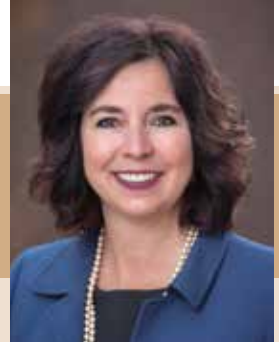


# Addressing Our Aging Population of Lawyers (aka Lawyers Are Mortal)



Jennifer M. Grieco

**T**he population of lawyers in Michigan (and across the country) is aging.<sup>1</sup> The median age for Michigan attorneys is 53. Half of Michigan lawyers are over age 50, and 41 percent are over 59 years of age.<sup>2</sup> An additional 39.7 percent of our state's lawyers are between the ages of 39 and 58. Those considered millennials, 38 years of age or younger, make up only 18.6 percent of the remaining population of lawyers.<sup>3</sup>

Lawyers, of course, can die unexpectedly at any age. But because the number of lawyers who practice longer and retire later in life is rising, the risk of clients being left in the lurch also rises if their lawyers do not have an effective succession plan in place.<sup>4</sup> In Michigan, more than 50 percent of active lawyers are in private practice; of those private practitioners, 68.3 percent are solo practitioners or in small law firms.<sup>5</sup> The unexpected death or disability of a lawyer in a small firm can be just as problematic for clients when associates are not equipped to step in and handle the files or run the firm. Without a competent attorney to manage or transition a law practice, clients are at risk of missing filing deadlines or court

hearings in pending cases or may be unable to locate vital documents or recover funds or property entrusted to the attorney.

Currently, when a lawyer dies or becomes disabled or disbarred and does not have a plan in place to protect clients or wind down his or her practice, the Attorney Grievance Commission can step in under MCR 9.119(G) to establish a receivership. However, winding down a practice is not a disciplinary function and the AGC is not equipped to provide this service on a large scale.<sup>6</sup> These court rules were promulgated under an assumption that most attorneys would have plans in place and that emergency intervention by the AGC would only be necessary in rare situations. Last revised in 1987, MCR 9.119(G) did not anticipate the growth of solo practitioners, especially the number of solo practitioners at the ends of their careers. Additionally, MCR 9.119(G) does not provide for funding of a receivership or clear direction regarding the receiver's ability to manage the firm. As a result, the AGC has had difficulty locating attorneys willing to step in and assist because of the lack of available funds and the amount of work required.<sup>7</sup> Often, nonattorney family or staff members do not even know to contact the AGC and take on the job of winding down the practice, risking the attorney-client privilege and uninformed

decisions about what to do with pending cases and with funds held in trust or in an operating account.<sup>8</sup>

Past SBM President Michael Dettmer has firsthand experience winding down a solo attorney's practice in Traverse City.<sup>9</sup> The attorney was only 51 years old when he died suddenly of an aortic aneurism while traveling to a client meeting. The attorney's widow, who lacked legal knowledge and was caring for the couple's young child, asked for Dettmer's help. Dettmer agreed and was appointed by the circuit court to close the attorney's practice. However, it took Dettmer two years to do everything that was necessary to close the practice, including inventorying of all open files, contacting the courts and clients in both open and closed files, dealing with the office landlord and lease obligations, reconciling bank accounts, and negotiating with creditors. Dettmer's work was essentially pro bono.<sup>10</sup> Not many lawyers have the time or desire to step in to assist in this type of situation, and as a result, clients suffer.

In response, the American Bar Association Center for Professional Responsibility recommends that every lawyer have a succession plan in place to proactively protect the public when an attorney with open files becomes unable to practice law.<sup>11</sup> Several states have adopted mandatory rules, while

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others are preparing proposals for their governing bodies.<sup>12</sup>

Some may recall that in 2012, the State Bar of Michigan Master Lawyers Section requested that the Representative Assembly recommend an amendment to State Bar Rule 2 to require all attorneys to identify an “inventory” attorney.<sup>13</sup> Representative Assembly members raised several concerns at the time, and the amendment was defeated.<sup>14</sup>

In the wake of that rejection, the SBM 21st Century Practice Task Force recommended that a work group be formed to review the process under MCR 9.119(G) and create a plan to transition the handling of these matters from the AGC to the State Bar. Created in 2018, the Receivership Work Group addressed the Representative Assembly’s concerns with the Master Lawyers Section’s proposal and drew from successful programs already in place in other states. Their draft recommendation was approved by the Representative Assembly at its April 13, 2019 meeting.<sup>15</sup>

The mandatory succession planning program approved by the Assembly is called the Interim Administrator Program. The work group determined that the term “receiver” was not applicable to this proposed program because it could be confused with ordinary receiverships, was not in line with the work that the AGC and attorneys like Mike Dettmer were performing to wind down a practice, and did not adequately describe what succession planning should accomplish. State Bar rules and court rule amendments are still needed for implementation and will be presented to the Michigan Supreme Court for its consideration.<sup>16</sup>

### Interim Administrator Program

If the Michigan Supreme Court approves the rule changes, the SBM Interim Administrator Program would require all active Bar members in private practice either to nominate an interim administrator on their annual dues statement or designate the State Bar Interim Administrator Program, for an annual fee, to carry out succession duties if they are needed. The interim administrator could be an active Michigan attorney or a law firm; however, the SBM will send a follow-up email to the designee outlining

the interim administrator’s responsibilities and seeking confirmation that the attorney or law firm has accepted the designation. If an attorney in private practice does not wish to designate another lawyer or law firm to serve as his or her interim administrator, the attorney can participate in the SBM Interim Administrator Program for an annual fee.<sup>17</sup>

Under this proposal, if an attorney becomes unable to practice due to death, disability, discipline, or disappearance, the designated interim administrator, working with the SBM Interim Administrator Program, would determine if court appointment of an interim administrator was necessary.<sup>18</sup> In some circumstances, court appointment may not be required if, for example, the only duty is to return client files. If it is determined that a court-appointed interim administrator would benefit the practice, its clients, or both, the Bar would facilitate that appointment by filing an ex parte petition in the probate court where the attorney’s practice is located. The petition asks that the court appoint the interim administrator designated by the attorney or, if participating in the SBM Interim Administrator Program, one identified by the Bar.

Once appointed, the interim administrator will determine the necessary steps and will have the authority to continue, sell, or wind down the affected attorney’s practice. The interim administrator will be required to protect client information, files, and property; maintain attorney-client privileges; and address any conflicts of interest. The interim administrator will have civil immunity from lawsuits as long as any conduct is undertaken in good faith. If appropriate, the interim administrator could run the office, including paying overhead and maintaining staff, while completing an orderly shutdown or sale of the practice or until the affected attorney, if disabled, can resume the practice of law.

Under the rules, the interim administrator will be eligible for compensation through the attorney’s law practice or estate. If the affected attorney designated the Interim Administrator Program, the interim administrator may receive compensation from the program’s fund as a last resort. The SBM will create tools for both clients and an attorney’s family members regarding necessary

steps following an attorney’s unexpected inability to practice law, including succession planning guidelines and interim administrator training documents. The Receivership Work Group and Representative Assembly agree that this program will ensure that lawyers’ ongoing ethical obligations to their clients are maintained if they are unable to practice law due to death, disability, or discipline, and that this program is necessary in light of increasingly unmet succession planning needs of Michigan lawyers.<sup>19</sup> Moreover, the program is designed to protect clients as well as the lawyer’s interest in his or her practice.

### The needs in rural Michigan

The aging lawyer population is also significant when we consider where our lawyers are located. As one would expect, most of our lawyers are in our state’s urban pockets. As of 2018, these counties have both the highest number of lawyers and the largest number of lawyers joining the profession since 2009:<sup>20</sup>

County	Lawyers in 2018	Lawyers joining since 2009
Oakland	11,388	2,578
Wayne	6,606	1,646
Kent	2,703	719
Ingham	2,484	622
Macomb	1,912	404
Washtenaw	1,808	447
Genesee	773	151

The significance of these numbers and our aging population of lawyers is that there are more than a few Michigan counties—55, in fact—where the entire population of lawyers in the county is fewer than 100. Twenty-one of those counties have 50 lawyers or fewer—that’s one lawyer for every 1,044 individuals.<sup>21</sup> And, in each instance, that population is older than our statewide demographic; that is, more than 50 percent of the

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lawyers are 59 years of age or older. Many lawyers are ready to retire but do not have viable successors.<sup>22</sup>

Obviously, these counties are less populated, but individuals in these communities still need lawyers. The absence of lawyers in rural areas is not unique to Michigan; it's an epidemic in America.<sup>23</sup>

Several largely rural states have tried to combat the justice gap by recruiting high schoolers to become rural lawyers, including providing scholarships and guaranteeing admission to law school. South Dakota offers stipends to lawyers working in rural areas as part of its Rural Attorney Recruitment Program and Project Rural Practice. In Iowa, the Rural Practice Committee matches law students with rural lawyers looking for summer clerks or new associates, allowing them to experience life as a rural lawyer. Nebraska and Wisconsin bar associations host bus tours for law students and new lawyers, allowing them to interact with local leaders and attorneys. As noted by one young criminal defense lawyer in rural Nebraska, "You can still have a very successful, rewarding, exciting legal practice in this area." This lawyer noted that the collegiality of the close-knit community was a "huge draw" to practicing outstate in a rural community.<sup>24</sup>

In my role as State Bar president, I've had the pleasure of visiting with several small bar associations. Each experience was impressive, inspiring, and heartwarming. I met a group of welcoming and engaging lawyers and judges who practice law in a small-town setting where everyone knows one another and cares deeply about those in their community. When explaining to one group the focus on civility this bar year and the efforts of the Professionalism Summit and the Professional Work Group, a lawyer com-

mented that it was a "damn shame" that we had to engage a work group to promote civility among professionals. I agree. But these county bar associations, while small, can boast that 90 percent of the lawyers practicing in the county are active members who attend monthly meetings. That makes a difference in how they treat one another, and civility is the norm.

Several lawyers acknowledged that there is plenty of work in these counties for attorneys, and many of the more senior attorneys are looking to bring in new lawyers to hand over their practices. At a Tuscola County Bar Association meeting, a new lawyer and first-time attendee was asked to introduce herself and describe her solo practice to the members. She noted that she is very busy and not just with court-appointed work. Because of the need for lawyers—especially those with a reputation for doing good work—she was already receiving referrals. In addition, she shared that many lawyers were generous with their time and happy to assist her. Another young lawyer in St. Joseph County confirmed that because of the small size of the legal community, newcomers have "a dozen experienced attorneys to bounce ideas off" and answer questions. She noted that although she has a busy and successful practice, St. Joseph County has also been a great place to raise her family. With a lower cost of living, she was able to purchase her dream home in the country just five minutes from her office.

I recommend that any lawyer, especially a newer lawyer, able and interested in moving or looking to build a practice where work-life balance can be achieved consider contacting the leaders of local county bar associations. As I've been told on several occasions, small county bars would love to

have more young attorneys. Lawyers interested in moving to rural areas can assist with succession planning and help a seasoned lawyer successfully transition out of practice.<sup>25</sup>

### Lawyer referral service as an option for outstate clients

Without lawyers interested in moving to less populated counties, we face an increasing shortage of lawyers serving these populations. Another option for serving the public in these "lawyer deserts" is to use technology to connect lawyers to outstate clients.

While many of the more populated bar associations have their own lawyer referral services, most bar associations do not. For more than 30 years, Michigan residents needing legal help have contacted the State Bar Lawyer Referral Service. To expand its outreach, the SBM is partnering with Michigan Legal Help to help connect people to lawyers who can meet their needs.

As part of its online triage system, Michigan Legal Help has developed a Guide to Legal Help, which collects minimal information from visitors to its site and uses it to steer them to the most appropriate self-help resources or legal assistance referrals, alerting them if they qualify for free or modest-means legal services. Michigan Legal Help also provides referrals to the SBM Lawyer Referral Service, our lawyer directory, Modest Means Panel, or local bar referral programs.<sup>26</sup>

Although Michigan Legal Help currently directs consumers to both the SBM website and the SBM Lawyer Referral staff hotline, the site will soon integrate with the SBM online Lawyer Referral Service to automatically connect consumers to an attorney in the requested practice area. These online, computer-generated referrals will be available around the clock to address the public's legal needs. For attorneys looking to expand their practice or those with a specialty willing to evaluate cases for clients across the state, the Michigan Legal Help-SBM Lawyer Referral Service connection will provide a smooth transition to lawyers looking for clients and help narrow the justice gap in these communities caused by the decreasing numbers of lawyers and the aging lawyer population.

An average of 123 people per day complete the Guide to Legal Help, which is still fewer than five percent of all the people accessing Michigan Legal Help. The SBM Legal Resource and Referral Center averages 35,000 views per month, which is roughly 15,000 unique users monthly, double the number from this time last year. This will only increase, as the Lawyer Referral staff has noted that call volumes have increased.

The final phase of the Michigan Legal Help—SBM Lawyer Referral Service partnership is in development. Stay tuned for future announcements toward the end of the year when the two systems are fully integrated. It's an exciting time to connect lawyers with clients and to help meet the challenges presented by both an aging population of lawyers and the rural justice gap.

And, finally, if you are willing to help a person of modest means who can afford to pay an attorney at the rate of \$75 per hour, please sign up for the SBM Modest Means Panel. The number of clients willing to pay reduced fees for legal services is greater than the number of panel members. This presents a unique opportunity to provide legal services to someone who has demonstrated need and is willing to pay you for your services.<sup>27</sup>

*Let's all continue to ensure that the legal process functions fairly and provides equal justice under the law.*

—Judge Damon J. Keith<sup>28</sup>

## ENDNOTES

1. *Aging of the Bar Data*, ABA (September 19, 2018) <[https://www.americanbar.org/groups/professional\\_responsibility/resources/lawyersintransition/aging\\_of\\_the\\_bar/](https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/aging_of_the_bar/)> [https://perma.cc/9M2K-DSX9]. All websites cited in this article were accessed June 15, 2019.
2. *Statewide and County Demographics (2018–2019)*, Research and Reports, SBM, available at <<https://www.michbar.org/opinions/content>> [https://perma.cc/KB28-5BL4].
3. *Id.*
4. RI-374 (December 1, 2016) and our obligations under the Michigan Rules of Professional Conduct, including MRPC 1.0, MRPC 1.3, MRPC 1.4, MRPC 1.6, MRPC 1.15, and MRPC 1.16. The SBM ethics opinion and MRPC are available at <[https://www.michbar.org/opinions/ethics/numbered\\_opinions/RI-374](https://www.michbar.org/opinions/ethics/numbered_opinions/RI-374)>.
5. *Statewide and County Demographics (2018–2019)*, pp 8–9. These numbers are not unique to Michigan, as approximately 63 percent of lawyers across the country are solo practitioners or practice in small firms of 2–5 lawyers.
6. Dettmer, *Update on Succession Planning and the Proposed Interim Administrator Program (IAP)*, *The Mentor* (Spring 2019), p 9 <<https://higherlogicdownload.s3.amazonaws.com/MICHBAR/95ae4c06-dc14-4089-85af-4ef1e5b03d73/UploadedImages/pdfs/Spring19.pdf>> [https://perma.cc/W2Y4-B7A9].
7. Proposal on Interim Administrator Program presented to the SBM Representative Assembly on April 13, 2019, and valuable assistance from Alecia Ruswinckel from the SBM. See also *Interim Administrator Program*, SBM (2019) <[https://www.michbar.org/file/generalinfo/pdfs/4-13-19consideration\\_interim.pdf](https://www.michbar.org/file/generalinfo/pdfs/4-13-19consideration_interim.pdf)>.
8. *Update on Succession Planning*.
9. Dettmer, *Spoiler Alert—We're Dying*, *The Mentor* (May 2017), p 7 <<https://higherlogicdownload.s3.amazonaws.com/MICHBAR/95ae4c06-dc14-4089-85af-4ef1e5b03d73/UploadedImages/pdfs/Spring17.pdf>> [https://perma.cc/5YCM-3F6B].
10. Email recount of experience from Michael Dettmer, June 10, 2019.
11. *Succession Planning*, ABA (September 19, 2018) <[https://www.americanbar.org/groups/professional\\_responsibility/resources/lawyersintransition/successionplanning/](https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning/)> [https://perma.cc/K9H8-KVYN].
12. *Id.* and memorandum from Alecia Ruswinckel, June 7, 2019. The following states have a mandatory program: Florida, Iowa, and Maine. The following states have a rule that recommends succession planning: Missouri, Ohio, and South Carolina. The following states are in the process of working on succession planning within their state: Illinois, Louisiana, Nebraska, New Mexico, and Pennsylvania. See also, e.g., state succession plans from the New York State Bar Ass'n <<http://www.nysba.org/PlanningAheadGuide/>>; the Vermont Bar Ass'n <<https://www.vtbar.org/FOR%20ATTORNEYS/Practice%20Resources/Succession%20Planning.aspx>>; and the State Bar of Texas <[https://www.texasbar.com/AM/Template.cfm?Section=Closing\\_a\\_Law\\_Practice&Template=/CM/HTMLDisplay.cfm&ContentID=31886](https://www.texasbar.com/AM/Template.cfm?Section=Closing_a_Law_Practice&Template=/CM/HTMLDisplay.cfm&ContentID=31886)>.
13. *Calendar: State Bar of Michigan Representative Assembly* (September 20, 2012) and *Transcript: Mtg of the Representative Assembly of the State Bar of Michigan* (September 20, 2012), both available at the SBM Representative Assembly Archive of Meetings and Proposals <<https://www.michbar.org/generalinfo/proceedings>> [https://perma.cc/6TUK-GZNS].
14. *Id.* Some of the questions raised by Representative Assembly members in 2012 included (1) clarification of the inventory attorney's responsibilities, including ethical obligations; (2) how the rule would apply to law firms; (3) how a nominated inventory attorney would receive notice of the nomination; (4) what would happen if an appropriate inventory attorney could not be found; and (5) how the inventory attorney would be compensated.
15. *Jurisdiction*, Receivership Work Group, SBM <<https://www.michbar.org/generalinfo/receivership>>.
16. *Interim Administrator Program*. According to the Interim Administrator Program proposal presented to the Representative Assembly on April 13, 2019, the following rules will need to be changed to implement the program: SBR 2 would be amended to require selection of an interim administrator; SBR 4 would be amended to authorize the funding structure; MCR 9.119(G) would be amended and the definition of receiver would be removed; and a new MCR would outline the interim administrator responsibilities.
17. *Id.*
18. See n 7.
19. See n 4.
20. *Statewide and County Demographics (2018–2019)*.
21. Demographics analysis by Anne Vrooman from the SBM, June 12, 2019.
22. *Statewide and County Demographics (2018–2019)*.
23. Laird, *In Rural America, there are job opportunities and a need for lawyers*, ABA Journal (October 1, 2014) <[http://www.abajournal.com/magazine/article/too\\_many\\_lawyers\\_not\\_here\\_in\\_rural\\_america\\_lawyers\\_are\\_few\\_and\\_far\\_between](http://www.abajournal.com/magazine/article/too_many_lawyers_not_here_in_rural_america_lawyers_are_few_and_far_between)> [https://perma.cc/6UZZ-8ZSE]; Kaeding, *Rural Wisconsin Lacking Lawyers, Especially Up North*, Wisconsin Public Radio (August 23, 2016) <<https://www.wpr.org/rural-wisconsin-lacking-lawyers-especially-north>> [https://perma.cc/2HJC-28QS]; Paquette, *8,500 residents, 12 attorneys: America's rural lawyer shortage*, *The Washington Post* (August 25, 2014) <[https://www.washingtonpost.com/news/storyline/wp/2014/08/25/how-do-you-keep-them-down-on-the-farm-once-theyve-passed-the-bar/?hpid=hp\\_hp-top-table-main-lawyer-shortage:homepage&hpid=hp\\_hp-top-table-main-lawyer-shortage:homepage&hpid=hp\\_hp-top-table-main-lawyer-shortage:homepage&hpid=hp\\_hp-top-table-main-lawyer-shortage:homepage](https://www.washingtonpost.com/news/storyline/wp/2014/08/25/how-do-you-keep-them-down-on-the-farm-once-theyve-passed-the-bar/?hpid=hp_hp-top-table-main-lawyer-shortage:homepage&hpid=hp_hp-top-table-main-lawyer-shortage:homepage&hpid=hp_hp-top-table-main-lawyer-shortage:homepage&hpid=hp_hp-top-table-main-lawyer-shortage:homepage)> [https://perma.cc/62YQ-4GQS]; and Gerlock, *Lawyer Shortage in Some Rural Areas Reaches Epic Proportions*, NPR (December 26, 2016) <<https://www.npr.org/2016/12/26/506971630/nebraska-and-other-states-combat-rural-lawyer-shortage>> [https://perma.cc/8VHF-4X4R].
24. *Id.*
25. French, *Succession Planning, Preparing Your Law Firm's Future*, Arizona Attorney (October 27, 2016) <<https://azatty.wordpress.com/2016/10/27/succession-planning-for-lawyers-covered-in-personal-way-in-arizona-attorney-magazine/>> [https://perma.cc/A8EK-66YH].
26. For elaboration on the number of available resources to assist, see Grieco, *Mobilizing to Help Those in Need*, 97 Mich B J 10, 22 (October 2018) <<http://www.michbar.org/file/barjournal/article/documents/pdf4article3497.pdf>>.
27. For more information, see *Become a Modest Means Program Panel Member*, SBM <[https://www.michbar.org/programs/lawyerreferral\\_panel/MMP](https://www.michbar.org/programs/lawyerreferral_panel/MMP)>.
28. Keith, *A Call to Pro Bono*, 90 Mich B J 30 (October 2011) <<https://www.michbar.org/file/journal/pdf/pdf4article1919.pdf>>.