MICHIGAN
BAR JOURNAL
MAY 2026

SIXTH CIRCUIT EN BANC OPINIONS

ALSO IN THIS ISSUE:

- Litigation v. arbitration: Which is better for you?
- Citizen Lawyer: Mayor David LaGrand

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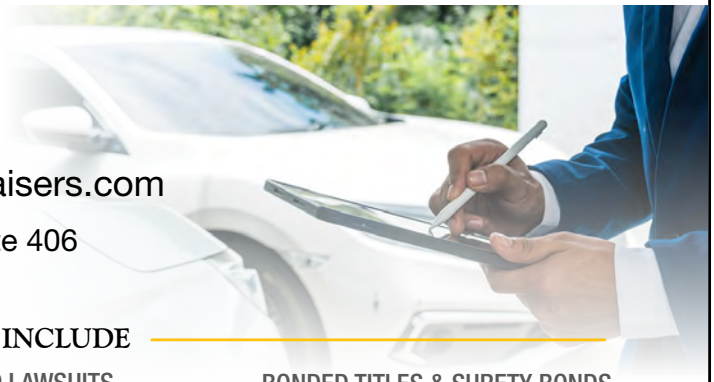

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COLUMNS

NOTICES

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MONEY JUDGMENT INTEREST RATE

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

For a complaint filed after Dec. 31, 1986, the rate as of January 1, 2025, is 4.083%. 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
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"We [MSBF] remain involved in shaping conversations about legal aid, access to justice and helping to guide the future of our civil legal aid infrastructure."

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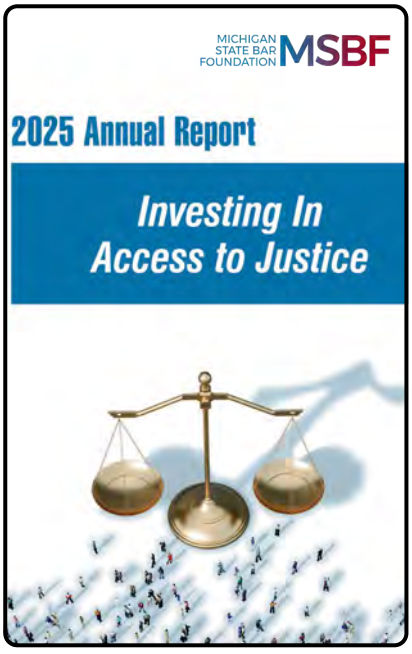

Scan the QR code to access and read more about MSBF's impact in our 2025 Annual Report

SBM
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BOARD OF COMMISSIONERS MEETING SCHEDULE

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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April 25, 2026
September 18, 2026

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Vacancy

CIRCUIT 57
Christina L. DeMoore

LETTERS TO THE EDITOR

To the Editor:

I wanted to publicly thank certified fiction book coach, author and educator, Miranda Keskes for her outstanding article in the March 2026 Edition of the Bar Journal, "The health benefits of writing fiction." After setting forth several of the positive health benefits arising out of writing fiction, Ms. Keskes articulates a 5-step method that is genius for busy lawyers who can't always find the time to engage in something like fiction writing, helping to make something otherwise very daunting but good for us more accessible. As Ms. Keskes notes, writing fiction "provides an escape into a world of *your own* creation" and consequently is "therapeutic" and even gives rise to "healing power." She hits the nail on the head, and, given the objectively established positive health effects of fiction writing and how adept the lawyer is at setting forth the narratives of the trials and tribulations in which they traffic as lawyers, it is high time that the Bar Journal's annual fiction writing competition should be reinstated after being suddenly cancelled in 2015. Of course, it was terminated due to a single submission that was deemed offensive having been awarded an honorable mention. Without a doubt, the Bar Journal editorial staff must be comfortable with the content, that goes without staying, but does it make sense to permanently cancel a wonderful tradition that had gone on for as many years as I had been a lawyer. Moreover, having been awarded second place for a story called *The Last Bullet* in that final competition, I can attest first-hand that not only did the process of writing *The Last Bullet* have very positive effects on my health, but, furthermore, winning a prize for doing it enhanced them. In the face of this evidence, members of the State Bar should once again have the opportunity to take part in this competition, which I always thought made for an excellent issue, which I looked forward to receiving in the mail every year.

Mark Rossman
Troy

Dear Editor,

I always enjoy the Journal's Practicing Wellness columns, and I must say that Miranda Keskes' March 2026 article "The Health Benefits of Writing Fiction" is spot on and very insightful.

Working on a novel can be an effective way for a lawyer to relax, refresh, and gear up for a day at the office. I wrote when I woke up at 5 AM and didn't want to disturb my wife and young son.

It took me 15 years, but I finished my novel with a sense of accomplishment.

The only thing I would add to Miranda's fine column is that you can always get published. Do it yourself ! When COVID hit and we had to close our office for 30 days, I asked my family, "What am I going to do?". My now grown son told me to publish my book on Amazon. So, I did. I even got my son's wife, a graphics designer, to design the cover.

The entire process was fun and easy. And you can't beat the thrill of holding that final printed and bound copy of your novel in your very own hands !

Michael Owsiany
Marco and Owsiany PLLC
100 Maple Park Boulevard
Suite 122
St. Clair Shores, MI 48081
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NEWS & MOVES

ARRIVALS & PROMOTIONS

MICHELLE (MICKEY) BARTLETT has joined the Detroit office of Butzel as a senior attorney.

CHRISTOPHER M. HILLER has joined the Grand Rapids office of Butzel.

MARK MEISNER and **HUNTER DESANTIS** have joined Fishman Stewart PLLC.

HENRY M. NIRENBERG has joined the Troy office of Butzel as a shareholder.

ANTHONY J. SCALISE has joined the Troy office of Butzel as a shareholder.

BRADLEY F. SCOBEL has joined the Troy office of Butzel as a shareholder.

LEADERSHIP

Plunkett Cooney partners **AUDREY J. FORBUSH, MICHAEL P. ASHCRAFT, JR., AND JEFFREY S. HENGEVELD** have been elected by the members of the firm's board of directors to board leadership positions.

BETH S. GOTTHELF, with Butzel, has been elected to the Board of Directors for NAATBatt International, the Trade Association for Advanced Battery Technology in North America.

LEE HORNBERGER has become a member of the Nevada Department of Business and Industry Government Employee-Management Relations Board roster of labor arbitrators.

FRANK T. MAMAT, a partner with Plunkett Cooney, was appointed president of the Private Directors Association Detroit-Toledo-Windsor Chapter (Detroit Chapter).

JENNIFER MILLER OERTEL, with Bodman PLC, was appointed chair of the National Tax-Exempt Council's State Regulatory Roundtable.

JOSHUA J. REUTER, an associate with Warner Norcross + Judd LLP, has been appointed to the Construction Allies in Action board of directors.

GLENN C. ROSS, with Plunkett Cooney, was named a Fellow of the American College of Mortgage Attorneys.

OTHER

FISHMAN STEWART PLLC is pleased to mark its 30th anniversary year in 2026.

PLUNKETT COONEY selected three law school students to receive $2,500 scholarships based on their essay submissions to the firm's 2025/2026 Laurel F. McGiffert Diversity, Equity & Inclusion Scholarship program.

PRESENTATIONS, PUBLICATIONS & EVENTS

JENNIFER DUKARSKI, with Butzel, was a featured speaker during the Society of Automotive Engineers (SAE) International's Automated and Connected Vehicles Digital Summit on March 24, 2026.

INGHAM COUNTY BAR ASSOCIATION will host its Annual Shrimp Dinner on May 20, 2026.

REGINALD A. PACIS, with Butzel, participated in an "Immigration Law Panel" discussion on March 25, 2026, presented by the Immigration Law (Student) Association at the University of Detroit Mercy.

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

IN MEMORIAM

JAMES M. BRADY, P39663, of Springfield, Va., died January 9, 2026. He was born in 1953, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1986.

HON. GERALD BROCK, P11221, of Sun Lakes, Ariz., died December 28, 2025. He was born in 1932, graduated from Detroit College of Law, and was admitted to the Bar in 1961.

RAYMOND G. BUFFMYER, P26950, of Potterville, died February 4, 2026. He was born in 1950, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1976.

EMIL E. CARDAMONE, P11601, of Sterling Heights, died March 7, 2026. He was born in 1924, graduated from Wayne State University Law School, and was admitted to the Bar in 1959.

ROBERT E. GUENZEL, P14457, of Ann Arbor, died February 8, 2026. He was born in 1941, graduated from University of Michigan Law School, and was admitted to the Bar in 1968.

FREDERIC WM. HELLER, P14852, of Ann Arbor, died December 17, 2025. He was born in 1941, graduated from University of Michigan Law School, and was admitted to the Bar in 1968.

JOHN B. HOLIDAY, P15064, of Franklin, died June 1, 2025. He was born in 1943, graduated from Wayne State University Law School, and was admitted to the Bar in 1971.

EDWIN GRIFFIN JOHNSON, III, P74038, of Cassopolis, died July 9, 2025. He was born in 1954, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 2010.

PETER J. KELLEY, P15822, of Ann Arbor, died April 4, 2026. He was born in 1943, graduated from Detroit College of Law, and was admitted to the Bar in 1970.

WILLIAM F. LILIENSIEK, P25782, of Madison, Wis., died October 17, 2017. He was born in 1937, graduated from Saint Louis University School of Law, and was admitted to the Bar in 1962.

WANDA S. LOSHER, P78464, of East Jordan, died March 20, 2026. She was born in 1965, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 2014.

CHRIS L. MCKENNEY, P17473, of Ann Arbor, died March 16, 2026. He was born in 1933, graduated from University of Michigan Law School, and was admitted to the Bar in 1962.

MARK S. METRY, P29204, of Saint Clair Shores, died March 13, 2026. He was born in 1953, graduated from Detroit College of Law, and was admitted to the Bar in 1978.

JOHN S. PATERSON, P18693, of Sandusky, died March 18, 2026. He was born in 1947, graduated from Detroit College of Law, and was admitted to the Bar in 1972.

RUSSELL E. PRINS, P19110, of East Lansing, died March 24, 2026. He was born in 1941, graduated from Stanford Law School, and was admitted to the Bar in 1967.

PHILLIP A. SCHAEDLER, P35047, of Tecumseh, died March 28, 2026. He was born in 1954, graduated from The University of Toledo College of Law, and was admitted to the Bar in 1983.

MICHAEL J. SUGAMELI, P29287, of Rochester Hills, died December 29, 2025. He was born in 1948, graduated from Detroit College of Law, and was admitted to the Bar in 1978.

In Memoriam information is published as soon as possible after it is received. To notify us of the passing of a loved one or colleague, please email barjournal@michbar.org.

FROM THE PRESIDENT

LISA J. HAMAMEH

Grab your petticoats

I did not set out to become a lawyer. There were no attorneys in my family — none in my immediate or extended circle. For much of my childhood, and even into young adulthood, higher education itself felt out of reach. The idea of law school was not just distant; it was unrealistic.

I attended Wayne State University for my undergraduate degree, living at home and working while taking classes in the evenings. It was there that I began to understand that education — and with it, opportunity — might be possible. Discovering federal student loans opened a door I hadn't known existed. A law degree, once seemingly impossible, began to look like a path to something I needed deeply: stability and control over my future.

The daughter of first-generation Palestinian immigrants (and later proud U.S. citizens), my desire for a career and independence was at odds with our traditional culture and definition of women's work. A family friend told me not to even bother trying to get into law school.

Instead of deterring me, their opposition inspired me to try even harder.

I attended two events recently that brought me back to these memories and got me thinking about the role of women in the legal profession.

First, I attended the Michigan Supreme Court Historical Society's annual meeting, where attorney, historian, and author Lynn Liberato educated us all on the "Con-Con's Petticoat Revolt." For those of you who are unfamiliar, she discussed the groundbreaking women who served as delegates to Michigan's 1961-1962 Constitutional Convention.[1]

A week later, I served on a "First, But Not the Last" panel discussion hosted by the Women Lawyers Association of Michigan during their annual meeting. While I am the first Palestinian American to serve as president of the State Bar of Michigan, I am also just the ninth woman.

The duo of events made me realize that while it is often easier to think about the challenges faced by women in the past tense, the reality is that challenges still exist.

Nationally, women now make up about 41% of all lawyers — a number that has grown steadily but still falls short of parity.[2] At the same time, women have become the majority in key entry points to the profession: More than half of law students are women, and women now make up the majority of law firm associates and federal government lawyers.[3]

Yet those gains have not fully translated upward. Women remain underrepresented in law firm partnerships, the judiciary, and other senior leadership roles.[4]

Michigan reflects many of these same dynamics.

Among active Michigan attorneys, men account for 20,087 (58.79%), while women make up 12,685 (37.13%). But among those who joined the State Bar in the last 10 years, the numbers are much closer: 49.15% men (3,497) and 47.74% women (3,397).[5]

The pipeline is changing. The question is whether the profession is changing with it.

Because representation is not just about who enters the law — it is about who stays, who advances, and who feels that they belong once they arrive. The data shows progress, but it also suggests friction: movement at the entry level, slower change at the top.

That tension is not new.

Ruth Bader Ginsburg graduated at the top of her class and still struggled to find employment because she was a woman. Her career became a study in persistence — incrementally dismantling barriers that had long been accepted as fixed. Her observation that women belong "in all places where decisions are being made" remains both a statement of principle and an ongoing challenge.[6]

And let's be clear: Women bring more than diversity to leadership. They improve the legal profession in part because women statistically score higher in core competencies such as team development, taking initiative, resilience, handling crises, collaboration, and empathy.[7]

While the statistics clearly show we in the legal profession have work to do — we also have significant gains to celebrate.

While I am the ninth woman to serve as SBM president, current President-elect Erika L. Bryant will take the reins next year as the 10th woman president (but only the second Black woman to hold the office), and Board Secretary Suzanne C. Larson is slated in 2029 to become the 11th woman president (and the first woman from the Upper Peninsula elected to the seat).

In fact, this is a historic year for woman attorneys in the state of Michigan.

For the first time ever, women occupy every top seat in the legal profession: I am joined by Michigan Supreme Court Chief Justice Megan K. Cavanagh, Gov. Gretchen Whitmer, Attorney General Dana Nessel, Secretary of State Jocelyn Benson, and State Bar Representative Assembly Chair Nicole Evans.

Today, we are seeing the results of the work of women who did not wait for permission and insisted on being included in shaping Michigan's future.[8] The legacy of the women of the 1961-62 Constitutional Convention (and many others) is not just that they were present — it is that they expanded what participation looked like.

Because of them, more women are visible in leadership, more women are entering the profession, and the trajectory is moving in the right direction.

That is real progress, and I am proud of our profession for taking real meaningful steps forward.

The task ahead is not simply to acknowledge progress but to sustain it — to ensure that the profession continues to evolve in ways that are not only more inclusive but more supportive and more durable.

For those of us who were told we didn't belong, the work is not just to prove otherwise — but to make sure the next generation never has to.

ENDNOTES

1. Lynn Liberato, *Michigan's Con-Con 11* (Michigan State University Press, 2025).
2. American Bar Association, *Profile of the Legal Profession 2024: Women in the Profession* (2024), https://www.americanbar.org/news/profile-legal-profession/women/.
3. *Id.*
4. *Id.*
5. State Bar of Michigan, membership demographics (2026).
6. Ruth Bader Ginsburg, remarks, Georgetown University Law Center (February 2015).
7. American Bar Association, *Profile of the Legal Profession: Women in the Profession* (2024), https://www.americanbar.org/news/profile-legal-profession/women/.

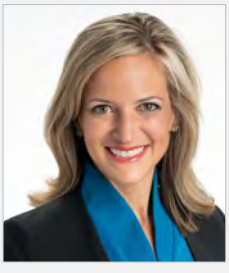
MICHIGAN'S LEGAL *LEADERS*

TOP ROW FROM LEFT: State Bar of Michigan President Lisa J. Hamameh, Michigan Supreme Court Chief Justice Megan K. Cavanagh, Gov. Gretchen Whitmer.

BOTTOM ROW FROM LEFT: Attorney General Dana Nessel, Secretary of State Jocelyn Benson, and State Bar Representative Assembly Chair Nicole Evans.








PUBLIC POLICY REPORT

AT THE CAPITOL

HB 5445 (Wozniak) **Courts: specialty courts; Courts: family division.** Courts: specialty courts; family division of the circuit court judgeships; modify. Amends secs. 1003, 1011, 1021 & 1023 of 1961 PA 236 (MCL 600.1003 et seq.) & adds secs. 1002 & 1012.

POSITION: Oppose.

(Position adopted via roll-call vote. Commissioners voting in support of the position: Anderson, Barr, Barton, Bryant, Burrell, Christenson, Clay, Crowley, Davis, Detzler, Easterly, Eccleston, Evans, Hamameh, Howlett, Kitchen-Troop, Larsen, Lerner, Liggins, Low, Lowe, Luckenbach, Mantese, Mason, Murray, Ohaneisan, Simmons, Timmons; Commissioners abstaining from voting: Clark.)

SB 0885 (Singh) **Criminal procedure: indigent defense; State agencies (existing): licensing and regulatory affairs.** Criminal procedure: indigent defense; parent and child legal representation commission; create. Creates new act.

POSITION: Support.

IN THE HALL OF JUSTICE

Proposed Amendment of Rule 2.410 of the Michigan Court Rules (ADM File No. 2024-32) – Alternative Dispute Resolution (See *Michigan Bar Journal* April 2026, 54).

STATUS: Comment Period Expires 7/1/26; Public Hearing to be Scheduled.

POSITION: Support.

Proposed Amendment of Rule 3.972 of the Michigan Court Rules (ADM File No. 2023-23) – Trial

STATUS: Comment Period Expires 7/1/26; Public Hearing to be Scheduled.

POSITION: Support with an additional amendment that the third sentence of MCR 3.972(E) should read: A party other than the respondent that filed the motion may request to present evidence to the court before it decides the motion, and the court must grant that request before deciding the motion.

Proposed Amendment of Rule 3.981 of the Michigan Court Rules (ADM File No. 2024-04) – Minor Personal Protection Orders; Issuance; Modification; Rescission; Appeal

STATUS: Comment Period Expires 7/1/26; Public Hearing to be Scheduled.

POSITION: Support with a further amendment to the language proposed to be added to MCR 3.981 as follows: The court must advise the respondent of their appellate rights under MCR 3.937 following the issuance of any order appealable by right.~~, and in those cases,~~ If a respondent requests the appointment of appellate counsel, the appointment ~~of appellate counsel~~ is controlled by MCR 3.993(D)(5).

Proposed Amendment of Rule 6.610 of the Michigan Court Rules (ADM File No. 2025-09) – Criminal Procedure Generally (See *Michigan Bar Journal* April 2026, 55).

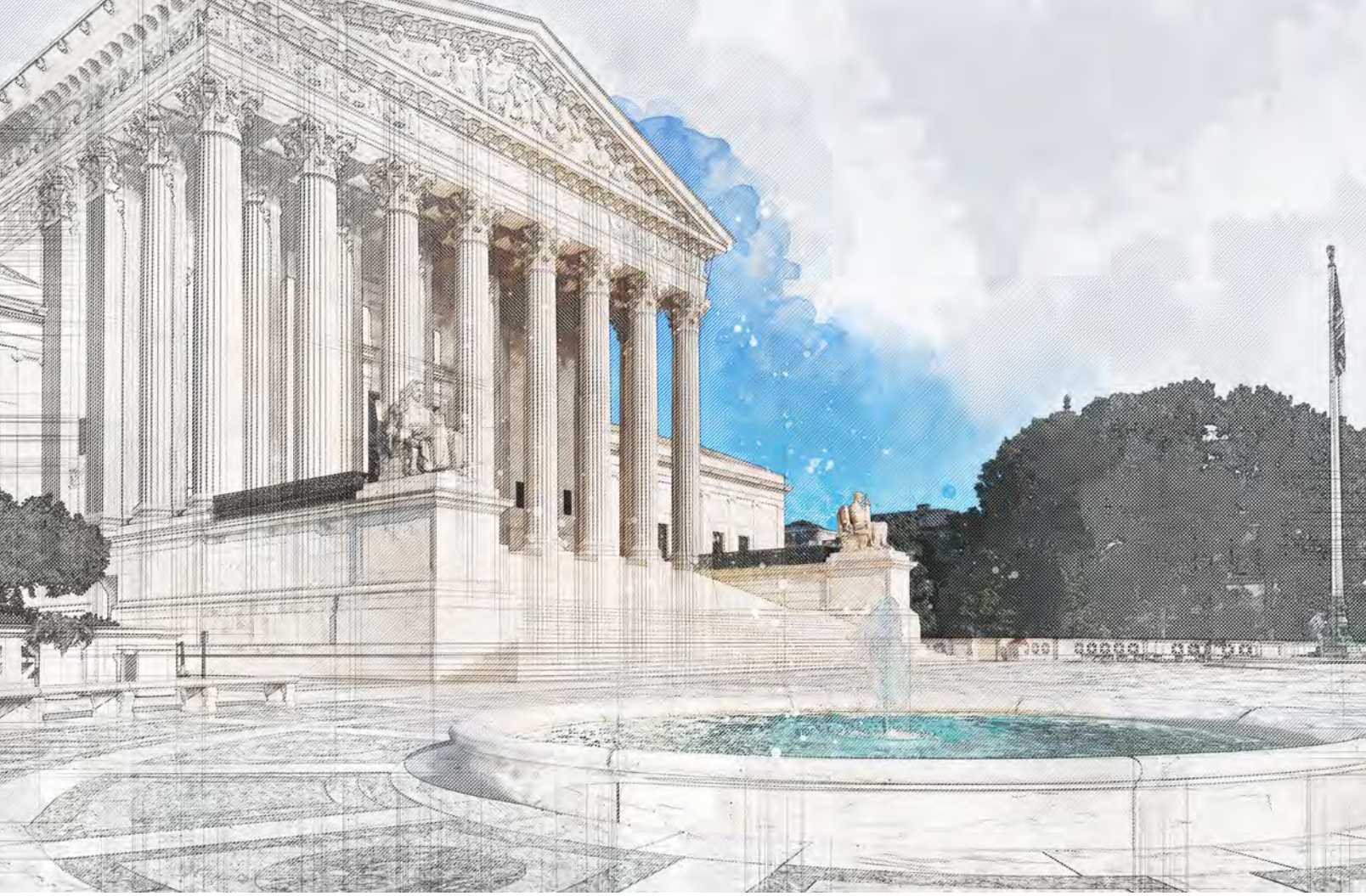
STATUS: Comment Period Expires 7/1/26; Public Hearing to be Scheduled.

POSITION: Support.

Proposed Amendment of Rule 7.210 of the Michigan Court Rules (ADM File No. 2025-23) – Record on Appeal (See *Michigan Bar Journal* April 2026, 55).

STATUS: Comment Period Expires 7/1/26; Public Hearing to be Scheduled.

POSITION: Support.



2024-2025 Sixth Circuit en banc opinions

BY MICHAEL HLUCHANIUK, THADDEUS MORGAN, AND DANIEL PING

The United States Court of Appeals for the Sixth Circuit issued four en banc decisions in 2024 — the highest number in one year since 2021.

UNITED STATES V. ANTWONE MIGUEL SANDERS[1]

The en banc Court affirmed the denial of a motion to suppress evidence in a significant criminal case. After receiving a tip from an anonymous informant that Antwone Sanders was selling drugs from a nearby apartment, police set up two controlled buys. Police watched Sanders travel directly between the sale location and the apartment during both sales. Using an affidavit containing this information, police sought a warrant to search the apartment. The search yielded incriminating items, including heroin, fentanyl, cocaine, handguns, and a large amount of cash. Sanders pleaded guilty to federal heroin and firearm charges and was sentenced to six years in prison. On appeal, he challenged the denial of his motion to suppress the evidence found in his apartment and denial of his discovery motion seeking case reports.

In an opinion by Judge Readler, the majority affirmed denial of Sanders's motion to suppress because there was probable cause to support the warrant. Challenged the warrant affidavit for not explaining law enforcement's familiarity with the informant or the infor-

mant's knowledge of the apartment, but these details were unnecessary given all of the other information included. The controlled buys alone were sufficient to find probable cause because police saw Sanders driving directly between the apartment and the sale location. That police also had an anonymous tip, which they considered to be credible, adds further support. Moreover, case law supports an inference that evidence of drug trafficking is typically found in the suspect's home because of the nature of the offense.

Even if the warrant affidavit fell short of establishing probable cause, the majority explained that the good faith exception to the exclusionary rule would save the search. This exception bars suppression where officers conduct a search with a good faith belief that they have a valid warrant. Here, officers' good faith belief that they had a valid warrant was reasonable because the supporting affidavit was not bare bones enough to suggest that it could not possibly establish probable cause. Further, the majority rejected Sanders's *Franks* challenge because while Sanders made general assertions about ethical concerns regarding one of the officers involved in the investigation, he failed to establish that the affidavit contained any falsehoods.

Judge Griffin authored a concurring opinion expressing concern about the majority's interpretation of case law allowing for an inference that drug traffickers store drugs in their homes. While law enforcement had probable cause to support a warrant here, a search warrant may not be issued without any evidence connecting a home with criminal activity.

In a separate concurrence, Judge Mathis expressed the view that although the officers lacked probable cause because of the missing information about the informant's credibility, the good faith exception saves the search because the affidavit could not be considered bare bones.

Judge Stranch and Judge Bloomekatz similarly expressed the view that the Court did not need to decide the probable cause issue because the good faith exception would have saved the search anyway.

In dissent, Judge Clay expressed the view that the warrant lacked probable cause and that no exception should save the search. In his view, the controlled buys were insufficient to make up for the missing details about the informant's credibility, and no reasonable officer could hold a good faith belief that the investigation was sufficient to establish probable cause given these missing details.

Next, the majority affirmed denial of Sanders's discovery request under Rule 16 of the Federal Rules of Criminal Procedure because the material Sanders sought fell beyond the scope of the rule. Sanders requested "case reports" regarding the investigation leading to issuance of the warrant, and the majority held that this conflicted with another part of Rule 16 that prohibits disclosure of reports connected with an investigation. The purpose of the rule is to allow defendants to obtain evidence to aid them in refuting the government's case-in-chief, and Sanders's vague and speculative request for case reports did not make clear how these records would help him to do that. Sanders also requested the drugs exchanged during the controlled buys. The majority held that denial of this request was appropriate because this case relied on the items seized from the apartment, not the drugs sold during the controlled buys.

In a concurrence, Judge Stranch and Judge Bloomekatz expressed the view that Rule 16 required Sanders to show how the requested evidence would materially help him in refuting the government's case-in-chief, which he failed to do. Thus, the analysis should have stopped there, in these judges' view, and the majority went too far in speculating about whether the requested materials fell in the scope of the rule.

Finally, Judge Clay dissented and expressed the view that Supreme Court precedent indicates that Rule 16 can serve as a "shield mechanism," which would encompass the materials sought. In affirming denial of the request, the majority imposed too high a bar by requiring Sanders to show that the evidence would be exculpatory.

On November 25, 2024, the U.S. Supreme Court denied Sanders's petition for a writ of certiorari.

VON DAVIS V. CHARLOTTE JENKINS, WARDEN[2]

After nearly 40 years of procedural history, the en banc Court affirmed the district court's denial of Von Clark Davis's habeas petition challenging his third death sentence for a 1983 murder. Davis was convicted of aggravated murder in Ohio after a bench trial, and the Court sentenced him to death based on a prior conviction for second-degree murder. On direct appeal, the Ohio Supreme Court vacated his death sentence, but on remand, the same panel reimposed the death penalty a second time. Davis's first habeas petition resulted in a Sixth Circuit panel vacating his death sentence, and by the time of the third sentencing, none of the three judges from his original panel were left on the bench. Pursuant to Ohio law, a new panel was formed and resentenced Davis to death for a third time after a mitigation hearing.

In his second habeas petition, Davis raised six claims based on the enforcement of his jury trial waiver against him at his resentencing hearing before the new panel, along with his counsel's ineffective performance at resentencing. The district court denied all claims. A panel of the Sixth Circuit reversed, finding merit to three of Davis's claims. The en banc Court then vacated the panel's opinion and affirmed the district court's denial of all six claims.

In his first two claims, Davis argued that because he waived his right to a jury trial in reliance on the court informing him that three particular judges would make up his panel, 1) the enforcement of the 1984 jury waiver denied him due process rights or violated the Sixth and Eighth Amendments and 2) his decision to waive his right to a jury was not knowing, intelligent, and voluntary because he was unaware of the possibility of being resentenced by a new panel. The majority applied Antiterrorism and Effective Death Pen-

alty Act of 1996 (AEDPA) deference because a state court adjudicated these issues on the merits. Where AEDPA deference applies, a federal court can grant a writ of habeas corpus only if the state court decision was contrary to federal law, involved an unreasonable application of federal law, or involved an unreasonable determination of facts based on the evidence. The majority found that the state court's decision comported with federal law on due process, the Sixth and Eighth Amendments, and the knowing, intelligent, and voluntary standard for waivers. The original panel found all of the facts required for conviction, and there was no constitutional right to sentencing by a jury. Accordingly, it was appropriate for the new panel to weigh the aggravating and mitigating factors at resentencing without finding any new facts. Further, unawareness of the possibility that a new panel could resentence him did not prevent the waiver from being knowing, intelligent, and voluntary. Davis knew of his right to a jury trial, the majority held, and there was no constitutional right to be sentenced by a particular judge.

In dissent, Judge Moore argued that AEDPA deference should not apply because Davis waived his jury trial rights in reliance on having a particular panel, and the Court should have treated it as an agreement that was breached when Davis did not receive the benefit of his bargain at resentencing.

Davis's remaining claims raised issues of ineffective assistance of counsel. He argued that: 1) counsel was ineffective in failing to move for recusal of a judge on the new panel on the grounds that he sought the death penalty while prosecuting Davis's cousin for an unrelated murder, 2) counsel was ineffective in failing to reasonably prepare and present two mitigation witnesses, 3) counsel was ineffective in failing to investigate and present mitigating evidence, and 4) counsel was ineffective in failing to advise Davis of the collateral consequences of his jury waiver. The Court held that the third claim was procedurally defaulted because Davis did not fairly present it in state court and that the fourth claim might also be procedurally defaulted but that it would fail even on de novo review.

The majority applied AEDPA deference to deny the first two ineffective assistance of counsel claims. Where there is any reasonable argument that counsel satisfied the deferential *Strickland* standard, AEDPA deference applies to state court decisions on the merits. Here, the majority found that the state court decisions comport with *Strickland.* The record indicated that counsel was aware of the issues concerning both the potentially biased judge and the witnesses, and the court validly assumed that counsel conducted reasonable investigation resulting in strategic decisions that are entitled to deference.

Again, Judge Moore expressed the view that AEDPA deference should not apply because the state court imposed an unreasonably high bar that did reflect *Strickland.* The court should have considered the reasonableness of counsel's actions, in her view, and damaging testimony from both witnesses suggested that counsel did not act reasonably.

On June 2, 2025, the U.S. Supreme Court denied Davis's petition for a writ of certiorari.

NATIONAL REPUBLICAN SENATORIAL COMMITTEE V. FEDERAL ELECTION COMMISSION[3]

In September 2024, the Court decided a First Amendment challenge to the Federal Election Campaign Act's limit on coordinated spending expenditures, which restricts political parties' spending with input from their candidates. The Supreme Court decided that the same coordinated spending limit did not violate the First Amendment in *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) (*Colorado II*). Over 20 years later, plaintiffs including the senatorial and congressional committees of the Republican Party, J.D. Vance, and Steve Chabot, brought another First Amendment challenge arguing that *Colorado II* no longer controls because: 1) more recent Supreme Court precedent has strayed from it, 2) Congress has since amended the statute, and 3) the landscape of campaign finance has changed. Plaintiffs argued that the coordinated spending limit violates the First Amendment both facially and as applied.

The district court then certified the constitutional question to the Sixth Circuit. The en banc majority held that the facial challenge must fail because *Colorado II* controls until the Supreme Court overrules it. Even if a new line of reasoning undermines the foundation of a previous Supreme Court decision, lower courts must follow the decision unless the Supreme Court itself decides otherwise.

However, the majority acknowledged the changed circumstances that plaintiffs identified. First, Supreme Court decisions following *Colorado II* have rendered the test for determining whether restrictions on campaign spending are constitutional more stringent. Now, the only government interest that justifies such restrictions is the prevention of quid pro quo corruption or its appearance. And the test now requires that restrictions are narrowly tailored to this goal rather than just "closely drawn." Next, Congress's amendments to the statute, which exempt certain expenses from the coordinated spending limit, indicate that the restriction is in fact not narrowly tailored. Finally, the rise of super PACs and social media has changed the campaign finance landscape in that political parties are now less powerful players.

Colorado II left open the possibility for successful as-applied challenges regarding specific expenditures. However, the majority held that plaintiffs' as-applied challenge here also failed because plaintiffs did not show that a specific expenditure does not involve coordination. Instead, they raised a broad challenge to the limit as applied to "the political advertising addressed in 11 CFR § 109.37." This category encompasses approximately 97% of the committees' expenditures. Thus, the majority held that the only way to accept this challenge would be to reject *Colorado II.*

In his concurrence, Judge Bush agreed that *Colorado II* still controls but expressed the view that the Supreme Court should overrule it

and instead adopt a "history and traditions" test as it has done for other constitutional issues, including First Amendment issues.

Judge Stranch wrote a concurring opinion arguing that *Colorado II* controls and that the majority went too far in validating plaintiffs' arguments about why it does not. While the Court should not reach the merits, she wrote, coordinated spending limits satisfy both prongs of this test. Finally, Judge Stranch agreed with the majority that the as-applied challenge must fail because of its breadth.

Similarly, Judge Bloomekatz concurred in an opinion stating that *Colorado II* controls, and nothing more is needed to decide the case.

In dissent, Judge Readler expressed the view that plaintiffs' claims that *Colorado II* does not control should prevail. Thus, the Court should have reached the merits and held for plaintiffs. In his view, the coordinated spending limit fails both prongs because the government has not proven that coordinated spending poses a significant risk of quid pro quo corruption, and there are other, less restrictive measures in place to serve the same interest.

On June 30, 2025, the U.S. Supreme Court granted the NRSC's petition for a writ of certiorari, and the Court heard oral argument on December 9, 2025.

CYNTHIA BROWN V. DAVID YOST[4]

In November 2024, the Court issued an opinion resolving a First Amendment Challenge to Ohio's ballot initiative procedure for proposed amendments to the state constitution. Ohio's statutory procedure requires ballot initiative proponents to submit their proposed amendment, a summary of the amendment, and 1,000 signatures to the state attorney general. This procedure authorizes the attorney general to review the summary and determine whether it is a "fair and truthful" statement of the proposal. Proponents whose proposals the attorney general rejects may seek review in the Ohio Supreme Court.

Here, Cynthia Brown submitted her proposal to eliminate state governmental immunities in certain state-law causes of action to the attorney general eight times over a span of nearly two years, and the attorney general rejected the summary each time. After a March 2024 rejection, Brown sought expedited review in the Ohio Supreme Court so that she might still obtain approval in time for her proposal to appear on the November 2024 ballot. The Ohio Supreme Court denied expedited review, and she voluntarily dismissed the action and instead sued the attorney general in federal court. Brown alleged that the review procedure violates the First Amendment both on its face and as applied and sought a preliminary injunction requiring the attorney general to approve her summary.

The district court denied Brown's motion for a preliminary injunction. A panel of the Sixth Circuit reversed. The en banc Court then vacated the panel's decision. But because it had become too late for Brown's proposed amendment to appear on the November 2024 ballot, the en banc Court first had to address whether the request for a preliminary injunction was moot. In a per curiam opinion, the Court held that the request was indeed moot because Brown expressly focused her requested relief on the November 2024 election, and such relief was no longer available. However, the Court explained that the mootness of the preliminary injunction request did not affect the status of the underlying First Amendment challenge, which could still proceed in time for the next election. For this reason, the Court determined that Brown's request did not fall within the exception to mootness for issues that are capable of repetition but evade review.

In a concurring opinion, Judge Thapar expressed the view that even if Brown's request was not moot, the preliminary injunction should not be granted because Brown could not show that she was likely to succeed on the merits of her First Amendment claim. In his view, the ballot initiative procedure was not a content-based regulation of speech and thus was not subject to First Amendment scrutiny. More broadly, Judge Thapar expressed that the Court should leave it up to Ohio to structure its own legislative processes.

Judges Moore and Kethledge dissented, separately, contending, based on slightly different reasoning, that mootness should not have prevented the court from ruling on the merits of the case and that the court should have ruled in plaintiff's favor.

UNITED STATES V. TYREN L. CERVENAK[5]

Judge Andre Mathis in April 2025 authored an en banc opinion vacating the defendant-appellant's sentence and remanding for resentencing, holding that the defendant's prior Ohio robbery convictions did not qualify as "crimes of violence" under the Sentencing Guidelines' career-offender provision.

The appellant pleaded guilty to distributing controlled substances and being a felon in possession of a firearm. The district court enhanced his sentence based on prior convictions, including two for robbery under Ohio state law. The legal dispute centered on whether these robbery convictions satisfied the Guidelines' enumerated-offenses clause for a "crime of violence" — specifically, whether the elements of robbery under Ohio law categorically matched (or were narrower than) the Guidelines' reference to "generic" extortion or robbery. This inquiry is performed without any reference to the facts of the party-defendant's crime. Stated differently, if a hypothetical defendant can possibly commit robbery under Ohio law without necessarily committing "generic" extortion or robbery, he or she is ineligible for the "crime of violence" enhancement in § 4B1.1(a) of the 2021 Guidelines under which Cervenak was sentenced.

The majority considered the "modified categorical approach," because one can commit "robbery" under Ohio law under several alternative sets of elements. The majority determined that the Ohio

robbery statute is divisible by both (1) the type of robbery and (2) the underlying "theft offense," the latter of which constitutes an element of robbery. Although a divisible statute still does not permit inquiry into the crime's underlying facts, divisible statutes like Ohio's do permit courts to reference a limited class of documents (such as the indictment or jury instructions) to determine which of the sets of alternative elements were used. If these documents fail to illuminate which set of alternative elements were applied to the defendant, the court must compare the "generic" offense against the "least serious conduct" of which the defendant could have been convicted.

The defendant's indictment specified which type of robbery he had committed, but it did not specify the predicate theft offense. Accordingly, the majority presumed the conviction rested on the least serious conduct criminalized by Ohio's theft-offense statute. It concluded the conviction was not a match for Guidelines extortion because several Ohio theft offenses (e.g., trespass in a habitation, forgery) do not require "obtaining something of value." Similarly, the court held the defendant's conviction was broader than generic robbery because it does not necessarily involve the "misappropriation of property." The majority rejected the government's argument that Ohio law presumes generic theft when the predicate is unspecified.

Judge John Nalbandian concurred but dissented from the decision not to certify the state-law question regarding theft offenses to the Ohio Supreme Court. Judge Keetan Ritz concurred in part and dissented in part, arguing that Ohio robbery qualifies as generic robbery. Judge Richard Griffin dissented, urging the Supreme Court "to discard the absurd, convoluted, and nonsensical categorical approach." Judge Amul Thapar also issued a 43-page dissent, arguing that the underlying theft offenses are "means" rather than "elements," which would make the conviction a categorical match, and criticizing the majority for creating constitutional concerns regarding Ohio indictments without certifying the issue to the state court.

BENNY LEE HODGE V. LAURA PLAPPERT, WARDEN[6]

In May 2025, Judge John Bush authored the en banc Court's majority opinion affirming the denial of the appellant's habeas petition, holding that the Kentucky Supreme Court's rejection of his ineffective-assistance-of-counsel and jury-tampering claims was not unreasonable under the Antiterrorism and Effective Death Penalty Act (AEDPA).

The appellant challenged his conviction and death sentence for the 1985 murder of Tammy Dee Acker and the attempted murder of her father, Dr. Roscoe Acker, during a robbery. The appellant and his accomplices posed as FBI agents to gain entry to the victims' home, where they bound the victims and stole nearly $2 million from a safe. The appellant stabbed the daughter at least 10 times with a butcher knife, and an accomplice tried (and failed) to kill the father by strangulation. At the penalty phase, trial counsel presented only a brief stipulation regarding the appellant's family and work history. In so doing, counsel failed to present extensive available evidence of the appellant's childhood, which was marred by severe physical and mental abuse at the hands of his stepfather, who was described as a "monster." Decades later, on post-conviction review, the Kentucky Supreme Court agreed that the appellant's trial counsel deficiently performed at sentencing under *Strickland v. Washington*[7] but that the appellant had not shown prejudice, i.e., a reasonable probability the jury would not have sentenced the appellant to death" had it heard the mitigation evidence regarding the appellant's childhood.

The majority applied AEDPA deference to the Kentucky Supreme Court's determination that the appellant failed to show prejudice. The state court had weighed the unpresented mitigation evidence against the "heinous nature" of the calculated crime, the appellant's violent criminal history, and his lack of remorse, concluding there was no reasonable probability the jury would have spared him the death penalty. Notably, the majority rejected the argument that the state court had applied an improper "nexus" requirement, which allegedly discounted any mitigation evidence that offered "no rationale" for the crime. Instead, the majority held that the state court properly assessed the probative strength of the evidence in light of overwhelming aggravating factors. The majority noted that *Thornell v. Jones*[8] permits courts to consider whether mitigation evidence explains a crime when weighing it. Regardless of whether a court may disregard attenuated mitigation evidence in theory, the Kentucky Supreme Court here had merely (and permissibly) used the lack of a "nexus" to inform the weight it gave to the mitigation evidence.

Regarding the appellant's remaining claims, the court held the state court reasonably determined there was no credible evidence of jury tampering, finding the post-conviction testimony of the trial bailiff unreliable. The court further held that the appellant's jury bias claim was procedurally defaulted because he failed to raise the issue in state court.

Judge John Nalbandian concurred to emphasize that assessing whether mitigation evidence explains a crime is a necessary part of determining a defendant's moral culpability under *Williams v. Taylor*. Judge Rachel Bloomekatz also concurred, noting that while she might have found prejudice on direct review given the "unimaginable" abuse the appellant suffered, AEDPA deference constrained the court to affirm. Judge Helene White dissented, joined by Judges Karen Nelson Moore, Eric Clay, and Jane Branstetter Stranch. The dissent argued that the Kentucky Supreme Court applied a rule contrary to clearly established federal law by dismissing mitigation evidence solely because it failed to provide a "rationale" or causal nexus for the crime. The dissent contended this reasoning conflicted with Supreme Court precedents like *Wiggins*, *Rompilla*, and *Wil-*

liams, which establish that mitigation evidence need not explain a crime to alter a jury's penalty selection.[9]

On November 20, 2025, the appellant petitioned the U.S. Supreme Court for a writ of certiorari. The Court ordered the Warden to respond, and the petition remains pending.

DENNIS SPEERLY V. GENERAL MOTORS, LLC[10]

Chief Judge Jeffrey Sutton authored an en banc opinion in June 2025 vacating the district court's class-certification order and remanding the case for further proceedings, holding that the certified subclasses failed to satisfy the rigorous requirements of Federal Rule of Civil Procedure 23 regarding commonality and predominance.

The plaintiffs represented approximately 800,000 car buyers across 26 statewide subclasses. They alleged defects in General Motors' eight-speed Hydra-Matic transmissions installed in vehicles from model years 2015 to 2019. The plaintiffs identified two specific problems: a "shudder" caused by moisture in the transmission fluid and a "lurch," or harsh shift, caused by pressure issues. They brought 59 distinct state-law claims, including breaches of express and implied warranties, violations of consumer-protection statutes, and fraudulent omissions. Addressing threshold jurisdictional issues, the majority concluded that the named plaintiffs had Article III standing because their vehicles actually manifested the defects, constituting an injury in fact.

Regarding Rule 23(a) commonality — which requires that a question of law or fact common to the class is a prerequisite to class certification — the court held that the district court erred by asking generally, and only, whether a "defect" existed. Instead, the court should have conducted an element-by-element analysis to ensure common questions were central to the specific elements of each varied state-law claim.

Regarding Rule 23(b)(3) predominance — which requires that the common questions predominate over questions affecting only individual class members — the majority found that individualized issues overwhelmed common ones across the various causes of action. It first delineated two threshold, general concerns regarding manageability and federalism: First, certifying a class involving 59 causes of action across 26 states forces the federal court to act as a "central planner," guessing at state law nuances and potentially violating the Seventh Amendment by merging distinct negligence standards into a single jury instruction. Second, the plaintiffs' decision to aggregate two distinct defects with distinct causes (the "shudder" and the "lurch") exponentially increased the complexity of the rigorous analysis required, likely eliminating the efficiency promoted by a properly certified class action.

The majority then evaluated predominance as to individual causes of action. For express warranty claims, the court noted that most relevant states require a buyer to present the vehicle for repair, necessitating individualized (i.e., non-common) inquiries into whether each buyer sought repairs and whether those repairs were successful. Similarly, for implied warranty claims, the court reasoned that "merchantability" depends on how a defect manifests — ranging from a slight vibration to a violent lurch — which varied among class members. Concerning consumer-protection and fraud claims, the court distinguished between states that require a defect to manifest or require proof of reliance (creating individualized barriers) and those that do not, instructing the district court to assess these distinctions rigorously. Finally, the court held that the district court must individually assess the impact of arbitration agreements signed by some class members, ruling that General Motors' waiver of arbitration against named plaintiffs did not bind it regarding the unnamed class members.

The majority also criticized the district court's standard of decision, clarifying that a judge conducting commonality and predominance inquiries must actually make the relevant findings of fact and conclusions of law. It is improper, said the majority, to shy away from determinations that overlap with the ultimate inquiries on the merits, and courts should not indulge in the kinds of presumptions that characterize motions to dismiss.

Judge Amul Thapar concurred, writing separately to address the "disjuncture problem," in which a named plaintiff has standing but some class members may not. He argued that courts should resolve this issue through Rule 23's procedural requirements rather than Article III standing doctrine. Judge John Nalbandian, joined by Judge Richard Griffin, concurred but wrote separately to argue that the court should have explicitly held that a class cannot be certified if it contains uninjured members, rejecting the "benefit of the bargain" theory of injury for products with unmanifested defects.

Judge Karen Nelson Moore dissented, joined by Judges R. Guy Cole, Jr., Eric Clay, Jane Branstetter Stranch, Andre Mathis, Rachel Bloomekatz, and Keetan Ritz. The dissent argued that the district court had conducted a proper, rigorous analysis and that the majority erected "insurmountable barriers" to class certification in complaints against national manufacturers. The dissent contended that the majority misinterpreted *Wal-Mart Stores, Inc. v. Dukes*,[11] engaged in an improper merits review, and ignored the central purpose of Rule 23(b)(3) to facilitate the aggregation of small consumer claims.

DEFENDING EDUCATION V. OLENTANGY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION[12]

This November 2025 opinion concerned a local school district's anti-harassment and bullying policies that prohibited students from referring to transgender or nonbinary classmates using pronouns matching their biological sex if those classmates preferred different

pronouns. The plaintiff organization represented parents and students who, believing gender to be an immutable characteristic, wished to express this view by using students' biological pronouns. Related, they claimed that following the School District's policy required them to convey falsehoods. The School District interpreted its policies to ban such conduct, classifying the intentional use of biological pronouns contrary to a student's preference as discriminatory language and harassment. The district court denied the injunction requested by the plaintiffs. The Sixth Circuit panel affirmed by a 2-1 vote, with Judge Batchelder dissenting. Judge Eric Murphy authored an en banc opinion reversing the district court and remanding for entry of a preliminary injunction in the plaintiffs' favor.

After agreeing that the plaintiffs established associational standing, the en banc majority applied the standard set forth in *Tinker v. Des Moines Independent Community School District*,[13] which permits schools to restrict student speech on matters of public concern only if it causes a "substantial disruption" or infringes on the "rights of others." The majority concluded that the School District failed to meet this demanding standard because it presented no evidence that the use of biological pronouns had actually disrupted school functions or constituted harassment under Ohio law. Although two exceptions to *Tinker*'s rule were available — i.e., "offensively lewd and indecent speech" and incitement to illegal acts — neither was available to the School District. Furthermore, the court held that the School District engaged in impermissible viewpoint discrimination by prohibiting the expression of the view that gender is determined by biology while requiring speech that affirms that gender and sex are distinct. The court emphasized that the government may not tip the scales in a sensitive public debate by silencing one side.

Several judges wrote separate concurring opinions. Judge Alice Batchelder argued that the policies were unconstitutional not only under *Tinker* but also as compelled speech and viewpoint discrimination. Judge Raymond Kethledge, writing separately, advocated for a historical common law approach, noting that the doctrine of *in loco parentis* does not grant schools the authority to force students to express viewpoints at odds with their parents' teachings. Judges Amul Thapar and John Nalbandian concurred to emphasize that the policies constituted egregious viewpoint discrimination on a matter of public concern. Judge John Bush also concurred, arguing that the government has no historical authority to regulate grammar or common usage.

Jane Branstetter Stranch dissented, joined by Judges Karen Nelson Moore, Eric Clay, Stephanie Dawkins Davis, Andre Mathis, Rachel Bloomekatz, and Keetan Ritz. The dissent argued that schools must have the leeway to protect students from bullying and harassment to maintain a safe learning environment. The dissenting judges contended that the record supported a reasonable forecast that the intentional, repeated use of non-preferred pronouns causes trauma and educational disruption, thereby satisfying the *Tinker* standard. The dissent criticized the majority for adopting a "sliding scale" approach that improperly demands more evidence of disruption for speech deemed political.

ENDNOTES

1. *United States v. Sanders*, 106 F. 4th 455 (6th Cir. 2024) (en banc).
2. *Davis v. Jenkins*, 115 F. 4th 545 (6th Cir. 2024) (en banc).
3. *Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n*, 117 F. 4th 389 (6th Cir. 2024) (en banc).
4. *Brown v. Yost*, 122 F. 4th 597 (6th Cir. 2024) (en banc).
5. *United States v. Cervenak*, 135 F. 4th 311 (6th Cir. 2025) (en banc).
6. *Hodge v. Plappert*, 136 F. 4th 648 (6th Cir. 2025) (en banc).
7. *Strickland v. Washington*, 466 U.S. 668 (1984).
8. *Thornell v. Jones*, 602 U.S. 154, 164 (2024).
9. *Wiggins v. Smith*, 539 U.S. 510 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Williams v. Taylor*, 529 U.S. 362 (2000).
10. 143 F. 4th 306 (6th Cir. 2025) (en banc).
11. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).
12. *Defending Educ. v. Olentangy Local Sch. Dist. Bd. of Educ.*, 158 F. 4th 732 (6th Cir. 2025) (en banc).
13. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969). *Tinker* held that students had the right to wear armbands to school as a protest of the then-ongoing conflict in Vietnam.

LITIGATION V. ARBITRATION

Which is better for you?

BY STEVEN SUSSER AND JESSICA FLEETHAM

This article presents a structure for determining if litigation or arbitration is the better path for the resolution of a given dispute. We refer to a court adjudication as "litigation" and a private adjudication by, typically, one or three arbitrators as "arbitration." The dispute resolution procedures are similar between the two, but there are differences that could be important. Although litigation is the default, and you do not often get to choose, there are times when you will be called on to decide whether to opt for litigation or arbitration. How will you approach that decision?

LITIGATION V. ARBITRATION

Here is a suggestion. Think about which aspects of your dispute are most important to your client and, based on these priorities, decide which of the two forums offers the benefits that matter. For

example, is it more important that your adversary feels the threat of your claims, or would you prefer a confidential and relatively quick proceeding? Here are some aspects of litigation versus arbitration that might help you make your choice.

KEY LITIGATION ADVANTAGES

- **Intimidation**: Few cases make it to trial. Often, the act of filing a lawsuit is enough to bring about a settlement. It is fair to assume that a recipient of a complaint will be more nervous about that lawsuit than he would be had he received an arbitration demand. There is something about the weight of tradition and governmental power that makes litigation feel more significant than arbitration. If you wish to intimidate your opponent into an early (and, perhaps, more favorable) settlement, litigation may be the better course.

- **Compulsion**: If your opponent wishes to avoid or delay a dispute, you are better off in litigation than arbitration, as it is easier to get a court to take compulsory action — like forcing a party to appear or follow a schedule — than it is to get an arbitrator to do so. If you have reason to believe that your adversary (or adversary's counsel) will play games, a courtroom can be better than a private office.

- **Appeal**: You have the right to appeal a trial court decision. Although one technically can appeal an arbitration decision to a court, arbitration decisions will only be set aside for a few limited reasons. As humans are fallible, the right to appeal can be important. If you want a second bite of the apple, lean toward litigation. But note that an appeal in arbitration may be less important considering that you and your adversary get to choose the decision-maker.

- **Precedent/Public**: You may want your dispute to be public and to set a precedent so that you do not have to relitigate the same dispute repeatedly. For example, a purchaser who makes clear through litigation that it will not accept price increases can use publicly available material from that litigation to dissuade future suppliers from trying to get a price increase.

- **Juries**: Our judicial system is not perfect, but it is pretty amazing. On any given day, you have a group of six to twelve strangers sitting in a courtroom and deciding the fate of a person or company. Although juries have been known to make baffling decisions, there is a comfort in having multiple people who consider and debate the significance of the evidence. This might be attractive in comparison to a single arbitrator or even a panel of three, where personal biases can — sometimes unconsciously — lead an arbitrator astray.

KEY ARBITRATION ADVANTAGES

- **Confidentiality**: Your client may wish to keep its "dirty laundry" private. If so, the client may be better off in arbitration, where you can control the outflow of confidential information more easily. Much of what happens in litigation and almost everything that happens at trial is publicly available.

- **Control**: You cannot choose your judge, but you can choose your arbitrator, subject to your adversary's veto. As the identity of the decision-maker can be critical, this increased control can be attractive. For example, if you have a technical issue, you may derive comfort from choosing an arbitrator with an engineering background. In one arbitration that we handled, we were able to choose one of the three arbitrators; we carefully selected a lawyer whom we thought was likely to be able to persuade the third, neutral, arbitrator of the merits of our client's position. If you opt for a jury trial, this factor becomes less significant, but you may derive some comfort in having a person with a known background making a decision on your behalf as opposed to a group of strangers.

- **Speed/Cost**: On average, arbitration takes less time and so is generally less expensive than litigation. This advantage is offset to an extent, however, by the fact that your client will have to pay for the arbitrator(s) but the public pays for the judge through tax dollars.

- **Foreign Enforcement**: Generally, it is relatively easy to confirm an arbitration award by bringing it before the appropriate court within one year of that award. Courts rarely set aside arbitration awards [Federal Arbitration Act, 9 U.S.C. § 9].[1] If you wish to enforce a United States arbitration award in a foreign country, the process is likewise relatively straightforward. The New York Convention — formally, Convention on the Recognition of Foreign Arbitral Awards — is a treaty signed by 172 countries that allows a foreign court to confirm a U.S. arbitration award subject only to limited grounds for refusal.[2] Conversely, some foreign courts are reluctant to enforce a U.S. judgment, concerned about the possibility of inflated awards and litigation procedures that are not consistent with local practice or custom. And some legal remedies are treated differently outside the U.S. For example, foreign countries limit noncompetition agreements and method patents to a greater extent than in the U.S.

CHART OF ADVANTAGES

Litigation	Arbitration
Intimidate your adversary	Confidential
Compulsory participation on a schedule	Decision-maker selection
Appealable decision	Easier to enforce abroad
Creates public precedent	Relatively quick
Right to a jury	Less expensive

CONCLUSION

If confidentiality, foreign enforcement of an award, and choosing your decision-maker are important factors, lean toward arbitration. If intimidation, precedent setting, and the jury deliberation process are important, lean toward litigation.

Steven Susser is the cofounder of Evia Law. He has 35 years of litigation and arbitration experience in the fields of intellectual property and complex commercial disputes. He has handled multiple trials (jury and bench) and arbitration proceedings.

Jessica Fleetham is the cofounder of Evia Law. She is a licensed patent attorney with a background in biomedical engineering and has many years of experience handling patent, trademark, and contract litigation matters.

ENDNOTES

1. 9 USC 9.
2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, 330 UNTS 3, art V; UNCITRAL, Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2 (accessed May 6, 2026).

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.)

TUESDAY 6 PM*
St. Aloysius Church Office1
232 Washington Blvd.

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

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.

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

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

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

GAMBLERS ANONYMOUS

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

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

Virtual
MONDAY 7 PM
AA/NA meeting (St. Paul of the Cross)
Contact Arvin P. at 248.310.6360 for login information

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

TUESDAY 7 PM
AA/NA meeting (Royal Oak)
Contact Arvin P. at 248.310.6360 for login information

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

WEDNESDAY 6 PM
AA/NA meeting (Bloomfield Hills- Kirk of the Hills)
Contact Arvin P. at 248.310.6360 for login information

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

THURSDAY 7:30 PM
New Freedom
Contact Arvin P. at 248.310.6360 for login information

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

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

MAYOR DAVID LAGRAND

CITIZEN LAWYER

A legal advocate for change and community revitalization

BY LAURA HELDEROP

In an era of wavering public trust in government, people such as Grand Rapids' mayor, David LaGrand, stand out for their firm commitment to justice, policy reform, and community revitalization. As a practicing attorney and a dedicated public servant, Mayor LaGrand has leveraged his legal expertise to enact meaningful change within Michigan, demonstrating how the legal profession can be used as a vehicle for social progress.

Mayor LaGrand's career reflects a unique blend of legal practice and public service. For many years, he has employed his law degree to advocate for those often overlooked by the justice system. His journey into politics was motivated by a desire to address critical issues such as criminal justice reform and child welfare — areas where systemic improvements are urgently needed.

Mayor LaGrand earned a law degree from the University of Chicago in 1992. He then served as an assistant Kent County prosecutor before entering private practice in 2000. Mayor LaGrand eventually pivoted from the traditional practice of law to that of a politician. He first served as Grand Rapids City Commission for the Second Ward and as a member of the Grand Rapids Public Schools board. He then served as a state representative between 2015 and 2022, where he championed legislative initiatives that received bipartisan support, underscoring his ability to build coalitions across party lines.[1] Among his most notable contributions are the changes he brought to Michigan's Child Protective Services (CPS) laws and his authorship of Michigan's Clean Slate law.[2] He described the impacts of these reforms as "mind-blowing" and noted that one of the many great aspects of these reforms is that "[we] don't have to talk about them to [know that they're] insanely effective."

In highlighting "mass incarceration" as a "terrible, terrible" problem, Mayor LaGrand authored Michigan's Clean Slate law while serving as a state representative. His background as a criminal law attorney prepared him well both for authoring Michigan's Clean Slate law and for negotiating bipartisan support for the law. The Clean Slate law expanded individuals' eligibility to petition for expungement of certain criminal convictions and created a new process that automatically expunges certain criminal convictions.[3] Allowing individuals to expunge certain offenses from their records serves to remove barriers to employment, housing, and education and, therefore, may help curb future mass incarceration. Mayor LaGrand explained that statistics show that cleaning up a person's criminal history can increase their income by 24%, and that increase remains that much higher for the rest of their earning career. According to Mayor LaGrand, within six months of the adoption period of his Clean Slate law, more than 1 million people in the State of Michigan had crimes expunged from their criminal record.

At the time it was passed, Michigan's Clean Slate law became the nation's most comprehensive expungement package. After our Legislature adopted the Clean Slate law, Mayor LaGrand collaborated with Yale law students to write a similar bill in Connecticut. He ultimately testified in front of the Connecticut Legislature, and

Connecticut passed a similar, albeit more expansive, expungement law. After Connecticut's passing of its expungement law, nine additional states followed suit. Mayor LaGrand's work, therefore, has had a national impact.

To further reduce mass incarceration, following the completion of his term as state representative, Mayor LaGrand worked to create the Michigan Sentencing Guideline Commission. Citing the fact that Michigan has the longest prison terms in the nation, the Michigan Sentencing Guideline Commission is tasked with reviewing the existing sentencing guidelines and suggesting changes to the Legislature that will result in fairer outcomes. Last, Mayor LaGrand expressed his desire to eventually tackle the issue of cash bail.

Mayor LaGrand's reforms to Michigan's CPS law also saw success. He was able to reform the CPS laws with unanimous bipartisan support.[4] After learning that there were 430,000 parents in the State of Michigan on Michigan's central registry, which Mayor LaGrand described as a "government watch list," Mayor LaGrand's "jaw dropped," and he knew that reform of Michigan's CPS laws had to occur. By his calculation, that meant approximately 10% of Michigan's parents ended up on the central registry. After learning that so many people were on the central registry, Mayor LaGrand spoke with "the head of the child abuse and neglect system," who estimated that only about 30,000 people should be on the central registry. This further confirmed to Mayor LaGrand that reforms to Michigan's CPS registry needed to occur.

Mayor LaGrand explained that, with his legal experience doing abuse and neglect work, he saw regular "parents who made mistakes, which we all do because we're all humans, [and they] would end up on this registry for things like they'd fall asleep on the couch and their kid would walk out the door." Being on the central registry prevents people from chaperoning their children's field trips and volunteering at church events, and it prohibits them from becoming foster parents. His CPS reforms were designed to enhance the efficacy of the CPS system, ensuring that children receive the protection and support they need while also ensuring that only the most severe child abuse offenders land on the central registry. Following the adoption of Mayor LaGrand's CPS reforms, over 400,000 Michigan parents got off the CPS central registry.

Now serving as the mayor of Grand Rapids, Mayor LaGrand has not abandoned his commitment to reducing mass incarceration; however, he has shifted his focus to the needs of his immediate community: Grand Rapids. Mayor LaGrand believes strongly in community revitalization.[5] With his commitment to creating stable and vibrant neighborhoods, Mayor LaGrand advocates for policies that attract investment and create jobs. In fact, he is a business owner. In an interview he gave during his mayoral campaign, Mayor LaGrand explained that he "started a number of neighborhood businesses starting with … the first viable coffee house operation, downtown Grand Rapids in the '90s … More recently, [L]ong [R]oad [D]istillers and [L]ess [T]raveled, on the West side and then on the East side," and he believes that those businesses "are good for the neighbors there."[6] He further explained that, in addition to community stability and a solid educational system, "vibrant neighborhoods with affordable housing" are essential to "make some transformative progress."[7]

Mayor LaGrand's approach to the practice of law transcends traditional roles. He has creatively utilized his legal skills to identify and address systemic problems affecting local communities. His tenure as a state representative laid the groundwork for his current role as mayor, where he continues to advocate for innovative solutions to persistent issues.

In addition to all his political work, Mayor LaGrand has continued to pay his bar dues and still practices law. Thus, although he has spent considerable time in the political arena, Mayor LaGrand has never abandoned the "traditional" role of being a practicing attorney. His career has exemplified the invaluable role of lawyers in public service. Mayor LaGrand's journey reminds us that when legal knowledge is paired with a genuine commitment to community welfare, it can lead to transformative outcomes that resonate far beyond the courtroom.

Laura Helderop is a legal research and writing attorney at the Kent County Office of the Public Defender. Through both professional and personal experiences, Laura has found a passion for issues surrounding criminal justice reform.

ENDNOTES

1. Mayor David LaGrand, City of Grand Rapids https://www.grandrapidsmi.gov/government/city-commission/commissioners/mayor-david-lagrand/ (accessed May 6, 2026).
2. About Clean Slate, City of Grand Rapids https://www.grandrapidsmi.gov/departments/oversight-public-accountability/clean-slate-gr/about-clean-slate/ (accessed May 6, 2026).
3. MCL 780.621g.
4. Governor Signs "Wyatt's Law" Legislation Championed by LaGrand, Michigan House Democrats (May 11, 2022) https://housedems.com/governor-signs-wyatts-law-legislation-championed-by-lagrand/ (accessed May 6, 2026).
5. On his commitment to community revitalization, Mayor LaGrand granted the author permission to refer to other interviews he has given in the past.
6. Cheaney, Q&A with 2024 Grand Rapids mayoral candidates Senita Lenear and David LaGrand, The Collegiate Live (Oct 29, 2024) https://www.thecollegiatelive.com/article/2024/10/q-a-with-2024-grand-rapids-mayoral-candidates-senita-lenear-and-david-lagrand (accessed May 6, 2026).
7. *Id.*

PLAIN LANGUAGE

A doubting Thomas's dictum (re: possessives with sibilant endings)

BY MARK COONEY

This morning, a newsletter editor gently corrected my wife for creating this singular possessive: *Ellis's* (as in *Jane Ellis's house*). The self-assured editor instructed my wife to remove the offensive *s* after the apostrophe but added, in a supportive vein, that grammar is tricky.

I was tempted to commandeer my wife's email account and reply, "It is, indeed." After all, my wife's version was correct.

Suspicion about the post-apostrophe *s* for singular possessives is widespread. It's especially common among people who read newspapers that follow an AP-endorsed house style designed to save type/print space. That AP shortcut excuses the post-apostrophe *s* for singular proper nouns that end in *s*.

My wife acquiesced to the *s*-ectomy, even though her newsletter hasn't adopted AP style. And the debate was none of my business, so I just sighed, sipped my coffee, . . . and wrote a column decrying this editorial injustice.

SIMPLIFYING APOSTROPHE-*S*

Sibilant endings and apostrophes have always been a volatile mix. Much of the angst and debate can be traced to publishers' inconsistent house styles, not to mention conflicting grammar-school lessons.

My advice is to keep it simple: add an apostrophe-*s* to a singular possessive—even if it ends in *s*—unless an exception or publisher's house style requires otherwise:

- A witness is a single person. The witness's testimony may be credible or suspect.
- Bridget Jones is a single person. Jones's diary is a bit racy. (Google the book cover or movie poster.)

If you seek authority supporting my advice, consult the latest edition of *The Chicago Manual of Style*; Amy Einsohn's *The Copyeditor's Handbook*; Bryan Garner's *Redbook* or *Modern English Usage*; Strunk and White's *The Elements of Style*; or another reputable reference guide.

Given the experts' uniformity on this point, it's no surprise that we see the *s's* style in literate publications of every stripe, including prominent newspapers that reject the AP shortcut:

- *The Atlantic*: "Beneath Ross's claim of 'incredible' complication is a plea for context and nuance . . . ."[1]
- *National Review*: "In Tiger Woods's early career, there were many, many headlines about him that included the words 'burning bright.'"[2]
- *The New York Times*: "How Justice Thomas's 'Nearly Adopted Daughter' Became His Law Clerk"[3]
- *The New Yorker*: "But Weiss's arrival at the network also coincided with a long-simmering crisis in broadcast news . . . ."[4]
- *The Wall Street Journal*: "Thomas's defense came as the federal judiciary released his 2022 disclosure form . . . ."[5]

Most federal appellate judges are also scrupulous in following the general rule:

- *Fourth Circuit*: "Limiting our review of the record to the issues raised in Jones's informal brief, we discern no reversible error."[6]

"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.

- *Fifth Circuit*: "[I]n October 2018, Brooks's probation officer filed a petition alleging multiple violations of Brooks's terms of conditional release . . . ."[7]

- *Ninth Circuit*: "[T]he same cannot be said for Flores's proposed distinction between nine gunshots and one."[8]

- *Eleventh Circuit*: "Rule 703 deals with the proper bases of an expert witness's opinion testimony."[9]

AN IMPORTANT EXCEPTION FOR LAWYERS

A major exception concerns singular names based on plural common nouns. For instance, the Michigan Court of Appeals is a singular entity, but the last word in its name takes the plural form. So we treat this singular possessive as if it were a plural possessive, with just an apostrophe after the *s*:

- The Michigan Court of Appeals' opinion was lengthy.

This exception often arises with business names:

- General Motors is a single manufacturer, but: General Motors' sales sagged in March.

Back to the appellate courts:

- *Fourth Circuit*: "[H]e points to various statements made by American Airlines' employees to the effect that the airline would not reemploy him as a pilot . . . ."[10]

You'll find a helpful explanation of this exception in Rule 7.11 of Garner's *Redbook*.

Another traditional exception concerns biblical or classical names (e.g., *Moses' words*), though that exception isn't consistently followed, as seen in *National Geographic*: "Moses's life was defined by miracles."[11]

Other sources, such as the *Gregg* manual, allow writers to drop the post-apostrophe *s* if it makes the possessive unpronounceable. That guidance is a bit loose and could result in an inconsistent style.

TOWARD A LASTING PEACE . . .

I might or might not earn points at home for defending my wife's punctuation. But perhaps I've helped solve a sticky punctuation question for some curious legal professionals.

The pessimist in me says that we're unlikely to see uniformity on the *s's* question, no matter how many usage guides offer uniform advice and examples. The best I can do is recommend that lawyers consult and follow the advice in Garner's *Redbook*, as I do.

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

ENDNOTES

1. Google "No Escape From History" from Feb. 10, 2015.
2. Google "Tigers of Different Stripes" from July 18, 2024.
3. Google article with that headline from Mar. 28, 2024.
4. Google "Inside Bari Weiss's Hostile Takeover of CBS News" from Jan. 19, 2026.
5. Google "Clarence Thomas Fires Back at Allegations of Ethical Breaches" from Aug. 31, 2023.
6. *Jones v Phelan*, unpublished per curiam opinion of the U.S. Court of Appeals for the Fourth Circuit, issued Dec. 10, 2025 (Docket No. 24-1066), slip op at 2.
7. *United States v Brooks*, 33 F4th 734, 737 (CA 5, 2022).
8. *Hampton v Flores*, unpublished memorandum opinion of the U.S. Court of Appeals for the Ninth Circuit, issued Nov. 20, 2025 (Docket No. 3:21-cv-09407-SK), slip op at 8.
9. *United States v Keegan*, 161 F4th 1334, 1343 (CA 11, 2025).
10. *Harwood v American Airlines, Inc*, 963 F3d 408, 418 (CA 4, 2020).
11. Google "Ten Plagues and a Betrayal—How Moses Saved the Hebrew Slaves" from Jan. 22, 2019.

ETHICAL PERSPECTIVE

Safeguarding client funds in the age of wire fraud

BY ALECIA CHANDLER

Wire transfers are routine in the practice of law, but they have become a prime target for fraud and cyberattacks. Settlement proceeds, business deals, and real estate closings are particularly vulnerable to criminals who exploit urgency and trust. When funds are diverted, the critical question is: Who bears the loss? Does it fall on the lawyer, the bank, or the client? The answer depends not only on ethics rules but also on statutory law, contractual terms, and evolving case law.

There have been many reports of Michigan lawyers falling for wire fraud scams. Consider the family law lawyer whose email account was compromised during a divorce settlement. The lawyer initially received legitimate wire transfer instructions from the opposing counsel, but before the transfer, a hacker infiltrated the lawyer's email and sent new "updated" wire transfer instructions. Trusting the familiar address, the lawyer initiated the wire without confirming by phone. The funds disappeared into a fraudulent account overseas. In this scenario, the lawyer may have technically been a victim of crime, but ethical analysis asks a different question: Did the lawyer exercise reasonable care in safeguarding client funds? Under MRPC 1.15, fiduciary obligations do not vanish simply because a third party interferes. Failing to adopt verification protocols or secure email practices may convert the lawyer from victim to liable party, with both disciplinary and malpractice consequences.[1]

THE LAWYER'S ETHICAL DUTIES

Safeguarding client funds is among the profession's most fundamental obligations. MRPC 1.15 requires funds to be safeguarded and promptly delivered. But other rules are just as important:

- MRPC 1.1 (Competence): Competence today includes recognizing technological risks and adopting necessary safeguards.
- MRPC Rule 1.3 (Diligence): The duty of diligence encompasses not only moving cases forward but also diligently protecting client information and acting promptly when problems arise.
- MRPC 1.4 (Communication): Clients should be warned about the risks involved in the wiring of funds and told in advance how instructions will be verified.
- MRPC 1.6 (Confidentiality): Lawyers are required to keep client information confidential. This requirement is broader than attorney-client privilege and extends to client secrets. That means almost every piece of data you collect for a client is confidential and must be protected vigilantly when wiring funds.

"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.

- MRPC 5.1 and 5.3 (Supervision): Lawyers are responsible for ensuring that staff and vendors follow security protocols.[2]

MULTIPLE STAKEHOLDERS, OVERLAPPING OBLIGATIONS

The ABA's recent article "Pass the Electronic Buck: Allocating the Risk of Unauthorized EFTs"[3] underscores that liability for unauthorized transfers is rarely confined to one party. EFTs involve banks, clients, lawyers, and intermediaries, each governed by a patchwork of obligations, including contracts, Article 4A of the UCC, common law duties, and rules of professional responsibility.

This mix creates tension. Banks point to contracts, clients expect protection, and lawyers are caught in the middle. Courts have not settled on a uniform approach, often blending negligence, fiduciary duty, and statutory interpretation when fraud occurs.

One of the ABA article's central lessons is that contracts matter. Engagement letters can clarify responsibilities and procedures:

- Requiring all wire instructions to be verified by phone using a known number.
- Advising clients in writing that instructions will not change by email.
- Placing the risk of unverified instructions on the party that failed to follow agreed protocols.

In all instances, courts often look to whether the lawyer acted reasonably under the circumstances.

REGULATION E AS A COMPARATIVE FRAMEWORK

Regulation E of the Electronic Fund Transfer Act[4] governs consumer-bank relationships. While not directly on point, as it does not cover lawyer-client relationships, it offers a useful lens for comparison. Regulation E reflects a policy choice that losses from unauthorized electronic transfers should be allocated based primarily on prompt reporting. Once timely notice is given, however, the burden shifts to the bank to investigate and resolve the error.

Lawyers are not covered by Regulation E, but the structure is instructive. The rule emphasizes that responsibility depends less on who committed the fraud and more on whether the parties followed reasonable procedures and acted quickly. For law practice, the parallel is clear: A lawyer who verifies instructions, uses secure communication, and reports problems immediately may be seen as acting reasonably, while a lawyer who fails to adopt such safeguards risks being treated as the responsible party.

PRACTICAL RISK MANAGEMENT

No one can prevent cybercriminals from attempting fraud, but lawyers can control how they respond to the risk. First and foremost, proper cybersecurity protocols should be put in place.[5] As it specifically relates to wire transfers, a plan should be established with at least the following:

Verification protocols

The simplest way to prevent wire fraud is to independently verify the wire transfer instructions. Every wire instruction should be confirmed verbally with the client or opposing counsel using a known, reliable phone number, not one supplied in the email containing the instructions. Law firms should adopt written protocols requiring this step so no staff member feels pressured to shortcut the process during a closing or settlement.

Client education

Clients are often unaware of how common wire fraud has become. From the engagement letter forward, clients should be warned in plain terms: "Wiring instructions will not change by email. If you receive revised instructions electronically, assume it is fraudulent and call us immediately." Educating clients not only protects them but also demonstrates the lawyer's compliance with MRPC 1.4's duty to keep clients informed about significant risks.

Internal controls

Law firms should treat wire transfers with the same seriousness as banks treat large withdrawals. Controls may include dual authorization for any transfer, use of encrypted or secure portals instead of open email, and limits on access to client funds to only those trained in the protocol. Staff must also be trained to recognize phishing and spoofing attempts, with regular testing to ensure compliance.

Incident response

Even the best systems can be breached. Firms should prepare in advance by creating a response plan: Immediately notify the bank and attempt to reverse the wire, inform the client, document the events, and

report as appropriate to insurers or disciplinary authorities. Quick action may make the difference between recovery and permanent loss.

Insurance and risk transfer

Standard malpractice policies often exclude or limit coverage for cyber fraud. Firms should carefully review their coverage and consider separate cyber liability policies. Many policies require the firm to have in place written security procedures, training programs, or specific verification steps. A lawyer who neglects these requirements may not only breach ethical duties but also lose the benefit of insurance coverage.

Documented procedures

Risk management is not only about doing the right thing but also about proving it afterward. Written protocols, client acknowledgments, and contemporaneous notes of verification calls can all serve as evidence that the lawyer met professional standards if a dispute arises.

CONCLUSION

Wire fraud has become part of everyday law practice. Lawyers must treat it as both an ethical duty and a risk management priority. The ABA's analysis makes clear that responsibility is allocated through a combination of ethics, contracts, and statutory frameworks. In this environment, lawyers who proactively educate clients, implement safeguards, and document procedures are protecting client property and their firm.

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

ENDNOTES

1. In 2023, three North Carolina Lawyers were disciplined for initiating wire transfers "without verifying with the sellers the authenticity of the wiring instructions." Pierce, *Dilemma: Will I Be Disciplined If I Fall for a Wire Transfer Scam?*, State Bar of Wisconsin (Nov 6, 2024) <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=16&ArticleID=30713#a> (all websites accessed March 18, 2026); See also *Pa Office of Disciplinary Counsel v Howell*, Order of the Disciplinary Board of the Supreme Court of Pennsylvania, issued Oct 7, 2021 (Docket No. 114 DB 2021; File No. C3-20-465) <https://www.pacourts.us/assets/opinions/DisciplinaryBoard/out/114DB2021-Howells.pdf>.
2. See *Cybersecurity FAQs*, State Bar of Michigan <https://www.michbar.org/opinions/ethics/cybersecurityFAQs> regarding relationships with vendors.
3. Graziano & Moraites, *Pass the Electronic Buck: Allocating the Risk of Unauthorized EFTs*, American Bar Association (Jun 10, 2025) <https://www.americanbar.org/groups/tort_trial_insurance_practice/resources/brief/2025-spring/pass-electronic-buck-allocating-risk-unauthorized-efts/>.
4. 12 CFR 1005 *et seq.*
5. See *Protecting Personal Information: A Guide for Business*, Federal Trade Commission (Oct 2016) <https://www.ftc.gov/system/files/documents/plain-language/pdf-0136_proteting-personal-information.pdf>.

LIBRARIES & LEGAL RESEARCH

Library e-book licensing and state law reform

BY KINCAID C. BROWN

Libraries don't "buy" most e-books the way they buy print books; they license them. That reality is at the crossroads of budgetary constraints and patron satisfaction in modern libraries. With print, a library typically pays once, owns the copy, and lends it until it wears out. With e-books, publishers and intermediaries, like platforms such as OverDrive, commonly offer time-limited or loan-limited terms (for example, a license that expires after a set number of checkouts or after a set period), can impose embargoes, and can set prices far above consumer retail. Libraries argue these terms frustrate their public mission and make it hard to meet demand; publishers respond that digital copies don't degrade, can be distributed at near-zero marginal cost, and require a different business model to sustain authorship and publishing investment.

COPYRIGHT LAW: THE FIRST SALE DOCTRINE

The lending model of libraries in the print world was enshrined in United States copyright law in the "first sale doctrine." The first sale doctrine[1] limits a copyright owner's control over a copy (e.g., a book or record album) after its first authorized sale. In plain terms: Once you own a lawful copy of a book, you can generally resell it, give it away, or lend it without needing the copyright owner's permission. That doctrine is a cornerstone of traditional library lending. But with e-books, libraries do not acquire ownership of a copy; they acquire a license governed by contract and implemented through controlled access systems. Even when a library pays "as if" it is buying, often at multiples of an individual's purchase price, publisher offerings are not structured as sales but instead as licenses. E-book licenses typically involve reproduction, transmission, and other controls in tandem with preempting federal copyright law.

HOW LICENSING SHAPES E-BOOK ACCESS

E-book licensing operates more like a negotiated service relationship than a sale. License terms for an individual e-book or e-book package typically address: (1) who may access it (e.g., authenticated cardholders, sometimes only in a geographic area); (2) how many simultaneous users there may be (e.g., one user at a time per copy, or multiple users in a costlier simultaneous-use model); (3) duration and durability (e.g., perpetual access, a length of time, or "metered access" limiting use to a set number of check-outs); and (4) technical controls (digital rights management (DRM), platform restrictions, and limits on preservation/archiving). These terms are often standardized and nonnegotiable for individual libraries. This shifts bargaining power toward large publishers and dominant distribution platforms; this is especially true for bestsellers, where patrons' demand is most intense. Regardless of the license terms, publishers and vendors sell e-books to libraries at a cost of multiples the cost for an individual consumer; this is vastly different from in the print market, where the cost for a library is generally the same as for an individual consumer.

Publishers' central economic concern is that library e-book lending can substitute for consumer purchases more directly than print lending, because e-books don't go out of stock, don't wear down, and can be delivered instantly. Libraries counter that digital lending serves equity goals (e.g., rural access, disability access, homebound patrons) and that restrictive pricing and expiration terms can force repeated repurchases that resemble a recurring tax on public access. The result is a policy fight over whether the market is functioning "normally" or whether law reform is needed to prevent one side from using contract terms to defeat copyright law and reshape what lending means in the digital world.

LAW REFORM FAILURES OF MARYLAND AND NEW YORK

Maryland enacted one of the first major state efforts to force better e-book terms for public libraries.[2] The law required that if a publisher offered to license certain electronic literary products to consumers, it also had to offer licenses to Maryland public libraries on "reasonable terms" while also targeting publisher practices such as embargoes.

Publishers sued, and a federal court blocked enforcement. The U.S. District Court for the District of Maryland issued a decision declaring the Maryland law unconstitutional and unenforceable on preemption grounds.[3]

The core reasoning was that copyright is a federal system designed to be nationally uniform, and a state cannot effectively create its own compulsory or quasi-compulsory licensing regime for copyrighted works. In the court's view, Maryland's approach interfered with rightsholders' federally protected exclusive rights, so it stood "as an obstacle"[4] to Congress's objectives. This case illustrates the central legal obstacle for state reforms: If a statute looks like it compels licenses or dictates terms in a way that conflicts with federal copyright's allocation of rights, it risks being struck down.

In 2021, the New York legislature passed a bill[5] which would have required publishers to offer libraries licenses to e-books on "reasonable terms," with enforcement mechanisms under state law. Despite widespread support for the bill, New York's Governor, Kathy Hochul, vetoed the bill, citing preemption by federal copyright law.[6]

Even though the New York bill never took effect, it became a key part of the national debate because it showed that "reasonable terms" legislation on one side could pass with significant bipartisan support, while, on the other, it could be framed as a state intrusion into federal copyright law. The New York veto and Maryland litigation together sent a clear signal: State mandates that resemble compelled licensing are legally vulnerable, and even when politically popular, they may be hard to implement without a federal solution.

After Maryland and New York, states have not stopped experimenting. One notable development is Connecticut's 2025 law,[7] which prohibits unreasonable contract terms in e-book licenses for libraries; these terms include prohibition on interlibrary loans, limits on the number of times an item can be loaned, and provisions that violate state privacy law.[8] The Connecticut law includes a multistate "trigger," wherein the law takes effect only if other states with a combined population threshold enact similar laws.[9] The trigger mechanism reflects a strategic attempt to build collective leverage while reducing the risk that Connecticut is singled out by publishers.

Massachusetts and other states have continued to consider similar bills for libraries, showing the issue remains politically live even after the Maryland defeat. These newer proposals try to avoid the specific preemption problems identified in *AAP v. Frosh*[10] by changing the legal focus, i.e., focusing on contract clauses or state procurement instead of compelled licensing requirements.

CURRENT STATUS

Right now, most libraries are stuck navigating a marketplace where the most popular/important titles are often the most constrained and expensive, license expirations can force libraries to repurchase the same titles repeatedly, and vendor/platform dependence can limit preservation and long-term access. Meanwhile, publishers are wary of rules that could negatively affect their bottom line. Along with states focusing on avenues within state contract and procurement law which may survive preemption scrutiny, many reform conversations now have shifted toward federal options to make preemption concerns disappear.

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ENDNOTES

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2. 2021 HB 518 (Md Gen Assembly; Md Education Code §§ 23-701 – 23-702.
3. *Ass'n of American Publishers, Inc v Frosh*, 607 F Supp 3d 614 (D Md 2022).
4. *Id.* at 618.
5. A5837B (NY 2021).
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LAW PRACTICE SOLUTIONS

We keep losing our best talent. Help!

BY A.D. OCEAN, J.D.

Your firm is thriving. The phones are ringing. New matters keep rolling in. Revenue charts are pointing up and to the right. And yet, every few months, another excellent paralegal resigns, or an attorney joins a rival firm. A legal assistant quietly hands in their notice. The office manager who "held everything together" is suddenly gone.

If this sounds familiar, you are not alone. Many highly profitable law firms are quietly bleeding their most valuable operational talent while wondering why pizza lunches, year-end bonuses, and promises of partnership are not fixing the problem. Unfortunately, a firm's choice of incentives is not always incentivizing to everyone.

WHEN SUCCESS BECOMES THE STRAIN

In most firms, financial growth does not arrive neatly packaged. It shows up as heavier caseloads, tighter deadlines, more clients, and more urgency. Attorneys stay busy. That is expected. Support staff, however, often absorb much of the shock without the systems, authority, or clarity to match the new pace.

Files pile up faster. Requests multiply. Processes that worked "back when things were slower" suddenly feel like trying to run airport security with one scanner and a folding table.

No one announces, "We are about to overload our staff." It simply happens.

THE INVISIBLE LOAD ON SUPPORT STAFF

When a firm grows quickly, staff are often expected to handle more work with the same tools. They are scrambling to solve workflow problems they did not create and were never empowered to fix. Several busy attorneys are assigning them tasks and giving them directions. Staff must rank priorities without clear guidance. When more people are hired, staff add training to their plates while barely keeping up themselves. This hurts support staff's performance and, in turn, negatively affects the attorneys who are billing clients and generating revenue.

Most of the new expectations that come with growth are unspoken. From the outside, it looks like people are simply "not keeping up." From the inside, it feels like sprinting on a treadmill that keeps speeding up.

By way of example, an extremely busy firm engaged Behavior Inc. to help understand its high rates of support staff and attorney turnover. The firm also questioned why the remaining employees seemed out of step and uninspired, contributing to internal disputes and a toxic work environment. Senior leadership was averse to fixing what was broken, assuming it would be a massive undertaking that would take months to diagnose.

After spending a couple of weeks observing and meeting with various members of the office, from the janitor up to the C-suite, the

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primary culprit became clear. It was such an easy fix that firm leadership couldn't believe they missed it.

As it turns out, despite the availability of electronic filing in many courts where the lawyers routinely practiced, paralegals had not been sufficiently trained in electronic filing. The paralegals' manager was still comfortable with the "old way" and did not see its value, since the courts continued to allow paper filings. She was known to say, "That's the way it has always been done."

The time wasted preparing paper filings instead of using e-filing had a significant trickle-down effect. Paralegals worked weekends in vain, scrambling to prepare files for upcoming hearings, but never seemed to have enough time to catch up. Despite the paralegals' persistent efforts, lawyers often arrived to court with incomplete files. This inefficient system led to both support staff and attorneys becoming overwhelmed and perpetually behind. As a result of the stressful work environment and lifestyle, many staff members cut ties with the firm.

What happens when people leave? The remaining staff become even more burdened with increasing workloads. This increased burden continues to compound like interest on bad debt.

In the example above, once we pinpointed the issue, we created an easy-to-implement training program for the firm, starting with the paralegal manager. The firm saw a 60% drop in turnover, and it is thriving.

WHAT YOU START TO SEE (IF YOU'RE PAYING ATTENTION)

Before people quit, they usually signal distress in quieter ways. The longer hours never seem to reduce the backlog, leading to irritability and disengagement. People are calling off more, and there is a general sentiment among staff that they are just trying to survive the day. Worse yet, the most talented staff stop offering ideas and quietly look for a new job.[1]

Leadership often interprets this as attitude or resilience issues. In reality, it is usually a system issue wearing a human face.[2]

WHY TURNOVER IS SO EXPENSIVE (EVEN FOR PROFITABLE FIRMS)[3]

When most firms lose staff, they just hire someone else. However, when support staff leave, the cost is not limited to recruiting and onboarding.

Turnover often means lost institutional knowledge, increased errors due to rushed or insufficient training, attorneys spending time on tasks they should not be doing, and reduced capacity to take on new matters. It also results in increased training costs and lost time billing clients, putting strain on productivity and reducing the quality of work. Ultimately, this can directly affect the firm's reputation.

Ironically, the more successful the firm becomes, the more damaging this cycle can be. Just hiring someone new does not solve the underlying problem and can, in many circumstances, exacerbate it.

CULTURE SHOULD NOT BE AN AFTERTHOUGHT

Many firms think culture lives in mission statements, social events, or annual retreats. In reality, culture shows up in daily operations. If your staff does not feel heard, supported, or equipped to succeed, no amount of financial success will keep them. The firm in the prior example thought all the social events and rudimentary perks they offered would be enough to retain staff. It wasn't.

THE FIX IS NOT COMPLICATED — BUT IT MUST BE INTENTIONAL

The firms that retain great talent do a few things consistently. They clarify roles, priorities, and decision-making authority. They align reporting structures so that staff are not pulled in multiple directions. They invest in meaningful training before mistakes happen, not after. They treat workload management as a leadership responsibility. They listen early — before resignation letters arrive. Most importantly, they recognize that people do not leave jobs simply because they are "busy"; they leave jobs that are chaotic or unfulfilling.

Behavior Inc. recently assisted a company experiencing an abnormal increase in formal complaints made to agencies such as the EEOC, the MDCR, and OSHA. As it turned out, the complaints could have been handled internally and quietly, but they were being reported to third parties because of a misaligned reporting structure. The way the reporting structure was organized left disgruntled employees with little recourse and created opportunities for leadership to sweep complaints under the rug. Support staff and attorneys often found themselves forced to report concerns to the very people with whom they were experiencing difficulty and/or to individuals who also reported to the problematic supervisor. This had a chilling effect on employee reports and resulted in an increase in legal actions against the company. The firm had not taken this into account when designing the organizational structure.

After identifying the cause of the increased reports, the reporting structure was redesigned to include a mechanism for discrete reporting procedures. As a result, agency actions and lawsuits dropped substantially.

FINAL THOUGHT

If your firm is making excellent money but cannot keep excellent staff, the problem is rarely motivation. It is usually misalignment. The good news? Systems can be fixed. Expectations can be clarified. Leadership habits can change. And when they do, profitability stops coming at the expense of the very people who make it possible in the first place.

QUICK SELF-ASSESSMENT FOR MANAGING PARTNERS

Are we accidentally driving our best talent away?

Ask yourself:

- Do employees receive clear guidance when workloads increase, or are they expected to "figure it out"?
- Are reporting lines simple and aligned, or do employees answer to multiple overwhelmed superiors?
- Have our processes evolved as the firm has grown, or are we relying on outdated systems?
- Is training proactive, or does it only happen after mistakes occur?
- Do support staff feel safe raising concerns without being labeled "difficult"?
- If a key staff member resigned tomorrow, would it be surprising?

If several of these questions raise discomfort, the issue is likely structural.

Every firm and situation is different. This article is for informational purposes only.

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ENDNOTES

1. The NALP reports a 20% increase in the attrition rate for law firm associates. According to the NALP, the cost of replacing just one associate can be anywhere between $200,000 and $500,000. *Update on Associate Attrition*, NALP Foundation (April 24, 2025) <https://www.nalpfoundation.org/news/the-nalp-foundation-releases-latest-update-on-associate-attrition-and-hiring-(cy-24)> (all websites accessed April 24, 2026).
2. A 2023 survey commissioned by a company named Action Step found that "Legal staff are much more likely to say they are affected by understaffing or lack of resources (54% vs. 35%) and demand or pressure from clients (52% vs. 34%) than administrative support roles." "Conversely, administrative roles are more likely to say they are stressed by team or firm culture issues (42% vs. 27%), not having clear processes in place to follow (34% vs. 26%), and a lack of support from leadership (29% vs. 21%) compared to their counterparts in legal roles." Ramirez, *New 2023 Midsize Law Firm Priorities Report: Highlights for Law Firms*, Actionstep (Feb 15, 2023) <https://www.actionstep.com/blog/new-2023-midsize-law-firm-priorities-report/>.
3. A 2019 Gallup Survey revealed that "the cost of replacing an individual employee can range from one-half to two times the employee's annual salary – and that's a conservative estimate. So, a 100-person organization that provides an average salary of $50,000 could have turnover and replacement costs of approximately $660,000 to $2.6 million per year." McFeely & Wigert, *This Fixable Problem Costs U.S. Businesses $1 Trillion*, Gallup Workplace (March 13, 2019) <https://www.gallup.com/workplace/247391/fixable-problem-costs-businesses-trillion.aspx>.

PRACTICING WELLNESS

Nervous system regulation for ethical law practice and improved overall well-being

BY MOLLY RANNS

If one were to search "hot topics in lawyer well-being" or "lawyer wellness trends for 2026," right up there with cold plunging, high protein or plant-based diets, and the use of AI in mental health support would be nervous system regulation — in particular *vagus nerve stimulation*. This article will aim to help those in a high-pressure profession like law understand why vagus nerve stimulation is gaining such widespread attention and popularity, supporting greater regulation of the nervous system, ethical law practice, and improved overall well-being. With elevated rates of stress, anxiety, and other mental health conditions found amongst lawyers,[1] the legal profession is experiencing a shift in thinking like never before — a reprioritization on preventative care and a vital emphasis on emotional well-being. With science-backed self-care and a much deeper understanding of the mind-body connection, lawyers are investing in greater emotional balance and the implementation of sustainable daily habits to thrive, both personally and professionally.

Like Interstate 90 connecting Seattle to Boston, the vagus nerve acts as an information highway running from your brain to your large intestine, carrying electrical signals all along the way.[2] Unlike other nerves, the vagus nerve is not one you can feel, and its main role is to control automatic functions most of us take for granted — breathing, heart rate, and digestion.[3] The legal profession has long been known as a challenging profession — demanding precision, a constant sense of urgency, and the necessity of resiliency under pressure. Deadlines can be unforgiving, stakes are high, and adversarial systems are often the norm. Over time, this environment can keep the body in a near-constant state of stress activation. While many lawyers are trained to manage external difficulties, far fewer are equipped with tools to regulate their internal state. Nervous system regulation offers a practical, science-based approach to sustaining well-being, improving performance, and preventing burnout. It helps to disengage one's "fight or flight" response to allow for mental and emotional recovery.[4]

In order to understand the nervous system in a high-stress profession like law, it's vital to understand that at the core of the stress response is the autonomic nervous system with two primary branches — the sympathetic and the parasympathetic nervous system. The former activates one's "fight or flight" response, a physiological response which releases stress hormones, increases heart rate and alertness, and prepares the body for danger.[5] The latter supports "rest and digest," calming the body, slowing the heart rate, and enabling recovery.[6] The stress of legal practice can result in prolonged activation of the sympathetic nervous system,[7] leading to fatigue, irritability, impaired decision making, cognitive difficulties,

"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.

and eventual burnout. Successful attorneys are perhaps not those that can completely eliminate stress but those that can effectively manage it and engage the body in recovery from it. This is where vagus nerve stimulation comes into play and has physicians, mental health practitioners, and even celebrities touting its success.

Work in law can require intense focus, swift decision-making under pressure, and emotional regulation during times of high stress. Prolonged activation of the sympathetic nervous system can hinder cognitive function and decision-making.[8] Stimulation of the vagus nerve and activation of the parasympathetic nervous system can calm the body, aiding in ethical decision-making, mental clarity, and emotional regulation.[9] Here are noninvasive and practical techniques for legal professionals to improve nervous system regulation. They're accessible, supported by research, and noted because they can be implemented during a normal workday when time is of the essence and stressors are high.

- **Structured breathing** – Structured breathing takes just two to five minutes, is easily implemented no matter the setting, can be done inconspicuously no matter the present company, and can be extremely simple. Try a 4-6 breathing pattern. Breathe in for four seconds, exhale for six seconds. Repeat three times. How do you feel?
- **Laughter** – Who doesn't love to laugh? Laughter that is natural and deep in the belly engages the diaphragm and helps to enhance relaxation. There's not much better than uncontrollable laughter that has tears streaming down your face and feels just plain good for the soul.
- **Physiological reset** – Take a physiological reset before high stress moments. Relax your jaw. Relax your shoulders. Take five slow breaths. Extend your exhales. This can measurably reduce acute stress.
- **Humming** – Humming, even quietly, vibrates the vocal cords, stimulating the vagus nerve. If humming out loud feels silly, try it privately. Humming on an exhale can be an easy way to get started.
- **Brief cold exposure** – Splashing cold water on your face in the bathroom, putting a cold washcloth to your face and neck, or ending the last few seconds of your shower with cold water can stimulate vagal nerve pathways.

Lawyer well-being is increasingly recognized as an ethical issue, not just a personal one. The American Bar Association and State Bars have emphasized that impaired mental health can affect competence and client representation.[10] There are many things that can contribute to stress outside of a lawyer's control — client demands, court schedules, legal research, or even administrative tasks. But through intentional practice, there are many ways within one's control to cope with external stressors and manage well-being effectively. As always, if you're having difficulty with anything discussed in this article or are simply looking to thrive, you don't have to tackle well-being alone. The State Bar of Michigan's Lawyers and Judges Assistance Program is here to help.

Molly Ranns, MA, LPC, CAADC is Director of the Lawyers and Judges Assistance Program at the State Bar of Michigan.

ENDNOTES

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10. *Commission on Lawyer Assistance Programs*, American Bar Association <https://www.americanbar.org/groups/lawyer_assistance/?login>.

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FROM THE MICHIGAN SUPREME COURT

ADM File No. 2024-10
Amendment of Rule 6.429 of the Michigan Court Rules

To read this file, visit perma.cc/4JD8-JDY5

ADM File No. 2022-31
Amendment of Rule 2.106 of the Michigan Court Rules

To read this file, visit perma.cc/2PQL-62Z4

ADM File No. 2023-09
Amendment of Rule 6.106 of the Michigan Court Rules

To read this file, visit perma.cc/C8XQ-FHX8

ADM File No. 2023-23
Amendment of Rule 3.942 of the Michigan Court Rules

To read this file, visit perma.cc/Q4DR-UUHW

ADM File No. 2023-23
Proposed Amendment of Rule 3.972 of the Michigan Court Rules

To read this file, visit perma.cc/5TX6-G8MQ

ADM File No. 2023-39
Amendment of Rule 7.215 of the Michigan Court Rules

To read this file, visit perma.cc/P7U3-ATBT

ADM File No. 2024-02
Amendment of Rule 7.215 of the Michigan Court Rules

To read this file, visit perma.cc/F993-67AA

ADM File No. 2026-01
Appointments to the Michigan Judicial Council

On order of the Court, pursuant to MCR 8.128, the following members are appointed to the Michigan Judicial Council for partial terms commencing immediately and expiring on December 31, 2028:

- Kevin M. Tatroe (court administrator)
- Joseph P. McGill (attorney)

ADM File No. 2026-01
Appointment to the Commission on Fairness and Public Trust in the Michigan Judiciary

On order of the Court, pursuant to Administrative Order 2022-1, Alicia J. Skillman (bar association member) is appointed to serve on the Commission on Fairness and Public Trust in the Michigan Judiciary for a partial term commencing immediately and expiring on December 31, 2026.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by August 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 seven instructions to include the term "human trafficking" when describing the offenses to the jury: M Crim JI 36.1 (Obtaining a Person for Forced Labor or Services), M Crim JI 36.2 (Holding a Person in Debt Bondage), M Crim JI 36.3 (Knowingly Subjecting a Person to Forced Labor or Debt Bondage), M Crim JI 36.4 (Participating in a Forced Labor, Debt Bondage, or Commercial Sex Enterprise for Financial Gain), M Crim JI 36.4a (Participating in a Forced Labor or Commercial Sex Enterprise for Financial Gain or for Anything of Value with a Minor), M Crim JI 36.5 (Aggravating Factors), and M Crim JI 36.6 (Using Minors for Commercial Sexual Activity or for Forced Labor or Services). The proposed amendments would also adjust some phrasing to ensure greater consistency with the statutes defining these offenses. Deletions are in ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 36.1

Human Trafficking: Obtaining a Person for Forced Labor or Services

(1) The defendant is charged with the crime of engaging in human trafficking by obtaining a person for forced labor or services. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] to perform forced labor or services.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], the defendant knew that it was for the purpose of having [*name complainant*] perform forced labor or services, whether or not such labor or service was actually provided.

(4) "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement. It does not matter if injury to [*name complainant*] occurred.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*select any that apply*]

(i) threats of harm or restraint to any person.

(ii) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(iv) [destroying / concealing / removing / confiscating / taking possession of] ~~a~~ any actual or purported [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

(v) facilitating or controlling access to [*identify controlled substance(s) per MCL 333.7104*] without a legitimate medical purpose.

These are examples of [force / fraud / coercion] and not an exhaustive list.

[*This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.*]

[AMENDED] M Crim JI 36.2

Human Trafficking: Holding a Person in Debt Bondage

(1) The defendant is charged with the crime of engaging in human trafficking by holding a person in debt bondage. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] to hold [him / her] in debt bondage.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], the defendant knew that it was for the purpose of holding [*name complainant*] in debt bondage.

(4) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not ap-

plied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.[1]

[*This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.*]

Use Note
Debt bondage is defined in MCL 750.462a(d).

[AMENDED] M Crim JI 36.3
Human Trafficking: Knowingly Subjecting a Person to Forced Labor or Debt Bondage

(1) The defendant is charged with the crime of engaging in human trafficking by knowingly subjecting a person to [forced labor or services / debt bondage]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant purposefully recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] by any means.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], the defendant knew that [*name complainant*] would be subjected to [perform forced labor or services / debt bondage].

[*Provide appropriate definitions:*]

(4) "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement. It does not matter if injury to [*name complainant*] occurred.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(iv) [destroying / concealing / removing / confiscating / taking possession of] ~~a~~ any actual or purported [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

(v) facilitating or controlling access to [*identify controlled substance(s) per MCL 333.7104*] without a legitimate medical purpose.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(5) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.[1]

[*This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.*]

Use Note
Debt bondage is defined in MCL 750.462a(d).

[AMENDED] M Crim JI 36.4
Human Trafficking: Participating in a Forced Labor, Debt Bondage, or Commercial Sex Enterprise for Financial Gain

(1) The defendant is charged with the crime of participating in ~~an~~ human-trafficking enterprise involving forced labor, debt bondage, or commercial sex for financial gain. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant participated in an enterprise that engaged in forced labor or services, debt bondage, or commercial sexual activity.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services, debt bondage, or commercial sexual activity.

(4) Third, that the defendant benefited financially or received anything of value from [his / her] participation in the enterprise.

(5) I will now define some of the legal terminology that was used in this instruction.

[*Provide appropriate definitions:*]

(a) An "enterprise"[1] is an organization for conducting business and can be an individual person, a sole proprietorship, a

partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any legal or illegal association of persons.

(b) "Forced labor or services"[2] are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(i) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement. It does not matter if injury to [*name complainant*] occurred.

(ii) Fraud includes false or deceptive offers of employment or marriage.

(iii) Coercion includes [*select any that apply*]:

(A) threats of harm or restraint to any person.

(B) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(C) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(D) ([destroying / concealing / removing / confiscating / taking possession of] ~~a~~ any actual or purported [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

(E) facilitating or controlling access to [*identify controlled substance(s) per MCL 333.7104*] without a legitimate medical purpose.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(c) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.

(d) "Commercial sexual activity"[3] means performing acts of sexual penetration or contact,[4] child sexually abusive activity,[5] or a sexually explicit performance.[6]

[*This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.*]

Use Notes

1. *Enterprise* is defined in MCL 750.159f(a).
2. *Debt bondage* is defined in MCL 750.462a(d).
3. ~~Definitions of c~~*Commercial sexual activity* ~~are found~~ is defined in MCL 750.462a(c).
4. Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.
5. *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(*i*) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.
6. *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

[AMENDED] M Crim JI 36.4a

Human Trafficking: Participating in a Forced Labor or Commercial Sex Enterprise for Financial Gain or for Anything of Value with a Minor

(1) The defendant is charged with the crime of participating in ~~an~~ human-trafficking enterprise involving forced labor or services or commercial sexual activity with a minor for financial gain or for anything of value. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant participated in an enterprise that engaged in forced labor or services or commercial sexual activity involving a person or persons less than 18 years old. It does not matter whether defendant knew the age of the person or persons.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services or commercial sexual activity with this person or persons.

(4) Third, that the defendant benefited financially or received anything of value from [his / her] participation in the enterprise.

(5) I will now define some of the legal terminology that was used in this instruction.

[*Provide appropriate definitions:*]

(a) An "enterprise"[1] is an organization for conducting business and can be an individual person, a sole proprietorship, a

partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any legal or illegal association of persons.

(b) "Forced labor or services"[2] are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(i) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement. It does not matter if injury to [*name complainant*] occurred.

(ii) Fraud includes false or deceptive offers of employment or marriage.

(iii) Coercion includes [*select any that apply*]:

(A) threats of harm or restraint to any person.

(B) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(C) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(D) [destroying / concealing / removing / confiscating / taking possession of] a any actual or purported [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

(E) facilitating or controlling access to [*identify controlled substance(s) per MCL 333.7104*] without a legitimate medical purpose.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(d) "Commercial sexual activity"[3] means performing acts of sexual penetration or contact,[4] child sexually abusive activity,[5] or a sexually explicit performance.[6]

[*This crime is a 20-year offense, and is not increased by other aggravating factors.*]

Use Notes

1. *Enterprise* is defined in MCL 750.159f(a).
2. *Debt bondage* is defined in MCL 750.462a(d).
3. Definitions of c*Commercial sexual activity* are found is defined in MCL 750.462a(c).
4. Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.
5. *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(*i*) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.
6. *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

[AMENDED] M Crim JI 36.5
Human Trafficking: Aggravating Factors

(1) If you find that the defendant is guilty of engaging in human trafficking by [obtaining a person for forced labor or services / holding a person in debt bondage / knowingly subjecting a person to forced labor or services or debt bondage / participating in an enterprise involving forced labor, debt bondage, or commercial sex for financial gain], then you must decide whether the prosecutor has proved the following aggravating element[s] beyond a reasonable doubt:

[*Select from the following. Proving a bodily injury under (5) below may be a lesser offense where serious bodily injury has been charged under (3).*]

(2) That the violation involved

[*Select one or more as warranted by the evidence:*]

(a) kidnapping or attempted kidnapping of [*name complainant*]. "Kidnapping" means restraining someone for ransom, to use as a shield, to engage in criminal sexual conduct, to take out of the state, or to hold in involuntary servitude, or to engage in child sexually abusive activity when [*name complainant*] was less than 18 years old.[1]

(b) first-degree criminal sexual conduct or attempted first-degree criminal sexual conduct of [*name complainant*]. First-degree criminal sexual conduct is sexual penetration of a person [*provide particular elements that may apply from M Crim JI 20.3 through 20.11*].

(c) an attempt to kill [*name complainant*].

(d) the death of [*name complainant*].

(3) That the violation resulted in serious bodily injury to [*name complainant*]. A serious bodily injury is any physical injury that requires medical treatment. It does not matter whether [*name complainant*] tried to get medical treatment.

(4) That the violation resulted in [*name complainant*] being engaged in commercial sexual activity. "Commercial sexual activity"[12] means performing acts of sexual penetration or contact,[23] child sexually abusive activity,[34] or a sexually explicit performance.[45]

(5) [That the violation / You may also consider the less serious offense that the violation[56]] resulted in bodily injury to [*name complainant*]. Bodily injury is any physical injury.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

Use Notes

1. For an expanded definition of *kidnapping*, see M Crim JI 19.1.
~~1~~2. ~~Definitions of c~~*Commercial sexual activity* ~~are found~~ is defined in MCL 750.462a(c).
~~2~~3. Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.
~~3~~4. *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(*i*) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.
~~4~~5. *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."
~~5~~6. The lesser offense language only applies where "serious bodily injury" is charged and paragraph (3) is read to the jury.

[AMENDED] M Crim JI 36.6

Human Trafficking: Using Minors for Commercial Sexual Activity or for Forced Labor or Services

(1) The defendant is charged with the crime of engaging in human trafficking by using a minor for [commercial sexual activity / forced labor or services]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[*Select (2) according to the charged conduct:*]

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] for commercial sexual activity. "Commercial sexual activity"[1] means performing acts of sexual penetration or contact,[2] child sexually abusive activity,[3] or a sexually explicit performance.[4]

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] to perform forced labor or services. "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, as applicable:*]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement. It does not matter if injury to [*name complainant*] occurred.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme / plan / pattern] intended to cause someone to think that [psychological harm / physical harm / harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested / deported], regardless of whether the person could be [arrested / deported].

(iv) [destroying / concealing / removing / confiscating / taking possession of] ~~a~~ any actual or purported [passport / immigration document / government identification document] from any person, even if the document was fraudulently obtained.

(v) facilitating or controlling access to [*identify controlled substance(s) per MCL 333.7104*] without a legitimate medical purpose.

These are examples of [force / fraud / coercion] and not an exhaustive list.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] [for commercial sexual purposes / to perform forced labor or services], [*name complainant*] was less than 18 years old, regardless of whether the defendant knew [he / she] was less than 18 years old.

(4) Third, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], the defendant intended that [*name complainant*] would perform [commercial sexual activity / forced labor or services], whether or not [commercial sexual activity / forced labor or service] was actually provided.

Use Notes

1. ~~Definitions of c~~*Commercial sexual activity* ~~are found~~ is defined in MCL 750.462a(c).
2. Definitions of *sexual penetration* and *sexual contact* are found in MCL 750.520a.
3. *Child sexually abusive activity* is defined in MCL 750.145c(1)(n) as a child engaging in a "listed sexual act." *Listed sexual act* is defined in MCL 750.145c(1)(*i*) as "sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity." Those terms, in turn, are each defined in MCL 750.145c(1), and the court may provide definitions where appropriate.
4. *Sexually explicit performance* is defined in MCL 722.673(g) as "a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse."

PROPOSED

The Committee proposes a new jury instruction, M Crim JI 37.8b (Using Position of Authority to Prevent Report of Child Abuse, Criminal Sexual Conduct, or Assault with Intent to Commit Criminal Sexual Conduct), to address the crime set forth in MCL 750.483a(1)(c), as amended by 2023 PA 49. This instruction is entirely new. Please note that the instruction previously designated as M Crim JI 37.8b has been renumbered as M Crim JI 37.8c (Retaliating for Crime Report).

[NEW] M Crim JI 37.8b

Using Position of Authority to Prevent Report of Child Abuse, Criminal Sexual Conduct, or Assault with Intent to Commit Criminal Sexual Conduct

(1) The defendant is charged with the crime of using [his / her] position of authority to prevent someone from reporting [child abuse / criminal sexual conduct / assault with intent to commit 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 held a position of professional authority over [*name complainant*].

(3) Second, that the defendant used [his / her] position of authority to prevent or attempt to prevent [*name complainant*] from reporting [child abuse / criminal sexual conduct / an assault with intent to commit criminal sexual conduct][1] committed by [*name perpetrator*].

(4) Third, that when the defendant used [his / her] position of authority in this way, [he / she] intended to prevent [*name complainant*] from reporting [child abuse / criminal sexual conduct / an assault with intent to commit criminal sexual conduct] committed by [*name perpetrator*].[2]

Use Notes

1. MCL 750.483a(1)(c) applies only when the crime to be reported is a violation of MCL 750.136b (child abuse), MCL 750.520b (first-degree criminal sexual conduct), MCL 750.520c (second-degree criminal sexual conduct), MCL 750.520d (third-degree criminal sexual conduct), MCL 750.520e (fourth-degree criminal sexual conduct), or MCL 750.520g (assault with intent to commit criminal sexual conduct). The Committee on Model Criminal Jury Instructions believes that the question whether the conduct that was attempted to be reported amounted to a violation of these statutes is a question of law for the court to determine and that the elements of a crime attempted to be reported do not have to be proven. *See People v Holley*, 480 Mich 222; 747 NW2d 856 (2008).
2. This is a specific intent crime.

PROPOSED

The Committee proposes new jury instructions for five election-related crimes found in MCL 168.932(e)-(i): M Crim JI 43.7 (Marking or Altering Another Person's Absentee Ballot), M Crim JI 43.7a (Possessing or Agreeing to Return an Absentee Ballot Mailed or Delivered to Another Person), M Crim JI 43.7b (Influencing or Attempting to Influence a Disabled Absentee Voter's Vote), M Crim JI 43.7c (Influencing or Attempting to Influence an Absentee Voter While Voting), and M Crim JI 43.7d (Planning or Organizing a Meeting Where Absentee Voters Would Mark Their Ballots). These instructions are entirely new.

[NEW] M Crim JI 43.7

Marking or Altering Another Person's Absentee Ballot

(1) The defendant is charged with the crime of opening, marking, altering, or substituting an absentee voter's ballot.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was in possession of an absentee voter ballot[2] that was mailed or delivered to [(*identify absentee voter*) / another person].

(3) Second, that the defendant was not legally involved in counting absentee ballots when in possession of the absentee voter ballot.

(4) Third, that the defendant

[*Read any that apply*:]

(a) opened the envelope containing the ballot.
(b) marked the ballot in some way.
(c) altered the ballot in any way.
(d) substituted a ballot for the one in [his / her] possession.

[(5) Fourth, that when the defendant marked the ballot, the defendant was not assisting an absentee voter who was disabled or otherwise unable to mark the ballot by marking the ballot as directed by the absentee voter.][3]

Use Notes

1. The statute, MCL 168.932, references "absent voter" and "absent voter ballot," as does the definitional statute, MCL 168.2. The Committee on Model Criminal Jury Instructions believes that the common parlance for such voters and ballots is the word "absentee," as in "absentee voter" and "absentee voter ballot." Because the statutory phrasing could be confusing as suggesting a missing person or ballot rather than a person who is engaged in voting but merely not present at the voting polls or a ballot sent to such a person, the term "absentee" has been used in these instructions.
2. *Absent voter ballot* is defined in MCL 168.2(b) as "a ballot that is issued to a voter through the absent voter process." That process is described in MCL 168.759.
3. Paragraph (5) may be omitted if there is no evidence that the defendant marked the ballot as directed by an absentee voter who was disabled or otherwise unable to mark the ballot. The terms *disabled* and *otherwise unable to a mark the ballot* are not defined in the Michigan Election Act or any applicable statute.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

[NEW] M Crim JI 43.7a
Possessing or Agreeing to Return an Absentee Ballot Mailed or Delivered to Another Person

(1) The defendant is charged with the crime of [possessing an absentee ballot mailed or delivered to another person / returning, offering, or agreeing to return an absentee ballot to a clerk's office].[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [was in possession of an absentee voter ballot[2] that was mailed or delivered to ([*identify absentee voter*] / another person) / (returned / offered or agreed to return) another person's absentee ballot to the clerk of (*identify city, village, or township*)].

(3) Second, that when the defendant [possessed / returned, offered, or agreed to return] the absentee voter's ballot, it was not the defendant's ballot and [he / she] was not a member of [*identify absentee voter*]'s household or immediate family,[3] a mail handler in the course of employment, or a clerk or assistant clerk conducting the election.

Use Notes

1. The statute, MCL 168.932, references "absent voter" and "absent voter ballot," as does the definitional statute, MCL 168.2. The Committee on Model Criminal Jury Instructions believes that the common parlance for such voters and ballots is the word "absentee," as in "absentee voter" and "absentee voter ballot." Because the statutory phrasing could be confusing as suggesting a missing person or ballot rather than a person who is engaged in voting but merely not present at the voting polls or a ballot sent to such a person, the term "absentee" has been used in these instructions.
2. *Absent voter ballot* is defined in MCL 168.2(b) as "a ballot that is issued to a voter through the absent voter process." That process is described in MCL 168.759. In light of the statute's complexity in describing the number of ways a ballot may be obtained, whether a document is a legitimate absentee ballot appears to be a legal question for the court.
3. MCL 168.2(o) provides that *immediate family* "means an individual's father, mother, son, daughter, brother, sister, and spouse and a relative of any degree residing in the same household as that individual." MCL 168.932(f) includes the following persons as also being *immediate family*: father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

[NEW] M Crim JI 43.7b
Influencing or Attempting to Influence a Disabled Absentee Voter's Vote

(1) The defendant is charged with the crime of influencing or attempting to influence a disabled absentee voter's vote.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name disabled absentee voter*] was an absentee voter[2] who had a right to vote in the [*date of election*] election.

(3) Second, that [*name disabled absentee voter*] was disabled or otherwise unable to mark a ballot.[3]

(4) Third, that the defendant assisted [*name disabled absentee voter*] in marking [his / her] ballot.

(5) Fourth, that while doing so, the defendant [suggested to (*name disabled absentee voter*) how to vote / attempted to influence (*name disabled absentee voter*)'s vote / allowed another person to suggest to (*name disabled absentee voter*) how to vote / allowed another person to attempt to influence (*name disabled absentee voter*)'s vote].

(6) Fifth, that the defendant [intended / knew another person intended] to influence how [*name disabled absentee voter*] voted while assisting [him / her] in marking the ballot.

Use Notes

1. The statute, MCL 168.932, references "absent voter" and "absent voter ballot," as does the definitional statute, MCL 168.2. The Committee on Model Criminal Jury Instructions believes that the common parlance for such voters and ballots is the word "absentee," as in "absentee voter" and "absentee voter ballot." Because the statutory phrasing could be confusing as suggesting a missing person or ballot rather than a person who is engaged in voting but merely not present at the voting polls or a ballot sent to such a person, the term "absentee" has been used in these instructions.
2. In MCL 168.2(a) of the Michigan Election Law Act, the phrase *absentee voter* means "a voter who utilizes the process described in section 759." MCL 168.759 describes the process for becoming an absentee voter. That statute references a *registered voter*, which is described in MCL 168.509t(1) as "a person who is a qualified elector in this state and who registers to vote in a manner consistent with the national voter registration act of 1993." MCL 168.10(1) provides that a *qualified elector* "means a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days." Mich Const 1963 art 2, §1, defines *elector* as "[e]very citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law." US Const amend XXVI, §1, provides, "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."
3. The terms *disabled* and *otherwise unable to mark the ballot* are not defined in the Michigan Election Act or any applicable statute.

[NEW] M Crim JI 43.7c

Influencing or Attempting to Influence an Absentee Voter's Vote

(1) The defendant is charged with the crime of influencing or attempting to influence an absentee voter's vote.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name absentee voter*] was an absentee voter[2] who had a right to vote in the [*date of election*] election.

(3) Second, that the defendant was present when [*name absentee voter*] was marking [his / her] absentee ballot.

(4) Third, that while [*name absentee voter*] was marking [his / her] absentee ballot, the defendant suggested to [*name absentee voter*] how to vote or attempted to influence [*name absentee voter*]'s vote.

(5) Fourth, that the defendant intended to influence how [*name absentee voter*] voted while [he / she] was marking [his / her] absentee ballot.

Use Notes

1. The statute, MCL 168.932, references "absent voter" and "absent voter ballot," as does the definitional statute, MCL 168.2. The Committee on Model Criminal Jury Instructions believes that the common parlance for such voters and ballots is the word "absentee," as in "absentee voter" and "absentee voter ballot." Because the statutory phrasing could be confusing as suggesting a missing person or ballot rather than a person who is engaged in voting but merely not present at the voting polls or a ballot sent to such a person, the term "absentee" has been used in these instructions.
2. In MCL 168.2(a) of the Michigan Election Law Act, the phrase *absentee voter* means "a voter who utilizes the process described in section 759." MCL 168.759 describes the process for becoming an absentee voter. That statute references a *registered voter*, which is described in MCL 168.509t(1) as "a person who is a qualified elector in this state and who registers to vote in a manner consistent with the national voter registration act of 1993." MCL 168.10(1) provides that a *qualified elector* "means a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days." Mich Const 1963 art 2, §1, defines *elector* as "[e]very citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law." US Const amend XXVI, §1, provides, "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

[NEW] M Crim JI 43.7d

Planning or Organizing a Meeting to Where Absentee Voters Would Mark Their Ballots

(1) The defendant is charged with the crime of planning or organizing a meeting where absentee voters would mark their ballots.[1] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant planned or organized a meeting for absentee voters[2] to mark their absentee voter ballots for the [*date of election*] election.

(3) Second, that the defendant intended that absentee voters would mark their ballots for the [*date of election*] at that meeting.

Use Notes

1. The statute, MCL 168.932, references "absent voter" and "absent voter ballot," as does the definitional statute, MCL 168.2. The Committee on Model Criminal Jury Instructions believes that the common parlance for such voters and ballots is the word "absentee," as in "absentee voter" and "absentee voter ballot." Because the statutory phrasing could be confusing as suggesting a missing person or ballot rather than a person who is engaged in voting but merely not present at the voting polls or a ballot sent to such a person, the term "absentee" has been used in these instructions.
2. In MCL 168.2(a) of the Michigan Election Law Act, the phrase *absentee voter* means "a voter who utilizes the process described in section 759." MCL 168.759 describes the process for becoming an absentee voter. That statute references a *registered voter*, which is described in MCL 168.509t(1) as "a person who is a qualified elector in this state and who registers to vote in a manner consistent with the national voter registration act of 1993." MCL 168.10(1) provides that a *qualified elector* "means a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days." Mich Const 1963 art 2, §1, defines *elector* as "[e]very citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law." US Const amend XXVI, §1, provides, "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

The Committee on Model Criminal Jury Instructions has adopted amendments to M Crim JI 11.38 (Felon Possessing Firearm or Ammunition: Nonspecified Felony) and M Crim JI 11.38a (Felon Possessing Firearm or Ammunition: Specified Felony) to account for recent legislative changes to MCL 750.224f. The Committee has

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

also adopted M Crim JI 11.38b (Prohibited Person Possessing Firearm or Ammunition: Misdemeanor Involving Domestic Violence), an entirely new instruction based on the same statute. The amended instructions and the new instruction will take effect on September 1, 2026.

[AMENDED] M Crim JI 11.38
Felon Possessing Firearm or Ammunition: Nonspecified Felony

(1) The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly [possessed / used / transported / sold / distributed / received / carried / shipped / purchased[1]] [a firearm / ammunition[2]] in this state.[3]

(3) Second, that at that time, the defendant had previously been convicted of [*name felony*].[4]

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

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

Use Notes

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

[AMENDED] M Crim JI 11.38a
Felon Possessing Firearm or Ammunition: Specified Felony

(1) The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a specified felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly [possessed / used / sold / distributed / received / carried / shipped / transported / purchased[1]] [a firearm / ammunition[2]] in this state.[3]

(3) Second, that at that time, the defendant had previously been convicted of [*name specified felony*].[4]

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

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

(5) Fourth, that the defendant's right to [possess / use / transport / sell / purchase / carry / ship / receive / distribute] [a firearm / ammunition] has not been restored pursuant to Michigan law.[5]

Use Notes

1. Purchase or receipt of ammunition is not barred under the statute.
2. *Ammunition* is defined in MCL 750.224f(10)(a) as "any projectile that, in its current state, may be expelled from a firearm by an explosive."
3. The prosecutor need not prove that the firearm was "operable." *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).
4. The judge, not the jury, determines whether the charged prior offense is a "felony" as defined in MCL 750.224f(10)(b), a "misdemeanor involving domestic violence" as defined in MCL 750.224f(10)(c), or a more serious "specified felony" as defined in MCL 750.224f(10)(d). The jury determines whether the defendant has in fact been convicted of that charged prior offense. For prosecutions involving a "nonspecified felony," use M Crim JI 11.38. For prosecutions involving a "misdemeanor involving domestic violence," use M Crim JI 11.38b. The defendant may stipulate that he or she was convicted of an offense

to avoid the court identifying that specific offense and the prosecutor offering proof of that offense. *See People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997) (citing *Old Chief v United States*, 519 US 172 (1997)).

5. The judge's determination of the character of the offense as explained in Use Note 4 will determine whether the prohibition extends for three years, five years, or eight years. Under subsections (1) and (3) of MCL 750.224f, the three-year period applies to crimes defined in subsection (10)(b) as felonies. Under subsections (2) and (4), the five-year ban applies to crimes defined as "specified" felonies in subsection (10)(d). Under subsection (5), the eight-year ban applies to crimes defined in subsection (10)(c) as misdemeanors involving domestic violence.
6. This paragraph is to be given when the court determines that some evidence relating to restoration was admitted at trial. *See People v Henderson*, 391 Mich 612; 218 NW2d 2 (1974) (addressing the burden of going forward and the burden of proof where a defendant submits evidence that he or she was licensed to carry a concealed weapon).

[NEW] M Crim JI 11.38b

Prohibited Person Possessing Firearm or Ammunition: Misdemeanor Involving Domestic Violence

(1) The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a misdemeanor involving domestic violence. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly [possessed / used / sold / distributed / received / carried / shipped / transported / purchased][1] [a firearm / ammunition[2]] in this state.[3]

(3) Second, that at that time, the defendant had previously been convicted of [*name specified misdemeanor involving domestic violence*].[4]

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

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

Use Notes

1. Although MCL 750.224f(5) prohibits the "purchase" or "receipt" of ammunition, MCL 750.224f(7) does not indicate the penalty for this conduct.
2. *Ammunition* is defined in MCL 750.224f(10)(a) as "any projectile that, in its current state, may be expelled from a firearm by an explosive."
3. The prosecutor need not prove that the firearm was "operable." *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).
4. The judge, not the jury, determines whether the charged prior offense is a "felony" as defined in MCL 750.224f(10)(b), a "misdemeanor involving domestic violence" as defined in MCL 750.224f(10)(c), or a more serious "specified felony" as defined in MCL 750.224f(10)(d). The jury determines whether the defendant has in fact been convicted of that charged prior offense. For prosecutions involving a "nonspecified felony," use M Crim JI 11.38. For prosecutions involving a "specified felony," use M Crim JI 11.38a. The defendant may stipulate that he or she was convicted of an offense to avoid the court identifying that specific offense and the prosecutor offering proof of that offense. *See People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997) (citing *Old Chief v United States*, 519 US 172 (1997)).
5. The judge's determination of the character of the offense as explained in Use Note 4 will determine whether the prohibition extends for three years, five years, or eight years. Under subsections (1) and (3) of MCL 750.224f, the three-year period applies to crimes defined in subsection (10)(b) as felonies. Under subsections (2) and (4), the five-year ban applies to crimes defined as "specified" felonies in subsection (10)(d). Under subsection (5), the eight-year ban applies to crimes defined in subsection (10)(c) as misdemeanors involving domestic violence.

The Committee on Model Criminal Jury Instructions has adopted two new instructions, M Crim JI 11.45 (Engaging in Computer-Assisted Shooting) and M Crim JI 11.45a (Providing or Offering to Provide Animals, Equipment, or Facilities for Computer-Assisted Shooting), to address the crimes set forth in MCL 750.236a and MCL 750.236b. These instructions are entirely new and will take effect on September 1, 2026.

[NEW] M Crim JI 11.45

Using Computer Assistance for Shooting an Animal

(1) (The defendant is charged with the crime of computer-assisted shooting of an animal. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used a [firearm / bow / crossbow][1] to kill an animal. It does not matter whether the animal was located in Michigan.

(3) Second, that the defendant used a computer or any other device, equipment, or software to remotely control the aiming and discharge of the [firearm / bow / crossbow].[2]

Use Notes

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

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

[NEW] M Crim JI 11.45a
Providing or Offering to Provide Animals, Equipment, or Facilities for Computer-Assisted Shooting

(1) (The defendant is charged with the crime of providing or offering to provide animals, equipment, or facilities for computer-assisted shooting. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant

[*Select from the following according to the charges and evidence*:]

(a) provided or offered to provide an animal for computer-assisted remote shooting.

(b) provided or offered to provide equipment specifically designed or adapted for computer-assisted shooting. Such equipment does not include general-purpose computers, software,[1] devices for accessing the Internet,[2] cameras, fencing, building materials, or [firearms / bows / crossbows].[3] The equipment must be specially designed or adapted to aim and discharge a [firearm / bow / crossbow] remotely at an animal.

(c) provided or operated facilities for computer-assisted remote shooting that are equipped to facilitate computer-assisted shooting of animals, including real estate and buildings, hunting blinds, and offices or rooms that have equipment specifically designed or adapted for computer-assisted shooting.

It does not matter whether or not the defendant was going to be paid for providing the [animal / equipment / facilities].

(3) Second, that the defendant intended to provide the [animal / equipment / facilities] to facilitate the killing of [the / an] animal by a [firearm / bow / crossbow] that could be aimed and discharged remotely using a computer or any other device, equipment, or software.

Use Notes

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

The Committee on Model Criminal Jury Instructions has adopted a new instruction, M Crim JI 15.18b (Moving Violation in a Work Zone or School Bus Zone Causing Death or Injury), for the offense set forth in MCL 257.601b. This instruction will serve as a companion to M Crim JI 15.18a, which applies to violations of MCL 257.601b occurring before certain statutory changes took effect on April 2, 2025. The new instruction will apply to offenses committed on or after that date. It will take effect on September 1, 2026.

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

(1) [The defendant is charged with the crime / You may consider the lesser charge[1]] of committing a moving traffic violation in a [work / school bus] zone that caused [the death of / an injury to] a person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.[2] To operate means to drive or have actual physical control of the vehicle.

(3) Second, that, while operating the motor vehicle, the defendant committed a moving violation by [*describe the moving violation that carries a 3 or more point penalty under MCL 257.320a*].

(4) Third, that when [he / she] committed the violation, the defendant was in a [work / school bus] zone:

[*Select from the following*:]

(a) A work zone is a portion of a street or highway that is open to vehicular traffic, adjacent to a [barrier / berm / lane / shoulder] where [construction / maintenance / public utility work / reconstruction / repair / resurfacing / surveying] is being conducted by one or more individuals, and is between a sign notifying the beginning of work and [an "end road work" sign / the last temporary traffic control device before the normal flow of traffic resumes].[3]

(b) A work zone is a portion of a street or highway that is open to vehicular traffic, adjacent to a [barrier / berm / lane / shoulder] where [construction / maintenance / public utility work / reconstruction / repair / resurfacing / or surveying] is being conducted by one or more individuals, and is between a "begin work convoy" sign and an "end work convoy" sign.

(c) If work activities were conducted by a work crew using a moving or stationary vehicle exhibiting a rotating beacon or strobe light, a work zone is a portion of a street or highway that is open to vehicular traffic, adjacent to a [barrier / berm / lane / shoulder] where [construction / maintenance

/ public utility work / reconstruction / repair / resurfacing / surveying] is being conducted by one or more individuals, and is between the following points:

(i) 150 feet behind the rear of the vehicle or the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle, whichever is the point closest to the vehicle, and

(ii) 150 feet in front of the front of the vehicle or the point from which the beacon or strobe light is first visible on the street or highway in front of the vehicle, whichever is the point closest to the vehicle.

(d) A "school bus zone" is the area within 20 feet of a school bus that has stopped and is displaying two alternately flashing red lights at the same level.[4]

(5) Fourth, that by committing the moving violation, the defendant caused [the death of (*name deceased*) / (*name injured person*) to suffer an injury[5]]. To cause [the death of (*name deceased*) / such injury to (*name injured person*)], the defendant's moving violation must have been a factual cause of the [death / injury], that is, but for committing the moving violation, the [death / injury] would not have occurred. In addition, the [death / injury] must have been a direct and natural result of committing the moving violation.

[(6) Fifth, that the [death / injury] was not caused by the negligence of [(*name deceased*) / (*name injured person*)] in the [work / school bus] zone.

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

Use Notes

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

The Committee on Model Criminal Jury Instructions has adopted amendments to M Crim JI 20.10 (Personal Injury-Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless), M Crim JI 20.11 (Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority), and M Crim JI 20.22 (Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless). The amendments account for a recent change to the statutory definition of "mentally incapacitated." See MCL 750.520a(k), as amended by 2023 PA 65. The amended instructions are effective September 1, 2026.

[AMENDED] M Crim JI 20.10
Personal Injury-Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that the defendant caused personal injury to [*name complainant*].

(2) "Personal injury" means bodily injury, disfigurement, chronic pain, pregnancy, disease, loss or impairment of a sexual or reproductive organ, or mental anguish. "Mental anguish" means extreme pain, extreme distress, or extreme suffering, either at the time of the event or later as a result of it.

[(3) Here are some things you may think about in deciding whether (*name complainant*) suffered mental anguish:

(a) Was (*name complainant*) upset, crying, or hysterical during or after the event?

(b) Did (he / she) need psychological treatment?

(c) Did the incident interfere with (*name complainant*)'s ability to work or lead a normal life?

(d) Was (*name complainant*) afraid that (he / she) or someone else would be hurt or killed?

(e) Did (he / she) feel angry or humiliated?

(f) Did (he / she) need medication for anxiety, insomnia, or other symptoms?

(g) Did the emotional effects of the incident last a long time?

(h) Did (*name complainant*) feel scared afterward about the possibility of being attacked again?

(i) Was the defendant (*name complainant*)'s parent?

(4) These are not the only things you should think about. No single factor is necessary. You must think about all the facts and circumstances to decide whether (*name complainant*) suffered mental anguish.][1]

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

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

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

(b) "Mentally incapacitated" means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs / alcohol / (*identify intoxicant*) / something done to (him / her) without (his / her) consent]. [It does not matter if (*name complainant*) voluntarily consumed the (drugs / alcohol / [*identify intoxicant*]).][3]

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

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

Use Notes

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

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

[AMENDED] M Crim JI 20.11

Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority

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

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

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

(b) "Mentally disabled" means that [*name complainant*] had a mental illness, was intellectually disabled, or had a developmental disability. "Mental illness" is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary demands of life. "Intellectual disability" means significantly subaverage intellectual functioning that appeared before [*name complainant*] was 18 years old and impaired two or more of [his / her] adaptive skills.[2] "Developmental disability" means an impairment of general thinking or behavior that originated before the age of 18, had continued since it started or can be expected to continue indefinitely, was a substantial burden to [*name complainant*]'s ability to function in society, and was caused by [intellectual disability as described / cerebral palsy / epilepsy / autism / an impairing condition requiring treatment and services similar to those required for intellectual disability].

(c) "Mentally incapacitated" means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs / alcohol / (*identify intoxicant*) / something done to (him / her) without (his / her) consent]. [It does not matter if (*name complainant*) voluntarily consumed the (drugs / alcohol / [*identify intoxicant*]).][3]

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

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

(2) [Third / Fourth], that the defendant and [*name complainant*] were related to each other, either by blood or marriage, as [*state relationship, e.g., first cousins*].[4]

(3) [Third / Fourth], that at the time of the alleged act, the defendant was in a position of authority over [*name complainant*] and used this authority to coerce [*name complainant*] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

Use Notes

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

1. MCL 750.520a provides the definitions of *developmental disability*, *intellectual disability*, *mental illness*, *mentally disabled*, *mentally incapable*, *mentally incapacitated*, and *physically helpless*.
2. The court may provide the jury with a definition of *adaptive skills* where appropriate. The phrase is defined in MCL 330.1100a(3) and means skills in one or more of the following areas:
   (a) Communication.
   (b) Self-care.
   (c) Home living.
   (d) Social skills.
   (e) Community use.
   (f) Self-direction.
   (g) Health and safety.
   (h) Functional academics.
      (i) Leisure
      (ii) Work.
3. This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.
4. The following are relatives of a person to the fourth degree of consanguinity:
   First degree of consanguinity:
      Parents
      Children

Second degree of consanguinity:
- Brothers and sisters
- Grandchildren
- Grandparents

Third degree of consanguinity:
- Great grandchildren
- Great grandparents
- Aunts and uncles
- Nephews and nieces

Fourth degree of consanguinity:
- Great-great grandchildren
- Great-great grandparents
- Grand aunts and uncles
- First cousins
- Grand nephews and nieces

[AMENDED] M Crim JI 20.22
Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

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

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

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

(b) "Mentally incapacitated" means that [*name complainant*] was unable to understand or control what [he / she] was doing because of [drugs / alcohol / (*identify intoxicant*) / something done to (him / her) without (his / her) consent]. [It does not matter if (*name complainant*) voluntarily consumed the (drugs / alcohol / [*identify intoxicant*]).][2]

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

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

Use Notes

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

1. MCL 750.520a provides the definitions of *mentally incapable*, *mentally incapacitated*, and *physically helpless*.
2. This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.

ORDERS OF DISCIPLINE & DISABILITY

DISBARMENT (BY CONSENT)

Ryan S. Bourjaily, P79575, Bloomfield Hill. Disbarment, Effective March 15, 2026.

Respondent and the Grievance Administrator filed a Stipulation for Consent Order of Discipline, in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by Tri-County Hearing Panel #58. The stipulation contains respondent's admissions to the factual allegations and allegations of professional misconduct as set forth in the formal complaint in its entirety. Based on respondent's admission and the stipulation of the parties, the hearing panel found that, between September 25, 2024 and October 17, 2024, respondent commingled over $100,000 for his personal use, including personal gambling transactions, while acting as a conservator in a probate matter in the Oakland County Probate Court, and that respondent misappropriated funds. As of November 7, 2024, respondent had repaid the funds in full that he misappropriated, back to the estate.

Specifically, the panel found that respondent: failed to promptly pay or deliver funds that a client is entitled to receive, in violation of MRPC 1.15(b)(3); knowingly disobeyed an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists, in violation of MRPC 3.4(c); engaged in conduct that violates the standards or rules of professional conduct, in violation of MRPC 8.4(a) and MCR 9.104(4); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b); engaged in conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and, engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

The panel ordered that respondent be disbarred, effective March 15, 2026. Costs were assessed in the amount of $1,129.00

INTERIM SUSPENSION PURSUANT TO MCR 9.115(H)(2) [FAILURE TO APPEAR DUE TO PHYSICAL OR MENTAL INCAPACITY]

Robert A. Pasionek, P33173, Mesa, Arizona. Interim Suspension — Effective March 12, 2026.

On March 12, 2026, Ingham County Hearing Panel #3 entered an order suspending respondent's license to practice law in Michigan on an interim basis, effective immediately, pursuant to MCR 9.115(H)(2), after respondent failed to personally appear at a hearing scheduled on the same date claiming a physical incapacity as the reason for his non-appearance.

AUTOMATIC INTERIM SUSPENSION

Michael E. Siwek, P 64198, Byron Center. Effective February 24, 2026.

On February 24, 2026, respondent was convicted by guilty plea of sexual exploitation of a minor, in violation of 18 U.S.C. 2251(a), and possession of child pornography, in violation of 18 U.S.C. 2252(A)(5)(B); in *United States of America v Michael E. Siwek,* United States District Court for the Western District of Michigan, Case No. 1:25-cr-5. Upon respondent's conviction and in accordance with MCR 9.120(B)(1), respondent's license to practice law in Michigan was automatically suspended.

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

REPRIMAND WITH CONDITION (BY CONSENT)

Kourtney L. Stone, P 85504, Grand Rapids. Reprimand, Effective March 19, 2026.

Respondent and the Grievance Administrator filed an Amended Stipulation for Consent Order of Reprimand in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by Kent County Hearing Panel #4. The stipulation contained respondent's admissions to the factual allegations and allegations that she committed professional misconduct while serving as an assistant prosecuting attorney assigned to the Kent County Treatment and Support Court (TASC), a diversion program for defendants with mental health or substance abuse issues. The complaint alleged that respondent developed and maintained an inappropriate personal relationship with a TASC participant whom she was professionally involved with, communicating extensively with him outside official channels, offering gifts and financial assistance, and making statements implying influence over prosecutorial decisions without the knowledge of his attorney. It was further alleged that respondent disclosed confidential information about other TASC participants and improperly accessed the detainee's recorded jail phone calls using her professional credentials, conduct that ultimately led to an investigation, suspension of her access, and the termination of her employment with the Kent County Prosecutor's Office.

Based upon respondent's admissions and the stipulation of the parties, the hearing panel found that respondent represented a client (the State of Michigan) when the representation of that client may have been materially limited by the lawyer's own interests, in violation of MRPC 1.7(b); communicated about the subject of the representation with a person whom the lawyer knew to be represented in the matter by another lawyer without the consent of the other lawyer, in violation of MRPC 4.2(a); failed to treat with courtesy and respect all persons involved in the legal process, in violation of MRPC 6.5(a); engaged in conduct prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1); engaged in conduct that 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 MPRC 8.4(a) and MCR 9.104(4).

In accordance with the stipulation of the parties, the panel ordered that respondent be reprimanded and subject to a condition relevant to the established misconduct. Costs were assessed in the amount of $1,143.92.

ORDER OF REINSTATEMENT

On January 13, 2026, Tri-County Hearing Panel #4 entered an Order of Suspension (By Consent) in this matter suspending respondent from the practice of law in Michigan for 45 days, effective February 4, 2026. On March 17, 2026, 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. Counsel for the Grievance Administrator informed the Board's staff that the Administrator has no objection to respondent's reinstatement; and the Board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that respondent, **Jalal J. Dallo,** P72879, is **REINSTATED** to the practice of law in Michigan, effective March 23, 2026.

ORDER OF REINSTATEMENT PURSUANT TO MCR 9.123(A)

On December 17, 2025, Washtenaw County Hearing Panel #3 entered an Amended Order of Suspension With Conditions (By Consent) in this matter suspending respondent from the practice of law in

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

Michigan for 30 days, effective January 8, 2026. On March 2, 2026, 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 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, **Erik C. Rakoczy,** P86620, is **REINSTATED** to the practice of law in Michigan, effective March 9, 2026.

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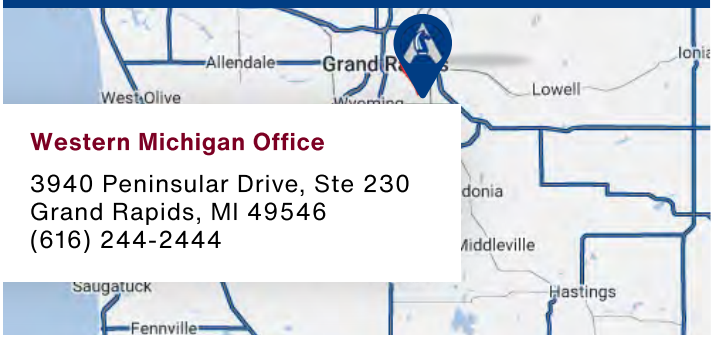

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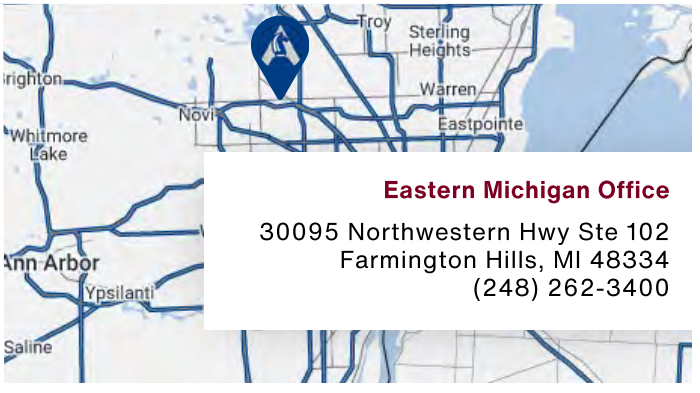

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