparatus claims and composition claims may permit larger financial returns and facilitate detection of a competitor's infringement. Depending on the state of the art, method claims or system claims may permit a different scope of patent protection, which may be broader than the protection afforded by the apparatus or composition claims. Pursuing claims of varying scope should result in various layers of protection.

In order to obtain a utility patent, the invention must be useful,[11] novel,[12] and nonobvious.[13] The novelty and nonobvious nature of the invention are examined in view of the prior art. In order to seek broad patent protection, it is advantageous to pursue broad patent claims. Conducting a prior art search in advance of preparation of a patent application can be useful in obtaining patent protection that can withstand challenges. An understanding of the state of the art permits a patent applicant to seek a scope of protection that is reasonably broad in view of the prior art but does not inadvertently seek to claim the prior art itself or an obvious variant thereof. Conversely, an understanding of the state of the art may also avoid a pursuit of claims that are too specific or narrow in view of the prior art to avoid surrendering the breadth of protection that is otherwise available to the applicant. Generally, the applicant should pursue claims of a broad scope while also pursuing claims to narrower features. Narrower claims bolster the claim set and help justify the broad scope while also providing claims to rely upon when faced with a rejection or validity challenge.

As the study of the prior art reveals which features of an invention may be novel over the prior art, the applicant can focus on claiming these novel features. The applicant can also disclose in the specification alternatives, benefits, and advantages of the novel features over the prior art. The alternatives may be relied upon to avoid narrowing the claims to a specific embodiment of the invention. The benefits and advantages may subsequently be relied upon to overcome an obviousness inquiry during examination or during a validity challenge by a competitor.

Another caution is to draft claims directed to a single party for infringement. For example, if a claim would require multiple parties to infringe, then enforcement, while possible,[14] may be difficult or undesirable. The applicant should take into consideration the condition of the article at the point of sale and draft the claims accordingly. Any claim that requires a customer or end consumer to infringe is unlikely to be enforced. If claiming a method, the applicant should target method steps practiced by a competitor and avoid method steps that are performed by others or by multiple parties. When claiming a system, the applicant should consider that different assemblies, or subassemblies, may be provided by separate parties.

In today's global market, it is common that many articles are assemblies with subassemblies or components provided from various suppliers. For an enforceable patent against a supplier, a broad claim should focus on the subcomponent, subassembly, or relevant method step(s). To maximize damages against the entire product, system, or method, additional claims should be drafted toward the product/system/method at large. Claims of varying scope provide the applicant with protection against both suppliers and end manufacturers with multiple options for leveraging the patents.

In the context of certain technologies, (e.g., software and biotechnology), the applicant should avoid claiming the invention as a law of nature, a natural phenomenon, or an abstract idea[15] to avoid rejection or invalidation. If claims are drafted that may be broadly interpreted to risk one of these categories, the applicant should consider additional narrowing claims that further avoid these risk categories.

While patent claims with a broad scope of protection may be the goal, if these claims are interpreted as vague or indefinite, then the Applicant may face a rejection or invalidity challenge.[16] As discussed with other strategies, the Applicant should identify potential risks associated with broad wording and add further specific claims narrowing these limitations to withstand a challenge of indefiniteness.

Broad claim terminology can also be interpreted as nonce words if a claim limitation is generic and has is "no specific structural meaning"[17] and "construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof,"[18] which may be a narrower interpretation than an ordinary meaning in view of the specification and file history.[19] The applicant should use claims of varying scope to obtain an interpretation under the ordinary meaning.

The applicant should employ care in word selection when preparing the patent claims and the patent specification. Understanding a client's business extends beyond their intellectual property and marketing goals. The applicant should also understand the product liability concerns of the business to avoid terminology in the patent application that is inconsistent with product liability efforts.

Careful word selection is a caution to be applied throughout the prosecution of the patent application as well. Remarks that are made during the prosecution of the application may be relied upon to limit the scope of the patent.[20] Likewise, a goal of patent prosecution is to keep remarks to a minimum to avoid prosecution history estoppel.

Finally, and once a patent is obtained, the patentee should properly mark the product with the patent number to optimize potential patent royalties.[21]

Various strategies for obtaining enforceable patent protection are outlined herein. An appropriate strategy coordinates with the

applicant's business and goals and is sufficiently flexible to be updated with evolving law and procedures.

Michael Turner is a co-chair of patent prosecution at Brooks Kushman in Royal Oak, where he is active in training and mentoring. His practice focuses on preparation and prosecution of domestic and international utility and design patents, patent portfolio management, client counseling, and opinions. Turner has prepared and prosecuted many patents that were successfully enforced and withstood the validity challenges of litigation and USPTO post-grant proceedings. He is also active in post-grant proceedings, including coordinating strategies across these proceedings, as well as co-pending litigation, product engineering, licensing, and patent prosecution.

Tiffany Fidler, PhD, is a co-chair of patent prosecution at Brooks Kushman in Royal Oak. Her practice involves counseling clients ranging from Fortune 100 companies to start-ups on intellectual property matters. Dr. Fidler's work centers on procuring domestic and foreign patents in mechanical and electromechanical matters and design arts, coordinating international patent portfolios, counseling clients regarding patentability and freedom-to-operate analyses, and negotiation and preparation of various intellectual property agreements.

ENDNOTES

1. U.S. Constitution, Article. I., Section. 8. (March 4, 1789).
2. 35 U.S.C. § 154(a)(1).
3. 35 U.S.C. § 112(a).
4. 35 U.S.C. § 154(a)(2), as related to utility patents.
5. 35 U.S.C. § 261.
6. 35 U.S.C. § 112(b).
7. *Topliff v. Topliff and Another*, 145 U.S. 156, 171 (1892).
8. 35 U.S.C. §§ 131, 132. 37 C.F.R. § 1.104.
9. 35 U.S.C. § 132. 37 C.F.R. § 1.111, *et seq.*
10. 35 U.S.C. § 101.
11. 35 U.S.C. § 101.
12. 35 U.S.C. § 102.
13. 35 U.S.C. § 103.
14. *E.g.* 35 U.S.C. § 271(b)-(c).
15. 35 U.S.C. § 101; *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Bilski v. Kappos*, 561 U.S. 593 (2010); Manual of Patent Examining Procedure (MPEP) § 2106 *et seq.*, Rev. 01.2024, November 2024.
16. 35 U.S.C. §§ 112(b). *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898 (2014).
17. *Williamson v. Citrix Online*, 792 F.3d 1339 (Fed. Cir. 2015) (*en banc*). MPEP § 2181(I)(A).
18. 35 U.S.C. § 112(f).
19. *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*).
20. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722 (2002).
21. 35 U.S.C. § 287.

PLAIN LANGUAGE

Collaborating with MAMA on improving ballot proposals

BY JOSEPH KIMBLE

This column is reprinted (with minor edits) from the Winter 2026 issue of Municipal Legal Briefs*, published by the Michigan Association of Municipal Attorneys. The column pairs with last month's column by Kristin Duffy. That column broadly covered the state and local requirements for ballot proposals in Michigan and included one real-world before-and-after example. As I mention below, Kristin deserves credit for her part in the two redrafted examples in this column, since they substantially follow the model of her January redraft. —JK*

For MAMA's Annual Meeting in October, Vince Duckworth, chair of MAMA's Professionalism and Education Committee, kindly invited me to speak about improving the clarity of Michigan ballot proposals. I was representing the Kimble Center for Legal Drafting at Cooley Law School. The Center's mission is to produce and make available—to attorneys and consumers—legal documents that are clear and easily understandable. We do this as a public service.

I was glad to accept Vince's invitation, and I attended with Kristin Duffy, a summa cum laude graduate of Cooley and the Center's graduate fellow. Kristin had written an article for the *Michigan Bar Journal*'s January Plain Language column. Before the meeting, we had shared a draft of the column with Vince and with Steven Mann, the outgoing president of MAMA, and were delighted that they seemed receptive to our offer to possibly collaborate.

At the meeting, we posed three questions:

- Do ballot proposals need to be in a single sentence? (The templates in the booklet *An Introduction to Township Millage Questions* all use single sentences.)
- Do proposals need to cite codified law such as the Headlee Amendment, which most voters will know little or nothing about?
- Do proposals need to show the calculations that go in the final millage amount, as opposed to just setting out the amount itself?

Kristin's research had convinced us that the answers were no, and we didn't hear any disagreement during or after our talk. In fact, several persons we spoke with afterwards seemed quite positive about our efforts.

Kristin and I listened to a few of the presentations during the meeting, including Steve's update of Headlee Amendment legal issues. He showed two slides that caught our attention—two templates for ballot proposals involving the Headlee Amendment. Kristin and I have since redrafted those proposals and sent the redrafts to Vince and Steve. Steve had two suggestions that we incorporated. We don't know yet whether there's a process for getting formal, or even informal, approval of these templates, but we stand ready to tackle any other standard ballot language that MAMA or the Michigan Townships Association might suggest. We are in the process of trying to connect with the Townships Association.

In the meantime, here are the two templates that we redrafted. Our redraft appears after each one. We welcome comments. We really do! Any inaccuracies can (we think) easily be fixed.

SAMPLE BALLOT PROPOSAL:

HEADLEE OVERRIDE BALLOT
CITY OF _____ MILLAGE RESTORATION PROPOSAL
This proposal will restore the authority of the City to levy 20 mills for general operating purposes which has been reduced by 2.8214 mills by application of the Headlee Amendment.
Shall the limitation on the amount of taxes which may be imposed on taxable property in the City of _____, County of

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 42 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.

_____, Michigan, be increased by 2.8214 mills ($2.8214 per $1,000 of the taxable value) [for a period of ten (10) years, from 2026 to 2035,] [in perpetuity commencing in 2026] as new additional millage in excess of the limitation imposed by Michigan Compiled Laws section 211.34d, to provide funds for general operating purposes? It is estimated that 2.8214 mills would raise approximately $192,888 when first levied in 2026.

SUGGESTED REDRAFT:

It is proposed that the current millage levied by the City of _____ be increased by 2.8214. This increase would restore the City's authority—which was reduced by law—to levy a total of 20 mills. The additional money raised would be used for general operating purposes. This would cost you about $2.82 for each $1,000 of your taxable real and personal property. The charge would [apply each year from 2026 through 2035] [be permanent, beginning in 2026]. About $193,000 would be raised in the first year. Should the proposed new additional millage be approved?

SAMPLE BALLOT PROPOSAL:

RENEWAL WITH HEADLEE OVERRIDE

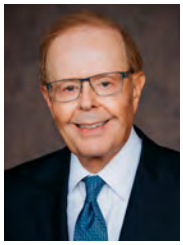
SENIOR SERVICES MILLAGE RENEWAL AND RESTORATION PROPOSAL

This proposal will authorize the City of _____ to levy 0.50 mill for the purpose of funding activities and services for persons 60 years of age and older. Of the 0.50 mill, 0.4721 represents a renewal of the 0.50 mill authorization approved by the electors in 2018, which will expire with the 2025 tax levy and 0.0279 mill represents a restoration of that portion of the same authority which has been reduced by application of the Headlee Amendment.

Shall the limitation on the amount of taxes which may be imposed on taxable property in the City of _____, County of _____, Michigan be increased by 0.50 mill ($0.50 per thousand dollars of taxable value) for a period of eight (8) years, 2026 to 2033, inclusive, as a renewal of the 0.4721 mill previously authorized by the electors which expires with the 2025 levy plus new additional millage in the amount of 0.0279 mill, for the purpose of providing funds for services and programs for senior citizens pursuant to the authority provided to it under Act 39 of PA 1976, specifically MCL 400.576? It is estimated that, if levied, the 0.50 mill would raise approximately $32,680 when first levied in 2026.

SUGGESTED REDRAFT:

It is proposed that the City of _____ levy a tax of 0.50 mill. The proposed millage includes (1) a renewal of 0.4721 mill that was previously approved by voters in 2018 and (2) an increase of 0.0279 mill as new additional millage. This renewal and increase would restore the City's authority—which was reduced by law—to levy a total of 0.50 mill. The money raised would be used to fund activities and services for people 60 and older. This would cost you about $0.50 (50 cents) for each $1,000 of your taxable real and personal property. The charge would apply each year from 2026 through 2033. About $32,700 would be raised in the first year. Should the proposed renewal and increase be approved?



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. In 2024, he won the Golden Pen Award from the Legal Writing Institute.

LIBRARIES & LEGAL RESEARCH

Michigan's humble "rules of the road" and how they drive the law

BY VIRGINIA C. THOMAS

Generations of Michigan drivers have relied upon their contemporary edition of *What Every Driver Must Know*[1] in preparation for the written and practical parts of their driver's license test. The Secretary of State and Commissioner of State Police first issued the pamphlet in 1937.[2] Its contents were approved by the Attorney General as a correct interpretation of the laws "relating to the operation of motor vehicles on the streets and highways of this state."[3] The following year, the state printed a million copies of the pamphlet for the benefit of Michigan motorists.[4]

Early on, driver's test examinations were based on the pamphlet, which updated and summarized changes in traffic laws "not known to the average driver."[5] Examiners across the state advised prospective motorists to read it before taking the test.[6] Today, *What Every Driver Must Know* continues to provide essential information on road signage and signals, vehicle operations and equipment requirements, and highway safety rules for new and experienced drivers alike.

The pamphlet's simple roots and ubiquity obscure its noteworthy role in the history of Michigan motor vehicle laws. Let's take a look …

IN THE REARVIEW MIRROR

In 1905, Michigan joined the growing number of states requiring registration and licensing of motor vehicles.[7] Public Act 196[8] outlined our state's first steps to regulate the use of motor vehicles on public highways. The Act required every motor vehicle owner to register their motor vehicle with the Secretary of State. In turn, the Secretary of State was tasked with coordinating the registration process, which included issuing individual certificates of registration (licenses) and license plates, collecting licensing fees, and keeping appropriate records. Surplus fees were earmarked for maintaining good roads for the benefit of the state at large.[9]

The 1905 statute also addressed basic elements of road safety and etiquette for drivers. It specified, for example, where to attach the seal or license plate on a vehicle and requirements for front and rear lights. Rules for operating a motor vehicle in the presence of pedestrians, rules for non-motor vehicle traffic, and guidance for proper turning, passing, and lending assistance are set out in the statute as well.

Over the next ten years, the Michigan legislature amended its motor vehicle law multiple times to respond to the needs of rapidly expanding motor vehicle use and to standardize local variations throughout the state.[10]

In 1915, Michigan enacted the Michigan Motor Vehicle Law,[11] a more comprehensive statute incorporating many of the changes to motor vehicle law that had been enacted over the previous decade. The same legislature enacted the Garage Keeper's Lien Act,[12] which established lien rights for motor vehicle mechanics (garage keepers) over automobiles or other propelled vehicles maintained, stored, or repaired at the request of the vehicle's registered owner.

While the Garage Keeper's Lien Act, as amended, remains in force today, the Michigan Motor Vehicle Law was repealed and replaced in 1949 by the Michigan Vehicle Code.[13] According to a special consultant to the (then) Secretary of State, the new code included few substantive changes to Michigan's motor vehicle laws.[14] The drafter followed the topical arrangement of the Uniform Motor Vehicle Code in an effort to clarify, simplify, and make the state's motor vehicle laws more comprehensible for Michigan motorists.[15] The better informed motorists are, the safer streets and highways will be for all Michiganders.

ROADS LESS TRAVELED

The Michigan Vehicle Code designates the Secretary of State as

the exclusive state agent to administer its driver's license provisions[16] and issue rules[17] within the scope of that authority. For example, "Driver License General Rules"[18] in the Administrative Code outline the hearing process for lost or restricted driving privileges. Other regulations focus on specific types of vehicles, such as motorcycles[19] and watercraft.[20] In that respect, *What Every Driver Must Know* and Secretary of State administrative rules for motor vehicles are coordinated and complementary, but not duplicative.

Michigan courts have addressed the evidentiary value of *What Every Driver Must Know* to automobile accident cases in the state. Early editions of the pamphlet had included a chart titled "Stopping Distance – Passenger Cars," which indicated the braking distance needed for a car traveling at different rates of speed. In Winekoff v Pospisil,[21] the Michigan Supreme Court held that the trial court's judicial notice of the chart was not prejudicial, as the stopping distances used in the chart were "widely published and pretty well understood."[22]

The stopping distance chart is no longer contained in *What Every Driver Must Know*. However, later automobile accident litigants have requested judicial notice of other elements of the pamphlet.[23] In Lawrence v Schauf,[24] plaintiff sought to rely on the pamphlet as authority for defining the parties' respective duties without formal proof. The Court of Appeals explained:

> Historically, our Supreme Court has only endorsed the use of the stopping-distance tables … [t]he pamphlet is not an official source of Michigan's constitutional, statutory, or common law … it is merely a guide to finding information regarding "obtaining a driver's license, common traffic laws, signs and signals, and basic driving tips for sharing the road and handling emergency situations." Contrary to plaintiff's assertion, the pamphlet is not authoritative for determining the relative rights and responsibilities of the parties in this case.[25]

THE HIGHWAY AHEAD

Numerous editions of *What Every Driver Must Know* have been published to keep pace with revisions in Michigan motor vehicle laws over the past century. The pamphlet has evolved from a state-approved interpretation of Michigan's motor vehicle laws to a helpful guide for motorists and other Michiganders seeking a driver's license. Looking ahead, it will be interesting to see whether our "rules of the road" may require further tweaking to accommodate the developing needs of autonomous car owners.

Virginia C. Thomas is a librarian with the University of Detroit Mercy Law Library.

ENDNOTES

1. Michigan Department of State, *What Every Driver Must Know* (2024) (available in several languages at: <https://www.michigan.gov/sos/resources/forms/what-every-driver-must-know>). (All Internet sites last searched December 28, 2025.)
2. The earliest publication of *What Every Driver Must Know: A Summary of the More Important Rules of the Road* in the HathiTrust is dated 1937 (available at: <https://babel.hathitrust.org/cgi/pt?id=mdp.39015006961075&seq=3>). However, compilations of the Michigan motor vehicle code and related laws, authorized by the Secretary of State, were published in as early as 1910. *See*, HathiTrust <https://catalog.hathitrust.org/Record/000060992>.
3. *Supra* note 2 at [2].
4. *Supra* note 1 at 73 (identifying Michigan as "the first state to produce trafficked law instructions specifically for drivers").
5. *Scavarda Claims Fears on Tests*, State Journal (February 16, 1938) p 9. (Michigan State Police Captain Ceasar J. Scavarda surmised that "[a]n applicant who has read this should be able to take and pass the test in 10 minutes.")
6. *No Flunks Are Recorded in Initial Driver Tests*, State Journal (April 1, 1938) p 1.
7. Martin, J. W., *The Motor Vehicle Registration License*, 12 Bull Nat Tax Assn, 193, 194 (July 1927) and Federal Highway Authority Chart: *Year in Which Motor Vehicles Were First Registered* (Table MV-230) (April 1997). (available at: <https://www.fhwa.dot.gov/ohim/summary95/mv230.pdf>).
8. 1905 PA 196.
9. Id.
10. 1909 PA 318 §9 (Local ordinances prohibited) challenged the home rule provision of the Constitution of 1908 by expressly prohibiting local authorities from licensing or regulating drivers with respect to their speed or use of public highways). See *People v McGraw*, 184 Mich. 233; 50 NW 836, 839 (1915), where the Court held invalid and void provisions of a local ordinance that contravened state law but affirmed the constitutional right of municipalities to exercise reasonable control over the use of motor vehicles on their highways.
11. 1915 PA 302.
12. 1915 PA 312.
13. 1949 PA 300, MCL 257 et seq. <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-ACT-300-OF-1949>.
14. John P. O'Brien, *The New Michigan Vehicle Code*, 28 Mich St BJ 36 (October 1949).
15. Id.
16. MCL 257.202.
17. MCL 257.204.
18. Mich Admin Code, R 257.301-R257.316.
19. Mich Admin Code, R257.971-R257.975.
20. Mich Admin Code, R281.2201-R281.2219.
21. *Winekoff v Pospisil*, 384 Mich 260; 181 NW2d 897, 898 (1970).
22. *Winekoff*, 384 Mich 260 at 264.
23. See, for example, *Collier v Montalvo*, unpublished per curiam opinion of the Court of Appeals, issued September 23, 2021 (Docket No. 353176). (The court held that Figure 4.7, a right-of-way illustration, was not representative of actual circumstances and could confuse the jury.)
24. *Lawrence v Schauf*, unpublished per curiam opinion of the Court of Appeals, issued February 10, 2022 (Docket No. 354872).
25. Id. at [4] (citing the preface to *What Every Driver Must Know* (2016)).

LAW PRACTICE SOLUTIONS

Growth and retention: Marketing tactics for small firms

BY ROBINJIT K. EAGLESON, J.D.

Marketing strategy used to be a luxury reserved for larger law firms. Small and solo law firms would rarely consider a marketing strategy outside of word of mouth due to those dollars needing to be used for office rent or keeping the lights on. However, with the added benefits of technology, marketing is no longer considered a luxury but instead within arm's reach. It is also, in today's world, a necessity. Today's legal landscape has become quite competitive, and small and solo firms face the challenge of standing out amidst larger competitors and a growing reliance on online platforms. Small and solo firms can carve out a strong market presence, attract clients, and build long-term relationships. Lawyers can use effective, cost-efficient marketing strategies that are tailored for small and solo firms that can drive growth, client loyalty, and positive word of mouth.

In an increasingly digital world, a lawyer's firm's online presence is essential and is often the first impression potential clients will have of the lawyer. When potential clients look at a website, they get an instant gut feeling — is this a lawyer or firm that I can trust and that will work hard for me? Have they placed enough thought into their website that correlates how much thought they will put into my case or matter? A well-crafted website and active digital channels can not only showcase a firm's expertise but also build trust and credibility.

A firm's website is their digital storefront, and it must look professional, be user-friendly, and be optimal for mobile device use. Key elements include:

- Clear contact information (including a phone number and email address).
- Well-defined practice areas that highlight the firm's expertise.
- Client testimonials or case studies, if available.
- An intuitive navigation structure for ease of use.
- A blog or resource section with useful legal tips or industry updates. While this is optional, it provides potential clients with insight as to the level of expertise the firm brings.

Search engine optimization (SEO) is not something attorneys automatically think about when determining a plan for their strong online presence. However, SEO is critical to ensure that the website appears in search results[1] when potential clients search for legal help. To assist with this optimization, there are online tools that can be utilized, such as Google My Business and local SEO tactics[2] (e.g., "Michigan family lawyer" or "Detroit estate planning attorney"). The website should contain high-quality content, including relevant keywords, practice area descriptions with helpful and informative language, and, if applicable, blog posts about common legal issues.

Positive online reviews can also significantly boost an attorney's credibility. This can be accomplished by encouraging satisfied clients to leave reviews on platforms like Google, Avvo, or Yelp. Reviews play a pivotal role in client decision-making, particularly for smaller firms where word-of-mouth recommendations are paramount.

Social media[3] is another essential marketing tool that allows small law firms to connect with clients and potential clients, share legal insights, and enhance visibility without a large budget. Small firms

"Law Practice Solutions" is a regular column from the State Bar of Michigan Practice Management Resource Center (PMRC) featuring articles on practice, technology, and risk management for lawyers and staff. For more resources, visit the PMRC website at michbar.org/pmrc/content or call our helpline at 800.341.9715 to speak with a practice management advisor.

should focus on the platforms where potential clients are most active, such as Facebook, Instagram, LinkedIn, TikTok, YouTube, Bluesky, etc. Social media may be used to share valuable legal tips, recent cases, and client success stories (with permission)[4] or to provide updates on new laws and regulations. This positions the firm as knowledgeable and approachable. Other options through the use of social media are creating short, informative videos demystifying legal concepts for the audience or making behind-the-scenes reels that show the human side of the firm by introducing staff, sharing community involvement, or posting firm milestones. If able to budget for some paid advertising, small firms should consider targeted ads on social media because even with a small budget, attorneys can run highly targeted campaigns aimed at specific demographics or geographic areas.

For small firms, personal connections and community involvement still have significant impact on brand recognition and client loyalty. This is why it is important for small firms to continue attending local business networking events, bar association functions, and industry conferences. These events provide opportunities to meet potential clients and build relationships with fellow professionals, so be prepared with business cards or digital marketing materials such as a firm brochure or website QR code to distribute.

Being involved in pro bono[5] work and community services also shows a firm's commitment to their community. This not only helps build goodwill but also establishes trust and raises awareness about the firm. Some tips are to consider hosting free legal clinics or offering seminars on common legal issues like estate planning, family law, or tenant rights. This is a great way to educate the public while subtly marketing the firm's services. In addition to pro bono work and participating in community services, referral[6] relationships also develop relationships with other professionals who may refer clients. Therefore, establishing a referral system where both parties benefit from client referrals may also garner additional business and promote the firm's practice through other professionals.

For many potential clients, taking the first step to hire an attorney can be intimidating. Offering free consultations can help ease the anxiety and create a sense of trust while also giving the attorney an opportunity to demonstrate their expertise. If the firm is able to fiscally provide free consultations, this should be highlighted on the firm's website and social media profiles. This opportunity allows the firm to engage with clients, understand their needs, and show the firm can solve the client's legal issues. But it may not be enough to offer a free consultation. Simplifying the process for booking consultations by providing an online scheduling system is essential in today's digital world. Think about it personally … what is preferable? – Calling, potentially leaving a voicemail, and waiting for a callback or quickly filling out a form online and moving on to the next thing on the day's to-do list?

Last, but certainly not least, small firms should build a natural niche.[7] Since law school, attorneys have been told to develop and specialize in their niche areas, whether that be criminal law, patent law, transactional law, medical negligence, etc. By having a niche area, the attorney can hone their marketing plan to find their ideal candidate and build their practice for those clients. By knowing the niche, the firm can create a strategic marketing plan to better reach their potential audience and to build its brand.

Effective marketing does not require a large budget — it is about strategy, consistency, and authenticity. For small law firms, focusing on building a strong online presence, networking, providing valuable content, and offering personalized services can make a huge impact. Combining digital tools with community engagement and thoughtful client communication, the firm and its attorneys can stand out, attract quality leads, and build lasting relationships that drive sustained growth.

As a small firm, it has a unique opportunity to offer personalized, client-focused service — that one-on-one relationship that many clients crave. Use the firm's marketing efforts to highlight how the firm is different — whether it is the deep understanding of local laws, the compassionate approach, or the innovative use of technology. When done thoughtfully, the marketing strategy will not only attract new clients but also help to build long-term success!

To receive some further tips on marketing strategies, contact the Practice Management Resource Center at (800) 341-9715 or pmrc@helpline@michbar.org.

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

ENDNOTES

1. Remember MI Ethics Opinion RI-385: An attorney may not utilize a keyword advertising campaign that involves using the name of another attorney, law firm or attorney's or law firm's tradenames without the express consent of the other attorney or law firm. Ethics Opinion RI-385, State Bar of Michigan (Nov 18, 2022) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-385> (all websites accessed Dec 15, 2025).
2. Verta, *Struggling to Attract Clients? Discover Small Law Firm Marketing Strategies That Work*, Best Lawyers (Dec 13, 2024) <https://www.bestlawyers.com/article/small-law-firm-marketing-strategies-to-attract-clients/6339>.
3. Molag, *The Complete Guide to Social Media for Lawyers and Law Firms*, Clio (May 13, 2025) <https://www.clio.com/resources/digital-marketing-lawyers/social-media-lawyers/>.
4. See MRPC 1.6.
5. See MRPC 6.1.
6. See MI Ethics Opinion RI-224 for guidance on what information needs to be exchanged between the two attorneys. Ethics Opinion RI-224, State Bar of Michigan (Jan 18, 1995) <https://www.michbar.org/opinions/ethics/numbered_opinions/RI-224>.
7. *Effective Marketing Ideas for Small Law Firms in 2025*, Attorney at Law Magazine (Feb 18, 2025) <https://attorneyatlawmagazine.com/legal-marketing/effective-marketing-ideas-for-small-law-firms>.

ETHICAL PERSPECTIVE

Judges, advocacy organizations, and maintaining public trust

BY DELANEY BLAKEY

At the heart of recently published Ethics Opinion JI-158 is a complex question. Specifically, under what circumstances may a judge hold membership in an advocacy organization without breaching their ethical duties? Specifically, the opinion considers judicial membership in the Fraternal Order of Police, but general advice on judicial membership in advocacy organizations is provided. The opinion asks whether judicial membership in advocacy organizations is consistent with a judge's duty of impartiality under the Michigan Code of Judicial Conduct (MCJC). Opinion JI-158 informs us that judicial membership in advocacy organizations may be permissible but with important caveats.

For judges, fear not! This opinion offers guidance: You don't have to sever all community and organizational ties in order to achieve the appearance of propriety. But context matters, and you do need to think proactively about whether your affiliations could be seen as jeopardizing your impartiality. In a time when public trust in institutions is under strain, and when judges' affiliations (personal, political, or organizational) are becoming increasingly scrutinized, an opinion like JI-158 helps clarify what is and isn't acceptable. It emphasizes that ethical obligations for judges are not just about avoiding wrongdoing; they're about preserving the public's confidence in the legal system.

KEY TAKEAWAYS

In JI-158, the State Bar's Standing Committee on Judicial Ethics addressed a set of facts involving a judge with a membership in the Fraternal Order of Police before whom police officers frequently appeared. Although that specific scenario is unique, the underlying principle is broad. The role of a judge is such that they must not only *be* fair, but they must also *appear* to be fair. Public confidence in the judiciary is the currency of legitimacy. If people believe a judge is biased (or potentially biased) because of their organizational memberships or affiliations, then the system loses credibility.

The opinion reminds us that under MCJC Canon 2, a judge must avoid not only impropriety but also the appearance of impropriety. Canon 2(A) requires judges to act at all times in a manner that promotes public confidence in their integrity and impartiality, while Canon 2(B) emphasizes that judges must conduct themselves in ways that earn and maintain public trust. Canon 2(F) adds that judges must be particularly cautious about memberships in organizations that could cast doubt on their ability to act consistent with the law.

That said, the opinion makes clear that membership in a fraternal or advocacy organization is not *automatically* prohibited. The mere fact of belonging to such a group does not, by itself, violate the Michigan Code of Judicial Conduct. Judges are members of their community and should be allowed to be involved in that community. What matters is whether, under the circumstances, that membership could undermine the appearance of impartiality or otherwise conflict with the judge's judicial duties.

Context is critical to the analysis. Factors such as how often the judge handles matters involving the organization's interests, the nature of the judge's role in the organization, the public positions the organization takes, and whether membership creates an obligation to support those positions all inform whether there is a concern. In short, the more the organization's advocacy or activities intersect with the judge's official work, the greater the risk of an appearance problem.

When there is a potential conflict, or when a judge's membership might reasonably call

"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.

their impartiality into question, the opinion advises that recusal or disclosure may be appropriate. Disclosure allows parties to make informed decisions and raise any concerns if warranted. Finally, if continued membership in an organization truly undermines a judge's obligation under the MCJC to remain impartial, independent, and fair, withdrawal from the organization may be the responsible and necessary course of action.

SOME HYPOTHETICAL SCENARIOS

> ***Scenario A**: A state trial judge who handles a lot of criminal cases is an active member of the local FOP lodge. The lodge frequently lobbies for increased police powers and provides amicus briefs in criminal justice reform cases.*

Here, the judge's membership is in an organization that directly relates to many cases in their courtroom. The public might reasonably question whether the judge can adjudicate impartially when police interests (or officers) appear. According to JI-158, this membership poses a high risk of undermining confidence in the judge's impartiality. Recusal or withdrawal is likely appropriate.

> ***Scenario B**: A circuit judge whose docket is primarily civil cases involving contract disputes, and who rarely handles any matter involving law enforcement, is a general (non-leadership) member of the FOP but has no involvement in its lobbying efforts or public policy advocacy.*

This is a much lower risk scenario. The judge's docket doesn't overlap materially with the organization's interests, and the judge's role is minimal. Under JI-158, membership could be permissible because the appearance of bias is minimal, but the judge should remain mindful and consider disclosure if a case is presented where the organization's interests are implicated.

> ***Scenario C**: An appellate judge whose work occasionally involves reviewing criminal appeals is a board member of a domestic-violence advocacy organization that actively lobbies for statutory changes and files amicus briefs.*

Here, the advocacy organization takes public positions on issues that could come before the Court. JI-158 suggests that membership in such a group could cast doubt on impartiality, especially if the judge is in a leadership role, and the organization is active in arenas the court sees. The judge would need to carefully examine whether withdrawal, recusal in relevant cases, or at least disclosure is required.

> ***Scenario D**: A judge is a member of a charitable legal aid organization (non-advocacy, non-political) designed to help provide legal services to underserved populations and does not take public positions or intervene in cases.*

Under JI-158, this kind of membership is more clearly allowed. Indeed, the MCJC even contemplates that judges can "serve as a member, officer or director of an organization…devoted to the improvement of the law, the legal system, or the administration of justice" Canon 4(A)(3). The judge should still review whether the organization appears frequently in the judge's court, whether the judge refers cases to the organization, and other similar concerns, but the likelihood that such membership would be ethically permissible is high.

PRACTICAL ADVICE FOR JUDGES

JI-158 doesn't say, "judges... must never join advocacy organizations." It says, "be careful, be thoughtful, evaluate the facts, and in some cases, recusal or withdrawal from the organization may be appropriate." Drawing on JI-158, here are some practical questions for judges evaluating their own organizational memberships:

- **Does the organization take public stances on legal/political issues?**
  If yes, that amplifies the risk that membership might lead to the appearance of impropriety.
- **How often do those issues come before you or your court?**
  If you frequently rule on cases that relate to the organization's interests, the possibility of bias (or perception thereof) increases. A judge who hears many police-related cases is in a very different situation from a judge hearing civil contract disputes. The opinion explicitly draws this distinction.
- **What role do I have in the organization?**
  Passive membership is less risky than leadership, sponsorship, lobbying, or public advocacy. The more visible and influential the role, the higher the risk.
- **Does my membership create an obligation to support that organization's positions?**
  If membership implies ongoing advocacy or a public stance, that may conflict with a judge's obligation to remain independent and impartial. Further, holding a leadership or lobbying role in the organization may increase ethical concerns.
- **If risk is present, consider disclosure and/or recusal.**
  Even if full withdrawal isn't necessary, transparency helps maintain public confidence. Don't wait until someone raises a question of propriety. Sometimes, simply disclosing the membership is not enough — recusal might be needed. The judge must evaluate whether their ability to be impartial might reasonably be questioned.
- **If the risk is serious, consider withdrawing from the organization.**
  If the membership really undermines the ability to appear impartial, the judge may need to step away from the organization. If the membership is deeply tied to the judge's docket or involves activities that overlap with court cases, stepping away from the group may be the cleanest route to preserving trust.

THE BOTTOM LINE

Judges often belong to professional associations, service clubs, community groups,

and fraternal organizations as part of civic engagement. These memberships aren't inherently problematic. But as society becomes more aware of organizational affiliations, judges are under growing scrutiny about whether their private associations might influence their judicial work. The topic arises especially in hot-button or politically charged areas. For example, if a judge is a member of an organization that takes a strong stance on abortion, gun rights, law enforcement oversight, drug policy, or other public policy issues, scrutiny may be more intense.

In sum, judges are part of their community. They can, and should be encouraged to, belong to organizations, engage in civic life, and have affiliations just like everyone else. But because judges hold a unique role in our system of justice, their affiliations carry extra weight. JI-158 reminds us that it's not just about being fair but also about appearing fair and sending a strong message of impartiality and integrity to the public.

If a judge's membership in a fraternal or advocacy group creates the *appearance* of bias or actual bias, especially when the group's mission overlaps with the judge's docket or the judge holds a leadership role, then ethical issues arise. The responsible path is for the judge to evaluate, disclose, recuse if needed, and withdraw from the organization when appropriate. Context and public perception matter enormously. The judiciary's legitimacy depends not just on what judges do but also on how their associations reflect on the fairness of the system they serve.

Delaney Blakey is ethics counsel at the State Bar of Michigan.

PRACTICING WELLNESS

Legal solo-citude

BY THOMAS J GRDEN

Lawyers are special. That may sound like an opinion, but the reality is that it's been a well-established fact for over a year now.[1] However, within the exercise of the legal profession, some modalities of practice stand out as more special than others. Obviously, the most special specialty is the area *you* specialize in. Second place, yet in a league of their own compared to the field, are the solo practitioners. Known for their impressive versatility, unencumbered independence, and enduring resilience, solo practitioners are the backbone of the legal industry.

Unfortunately, being special doesn't end at laurel wreaths, subpoena powers, and effusive praise from faux journalists. In fact, it creates extra responsibilities, the most basic of which is maintaining competence. Intrinsic to maintaining competence is avoiding physical or mental conditions that materially impair the ability to represent the client.[2] One of the best ways to avoid impairment is the practice of wellness. So, what could be more germane to both the practice of law and the practice of wellness than a gathering of lawyers sharing how they practice wellness? The following is a group interview with four solo practitioners, who graciously agreed to speak candidly about their unique stressors and, more importantly, the tactics they use to protect their health and promote their own well-being.

WHAT DREW YOU TO THE LEGAL PROFESSION, AND WHY SOLO PRACTICE?

Evelyn Calogero: I went to law school because I was investigating child abuse and neglect cases in Florida. And I was so angry at the prosecutors for not taking cases criminally that they should have. And so I said, "I could do a better job than you can." I wasn't gonna stay in Michigan; I was gonna go back to Pennsylvania. But then I got a job offer from one of the justices on the Michigan Supreme Court — for a clerkship — so I stayed. Did appellate work and went on [to be] offered a job at Cooley. [I] taught for 15 years and then was a victim of a reduction in force. That's a pretty diplomatic way of saying it. And at that point, I said, "I don't want anybody telling me what to do." And there were no lawyers in Olivet. And I said, "That's it. I will open up my own practice." I had already been doing pro bono work in the child welfare arena while I was still teaching. And so, that's how I got started.

Kelly Riegel-Green: My undergrad degrees were in radio, TV production, and speech communication. I thought I was gonna go work for Disney making cartoons. And then I was a victim of sexual assault as an undergrad, and I couldn't find anybody to help me as a victim. And I thought, you know, that's not a good system. So, six months after it happened, I was in Lansing testifying for the Campus Sexual Assault Victims Bill of Rights back in the 90s. [I] ended up going to law school and ended up graduating three months pregnant with my twins, who came early. So, my twins didn't get nursery rhymes; they got tort law. I took some time off to raise my kids. I actually started off going back into the workforce teaching business law at OCC. Which led to an offer from a firm, filling in while an associate was on maternity leave. The associate and I ended up hitting it off. The day we walked out, [the supervisor] threw something at us. She threw a file across the room at us, and I said, "Never again." The next day, we literally got a table from Craigslist. That afternoon, we signed the lease on an office. The next day, we got a kitchen table off Craigslist and opened the firm. My partner then, after I had brain surgeries, decided that she wanted to no longer be in private practice for herself. She had a little one — I get it; the

"Practicing Wellness" is a regular column of the *Michigan Bar Journal* presented by the State Bar of Michigan Lawyers and Judges Assistance Program. If you'd like to contribute a guest column, please email contactljap@michbar.org.

pay's not always steady. So, at that point, I went out on my own. I have a lot of flexibility when I work for myself, so if I don't feel good, I can kind of ... juggle things to accommodate that, as long as it's not a court hearing. If I want to go into my office wearing a hoodie and sweatpants, again, as long as it's not court, I get to. And nobody gets to tell me I can't. If I don't want to work on a Saturday, I don't have to work on a Saturday. So, it affords me a lot of freedom to be able to be present for my children. My son is in band. I don't have to miss band concerts, I don't have to miss those kinds of things; so I'm very lucky in that regard.

Christine Caswell: I was in the communications field for 25 years, and I knew I needed a change. I was trying to figure out what else I could do, and I thought maybe law school. Then my boss ticked me off on a Monday, so I signed up for the LSAT. The deadline for the LSAT was Tuesday; the LSAT was February. Cooley showed me the money, and then they found out I wanted to go in the evening because I was working, and they said, "Oh, you have to start in four days." So, I applied in January, and I started in May. So, that was kind of wild, but when I got to Cooley, and I saw they had the 60-plus clinic there, I thought, *oh, I want to do that.* I'll note that I was 49 when I graduated from law school, and because I was older, I didn't think anybody was going to hire me. I got my bar card and my AARP card within six months of each other. Plus, at that age, I didn't think I was very good at being subservient. So, I didn't think I would do well with management styles. I thought, *I'm just gonna go out on my own, and that way I can control my life more, and my practice, and I don't have to take cases that I don't want to take.*

Judy Coleman: What inspired me to go to law school was that I was a victim of a crime when I was a kid. But the quick biography is that I was a personal injury attorney and kind of family law and criminal. Then I got a managing attorney job working for UAW Legal Services. I worked there for 22 years. I went out to private practice about 10 years ago.

WHAT ADVICE DO YOU HAVE FOR AN ATTORNEY FRESH OUT OF LAW SCHOOL WHO WANTS TO CONSIDER HANGING A SHINGLE?

Judy Coleman: Have a backup? Always have people that you can go to. If you decide to take on anybody in your law firm, make sure that you have somebody that you've really, really vetted. You know their work ethic.

Kelly Riegel-Green: Clear boundaries. Clear organizational systems that are scalable. Building a network of not just clients but other attorneys that you can go to. Making sure that you're aware of what resources are available. The bar has a lot of resources that ... honestly, even now, I'm finding out more and more about, and I've been in practice for more years than I care to quote. Being organized, staying on top of billing, making sure that system is there.

Evelyn Calogero: I would also tell them to be prepared for the stressors. Do as I say now, not as I do. Take time for yourself. Make sure that you have some me time built in — whatever me time is to you, just make sure you've got it. Find yourself a good therapist.

Kelly Riegel-Green: A good therapist; a good massage therapist.

Christine Caswell: A good support group.

Evelyn Calogero: The networking is really important. Bar organizations, State Bar organizations. There are people who are willing to share their time and just bounce ideas off of, so I do have a network as well of people that, if I need somebody to bounce it off of, I can call. Or I can put it out on the listserv without identifying any people, just ... here's a general hypothetical for you guys. What's my next best step? Those are also very, very helpful. And you can lurk; you don't have to answer; you don't have to ask questions. But they're there, and they're helpful even if you don't ask anything, just read them. Save the ones that are helpful in your email box somewhere, and when you have that issue, go back and look at it.

Christine Caswell: You know, doing the books, doing the billing, advertising, overhead. All this stuff I do that I'm not getting paid for, that's part of my job. Especially as a solo. It's flexible, but people don't realize how much time you put into it that you're not getting paid for! One thing [we] have touched on, too: If you're starting out, make sure you know how to keep track of your hours and that you are billing your clients. I hear so many people talking about [letting] things just slide, [and] they get behind. I've finally learned how to do mine so I can keep track every single day, so when it's the end of the month, I just email them to my clients, but yeah ... get money up front, and keep good track of everything.

Kelly Riegel-Green: And that goes for if you're representing friends and family, too. They absolutely pay. A law school professor told [me], you have your list of three or four people that, yes, if they call in the middle of the night, you'll represent them for free, but everybody else pays.

Evelyn Calogero: I just have started charging for an initial consultation.

Christine Caswell: I have too.

Kelly Riegel-Green: Here's our policies, here's what we can cover, but I'm not giving out tons of legal advice, because then what you're gonna hear is, "Well, I checked Google ..." Please don't confuse your Google degree with mine. And my state licensing number, and my years of experience in front of that judge.

WHAT ARE THE STRESSORS UNIQUE TO SOLO PRACTICE?

Christine Caswell: I think we can all answer that you have no support.

Kelly Riegel-Green: Yeah, it's hard, because you do juggle, you know, how do I get the next guy in the door? How do I make sure

I have an income to support my family? What happens if I don't have an idea for how to help somebody? I've been lucky in making connections, but it's all on our shoulders. If I'm sick, it doesn't get done. If I'm not in the mood to do social media to help promote the firm, [it] doesn't get done. It's a one-woman show, for the most part. Still, planning the office Christmas party is really, really easy.

Christine Caswell: Well, fortunately for me, being older when I came into this, I knew when I was still in law school I needed to build up a network. And I already knew some lawyers in town — I worked at Elder Law of Michigan, so I met a number of attorneys there. I started going to the elder law section meetings while I was still in law school. And the elder law section is great. It's just one of the best groups of people you ever meet. They are so willing to help you, and they are so kind, but I'm lucky I went into that specific field.

Evelyn Calogero: I am the sole breadwinner for the family, so if I don't work, we don't eat. And that's a huge stressor.

HOW DO YOU DEAL WITH DISRESPECT?

Christine Caswell: Not well. I don't deal with disrespectful people, period, unless it's a judge, and then I stay quiet.

Kelly Riegel-Green: As many years as I've been doing this, it's been very rare that I've run against somebody who is just downright nasty. And I'm not above sending flowers, as sort of a "hey, just do better." I don't know what's going on in your personal life that you have to be so nasty, but just do better. I also have a set of pens that look like crayons, and I'm not above handing those to opposing counsel to sign a document.

Evelyn Calogero: I kinda like it when opposing counsel underestimates me, because then I can pop the surprise on them later on. [Disrespect] happens mostly with clients because of the type of clients I have, where in their world the F-word flies freely, and I just freely use it back at them. Doesn't bother me in the least. I don't use that language in court unless I'm quoting something.

Christine Caswell: Fortunately, I don't have clients like that. I do have arguments with them sometimes, but no swearing at each other has ever occurred. Couple of them have tried telling me what to do, and I'm just like, I think you need to find another attorney. I give them back all their money so [I] don't have to worry about ethics. I don't care if I've already done some work.

WHAT IS YOUR ADVICE FOR MANAGING THE STRESSORS OF SOLO PRACTICE?

Kelly Riegel-Green: You know, it may sound trite, [but] the virtual support group that we have. It's been a valuable resource that I wish I had sooner. I think setting clear boundaries and making sure that you're taking time out for yourself. It's okay to say, at 7 o'clock at night, work is done. Unless I'm in the middle of a trial, then it's no holds barred. Not being afraid to ask for help. Making sure that that network is there, be it somebody who's practicing the exact type of law you are, and I think it is important to build a network of lawyers who practice in other areas as well.

Those meal delivery places that have everything packaged, and I don't have to go, or now, since the pandemic, I can just do shipped orders for groceries. Little things like that will save me time, save me a lot of stress, and make sure that I'm staying on track with things.

Christine Caswell: Well, I know, starting out, a lot of people dabble in a lot of things because they're just trying to get work. But finally, I had to realize: I can't do that; I can't know everything; I need to specialize. And I've also learned that if a job comes in, and then you lose it for some reason, another one comes in. You just don't worry about [the job], and sometimes it's "Thank God I didn't get that one." But something else always shows up, so I don't panic.

Christine Caswell: It's hard because being older, I had more of a safety net financially, and young people doing this, they just drown. They have student loans; they have mortgages. So, I admit, in my case, I had pretty much everything paid off, but I know anyone young starting out, it's very hard. A lot of my classmates tried it, and they all ended up getting jobs somewhere else because they just could not handle the financial aspect of it. So, just be aware, you're not gonna get rich.

Kelly Riegel-Green: I think that's one of those big assumptions about lawyers, is we're all rich.

Evelyn Calogero: Oh, absolutely. And I am the first bank of Evelyn.

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

ENDNOTES

1. Grden, *Yes, lawyers are special*, State Bar of Michigan Bar Journal (Nov 2024) <https://www.michbar.org/journal/Details/Yes-lawyers-are-special?ArticleID=4974> (all websites accessed Jan 12, 2026).
2. Fucile, *Model Rule 1.16(a)(2): Where Wellness Meets Withdrawal*, American Bar Association (Oct 02, 2020) <https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/model-rule-116a2-where-wellness-meets-withdrawal/>.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee proposes two new instructions, M Crim JI 11.30a (Manufacture, Sale, or Possession of Semiautomatic Firearm Conversion Device) and M Crim JI 11.30b (Demonstrating How to Manufacture or Install Semiautomatic Firearm Conversion Device), to address the crimes set forth in MCL 750.224e. These instructions are entirely new.

[NEW] M Crim JI 11.30a
Manufacture, Sale, or Possession of Semiautomatic Firearm Conversion Device

(1) The defendant is charged with the crime of [manufacturing / selling / distributing / possessing / attempting to (manufacture / sell / distribute / possess)] a device to convert a semiautomatic firearm into a fully automatic firearm. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured[1] / sold[2] / distributed / possessed / attempted to (manufacture / sell / distribute / possess)] a device that was [designed / intended to be used] to convert a semiautomatic firearm into a fully automatic firearm.

A "firearm" includes any weapon which will, or is designed to, or may readily be converted to expel a projectile by action of an explosive.[3]

A "fully automatic firearm" uses gas pressure or force of recoil to mechanically eject an empty cartridge from the firearm after a shot and to load the next cartridge from the magazine without renewed pressure on the trigger for each successive shot.[4]

A "semiautomatic firearm," in contrast, requires the shooter to renew pressure on the trigger for every shot.[5]

(3) Second, that at the time [he / she] [manufactured / sold / distributed / possessed / attempted to (manufacture / sell / distribute / possess)] the conversion device, the defendant knew that it was [designed / intended to be used] to convert a semiautomatic firearm into a fully automatic firearm.

[(4) Third, that when the defendant (manufactured / sold / distributed / possessed / attempted to [manufacture / sell / distribute / possess]) the conversion device, (he / she) was not acting in the course of (his / her) official duties as (an employee / a member) of (identify law enforcement agency or branch of the armed services).][6]

[(5) [Third / Fourth], that the defendant did not lawfully obtain possession of the conversion device as a licensed collector on or before March 27, 1991.][7]

Use Notes

1. When appropriate, define this term using M Crim JI 11.31, Definition of Manufacture.
2. When appropriate, define this term using M Crim JI 11.32, Definition of Sell.
3. *Firearm* is defined in MCL 750.222(e).
4. *Fully automatic firearm* is defined in MCL 750.224e(4)(a).
5. *Semiautomatic firearm* is defined in MCL 750.224e(4)(c).
6. Use the bracketed material in this paragraph only when there is evidence that the defendant is an employee or member of a law enforcement agency or a branch of the armed services. *See* MCL 750.224e(3)(a)-(d).
7. Use the bracketed material in this paragraph only when there is evidence that the defendant is a licensed collector and he or she is not charged with manufacturing, selling, or distributing the conversion device. *See* MCL 750.224e(3)(e). *Licensed collector* is defined in MCL 750.224e(4)(b)

[NEW] M Crim JI 11.30b
Demonstrating How to Manufacture or Install Semiautomatic Firearm Conversion Device

(1) The defendant is charged with the crime of [demonstrating / attempting to demonstrate] how to [manufacture / install] a device to convert a semiautomatic firearm into a fully automatic firearm. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [demonstrated / attempted to demonstrate] to [another person / (*name person*)] how to [manufacture[1] / install] a device to convert a semiautomatic firearm into a fully automatic firearm.

A "firearm" includes any weapon which will, or is designed to, or may readily be converted to expel a projectile by action of an explosive.[2]

A "fully automatic firearm" uses gas pressure or force of recoil to mechanically eject an empty cartridge from the firearm after a shot and to load the next cartridge from the magazine without renewed pressure on the trigger for each successive shot.[3]

A "semiautomatic firearm," in contrast, requires the shooter to renew pressure on the trigger for every shot.[4]

(3) Second, that at the time of the [demonstration / attempted demonstration], the defendant knew that the device would convert a semiautomatic firearm into a fully automatic firearm.

(4) [Third, that when the defendant (conducted / attempted to conduct) this demonstration, (he / she) was not acting in the course of (his / her) official duties as (an employee / a member) of (*identify law enforcement agency or branch of the armed services*).][5]

Use Notes

1. When appropriate, define this term using M Crim 11.31, Definition of Manufacture.
2. *Firearm* is defined in MCL 750.222(e).
3. *Fully automatic firearm* is defined in MCL 750.224e(4)(a).

4. *Semiautomatic firearm* is defined in MCL 750.224e(4)(c).
5. Use the bracketed material in this paragraph only when there is evidence that the defendant is an employee or member of a law enforcement agency or a branch of the armed services. *See* MCL 750.224e(3)(a)-(d).

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 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 M Crim JI 17.6 (Assault and Infliction of Serious Injury) to make the *mens rea* element more consistent with MCL 750.81a(1), as well as to account for the Legislature's recent addition of an enhanced fine for aggravated assaults against healthcare professionals. Deletions are in ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 17.6
Assault and Infliction of Serious Injury (Aggravated Assault)

(1) [The defendant is charged with the crime of _____/ You may also consider the lesser charge of[1]] assault and infliction of serious injury. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant ~~tried to physically injure another person~~ [assaulted[2] / assaulted and battered][3] [*name complainant*].

A battery is the forceful, violent, or off\ensive touching of a person or something closely connected with him or her.[4]

The touching must have been intended by the defendant, that is, not accidental, and it must have been against [*name complainant*]'s will.

An assault is an attempt to commit a battery or an act that would cause a reasonable person to fear or apprehend an immediate battery. The defendant must have intended either to commit a battery or to make [*name complainant*] reasonably fear an immediate battery.[5] [An assault cannot happen by accident.] At the time of an assault, the defendant must have had the ability to commit a battery, or must have appeared to have the ability, or must have thought [he / she] had the ability.

~~(3) Second, that the defendant intended to injure [*name complainant*] [or intended to make (*name complainant*) reasonably fear an immediate battery].~~

(4) (~~4~~3) ~~Third~~ Second, that the [assault / assault and battery] caused a serious or aggravated injury. A serious or aggravated injury is a physical injury that requires immediate medical treatment or that causes disfigurement, impairment of health, or impairment of a part of the body.[6]

(5) [(4) Third, that the assault occurred when (*name complainant*) was performing (his / her) duties as a health professional or medical volunteer, and the defendant was not a patient receiving treatment from (*name complainant*).[7]]

Use Notes

1. Use when instructing on this crime as a lesser included offense.
2. Rarely, serious injury will result from an attempt to frighten. In that instance, a further or substitute instruction on assault should be given: "An assault is also any forceful or violent act done with the intention of frightening someone else. The act must be such as would cause a reasonable person to be afraid of being injured."
3. Use either or both as warranted by the evidence.
4. If the victim's consent or nature of the touching is at issue, use of M Crim JI 17.14, Definition of Force and Violence, or M Crim JI 17.15, Definition of Touching, is recommended.
5. All assaults are specific intent crimes. *People v Johnson*, 407 Mich 196; 284 NW2d 718 (1979).
6. This definition of *serious or aggravated injury* was approved in *People v Norris*, 236 Mich App 411, 415 n3; 600 NW2d 658 (1999).
7. Read this element when the prosecution seeks the enhanced fine under MCL 750.81a(1). *See Southern Union Co v United States*, 567 US 343, 356 (2012). *Health professional* and *medical volunteer* are defined in MCL 750.81a(5).

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PROPOSED

The Committee proposes creating M Crim JI 20.16b (Mental Health Professional) for fourth-degree criminal sexual conduct arising out of a patient-therapist relationship. See MCL 750.520e(1)(e). This instruction is entirely new. The Committee also proposes amending M Crim JI 20.13 (Criminal Sexual Conduct in the Fourth Degree) to cross-reference the new instruction. Deletions are in ~~strikethrough~~, and new language is underlined.

[NEW] M Crim JI 20.16b
Mental Health Professional

(1) Third, that the defendant was a mental health professional, that is, [he / she] was [a physician / a psychologist / authorized to engage in the practice of (nursing / social work at the master's level / counseling / marriage and family therapy)] and had training and experience in the area of mental illness or developmental disabilities.[1]

(2) Fourth, that the touching occurred during the time when [*name complainant*] was the defendant's [client / patient] or no more than two years after the end of their professional relationship.[2]

(3) [Fifth, that (*name complainant*) was not the defendant's spouse when the touching occurred.][3]

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

(4) It does not matter whether [*name complainant*] gave consent when the defendant [touched (him / her) / made, permitted, or caused (*name complainant*) to touch (him / her)].

Use Notes

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

1. MCL 750.520a(g) defines *mental health professional* by incorporating the definition found in MCL 330.1100b.
2. MCL 750.520e(1)(e) directs that "[a] prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent."
3. Use this paragraph only when there is a question of fact concerning whether the defendant and the complainant were married at the time of the alleged sexual contact.

[AMENDED] M Crim JI 20.13
Criminal Sexual Conduct in the Fourth Degree

(1) The defendant is charged with the crime of fourth-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [touched (*name complainant*)'s / made, permitted, or caused (*name complainant*) to touch (his / her)] [genital area / groin / inner thigh / buttock / (or) breast] or the clothing covering that area.

(3) Second, that when the defendant [touched (*name complainant*) / made, permitted, or caused (*name complainant*) to touch (him / her)] it could reasonably be construed as being done for any of these reasons:
   (a) for sexual arousal or gratification,
   (b) for a sexual purpose, or
   (c) in a sexual manner for
      (i) revenge or
      (ii) to inflict humiliation or
      (iii) out of anger.

(4) [*Follow this instruction with M Crim JI 20.14a, M Crim JI 20.14b, M Crim JI 20.14c, M Crim JI 20.14d, M Crim JI 20.15, M Crim JI 20.16, ~~or~~ M Crim JI 20.16a, or M Crim JI 20.16b as warranted by the charges and evidence.*]

Use Note

Use this instruction where the facts describe an offensive touching not included under criminal sexual conduct in the second degree.

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PROPOSED

The Committee proposes amending M Crim JI 20.38 (Child Sexually Abusive Activity – Causing or Allowing), M Crim JI 20.38a (Child Sexually Abusive Activity – Producing), M Crim JI 20.38b (Child Sexually Abusive Activity – Distributing), and M Crim JI 20.38c (Child Sexually Abusive Activity – Possessing or Accessing) to account for the sentencing enhancements added by the Legislature in 2019. This proposal would also modify the title of each instruction to more accurately describe the offense at issue. Deletions are in ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 20.38
Child Sexually Abusive ~~Activity~~ Material– Causing or Allowing

(1) The defendant is charged with the crime of causing or allowing a child to engage in sexually abusive activity in order to create or produce child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [persuaded / induced / enticed / coerced / caused / knowingly allowed] a child under 18 years old to engage in child sexually abusive activity.

(3) Child sexually abusive activity includes~~:~~

[*Choose any of the following that apply*:][1]

   (a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]
   (b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]
   (c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]
   (d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]
   (e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]
   (e) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(f) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

(4) Second, that the defendant caused or allowed the person to engage in child sexually abusive activity for the purpose of producing or making child sexually abusive material. Child sexually abusive materials are pictures, movies, or illustrations, made or produced by any means,[2] of [a person under 18 years old / the representation of a person under 18 years old] engaged in sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, and/or erotic nudity.[2]

(5) (Third, that the defendant knew or reasonably should have known that the person was less than 18 years old~~,~~ or failed to take reasonable precautions to determine whether the person was less than 18 years old.[3]

[*Add the following paragraph if appropriate*:][4]

(6) Fourth, that the child sexually abusive activity or the child sexually abusive material involved

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

(a) a child who has not yet reached puberty, or

(b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or

(c) sexual acts between a person and an animal,[5] or

(d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, or simulated acts are included, the instructions should be modified accordingly.
2. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

   . . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase~~,~~ "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

(3) The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

   . . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

(4) Paragraph (6) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(2)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive activity being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

(5) MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

[AMENDED] M Crim JI 20.38a

Child Sexually Abusive ~~Activity~~ Material – Producing

(1) The defendant is charged with the crime of producing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [arranged for / produced / made[1] / copied / reproduced / financed / (attempted / prepared / conspired) to (arrange for / produce / make / copy / reproduce / finance)] child sexually abusive [activity / material].

(3) Child sexually abusive materials are pictures, movies, or illustrations, made or produced by any means,[2] of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

[*Choose any of the following that apply*:][3]

(a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[*Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18*:]

(1) Second, that the defendant knew or should reasonably have known that the person shown in the sexually abusive material was less than 18 years old~~,~~ or failed to take reasonable precautions to determine whether the person was less than 18 years old.[4]

(2) Second, that the defendant produced a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:[4]

(a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.[5]

(b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.

(c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

[*Add the following paragraph if appropriate*:][6]

(6) Third, that the child sexually abusive activity or the child sexually abusive material involved

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

(a) a child who has not yet reached puberty, or

(b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or

(c) sexual acts between a person and an animal,7 or

(d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. *Make* is defined in MCL 750.145c(1)(j) as:

> . . . to bring into existence by copying, shaping, changing, or combining material, and specifically includes, but is not limited to, intentionally creating a reproduction, copy, or print of child sexually abusive material, in whole or part. Make does not include the creation of an identical reproduction or copy of child sexually abusive material within the same digital storage device or the same piece of digital storage media.

2. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

> . . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase~~,~~ "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

(3) The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

(4) The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

(5)

> . . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

(5) If necessary, *excretion* may be defined as the act or product of urinating or defecating.

(6) Paragraph (6) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(2)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive material being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

(7) MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

[AMENDED] M Crim JI 20.38b
Child Sexually Abusive ~~Activity~~ Material – Distributing

(1) The defendant is charged with the crime of distributing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [distributed / promoted / financed the (distribution / promotion) of / received for the purpose of (distributing / promoting) / (conspired / attempted / prepared) to (distribute / receive / finance / promote)] child sexually abusive [material / activity].

(3) Child sexually abusive materials are pictures, movies, or illustrations[1] of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

[*Choose any of the following that apply*:][2]

(a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[*Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18*:]

(5) Second, that the defendant knew or should reasonably have known[3] that the person shown in the sexually abusive material was less than 18 years old~~,~~ or failed to take reasonable precautions to determine whether the person was less than 18 years old.

(6) Second, that the defendant distributed a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:

(a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.[4]

(b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.

(c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

[*Add the following paragraph if appropriate*:][5]

(7) Third, that the child sexually abusive activity or the child sexually abusive material involved

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

(a) a child who has not yet reached puberty, or

(b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or

(c) sexual acts between a person and an animal,6 or

(d) a video or more than 100 images of child sexually abusive material.

Use Notes

(1) The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

> . . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a

book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase, "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

(2) The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

(3) The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

> . . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

(4) If necessary, *excretion* may be defined as the act or product of urinating or defecating.

(5) Paragraph (6) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(3)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive material being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

(6) MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

[AMENDED] M Crim JI 20.38c
Child Sexually Abusive ~~Activity~~ Material – Possessing or Accessing

(1) The defendant is charged with the crime of possessing or accessing child sexually abusive material. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [possessed child sexually abusive material / intentionally looked for child sexually abusive material to view it, or to cause it to be sent to or seen by another person].

(3) Child sexually abusive materials are pictures, movies, or illustrations[1] of [a person under 18 years old / the representation of a person under 18 years old] engaged in one or more of the following sexual acts:

[*Choose any of the following that apply*:][2]

(a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]

(b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]

(c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]

(d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]

(e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]

(f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]

(g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

[*Choose either (4) or (5), depending on whether the depiction is an actual person or is a created representation of a person under the age of 18*:]

(4) Second, that the defendant knew or should reasonably have known that the person shown in the sexually abusive material was less than 18 years old or failed to take reasonable precautions to determine whether the person was less than 18 years old.[3]

(5) Second, that the defendant produced a portrayal of a person appearing to be less than 18 years old, knowing that the person portrayed appeared to be less than 18 years old, and all of the following conditions apply:

(a) An average person, applying current community standards, would find that the material appealed to an unhealthy or shameful interest in nudity, sex, or excretion.[4]

(b) A reasonable person would not find any serious literary, artistic, political, or scientific value in the material.

(c) The material shows or describes sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity, as previously described for you.

(6) Third, that the defendant [knew that (he / she) possessed / knowingly looked for] the material.

[*Add the following paragraph if appropriate*:][5]

(7) Fourth, that the child sexually abusive activity or the child sexually abusive material involved

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

(a) a child who has not yet reached puberty, or

(b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or

(c) sexual acts between a person and an animal,[6] or

(d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. The statute, MCL 750.145c(1)(o), provides a list of forms that child sexually abusive materials can take:

> . . . any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

The Committee on Model Criminal Jury Instructions believes that the phrase, "pictures, movies, or illustrations, made or produced by any means," will generally suffice to describe such materials. However, the court may prefer to select a more specific term or phrase from the statutory list.

(2) The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

(3) The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

> . . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

(4) If necessary, *excretion* may be defined as the act or product of urinating or defecating.

(5) Paragraph (7) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(4)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive material being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

(6) MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 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.

ORDERS OF DISCIPLINE & DISABILITY

SUSPENSION AND RESTITUTION (BY CONSENT)

Daniel J. Andoni, P67098, Flint. Suspension, 60 Days, Effective February 23, 2024

Respondent and the Grievance Administrator filed a Stipulation for Consent Order of a 60-Day Suspension With Restitution, which was approved by the Attorney Grievance Commission and accepted by Genesee County Hearing Panel #3. The stipulation contained respondent's admissions to the factual allegations and allegations of professional misconduct in the formal complaint. Based on respondent's admissions, the panel found that respondent committed misconduct in connection with his representation of a client in a custody matter (Count One) and for his failure to provide the Grievance Administrator with an answer to the Request for Investigation (Count Two).

Based on respondent's admissions and the stipulation of the parties, the panel found that respondent neglected a legal 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 refund an advance payment of fee that has not been earned upon termination of representation, in violation of MRPC 1.16(d) [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]; and, failed to answer a request for investigation in conformity with MCR 9.113(A) and (B)(2), in violation of MCR 9.104(7) [Count Two]. The panel found that respondent's conduct also violated MRPC 8.4(c) and MCR 9.104(1)-(3) [Counts One and Two].

In accordance with the stipulation, the panel ordered that respondent's license to practice law in Michigan be suspended for 60 days, effective February 23, 2024, as agreed to by the parties, and that he pay restitution totaling $1,250.00. Costs were assessed in the amount of $794.12.

1. Respondent's license to practice law was further suspended for 180 days and he was ordered to pay restitution in a separate, unrelated disciplinary matter, *Grievance Administrator v Daniel J. Andoni*, 24-93-GA, also effective February 23, 2024. See Notice of Suspension and Restitution (By Consent) issued on April 17, 2025. As a result of the length of that suspension, respondent must comply with the requirements of MCR 9.123(B) and (C) and MCR 9.124 to be reinstated to the practice of law rather than MCR 9.123(A)

SUSPENSION

Daniel Reid Casey, P75533, Sault Ste. Marie. Suspension — One Year, Effective October 17, 2025.

The Grievance Administrator filed a combined notice of filing of judgment of conviction (Case No. 25-68-JC) and formal complaint (Case No. 25-69-GA), charging that respondent committed acts of professional misconduct warranting discipline. Specifically, the notice, filed in accordance with MCR 9.120(B)(3), advised that respondent was convicted by guilty plea of operating a motor vehicle while impaired, a misdemeanor, in violation of MCL 257.6253A, in *People v Daniel Reid Casey*, Case No. 24-68099-SD-1, 91st District Court. The formal complaint alleged that respondent committed professional misconduct by failing to provide notice of his conviction to the Attorney Discipline Board and Attorney Grievance Commission as required by MCR 9.120(A)(1), and by failing to answer a request for investigation.

Respondent did not file an answer to the formal complaint, and his default was entered by the Grievance Administrator on September 9, 2025. Thereafter, respondent failed to appear at the hearing conducted pursuant to MCR 9.115 and 9.120, and the panel entered an order of interim suspension pursuant to MCR 9.115(H)(1), suspending respondent's license to practice law, effective October 17, 2025.

After the proceedings concluded, Emmet County Hearing Panel #2 found that respondent committed professional misconduct when he engaged in conduct that violated a criminal law of a state or of the

United States, an ordinance, or tribal law pursuant to MCR 2.615, in violation of MCR 9.104(5) and MRPC 8.4(b).

With regard to the formal complaint, the panel found, based on respondent's default and evidence presented at the hearing, that respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2); failed to answer the request for investigation in conformity with MCR 9.113(A) and (B)(2), and in violation of MCR 9.104(7); engaged in conduct that is a violation of the Michigan Rules of Professional Conduct, in violation of MRPC 8.4(a) and MCR 9.104(4); engaged in conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); engaged in conduct that is contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(3); and, engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court, in violation of MCR 9.104(4).

The panel ordered that respondent's license to practice law be suspended for one year, effective October 17, 2025, the date of his interim suspension for failing to appear at the hearing. Costs were assessed in the amount of $2,121.70.

1. On October 10, 2025, the hearing panel issued an order suspending respondent from the practice of law based on his failure to appear at the public hearing. That suspension went into effect on October 17, 2025. Please see, Notice of Interim Suspension Pursuant to MCR 9.115(H)(1), issued October 20, 2025.

2. MCR 9.120(B) does not require a respondent to file a written response to a notice of filing of judgment of conviction, a point conceded by the Grievance Administrator at the prehearing conference. Thus, the default was only applicable to the formal complaint portion of the complaint.

AMENDED SUSPENSION WITH CONDITION[1] (BY CONSENT)

Richard Daniel Dorfman, P80980, Boca Raton, Florida. Suspension — Three Years, Effective November 26, 2025.

Respondent and the Grievance Administrator filed a Stipulation for Consent Order of Discipline pursuant to MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by Tri-County Hearing Panel #15. The stipulation contained respondent's admission that he was convicted by guilty plea of Vehicular homicide, a second-degree felony, in violation of F82.071(i)(a) in *State of Florida v Richard Dorfman,* Case No. 2023-CF-007041-AMB, Fifteenth Judicial Circuit Court in and for Palm Beach Florida as set forth in the notice of filing of judgment of conviction, and that his conviction constitutes professional misconduct, in violation of MCR 9.104(5) and MRPC 8.4(b). In accordance with MCR 9.120(B)(1), respondent's license to practice law in Michigan was automatically suspended, effective December 10, 2024, the date of respondent's conviction.

Based on respondent's admission and the stipulation of the parties, the panel found that respondent engaged in conduct that violated a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, in violation of MCR 9.104(5); and, engaged in conduct involving a violation of the criminal law, where such conduct reflects adversely on the lawyer's fitness as a lawyer, and constituted professional misconduct under MRPC 8.4(b).

The panel ordered that respondent's license to practice law in Michigan be suspended for a period of three years and that he be subject to a condition relevant to the established misconduct. Costs were assessed in the amount of $948.38.

1. Amended only to include the specifics of respondent's conviction.

TRANSFER TO DISABILITY INACTIVE STATUS

Byron E. Siegel, P20428, Bingham Farms Disability Inactive Status, Effective December 23, 2025

The Grievance Administrator filed a Notice of Filing of Reciprocal Discipline pursuant to MCR 9.120(C), that attached a certified copy

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

of an order issued by the Presiding Disciplinary Judge of the Supreme Court of Arizona, transferring respondent to disability inactive status, effective January 23, 2025, in a matter titled *In the Matter of a Suspended Member of the State Bar of Arizona Byron E. Siegel,* Case No. PDJ 2024-9105-D.

The Attorney Discipline Board issued an order regarding imposition of reciprocal discipline, ordering the parties, within 21 days from service of the order, to inform the Board in writing (i) of any objection to a transfer to disability inactive status in Michigan based on the grounds set forth in MCR 9.120(C)(1) and (ii) whether a hearing is requested.

Respondent sent an email to the Board's case manager objecting to his transfer to disability inactive status based on the grounds set forth in MCR 9.120(C)(1) and requesting a hearing. Thereafter, the Board assigned this matter to Tri-County Hearing Panel #3 for disposition, pursuant to MCR 9.120(C)(3). The Grievance Administrator filed a response to respondent's objection to the transfer to disability inactive status. After further briefing was requested by the panel and provided by the parties, the panel determined that a hearing was not necessary and that respondent failed to satisfy his burden of showing that his transfer to disability inactive status in Michigan would be clearly inappropriate.

On December 23, 2025, the panel issued an order transferring respondent to disability inactive status pursuant to MCR 9.120(C) and MCR 9.121(A), effective immediately and until respondent is reinstated in accordance with MCR 9.121(E). No costs were assessed.

1. MCR 9.120(C)(1) provides: "A certified copy of a final adjudication by any court of record or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or a federal administrative agency, determining that an attorney, whether or not admitted in that jurisdiction, has committed misconduct or has been transferred to disability inactive status, shall establish conclusively the misconduct or the disability for purposes of a proceeding under subchapter 9.100 of these rules and comparable discipline or transfer shall be imposed in the Michigan proceeding unless the respondent was not afforded due process of law in the course of the original proceedings, the imposition of comparable discipline or transfer in Michigan would be clearly inappropriate, or the reason for the original transfer to disability inactive status no longer exists."

2. Arizona Rule 63(c)(4) provides:

A. Incapacity to Discharge Duty. The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer or legal paraprofessional is incapacitated, including directing examination of the lawyer or legal paraprofessional by qualified experts designated by the presiding disciplinary judge at the expense of the state bar. The petitioner shall have the burden of proving by clear and convincing evidence, which shall include a relevant and recent medical, psychiatric or psychological evaluation, that, as a result of a mental or physical condition, the lawyer or legal paraprofessional lacks the capacity to adequately discharge the lawyer's or legal paraprofessional's duty to clients, the bar, the courts or the public.

B. Competency to Assist in Defense. The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer or legal paraprofessional is competent, including directing examination of the lawyer by qualified experts. Upon the filing of a disability petition, the state bar may also direct a lawyer to submit to an independent medical or mental evaluation by a qualified expert chosen by the state bar. The mere presence of a mental illness, defect, or disability or physical incapacity is not grounds for finding a lawyer incompetent. The only issue to be determined is whether the lawyer or legal paraprofessional is able to assist in the lawyer's or le-

gal paraprofessional's own defense. To assist in the lawyer's or legal paraprofessional's own defense, the lawyer or legal paraprofessional needs to understand the charges, be able to communicate with the lawyer's or legal paraprofessional's attorney about the charges and any defense to those charges, and be able to testify about relevant conduct in the disciplinary proceeding. The expense for the evaluation shall be paid by the petitioner, unless otherwise ordered by the presiding disciplinary judge.

REINSTATEMENT WITH CONDITION

On December 4, 2025, Tri-County Hearing Panel #1 issued an order of eligibility for reinstatement with condition that ordered petitioner to be reinstated to the practice of law in the State of Michigan upon receipt of written proof that he has paid his applicable membership dues to the State Bar of Michigan in accordance with Rules 2 and 3 of the Supreme Court Rules concerning the State Bar.

On December 23, 2025, the Board received written verification from the State Bar of Michigan that petitioner has paid his applicable membership dues.

The Board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that petitioner, **Omar Fahmi Shaaban,** P80425, is **REINSTATED** to the practice of law in Michigan, effective December 23, 2025.

It is further ordered that, upon petitioner's reinstatement to the practice of law in Michigan and for two years after, petitioner shall be subject to the following condition:

1) If petitioner does not maintain malpractice coverage, he shall inform each of his clients of his lack of coverage and have them sign a declaration that they have been informed by him that he does not carry professional liability coverage. If petitioner does obtain coverage and then allows it to lapse or it is discontinued for some reason, he must notify all of his clients of that change in status.

ORDER OF REINSTATEMENT

On September 11, 2025, Tri-County Hearing Panel #63 entered an Order of Suspension (By Consent) in this matter, suspending respondent's license to practice of law in Michigan for 60 days, effective October 3, 2025. On November 26, 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, **Carl D. Winekoff,** P 76862, is **REINSTATED** to the practice of law in Michigan, effective **December 17, 2025.**

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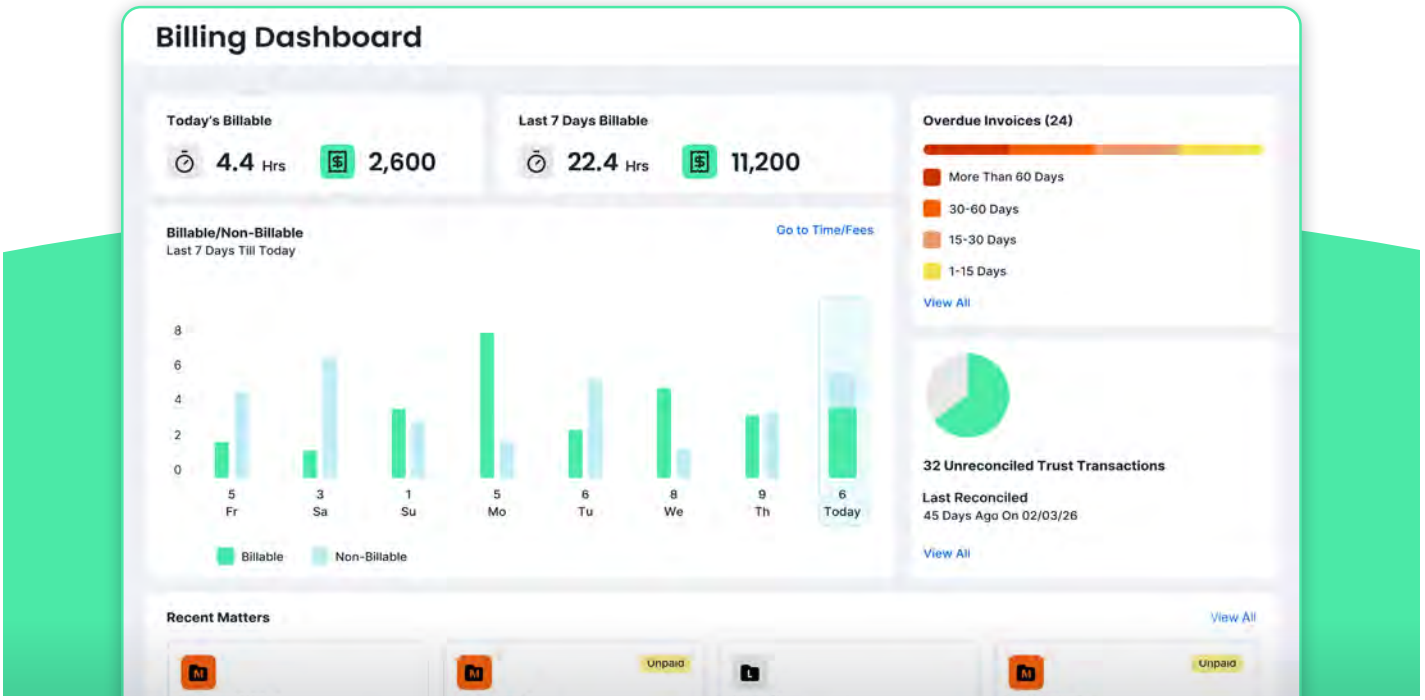

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PUBLIC POLICY REPORT

IN THE HALL OF JUSTICE

Proposed Amendment of Rule 1.111 of the Michigan Court Rules (ADM File No. 2025-03) – Foreign Language Interpreters

STATUS: Comment Period Expires 3/1/26; Public Hearing to be Scheduled.

POSITION: Support.

Proposed Amendment of Rule 2.106 of the Michigan Court Rules (ADM File No. 2022-31) – Notice by Posting or Publication (See *Michigan Bar Journal* December 2025, p 54).

STATUS: Comment Period Expires 2/1/26; Public Hearing to be Scheduled.

POSITION: Support.

Proposed Amendment of Rule 3.992 of the Michigan Court Rules (ADM File No. 2022-34) – Rehearings; New Trial (See *Michigan Bar Journal* November 2025, p 53).

STATUS: Comment Period Expires 2/1/26; Public Hearing to be Scheduled.

POSITION: Support.

Proposed Amendment of Rule 6.106 of the Michigan Court Rules (ADM File No. 2023-09) – Pretrial Release (See *Michigan Bar Journal* December 2025, p 54).

STATUS: Comment Period Expires 2/1/26; Public Hearing to be Scheduled.

POSITION: Support with the following amendment to clarify the last sentence of MCR 6.106(I)(1) as follows:

However, if the accused is discharged from all obligations in the case and has not been convicted in the charged case whether public or under seal, has not received assignment under HYTA, is not under a delayed sentence and has not been assigned to specialty court, the court must return to the accused the entire deposited amount.

Proposed Amendment of Rule 6.429 of the Michigan Court Rules (ADM File No. 2024-10) – Correction and Appeal of Sentence (See *Michigan Bar Journal* December 2025, p 57).

STATUS: Comment Period Expires 2/1/26; Public Hearing to be Scheduled.

POSITION: Support with further amendments to MCR 6.429(A) to read: ~~Any~~ An objection to the corrected sentence must may, but need not, be presented to the court at the time that the court provides an opportunity to be heard.

Proposed Amendment of Rule 7.215 of the Michigan Court Rules (ADM File No. 2024-02) – Opinions, Orders, Judgments, and Final Process for Court of Appeals (See *Michigan Bar Journal* December 2025, p 55).

STATUS: Comment Period Expires 2/1/26; Public Hearing to be Scheduled.

POSITION: Support ADM File No. 2024-02 with the following amendments:

(1) Amend MCR 7.215(H)(2)(b) to read: "file with the Court of Appeals all orders entered on remand within seven days of ~~entry by the trial court~~ receipt by the party."

(2) Amend MCR 7.215(H)(2)(c) to read: "ensure the transcripts of all proceedings on remand are filed in the trial court and the Court of Appeals within ~~21~~ seven days of the receipt of the transcript by the party ~~after completion of the proceedings~~.

(3) Amend the proposed third paragraph of MCR 7.215(H)(2) to allow all appellants to file supplemental briefs. In the alternative, if the Court is not inclined to allow all appellants to file supplemental briefs, add juvenile delinquency cases alongside criminal and termination of parental rights cases to those where supplemental briefing is allowed.

Proposed Amendment of Rule 7.312 of the Michigan Court Rules (ADM File No. 2025-37) – Briefs, Responses to Adverse Amicus Briefs, and Appendixes in Calendar Cases and Cases Argued on the Application.

STATUS: Comment Period Expires 4/1/26; Public Hearing to be Scheduled.

POSITION: Support.

Proposed Amendments of Rule 8.120 of the Michigan Court Rules and Rule 5 of the Rules for the Board of Law Examiners (ADM File No. 2022-49) – Law Students and Recent Graduates; Participation in Legal Clinics, Defender Offices, and Legal Training Programs; Admission Without Examination.

STATUS: Comment Period Expires 4/1/26; Public Hearing to be Scheduled.

POSITION: Support with two amendments: (1) striking the reference to "Individuals Already Barred" from the title of MCR 8.120; and (2) amending the definition of "recent law graduate" from a person who graduated from an ABA-accredited law school within the last 15 months to within the last 18 months.

FROM THE MICHIGAN SUPREME COURT

ADM File No. 2019-40
Proposed Adoption of Administrative Order No. 2026-X, Proposed Rescission of Administrative Order No. 2012-7, and Proposed Amendments of Rules 2.407 and 8.110 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 a proposal administrative order regarding a judicial officer's ability to appear remotely. 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 adoption of Administrative Order No. 2026-X, rescission of Administrative Order No. 2012-7, and amendments of Rules 2.407 and 8.110 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.

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

Administrative Order No. 2026-X – Adoption of Administrative Order Regarding a Judicial Officer's Remote Appearance

In accordance with this administrative order, judicial officers may preside remotely, as provided by the applicable court rules governing the use of videoconferencing, in any proceeding that does not require the judicial officer's in-person presence. A judicial officer must not preside over their docket from a remote location that is geographically further than either their in-district residential address or 30 miles from the courthouse where the proceeding would take place if in person, unless: (1) the judicial officer is experiencing an emergency or (2) the parties have all agreed to attend a proceeding that is specifically scheduled while the judge is out of the office on vacation or out of the office for a reason stated in MCR 8.110(D)(3)(a)-(e).

Unless the judicial officer is out of the office for an emergency or a reason set forth in MCR 8.110(D)(3)(a)-(e), the judicial officer must also maintain the ability to comply with in-person requests pursuant to MCR 2.407(B)(4) without unreasonable delay or change to a different judicial officer. Any delay that is attributed to the judicial officer's physical location at the time of a request may be considered unreasonable.

The judicial officer who presides remotely must
(1) be physically located in Michigan,
(2) preside from a location that is free of personal distractions,
(3) preside from a location that the judicial officer reasonably believes to have a reliable internet connection that will support remote proceedings,
(4) have their videoconferencing camera on at all times during the proceeding,
(5) display the flags of the United States and Michigan as provided in MCR 8.115(A), and
(6) wear a black robe if they are a judge or if required by court rules, statute, or their chief judge.

For purposes of this administrative order, the judge may display digital representations of the United States and Michigan flags adjacent to the judge.

A judicial officer's remote participation is subject to the court's ability to produce a suitable recording of the proceeding for purposes of preparing a verbatim transcript in accordance with the Michigan Court Rules.

The State Court Administrative Office must report periodically to this Court regarding its assessment of judicial officers presiding remotely. Courts must cooperate with the State Court Administrative Office in monitoring the remote participation of judicial officers in court proceedings.

For purposes of this order:
- "Videoconferencing" means that term as defined in MCR 2.407.
- A "judicial officer" includes judges, district court magistrates, and referees.
- "Emergency" is defined as the judicial officer needing to tend to personal or family health emergencies which last less than five business days.

Rule 2.407 Videoconferencing

(A)-(D) [Unchanged.]
~~(E) Notwithstanding any other provision in this rule, until further order of the Court, AO No. 2012-7 is suspended.~~

Rule 8.110 Chief Judge Rule

(A)-(B) [Unchanged.]
(C) Duties and Powers of Chief Judge.
(1)-(2) [Unchanged.]
(3) As director of the administration of the court, a chief judge shall have administrative superintending power and con-

trol over the judges of the court and all court personnel with authority and responsibility to:

(a)-(b) [Unchanged.]

(c) determine the hours of the court and the judges; coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial administrative work of the court, and require their in-person or remote presence to perform that work;

(d)-(i) [Unchanged.]

(4)-(9) [Unchanged.]

(D) [Unchanged.]

Staff Comment (ADM File No. 2019-40): Proposed Administrative Order No. 2026-X would clarify when, from where, and how a judicial officer may participate remotely. A related proposed amendment of MCR 2.407 would strike a reference to Administrative Order No. 2012-7 being suspended, and that administrative order would be rescinded. The proposed amendment of MCR 8.110 would authorize chief judges to require a judge's in-person or remote presence to perform work.

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 April 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. 2019-40. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2022-49
Proposed Amendments of Rule 8.120 of the Michigan Court Rules and Rule 5 of the Rules for the Board of Law Examiners

On order of the Court, this is to advise that the Court is considering amendments of Rule 8.120 of the Michigan Court Rules and Rule 5 of the Rules for the Board of Law Examiners. 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 8.120 Law Students, ~~and~~ Recent Law Graduates, and Individuals Already Barred; Participation in Legal Services~~Aid~~ Clinics, and Programs, Defender Offices, and Legal Training Programs

(A) Legal Aid Clinics; Defender Offices. Effective legal service for each person in Michigan, regardless of that person's ability to pay, is important to the directly affected person, to our court system, and to the whole citizenry. Law students and recent law graduates, under supervision by a member of the state bar, may staff the following:

(a) public and nonprofit defender offices, ~~and~~

(b) legal aid clinics that are organized under a city or county bar association or an accredited law school or for the primary purpose of providing free legal services to indigent persons, and~~.~~

(c) organized legal services programs funded by the Michigan State Bar Foundation or Legal Services Corporation that provide legal assistance to indigent persons in civil matters.

(B) [Unchanged.]

(C) Eligible Individuals~~Students~~.

(1) A student in a law school approved by the American Bar Association who has received a passing grade in law school courses and has completed the first year is eligible to participate in a clinic or program listed in subrules (A) and (B) if the student meets the academic and moral standards established by the dean of that school.

(2) A~~For the purpose of this rule, a~~ "recent law graduate" is a person who has graduated from an ABA-accredited law school within the last 15 months~~year~~.

(D) The student or recent law graduate must certify in writing that they have~~he or she has~~ read and are~~is~~ familiar with the Michigan Rules of Professional Conduct and the Michigan Court Rules, and shall take an oath which is reasonably equivalent to the Michigan Lawyer's Oath in requiring at a minimum the promise to: (a) support the Constitution of the United States; (b) support the Constitution of the State of Michigan; (c) maintain the respect due to courts of justice and judicial officers; (d) never seek to mislead a judge or jury by any artifice or false statement of fact or law; (e) maintain the confidence and preserve inviolate the secrets of the client; (f) abstain from all offensive personality; (g) advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause; and(h) in all other respects conduct himself or herself personally and professionally in conformity with the high standards of conduct imposed upon members of the state bar of Michigan.

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

(ED) Scope; Procedure; Duration; Revocation.

(1) A law student or recent law graduate~~member of the legal aid clinic~~, in representing an indigent person, is authorized to advise the person and to negotiate and appear on the person's behalf in all Michigan courts ~~except the Supreme Court~~. Except as otherwise provided in this rule, the indigent person that will be assisted by the student or graduate must consent in writing to the representation. In a situation in which a law student provides short-term, limited-scope legal advice by telephone in the context of a clinical program intended to assist indigent persons offered as part of a law school curriculum, the clinic patron shall be informed that:

(a) the advice provided may be rendered by a law student;~~,~~ and

(b) [Unchanged.]

(2) Representation by a law student or recent law graduate must be conducted under the supervision of a state bar member. Supervision by a state bar member includes the duty to examine and sign all pleadings filed. It does not require the state bar member to be present:

(a) while a law student or recent law graduate is advising an indigent person or negotiating on the person's behalf;~~,~~ or

(b) during a courtroom appearance of a law student or recent law graduate, except

(i)-(ii) [Unchanged.]

The supervising attorney shall assume all personal professional responsibility for the student's or recent law graduate's work, and should consider purchasing professional liability insurance to cover the practice of such student or graduate.

(3) A law student or recent law graduate may not appear in a case in a Michigan court without the approval of the judge or a majority of the panel of judges to which the case is assigned. If the judge or a majority of the panel grants approval, the judge or a majority of the panel may suspend the proceedings at any stage if the judge or a majority of the panel determines that the representation by the law student or graduate:

(a) is professionally inadequate;~~,~~ and

(b) [Unchanged.]

In the Court of Appeals or Supreme Court, a request for a law student or recent law graduate to appear at oral argument must be submitted by motion to the Court of Appeals panel that will hear the case or to the Supreme Court Clerk. The Court of Appeals panel or Supreme Court may deny the request or establish restrictions or other parameters for the representation on a case-by-case basis.

(4) A law student or recent law graduate serving in a prosecutor's, county corporation counsel's, city attorney's, Attorney Grievance Commission's, or Attorney General's program may be authorized to perform comparable functions and duties assigned by the prosecuting attorney, county attorney, city attorney, Attorney Grievance Commission attorney, or Attorney General, except that:

(a) the law student or recent law graduate is subject to the conditions and restrictions of this rule; and

(b) the law student or recent law graduate may not be appointed as an assistant prosecutor, assistant corporation counsel, assistant city attorney, assistant Attorney Grievance Commission attorney, or assistant Attorney General.

Board of Law Examiners Rule 5. Admission Without Examination.

(A) [Unchanged.]

(B) An applicant for admission without examination must

(1)-(4) [Unchanged.]

(5) have, after being licensed and for 3 of the 5 years preceding the application,

(a) actively practiced law as a principal business or occupation in a jurisdiction where admitted (the practice of law ~~under a special certificate pursuant to Rule 5[F] or~~ as a special legal consultant pursuant to Rule 5[G] does not qualify as the practice of law required by this rule);

(b)-(c) [Unchanged.]

The Board may, for good cause, increase the 5-year period. Active duty in the United States armed forces not satisfying Rule 5(B)(5)(c) may be excluded when computing the 5-year period.

(6) [Unchanged.]

(C)-(E) [Unchanged.]

(F) An attorney

(1) [Unchanged.]

(2) practicing law in an institutional setting, e.g., counsel to a corporation or instructor in a law school; or~~,~~

(3) employed by a public or nonprofit defender office, legal aid clinic organized under a city or county bar association, legal aid clinic with a primary purpose of providing free legal services to indigent persons, legal services program funded by the Michigan State Bar Foundation or the Legal Services Corporation,

may apply to the Board for a special certificate of qualification to practice law. The applicant must satisfy Rule 5(B)(1)-(3)~~,~~ and comply with Rule 5(C). The Board may then issue the special certificate, which will entitle the attorney to continue current employment if the attorney becomes an active member of the State Bar. The special certificate permits attorneys teaching or supervising law students in a clinical program to represent the

clients of that clinical program. If the attorney leaves the current employment, the special certificate automatically expires; if the attorney's new employment is also institutional, the attorney may reapply for another special certificate.

(G) [Unchanged.]

Staff Comment (ADM File No. 2022-49): The proposed amendment of MCR 8.120 would allow law students and recent law graduates to: (1) staff certain legal programs that provide assistance to indigent persons in civil matters under the supervision by a member of the state bar, and (2) appear on behalf of indigent persons in all Michigan courts. The proposal would also expand the definition of a "recent law graduate" from one year to 15 months. The proposed amendment of BLE Rule 5 would expand the qualifications for a special certificate of qualification to practice law.

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 April 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. 2022-49. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2024-08
Proposed Amendment of Canon 3 of the Code of Judicial Conduct

On order of the Court, this is to advise that the Court is considering an amendment of Canon 3 of the Code of Judicial Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

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

Canon 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. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities:

(1)-(11) [Unchanged.]

(12) A judge must not knowingly allow~~should prohibit~~ broadcasting, televising, recording, or taking of photographs in or out of the courtroom during sessions of court or recesses between sessions except as provided herein or as authorized by the Supreme Court. See, e.g., AO 1989-1. A presiding judge may specifically allow broadcasting, televising, recording, or photography via portable electronic device in their courtroom. MCR 8.115(C). When there are no objections, a judge may, for example, allow photography or recording to commemorate celebratory events such as adoption day proceedings, treatment court graduations, and swearing-in ceremonies.

(13)-(15) [Unchanged.]

B.-D. [Unchanged.]

Staff Comment (ADM File No. 2024-08): The proposed amendment of Canon 3 would clarify a judge's responsibility to not knowingly allow unauthorized broadcasting, televising, recording, or taking of photographs in or out of the courtroom during sessions of court or recesses between sessions.

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 April 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. 2024-08. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2024-19
Proposed Amendments of Rules 9.108 and 9.110 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 9.108 and 9.110 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

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

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 9.108 Attorney Grievance Commission

(A) [Unchanged.]

(B) Composition. The commission consists of 3 laypersons and 6 attorneys appointed by the Supreme Court. The members serve 3-year terms. Unless initially appointed to fill a mid-term vacancy, a member may serve up to 2 full terms. A member appointed to fill a mid-term vacancy shall serve the remainder of that term and may be reappointed to ~~may not~~ serve up to ~~more than~~ 2 full terms.

(C) Chairperson and Vice-Chairperson. The Supreme Court shall designate from among the members of the commission a chairperson and a vice-chairperson who shall serve 1-year terms in those offices. The commencement and termination dates for the 1-year terms shall coincide appropriately with the 3-year membership terms of those officers and the other commission members. The Supreme Court may reappoint these officers for additional terms and may remove these officers prior to the expiration of a term. An officer appointed to fill a mid-term vacancy shall serve the remainder of that term and may be reappointed ~~to serve up to 2 more full terms~~.

(D)-(E) [Unchanged.]

Rule 9.110 Attorney Discipline Board

(A) [Unchanged.]

(B) Composition. The board consists of 6 attorneys and 3 laypersons appointed by the Supreme Court. The members serve 3-year terms. Unless initially appointed to fill a mid-term vacancy, a member may serve up to 2 full terms. A member appointed to fill a mid-term vacancy shall serve the remainder of that term and may be reappointed to ~~may not~~ serve up to ~~more than~~ 2 full terms.

(C) Chairperson and Vice-Chairperson. The Supreme Court shall designate from among the members of the board a chairperson and a vice-chairperson who shall serve 1-year terms in those offices. The commencement and termination dates of the 1-year terms shall coincide appropriately with the 3-year board terms of those officers and the other board members. The Supreme Court may reappoint these officers for additional terms and may remove an officer prior to the expiration of a term. An officer appointed to fill a midterm vacancy shall serve the remainder of that term and may be reappointed ~~to serve two full terms~~.

(D)-(E) [Unchanged.]

Staff Comment (ADM File No. 2024-19): The proposed amendments of MCR 9.108 and 9.110 would address mid-term member vacancies and would eliminate the 2-full term officer limit for the Attorney Grievance Commission and the Attorney Discipline Board.

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 April 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. 2024-19. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2025-01
Appointments to the Commission on Fairness and Public Trust in the Michigan Judiciary

On order of the Court, pursuant to Administrative Order No. 2022-1, the following individuals are reappointed to serve on the Commission on Fairness and Public Trust in the Michigan Judiciary for terms commencing on January 1, 2026, and expiring on December 31, 2028:

- Honorable Shauna Dunnings (on behalf of the Michigan Association of Probate Judges)
- Honorable Austin Garrett (on behalf of the Association of Black Judges of Michigan)
- Siham Awada Jaafar (Community Member)
- David W. Jones (on behalf of the Michigan Indigent Defense Commission)
- Honorable Sima Patel (on behalf of the Michigan Court of Appeals)
- Louisa Wills (Community Member)

In addition, the following individuals, or their designees, continue to serve by virtue of their role within their organization:

- Justice Elizabeth Welch (Supreme Court Justice)
- Elizabeth Rios-Jones (State Court Administrator Designee)
- Jennifer Bentley (Michigan State Bar Foundation Director)
- Peter Cunningham (State Bar of Michigan Director)

Further, Justice Elizabeth Welch and Honorable Austin Garrett are reappointed to serve as co-chairs for terms commencing on January 1, 2026, and expiring on December 31, 2027.

ADM File No. 2025-01
Appointments to the Commission on Well-Being in the Law

On order of the Court, pursuant to Administrative Order No. 2023-1, the following members are reappointed to serve on the Commission on Well-Being in the Law for full terms commencing on January 1, 2026 and expiring on December 31, 2028:

- Cynthia Bullington (on behalf of the Attorney Grievance Commission)
- Jeff Getting (on behalf of the Prosecuting Attorneys Association of Michigan)
- Honorable Andrew Griffin (on behalf of the Michigan Judges Association)
- Tierney Hoffman (on behalf of Wayne State University Law School)
- Honorable Lisa Martin (on behalf of the Association of Black Judges of Michigan)
- Marissa Navarro (Law Student)
- Katharine Smith (Attorney, Licensed less than five years)

In addition, the following individual is appointed to a first full term commencing on January 1, 2026 and expiring on December 31, 2028:

- Ieisha Humphrey (on behalf of Michigan State University College of Law)

Additionally, pursuant to Administrative Order No. 2023-1, the following individuals, or their designees, will serve by virtue of their role within their organization:

- Justice Kyra H. Bolden (Michigan Supreme Court Justice)
- Elizabeth Rios-Jones (State Court Administrator designee)
- Peter Cunningham (Executive Director, State Bar of Michigan)
- Molly Ranns (Director, State Bar of Michigan Lawyers and Judges Assistance Program)

Further, Justice Kyra H. Bolden is reappointed to serve as chair, and Molly Ranns is reappointed to serve as vice-chair of the Commission for terms commencing on January 1, 2026, and expiring on December 31, 2027.

ADM File No. 2025-01
Appointments to the Foreign Language Board of Review

On order of the Court, pursuant to MCR 8.127(A), Amy Etzel (Court Administrator) is reappointed to serve on the Foreign Language Board of Review for a first full term commencing on January 1, 2026 and expiring on December 31, 2028.

In addition, the following members are appointed to serve on the Foreign Language Board of Review for first full terms commencing on January 1, 2026 and expiring on December 31, 2028:

- Dr. Ahmed Elsayed (Certified Interpreter)
- Honorable Sean B. Perkins (District Court Judge)

ADM File No. 2025-01
Appointments to the Judicial Education Board

On order of the Court, pursuant to Mich CJE R 3, the following members are reappointed to serve on the Judicial Education Board for full terms commencing on January 1, 2026 and expiring on December 31, 2029:

- Honorable Kathleen M. Brickley (Circuit Court Judge)
- Honorable William G. Kelly (Retired Judge)
- Magistrate Gerald J. Ladwig (Quasi-Judicial Officer)
- Honorable Cynthia M. Ward (District Court Judge)

Additionally, Honorable Cylenthia LaToye Miller (Circuit Court Judge) is appointed to serve on the Judicial Education Board for a first full term commencing on January 1, 2026 and expiring on December 31, 2029.

Further, Honorable Christopher M. Murray is reappointed to serve as chair and Honorable Kathleen M. Brickley is reappointed to serve as vice-chair of the Judicial Education Board for terms commencing on January 1, 2026 and expiring on December 31, 2026.

ADM File No. 2025-01
Appointments to the Justice For All Commission

On order of the Court, pursuant to Administrative Order No. 2021-1, the following members are reappointed to serve on the Justice for All Commission for full terms commencing on January 1, 2026, and expiring on December 31, 2028:

- James Bacarella (on behalf of the Prosecuting Attorneys Association of Michigan)
- Ashley Lowe (on behalf of the Legal Services Association of Michigan)

In addition, Honorable Nicole N. Goodson (on behalf of the Association of Black Judges of Michigan) is appointed to serve on the Commission for a first full term commencing January 1, 2026, and expiring on December 31, 2028.

In addition, the following individuals, or their designees, will serve on the Commission by virtue of their role within their organization:

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

- Justice Brian K. Zahra (Michigan Supreme Court)
- Tom Boyd (State Court Administrator)
- Jennifer Bentley (Executive Director, Michigan State Bar Foundation)
- Peter Cunningham (Executive Director, State Bar of Michigan)
- Nora Ryan (Executive Director, Michigan Legal Help)
- Kristen Staley (Executive Director, Michigan Indigent Defense Commission)

Further, Justice Brian K. Zahra is reappointed to serve as chair, and Nora Ryan is reappointed to serve as vice-chair of the Commission for terms commencing on January 1, 2026, and expiring December 31, 2027.

ADM File No. 2025-37
Proposed Amendment of Rule 7.312 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.312 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 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) the appellant's brief and appendixes, if any, are due

(a) within 56 days of the order granting the application for leave to appeal, or within 56 days of an order appointing counsel for representation in this Court or of a ruling that the defendant is not entitled to appointed counsel, or

(b) within 42 days of the order directing the clerk to schedule oral argument on the application, or within 42 days of an order appointing counsel for representation in this Court or of a ruling that the defendant is not entitled to appointed counsel;

(2)-(4) [Unchanged.]

(F)-(K) [Unchanged.]

Staff Comment (ADM File No. 2025-37): The proposed amendment of MCR7.312 would establish rule-based briefing deadlines in leave granted and MOAA cases where it appears necessary to appoint counsel for the indigent defendant.

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 April 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. 2025-37. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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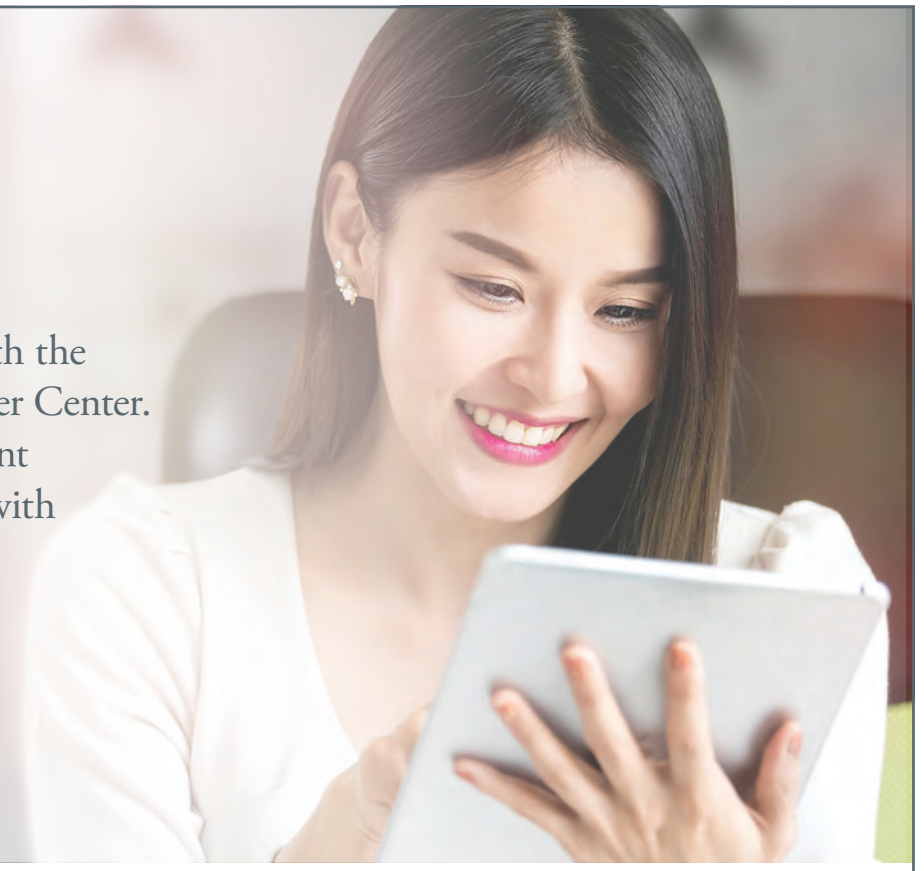

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