

SBM Ghosts

To the Editor:

As a Michigan attorney (P15654) who would like to reactivate his membership in the State Bar of Michigan, I invite you as fellow legal professionals to ask the organization for mercy for me and thousands of others who have been suspended for years for alleged failure to pay our dues. I certainly do not know whether all of us are as qualified as you who possess legal rights in the organization. But I certainly know some who are.

In the 1970s, lawyers and law students associated with federally funded Michigan Legal Services and Legal Services of Eastern Michigan brought or participated in several cases in federal and state courts that transformed the rights of juveniles and adults who were said to be mentally ill.

Among the State Bar members who were involved in those cases or in those legal service programs were Corey Y. S. Park, Gary J. Kolb, Neal Dudovitz, Martin A. Geer, Samuel I. Shuman, David L. Chambers, Robert L. Reed, Richard N. Feferman, and Robert A. Burt. You will find none of us listed in the 2010–2011 *Michigan Bar Journal* Directory, although you can find each of us and our Michigan Bar numbers in the online directory.

With the exception of Mr. Burt at Yale, the rest of us are listed among several thousand Bar members as “suspended for non-payment of dues.” The taint to our business reputations by placement in that category should be obvious. If any of us now wants to be active in Michigan again, we will have to be reviewed by a committee before we even are allowed to pay all the back dues.

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When the State Bar, with Michigan Supreme Court direction/approval, amended the rules concerning payment of dues in 2003 and imposed them as of 2003 on inactive members, several categories of membership were considered, including active; inactive; resigned; deceased; and suspended for various disciplinary reasons, including nonpayment of dues. But no mention was made of yet another classification.

Last year, Mr. Burt was among several thousand members whose status was “unknown.” The Bar claims to have created that category for members who were probably not dead but joined “back in the day.”

I persisted for months in asking the Bar why I was listed as suspended and Mr. Burt in the more benign category of status unknown. He had been admitted to practice in 1972, a year after I became a member of this integrated Bar. Last month, the Bar finally contacted Mr. Burt and allowed him to choose among several possibilities. Online, he now is regarded as “emeritus.” How did he become an exception to the rule? Did he get reviewed by the committee?

The Bar apparently is culling the files for those in the status unknown category, primarily to separate the living from the dead. They may be eliminating those attorneys who have no apparent Bar number but have been listed as status unknown. Constitutional Law Professor Emeritus Joseph W. Little was in that category online in 2010, but now he is not listed at all. He graduated around 1964.

I have supplied the Bar with the addresses I have for the attorneys I noted previously, along with a half dozen others. I appealed to the Bar to list in the *Michigan Bar Journal* all those suspended for failure to pay dues to alert readers to provide addresses, or even just e-mail addresses, for those whose whereabouts you might know. The Bar refuses. The problem, I am assured, is ours.

I, for one, would pay arrears and become active—but I will not go through a review committee to determine whether I am still of good moral character and fitness and still as practiced as, say, the general counsel of the Bar, to be worthy of membership. If there are a hundred like me willing to become active by payment of arrears, the financial gain to the organization would be significant.

The Bar will have none of it.

The Bar apparently is reluctant to grant me any leeway because of a civil action in which I have been involved in Michigan for the last five years. In that proceeding, unfortunately, I am now a ghost.

A Wayne County Circuit Court judge has ruled that I am not now and never have been a member of the State Bar of Michigan. In 2009, she denied me any opportunity to appear in person, by phone, or by paper submission, although in 2006 she was kind enough to send me courtesy copies of orders in favor of the same client. In 2009, she fined me \$5,000 and dismissed the civil action. Michigan Court Rules applicable to appeals to state appellate courts explicitly gave me the right to appeal that sanction, but both the Michigan Court of Appeals and the Michigan Supreme Court see no reason to (1) apply the state’s own rule, (2) explain why they are ignoring that rule, or (3) grant me an opportunity to be heard meaningfully.

The same thing happened to my former client, both before and after he prevailed in the Michigan Court of Appeals in 2005 and in the Wayne County Circuit Court, on remand, in 2006. For no apparent reason, the case was returned to the 36th District Court for a hearing within 60 days of the order. No hearing was ever held. Instead, although the Detroit court docket sheet asserts that the case is closed, there is no final order, no judgment, and no satisfaction of judgment. The case remains open in the 36th District Court in Detroit.

I will gladly pay my dues, if permitted, so I can move forward in the civil action in which I was allowed to proceed pro hac vice. I will not, however, agree to have the State Bar judge my character and fitness to appear after 40 years of membership. I doubt that many of the nearly 4,000 others also suspended for failure to pay dues since 2004 feel differently.

Gabriel Kaimowitz
Gainesville, Florida

Response from the State Bar of Michigan

The Michigan Supreme Court Rules Concerning the State Bar of Michigan establish membership dues and procedures pertaining

to failure to pay them. Those same rules require members to notify the State Bar promptly in writing of any change of name or address.¹ Mr. Kaimowitz seeks to hold the State Bar responsible for his suspension for nonpayment of inactive dues because he asserts that the Bar failed to notify him of the 2003 Supreme Court rule change that imposed dues for inactive members. He argues that, had he been informed, he would have paid the dues, avoided suspension, and returned to active status, without having to subject himself to certification from the Michigan Board of Law Examiners, which is required of anyone who remains Bar-dues suspended² or maintains inactive membership status³ for three years or more.

In fact, the Bar attempted to notify Mr. Kaimowitz; its letter to him was returned as undeliverable. Mr. Kaimowitz acknowledges that he has moved from the address he last provided to the Bar in 1986, but argues the Bar could have easily tracked him down. However, the obligation to notify the Bar of an address change rests with Mr. Kaimowitz, not vice versa—and justifiably so. Why should the many thousands of members within and outside Michigan who have kept the Bar informed of their address changes foot the expenses of locating and notifying members like Mr. Kaimowitz who have not kept the Bar abreast of address changes?

Further, at the time the State Bar granted Mr. Kaimowitz's request for inactive status in 1986, the Bar informed him of the rule regarding certification and provided him with a copy of the pertinent rules, which he acknowledged. Significantly, the requirement of certification applied to Mr. Kaimowitz as of 1989 as a result of his more than three-year status as an inactive member, independent of and long before his failure to pay inactive dues required by the 2003 change in the Supreme Court rules. Mr. Burt elected to return as an emeritus member, which does not require BLE certification, an option that is equally available to Mr. Kaimowitz.

Mr. Kaimowitz asserts he prefers to be classified as "status unknown," as some individuals were previously identified on the Bar's online directory,⁴ rather than as suspended for nonpayment of dues. However,

his status is not unknown. Moreover, "status unknown" is not a membership classification. It is a temporary identifier for persons who were not assigned P numbers or added to the Bar's electronic membership records in the early 1980s because of incomplete information. Any of these persons can contact the Bar to update their status (some have) and each is presented the same membership options that have been made available to Mr. Kaimowitz.

Mr. Kaimowitz contends that the Bar is obstructing his efforts at returning as an active member to protect itself or the Wayne County judge who sanctioned him in an appeal from a district court matter. He argued as much in his filings with the Michigan Court of Appeals and the Supreme Court, both of which denied his request for relief. Before hearing from Mr. Kaimowitz, the Bar was unaware of the district court matter or any appeal from it. Further, irrespective of the points Mr. Kaimowitz makes regarding the procedural elements of the matter, including the fact that there is no appealable judgment or final order to review, the records reflect that the district court ordered the return of all garnished proceeds and the creditor's counsel represented in the Wayne County Circuit Court that all garnished amounts had been returned.

Mr. Kaimowitz has a number of options available to him, and has been so informed. He can resign without cost; take emeritus status without cost; pay his back dues and fees and return to inactive status; or pay his back dues and fees, seek BLE certification, and return to active status. ■

FOOTNOTES

1. Rule 2, in place in substantially its present form since at least 1956, states: "Members shall notify the State Bar promptly in writing of any change of name or address."
2. Rule 4(C) of the Rules Concerning the State Bar of Michigan.
3. Rule 3(B)(2) of the Rules Concerning the State Bar of Michigan.
4. Members designated with an "unknown status" or suspended for nonpayment of dues were never listed in the State Bar's published member directory but were available on the online member directory if a search other than a default selection was made. They have now been removed from the online directory.