

## From the Chair

October 2005 was a great month for Michigan lawyers.

In October, the State Bar of Michigan hired staff that is dedicated to preparing the launch of the Practice Management Resource Center (PMRC). The PMRC is intended to help Michigan's lawyers operate their law practices more efficiently and effectively by providing information, training, resources, and hands-on assistance designed to expand and enhance their practice management skills.

The Law Practice Management Section's leadership has worked very closely with State Bar staff and its elected and executive leadership in the development of the PMRC because we share with it the primary mission of helping Michigan lawyers where they need it most—at their desks. The PMRC represents an exciting opportunity for all of us. We'll keep you informed about the Center's development and how you can tap into the vast store of practice management resources and expertise that it's assembling.

Also in October, the Institute of Continuing Legal Education held its 2<sup>nd</sup> Annual Solo & Small Firm Institute. By any measure, this year's Institute was a huge success. Most significantly, the attendees raved about it rating it an overall 6.6 on a 1 to 7 scale.

The Institute was filled to capacity with over 350 attendees, double last year's number. Its four tracks, Substantive Law, Law Practice Management, Technology and Legal Assistance and Support, played to full rooms over the day and a half of programs. Six Section Council members (Barry Brickner, Konnie Kustron, Ken Lewis, Gary Bauer, Joan Vestrand and I) were featured speakers. Also, Joan and I served as moderators for the Law Practice Management track. Highly regarded national figures Larry Rice and Barron Henley presented several times on both days.

As with the PMRC, the Section has played a leadership role in the development and success of the Institute. Joan Vestrand, Gary Bauer, Konnie Kustron and I were part of the team that planned the program offerings and selected the speakers. In addition, the Section's co-sponsorship of the Institute helped hold registration fees down and provided a discounted registration fee for all Section members. To further help market the Institute, the Section held a drawing

Continued on page 3

### Table of Contents

Site Watch .....	2
Holistically Speaking .....	4
Creating an Effective Associate Orientation Program .....	5
Successfully Marketing a Solo Practice .....	7
A Glance at the Proposed Changes to the Michigan Rules of Professional Conduct .....	9

### Listserv

If you would like to raise a question or begin a discussion on the listserv, just address your message to:

[Lawprac@groups.michbar.org](mailto:Lawprac@groups.michbar.org)

For those responding to a comment or question, send your response to the list. This is easily done by pushing the Reply to All button and typing your answer. If you want your answer to be sent only to the author, find the author's address and respond directly to him or her. By pushing the Reply to Author button, you may be sending your response back to the list if you are not careful. Of course, we have more fun when we can all join in on the conversation.

**STATE BAR OF MICHIGAN  
Law Practice Management  
Section Council**

2005-2006

**Chairperson**

**Vincent A. Romano** (P25948)  
Phone: 313-333-2129  
e-mail: [varomano@comcast.net](mailto:varomano@comcast.net)  
President, Attorney Services Marketing  
1037 Maryland  
Grosse Pointe Park, MI 48230-1305

**Chairperson-Elect**

**Michael J. Fraleigh**, Lansing

**Vice-Chairperson**

**Gary P. Bauer**, Lansing

**Secretary**

**Rebecca S. Seslar**, Detroit

**Treasurer**

**Ernest I. Gifford**, Birmingham

**2006**

**Henry S. Gornbein**, Bloomfield Hills  
**Konnie G. Kustron**, Milford  
**Sally B. VanDenBerg**, East Lansing

**2007**

**Joan R. Bullock**, Orlando, FL  
**Beverly M. Helm**, Wheaton, IL  
**Cindy Rhodes Victor**, Utica

**Immediate Past Chairperson**

**Joan P. Vestrاند**, Rochester

**Ex-Officio**

Austin G. Anderson  
Benson J. Barr  
Linda D. Bernard  
L. Ray Bishop  
Barry L. Brickner  
John C. Buchanan  
Daniel J. Cline  
Reginald D. Dozier  
Mark R. Filipp  
Milton I. Firestone

Michael J. Fraleigh  
Howard J. Gourwitz  
Wesley P. Hackett, Jr.  
Kenneth Lee Lewis  
Miles J. Postema  
David C. Sarnacki  
Cindy Rhodes Victor  
Thomas R. Winquist

**Commissioner Liaison** Julie I. Fershtman



L. Brooks Patterson, Oakland County Executive, has announced that by the end of 2007 the entire county will be wireless. What this means, of course, is that computer users anywhere in the county will be able to connect to the Internet and to e-mail free of charge. No longer will it be necessary to find the nearest Starbucks to connect in Oakland County with the office. The service will be free with add-ons available for a fee.

The program calls for pilot programs in seven cities: Troy, Pontiac, Wixom, Royal Oak, Birmingham, Madison Heights, and Oak Park. Pontiac is, of course, the location of the Oakland Circuit Court facilities, while district courts are located in each of these cities. These cities will be wireless by the end of the year.

Free wireless connectivity seems to be catching on with businesses, airports, and government entities throughout the U.S. joining the trend. There are sites on the Internet for

finding free WiFi locations. Click on [www.wififreespot.com](http://www.wififreespot.com) or [www.wififreenet.com](http://www.wififreenet.com) for a list of free wireless connections.

Clicking on [www.wififreespot.com](http://www.wififreespot.com) will take you to a website with links to "Airports with Free WiFi," "Hotels, Motels, Inns and Resorts With Free WiFi" as well a list of business with multi-state facilities such as Panera Bread Co. and CompUSA Stores. There is also a state-by-state list. Clicking on "Michigan" brings up a list of 20 pages of facilities listed city by city from Adrian to Zeeland. The listing for Traverse City, for instance has seven facilities listed, including coffee shops, bookstores, and the Traverse City Library.

In addition to including lists of free WiFi connection spots, [www.wififreenet.com](http://www.wififreenet.com) also includes a blog with the latest WiFi news. An October 18 posting, for instance, describes the plan of the city of San Francisco to provide free WiFi connectivity. The plan will be

**From the Chair**

Continued from page 1

among those Section members that signed up during the early bird registration period. Sixty Section members qualified and three one year ICLE Partnership's were awarded.

Watch for the announcement of next year's Institute, and be sure to register early. It's only going to get bigger and better.

October also saw Council members Joan Vestrand, Ernie Gifford, Austin Anderson, Rebecca Seslar, Cindy Rhodes Victor and I journeying to Traverse City to present the Section's popular half-day program, *The Nuts & Bolts of Successful Law Practice Management*. The program was presented in cooperation with the Grand Traverse-Leelanau-Antrim Bar Association.

The *Nuts & Bolts* program was also a featured presentation at the State Bar's 2005 Annual Meeting in East Lansing. Both presentations were very highly rated by attendees. These presentations are always free to Section members and represent an outstanding CLE opportunity. We'll be doing the program again during the next year. We'll let you know where and when and invite you to join us.

Our Section is extremely fortunate to have so many unselfish leaders willing to travel the state and share their practice management expertise with their colleagues. I'm honored to be in their company. If any of you is interested in joining this esteemed group and becoming a Section Council member, please contact me.

Finally, I note my gratitude—and the entire Section's appreciation—for Joan Vestrand's inspired leadership over the past year. She set a clear path for me to follow. By positioning the Section in a leadership role at every opportunity that was presented, Joan has made us a more vital contributor to the prosperity and well-being of Michigan lawyers – and that's what we're all about. Thanks Joan!

Vincent A. Romano, Esq.

*Mr. Romano is president of Attorney Services Marketing located in Grosse Pointe Park, MI. If you have comments, suggestions, or criticisms, please feel free to contact him at (313) 333-2129 or varomano@comcast.net.*

**Site Watch**

Continued from page 2

in conjunction with Google and will include specific location advertising. This is explained as meaning that you can be sitting in a restaurant and when you connect to the Internet through the free WiFi service, you may receive an ad for businesses located close to where you are and with instructions as to how to find the business location. This means, of course, that Google will know where you are and will have the ability to reach only your computer. Kind of scary, huh? I am glad that the Oakland proposal doesn't include Google! §

*Ernest Gifford is a principal in the patent firm of Gifford Krass Groh Sprinkle Anderson & Citkowski, PC, located in Birmingham, Michigan. He can be contacted at (248) 647-6000 or by email at egifford@patlaw.com.*



# Holistically Speaking

## 35 Random Acts of Kindness

By Nancy A. Werner, Esq.

1. Extend a hand to someone in need. Give your full attention and simply listen.
2. Bring coworkers a special treat.
3. Let your staff leave work an hour early.
4. Laugh out loud often and share your smile generously.
5. As you go about your day, pick up trash.
6. Transport someone who can't drive.
7. Say something nice to everyone you meet today.
8. Volunteer at an agency that needs help.
9. Adopt a homeless pet from the humane society.
10. Give a hug to a friend.
11. Tell your children why you love them.
12. Let someone merge into traffic during rush hour.
13. Give another driver your parking spot.
14. Tell your employees how much you appreciate their work.
15. Let the person behind you in the grocery store go ahead of you in line.
16. Leave an extra big tip for the waitperson.
17. Open the door for another person.
18. Pay for the meal of the person behind you in the drive-through.
19. Pay the toll for the person behind you.
20. Open the door for another person.
21. Call an animal shelter and find out what donations they need.
22. Be a friend to a new student or coworker.
23. Hold the door of the elevator, subway, or bus for someone rushing to catch it.
24. Provide transportation for elderly neighbors to help with their shopping.
25. Offer to take a friend's child to ball practice.
26. Write something nice about your waitperson on the back of the bill.
27. Deliver soup and crackers to a sick friend.
28. Roll an elderly neighbor's garbage cans back up the driveway on trash pick-up day.
29. Stop for a person waiting to cross the street.
30. Have a potluck at work to celebrate a milestone like a birthday or a successful event.
31. Call loved ones just to say "I love you" or to tell them what you appreciate about them.
32. If you play a musical instrument, visit a senior center or hospital and give a brief recital.
33. Help someone struggling with heavy bags.
34. Compliment a stranger about something he/she is wearing.
35. Call someone who has no family nearby and invite him or her to your home for a visit or meal. §

Nancy Werner has started a Yahoo group called *Pax\_Vobiscum\_Lex*. You can find it at [http://health.groups.yahoo.com/group/Pax\\_vobiscum\\_lex/](http://health.groups.yahoo.com/group/Pax_vobiscum_lex/).

The group is named *pax vobiscum lex*, Latin for "peace be with you" and "law."

This is a private, moderated, anonymous group for lawyers and judges to exchange ideas and cultivate inner peace.

Membership is open to those recovering from addiction, searching for answers but with an untreated addiction, going through mental or physical health challenges, experiencing life changes/challenges or seeking a deeper human experience in tandem with the practice of law. In short, this is for any legal professional looking for peace in his or her life.

# Creating an Effective Associate Orientation Program

By Sandra J. Boyer

Criteria identification, recruitment, and orientation are three strong components of a successful associate retention program. After the firm has developed and implemented associate criteria that describe the skills and qualifications each associate should possess to fit into the culture of the firm, the firm must develop and implement an effective associate recruitment program. The recruitment process should motivate lawyers to join the firm, become viable members of the firm, and grow into leaders within the firm, as well as in the local and legal communities. Once a firm has implemented the first two steps, it must develop and implement an effective associate orientation program that assimilates the new lawyers into the firm, including its culture, processes, and philosophy.

There are several advantages to the implementation of an effective associate orientation program. Among the advantages are: associates can be more productive sooner; associates feel like an important part of the team from the outset; associates have a better understanding of the firm, its lawyers, its practice, and its client base; and an effective orientation program begins to build loyalty from the beginning of the associate's employment with the firm.

An associate orientation program will be successful and effective

if everybody in the firm understands and participates in the process. A good orientation program includes the legal administrator/office manager, the managing partner, practice group chairs, mentors, senior associates, and appropriate staff.

An effective associate orientation program consists of four components. The first component, the **administrative overview**, should be conducted by the firm's legal administrator/office manager and could include:

- A review of the technology systems
- A description of the benefits offered to Associates
- A description of the associate compensation policy
- A review of the associate evaluation process
- A review of the firm's CLE program
- A review of the firm's filing system, as well as how client files are organized
- A description of the time and billing process, as well as the role the associate can play in implementing that process for profitability
- A review of how an associate should work with a secretary

- A tour of the firm and a brief introduction to the support staff and lawyers
- A description of, and introduction to, the firm's administrative team
- An introduction to the associate's new mentor
- An introduction to the managing partner

Another component of the Associate orientation program includes the **firm overview** which should be conducted by the firm's managing partner, or chair of the management committee and should include:

- A description of the firm's history
- A description of the firm, including:
  - A review of the practice groups
  - A review of firm lawyers and the areas in which they practice
- A description of firm clients
- A description of management structure

The third component of the associate orientation program includes the **financial overview** and should be conducted by the financial partner, if the firm has such a designation. If there is no financial partner, then the lawyer in charge of financial management, the managing partner, or the firm's legal administrator/office manager should

**“An associate orientation program will be successful and effective if everybody in the firm understands and participates in the process.”**

Continued on next page

**Creating . . .**

Continued from page 5

conduct the review with the associates. This overview should include:

- A description of the firm's client intake procedures
- A review of firm retainer agreements
- Disclosure of lawyer billing rates
- An explanation of financial reports associates can expect to receive
- A general description of what is involved in firm financial management
- Trust fund management

The final component of the associate orientation program should be the **professionalism overview**, conducted

by the mentor assigned to the associate. If the firm does not designate mentors for associates, the professionalism overview could be conducted by the professional personnel partner, depending on who is responsible for professional growth in the firm. This overview should include:

- A description of the criteria and process for making partner
- A review of the rules of professional conduct
- A review of the firm's expectations of the associate
- A discussion of ethics issues

The legal administrator or professional development coordinator, de-

pending on the size of the firm, should develop the initial process and material for the orientation program. Input from lawyers, management, and staff should be sought as well. Once the material is finalized, a written manual should be developed and provided to relevant personnel within the firm. The process and manual should be updated annually.

Social interaction is another very important aspect of an associate recruitment program. The social aspect allows associates to get to know members of the firm and helps to build lasting relationships. When the associate(s) join the firm, the managing partner should take them to lunch to welcome them as a new part of the team; a group of senior associates should take the associate(s) to lunch; the firm can have a small social event to welcome the associate(s) and each partner should invite the associate(s) to lunch to begin to build a relationship with them.

The social interaction also allows the new associate(s) to begin to understand the culture of the firm, which is so important in the retention of associates. The most successful associate orientation programs are built around the culture of the firm and are well-organized and implemented consistently. The orientation program is the foundation upon which associates learn to practice law, become comfortable within the walls of the firm, and become contributors to the firm. §

© 2005 AndersonBoyer Group.

*Sandra J. Boyer is a principal of the AndersonBoyer Group, a law firm management consulting firm located in Saline, Michigan. She can be reached at (734) 944-6040 or sjb@andersonboyer. The firm's web address is [www.andersonboyer.com](http://www.andersonboyer.com)*



# Successfully Marketing a Solo Practice

By Austin G. Anderson

## Introduction

You have made the decision to practice alone. Having made the decision, you have committed to building a practice through effective client development and retention practices. This article suggests steps and techniques that will enable you to successfully attract and keep clients who will pay for your services.

## The Definition of Marketing

Marketing is simply defined as generating awareness and creating opportunities. The important steps in marketing are:

- Plan
- Process
- Involvement
- Persistence
- Patience

## Your Marketing Plan

The Keys to Successful Marketing are:

1. *Know your practice.* You must know what legal services you are going to provide clients before you can successfully market them.
2. *Know whom you want as clients.* Identify the type of entity or individual that you want to represent in your practice. Initial guidelines include someone who can use your services and someone who can and will pay your invoices in a timely manner.
3. *Plan your efforts.* You will have limited time to devote to client development, so you must organize your efforts before beginning them. Planning will enable you to effectively use your available time and maximize the use of the money you can invest in your client development efforts.
4. *Monitor your plan.* Review your initial plan to insure that you are devoting your time and money to develop and retain the client base you want to represent.

### The Marketing Tools Available to You and Your Practice

There are several different marketing tools available for marketing your practice. The tools include both promotional elements and marketing tools.

1. The promotional tools available to you include:
  - a. Direct mail
  - b. Display ads
  - c. Directory listings
  - d. Writing for publication
  - e. Appearances at various events
  - f. Networking with other lawyers who are in a position to refer work to you or individuals who may be able to refer work to you
  - g. The opportunity to teach at seminars or other educational events. The seminars may be continuing legal education sessions or they may be industry directed. Teaching and writing for non-legal groups often provides the best opportunity for gaining exposure before groups who are prospective clients or referral sources.
2. You have several marketing tools available to you.

All of the tools should be initially considered, then prioritized to meet your client development

plan. Listed below are the most commonly used tools.

- a. Quality service provided on a timely basis is the best single marketing tool available to you. Quality service that is delivered ahead or on time to a client will usually convert the client into a referral source.
- b. Business cards are a must. You must not only have them, you must always have them with you. When you have them with you, hand them out to clients and prospects. Your business cards should also contain your home telephone number if you are available 24/7.
- c. Develop a modest firm brochure. The brochure should be displayed in the public area of your firm. It should also be mailed to prospective clients inquiring about your legal services. The brochure should briefly describe you, your practice, a brief statement about your fees and billing practice, office hours and a map to enable clients to find your office.
- d. Sole practitioners are increasingly developing web sites. Web sites are often used by prospective clients to validate a lawyer and the lawyer's practice.
- e. Brief communications to clients concerning changes in the law that affect their lives or business are effective communication tools.

Continued on next page

**Successfully Marketing. . .**

Continued from page 5

- f. Developing an electronic or manual list of clients, then using it to call clients whom you have not seen for a while is an excellent tool for staying in touch with clients.
- g. Thank you cards, congratulation letters, etc., are great marketing tools. Clients like to hear from their lawyers at times other than when they are seeking a solution to a legal problem.
- h. Join and be active in an organization that you enjoy. It will pay dividends.
- i. Public speaking and writing articles are effective marketing tools. They involve an investment of time and effort that must be built into your time management plan.
- j. Yellow Page ads call you and your practice to the attention of possible clients. They are not a substitute for one-on-one contact with prospective clients.

**Things to Remember When Conducting Your Client Development/Retention Efforts****A Few Rules to Keep in Mind**

1. *The 80/20 Rule.* 80% of your work comes from 20% of your clients.
2. *The 50/30/20 Rule.* 50% of your “new” work comes from existing clients, 30% of your “new” work comes from people who are not your clients but with whom you have significant business contacts, and 20% of your “new” business comes from people who have learned of you from outside contacts.
3. Let clients know what services your firm can provide them.
4. Overcome the perceptions that you either don’t do a type of work, you are too busy for more work, or you don’t care about the client’s problem(s).

**How to Build Good Relationships**

1. Recognize that clients have a “me first” attitude.
2. Telephone calls must be returned the same day or earlier.
3. Recognize that clients are price sensitive.
4. Clients like to have their lawyers learn their business.

5. Clients like lawyers who stop talking and listen.
6. When asked a question, answer it.

**Get Paid for Your Services**

1. Establish the criteria that will guide you and your firm when deciding whom to accept as your client.
2. Explain the timekeeping, billing and accounts receivable process you follow when working for clients.
3. Establish and maintain a billing cycle.
4. Write your time entries so they fully describe the work performed for the client in the entry. The entries should tell a “story.”

**Conclusion**

Getting and keeping good clients begins with a client development and retention plan. The plan focuses on the client and includes all of the client driven activities which are essential to attracting and keeping them. It concludes with a timekeeping, billing and accounts receivable management program which insures you will be paid for your work. The lawyer that puts it all together insures his/her future success. §

© 2003 AndersonBoyer Group. Austin Anderson is a principal of the Anderson-Boyer Group, a law firm management consulting firm located in Saline, Michigan. He can be reached at (734) 944-6040 or aga@andersonboyer. The firm’s web address is www.andersonboyer.com



# A Glance at the Proposed Changes to the Michigan Rules of Professional Conduct

By Joan P. Vestrand

In 2000, the ABA formed a commission called Ethics 2000 to review and recommend changes to the ABA Model Rules of Professional Conduct. The commission was created in part in response to Sarbanes Oxley, which placed on lawyers new requirements of which some were inconsistent with current state ethics rules. Ethics 2000 led to some sweeping changes in the model rules, particularly in the area of conflicts of interest and confidentiality.

In response to these changes, the State Bar Ethics Committee launched a review of Michigan's current rules and made recommended revisions to the Michigan Supreme Court. These recommendations were published for comment by the Court in July 2004. The comment period ended June 2005. The Court is expected to act on the recommendations in the coming months.

There are numerous recommended revisions to Michigan's rules, including the recommendation for some entirely new rules of conduct. Extensive revision to the commentary of most of the rules is also recommended. To give you an idea of how broad sweeping the recommendations are, the Court's July 2004 Order publishing the recommendations for comment is some 126 pages in length. Given that the recommendations are so extensive, this article highlights just a few of them. Look for other proposed changes to the rules in future newsletters. Lawyers are encouraged to become familiar with all of the recommendations and may do so by visiting the Representative Assembly page of the State Bar of Michigan website.

## **RULE 1.1 – Competence**

The first rule of ethics, the rule on competency, is the subject of a proposed amendment that will result in a "blending" of ABA Model Rule 1.1 with Michigan's current provision. Michigan's provision requires that a lawyer provide competent representation to a client. The proposed amendment would add the ABA's definition of competent representation to the rule. Pursuant to ABA Model Rule 1.1, "[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Michigan's rule would also be amended to add the additional proviso found in the ABA rule that a lawyer shall not "handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer that is competent to handle it; handle a legal matter without preparation adequate in the circumstances; or neglect a legal matter entrusted to the lawyer." These are good changes to Michigan's rule, as the new language would provide better guidance to lawyers on the issue of competency and the lawyer's qualifications in a particular matter.

## **RULE 1.2 – Scope of Representation**

Pursuant to the proposed amendments, Michigan's Rule 1.2 which governs Scope of Representation, would be replaced with ABA Model Rule 1.2, which is called, "Scope of Representation and Allocation of Authority Between Client and Lawyer." The new, expanded rule is clearer with regard to a lawyer's duty

to clearly articulate the scope of representation and to follow the lawful and ethical directives of the client.

Pursuant to the proposed amendment, "[s]ubject to paragraphs (c) and (d) a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." The proposed rule would further state, "A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation."

Paragraph (c) would make clear that a lawyer can limit the scope of representation if reasonable under the circumstances and the client gives informed consent. "Informed consent" under the proposed rules would require that the lawyer first communicate adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. (Proposed Rule 1.0 (e)).

Paragraph (d) of proposed Rule 1.2 would provide, "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law." (Currently Michigan's Rule 1.2(c)).

Continued on next page

**A Glance . . .**

Continued from page 9

**RULE 1.4 – Communication**

If the proposed amendments are adopted, Michigan's Rule 1.4 will be substantially replaced with ABA Model Rule 1.4. ABA Model Rule 1.4 provides a more detailed description of a lawyer's duties of communication. Michigan's current rule merely states that a lawyer shall keep a client reasonably informed, comply promptly with reasonable requests for information, notify the client promptly of all settlement offers, proposed pleas, etc., and explain a matter to the extent reasonably necessary for a client to make informed decisions regarding the representation.

The ABA Model Rule contains these requirements but also sets forth that a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required. Again, consent under proposed Rule 1.0(e) must be an "informed" consent. To qualify as an informed consent, as part of the discussion with the client, the lawyer must identify and explain the "material risks of and reasonably available alternative to the proposed course of conduct."

ABA Model Rule 1.4 also requires that a lawyer reasonably consult with the client about the means by which the client's objectives are to be accomplished and consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

**RULE 1.5 – Fees**

If the proposed amendments to this rule are adopted, there will be many major changes to the rule. While the rule would retain the "illegal or clearly excessive" standard,

this sentence would be changed to read, "A lawyer shall not make agreement for, charge or collect an illegal or clearly excessive fee." Further, the factors of reasonableness found in the ABA Model Rule would serve as the basis for determining whether a fee is "illegal or clearly excessive." These factors would be added to the rule and include the time and labor required, the novelty and difficulty of the questions involved, the skill needed to perform the legal service properly, the likelihood, if apparent to the client, that the matter would preclude other work by the lawyer, the customary fee in the community for the type of matter, the amount involved and the results obtained, the nature and length of the professional relationship with the client, the experience, reputation, and ability of the lawyer, and whether the fee is fixed or contingent.

The communication requirements that pertain to attorney fees (paragraph (b) of the proposed rule) are more specific than in the current rule. The current rule states, in this regard, "When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation." Under the proposed rule, this provision would be expanded to state, "The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client."

If the proposed amendments are adopted, there is a major change to

that part of the rule (paragraph (c)) that governs contingent fees. Under the proposed amendments, all contingent fee agreements must be signed by the client. The current rule merely states that a contingent fee agreement "shall be in writing." There is currently no requirement that the writing be signed by the client.

The proposed rule would clarify, in paragraph (d), that contingent fees are inappropriate in domestic relations cases when alimony, child support and property settlement is at stake.

The rule would continue, in paragraph (e) (unlike the ABA Model Rule), to permit referral fees. However, it would add the requirement for client consent, in writing, to any fee sharing agreement.

The final major change to Rule 1.5 is the proposal of the State Bar Representative Assembly that the rule set forth (in a new paragraph (f)) that non-refundable fees, in specified circumstances (where the criteria set forth in Michigan Formal Ethics Opinion RI-10 are present), are appropriate and permissible. The Representative Assembly has also proposed that this provision state that such fees are considered "earned upon receipt."

**RULE 1.6 – Confidentiality**

The new Rule 1.6 would be a blend of Michigan's current rule and the ABA Model Rule. The current rule states that a lawyer shall not reveal a confidence or secret of a client. The new rule would delete reference to "confidence and secret" in favor of the ABA's model language which sets forth, "A lawyer shall not reveal information relating to the representation of a client." The rule would retain Michigan's rather permissive exceptions to the prohibition against disclosure.

**RULE 1.7– Conflicts of Interest: Current Clients**

Michigan's Rule 1.7 is difficult to understand and apply. ABA Model Rule 1.7 is much clearer, and the analysis under the rule is easier to apply. It is proposed that Michigan substitute the ABA Model Rule for Michigan's rule. Included in the proposal is that part of the ABA Model Rule that requires that a lawyer obtain an *informed consent, confirmed in writing* from all affected parties to any conflict situation involving current clients. Pursuant to proposed Rule 1.0(e), to constitute an informed consent, each affected client must be made aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client.

Pursuant to the proposed comment, the exact nature of information that will need to be disclosed to satisfy this requirement will depend on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is contemplated, the information must include the implications of the common representation, including possible effects on loyalty and confidentiality of information and the advantages and risks involved. All this information must be given for each client's consideration in determining whether to submit to common representation.

If consent is received, as indicated above, it must be *confirmed in writing*. The definition of this requirement is set forth in proposed Rule 1.0(b). Pursuant to Rule 1.0(b), a "writing" is a document executed by the client or one that the lawyer promptly records and transmits to the client. Further, the writing must be made at the time the client gives the informed consent or within a reasonable time thereafter.

Additional proposed commentary makes clear that, "The client is free to revoke consent as to the lawyer's rep-

resentation of the client, and may terminate the lawyer's representation at any time." Of course, should a client revoke consent in a joint representation situation, the lawyer may well be disqualified from continuing with the representation of others in the group.

**RULE 1.8(a) – Business Transactions with a Client**

The new rule 1.8 is substantially the same as Michigan's current rule except that changes would be made to paragraph (a) that governs business transactions with a client. Under current Rule 1.8(a), any business transaction with a client must be on terms fair and reasonable to the client and fully disclosed to the client in writing in a manner that can be reasonably understood by the client. Under the current rule, a lawyer engaging in a business transaction with a client must also advise the client to seek the advice of independent counsel regarding the wisdom and propriety of the transaction. The proposed amendment to this rule would require that this advice be given *in writing* and that the lawyer would also need to obtain a client's *informed consent, confirmed in writing* to the transaction. Again, pursuant to Rule 1.0(e), to qualify as an informed consent, the lawyer would need to disclose and discuss with the client all of the risks and disadvantages to the client of the proposed transaction for the client's consideration in determining whether to enter into the transaction.

**RULE 1.9 – Duties to Former Clients**

Proposed rule 1.9 states, in part, "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." The proposed rule substitutes, "unless the former client

gives informed consent, confirmed in writing" for "unless the former client consents after consultation."

**RULE 1.15 – Safekeeping Property**

Under the proposed changes, Michigan's Rule 1.15 will be replaced by ABA Model Rule 1.15 except that it will retain Michigan's specific language on IOLTA accounts. ABA Model Rule 1.15 has two provisions Michigan's current rule does not have.

The first of these appears in proposed paragraph (a) which would state, "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation."

The second provision that would be added would appear in paragraph (c) which would state, "A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. Nonrefundable fees that comply with Rule 1.5(f) are fully earned when received and should not be deposited in a client trust account."

The Court has proposed that Rule 1.5(f) set forth the criteria for a non-refundable fee found in Michigan Informal Ethics Opinion RI-10. **NOTE:** The Representative Assembly has recommended that the language in Rule 1.5(f) be replaced with the following language: "A lawyer and a client may agree to a lump sum or nonrefundable

Continued on next page

## A Glance . . .

Continued from page 11

fee arrangement that is earned by the lawyer at the time of engagement or at the time of the agreement, provided that the fee agreement is in writing, signed by the client, and states that the fee is non-refundable.”

### **RULE 1.18 – Duties to Prospective Client**

This proposed rule would be a brand new rule in Michigan. It comes from the ABA Model Rule of the same number (1.18) and addresses a lawyer's duties to prospective clients. While the Ethics Committee supports adoption of this rule, the Representative Assembly is against it.

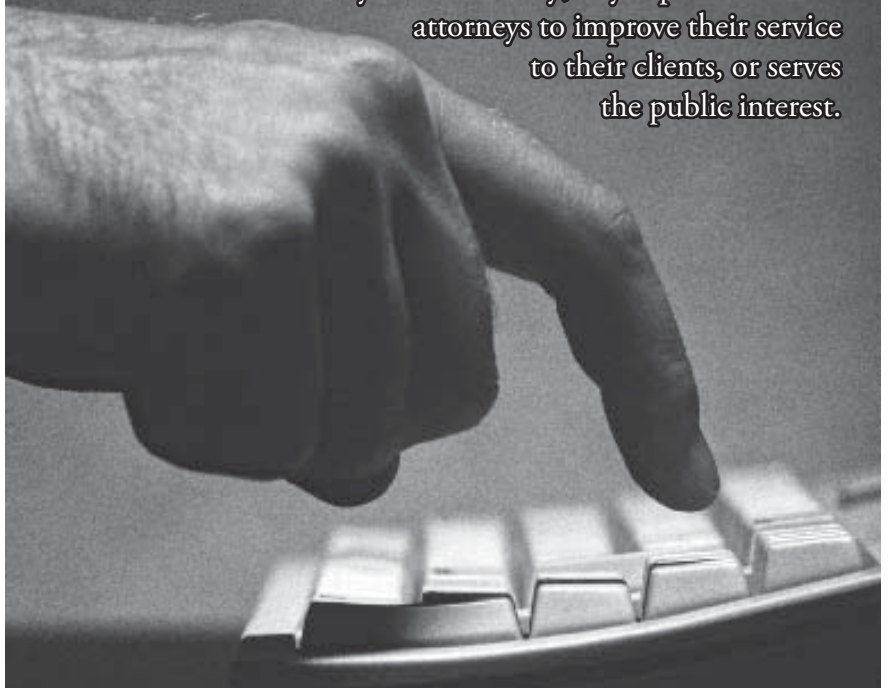
The rule defines a prospective client as a “person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter.” The rule provides, in paragraph (b), that “Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation except as Rule 1.9 would permit with respect to information of a former client.”

The rule further states, “A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter...” Further, if a lawyer is disqualified under this paragraph, the disqualification is imputed to other lawyers with whom the lawyer is associated unless the affected client and prospective client have given informed consent, confirmed in writing, and the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information and is screened from any participation in the matter and does not share in any portion of the fee therefrom. §

# Interested in Writing an Article for the Newsletter?

Articles should be 500-1500 words in length.

Suitable topics of interest include those that assist attorneys in improving their understanding of the economics of law practice; that promote the effective use of non-lawyer personnel and technology in order to render legal services more economically and efficiently; any topic that assists attorneys to improve their service to their clients, or serves the public interest.



PUBLICATION DEADLINE FOR THE UPCOMING ISSUE:

**January 27, 2006 for Winter Issue**

Submissions should be sent to Joan Bullock at [jbullocklaw@hotmail.com](mailto:jbullocklaw@hotmail.com)

## SBM

STATE BAR OF MICHIGAN

MICHAEL FRANCK BUILDING  
306 TOWNSEND STREET  
LANSING, MI 48933-2083

[www.michbar.org](http://www.michbar.org)

FIRST CLASS MAIL  
U.S. POSTAGE PAID  
LANSING, MI  
PERMIT NO.191