

SBM State Bar of Michigan
2014-2015 COMMITTEE ANNUAL REPORT

Article VI §6, Bylaws of the State Bar of Michigan

No later than May 1 of each year, the chair of each committee and sub-entity of the Bar, with the assistance of the staff liaison, shall report to the Executive Director on a form provided by the State Bar on the activities and accomplishments of the committee or sub-entity.

Committee Name: Standing Committee on Professional Ethics

Jurisdiction: The Professional Ethics Committee has the following jurisdictional mandate:

- Prepare written opinions on professional ethical conduct at the request of the State Bar President, Board of Commissioners, Representative Assembly, Attorney Discipline Board, Attorney Grievance Commission, Executive Director, or individual members of the State Bar inquiring about their own contemplated conduct.
- Recommend amendments to the Michigan Rules of Professional Conduct and other standards of professional conduct, and review proposed amendments.

This committee may have more than 15 members.

Chair and Committee Members:

Officer	Name	Address	Telephone	Email
Chair	Kenneth M. Mogill	27 E Flint St Ste 2 Lake Orion, MI 48362-3220	(248) 814-9470	kmogill@bignet.net
State Bar Liaison	Danon D. Goodrum-Garland	306 Townsend St Lansing, MI 48933-2012	(517) 346-6333	dgarland@mail.michbar.org
State Bar Liaison	Nkrumah Johnson-Wynn	306 Townsend St Lansing, MI 48933-2012	(517) 346-6310	njwynn@mail.michbar.org
State Bar Liaison	Alecia M. Ruswinckel	306 Townsend St Lansing, MI 48933-2012	(517) 346-6328	amruswinckel@mail.michbar.org
State Bar Liaison Assistant	Karen Spohn	306 Townsend St Lansing, MI 48933-2012	(517) 346-6309	kspohn@mail.michbar.org
Members		Members		Disciplinary System Liaisons
William J. Ard		Stephanie J. LaRose		Attorney Discipline Board
Patrick M. Barrett		Martha D. Moore		Mark A. Armitage
Lori Grigg Bluhm		Nicholas M. Ohanesian		Wendy A. Neeley
Charles W. Borgsdorf		Joseph V. Walker		
Keefe A. Brooks				Attorney Grievance Commission
Kevin L. Francart				Alan Gershel
Kristen L. Getting				Rhonda Spencer Pozehl
Andrew Carl Goetz				
Tina S. Gray				
Edward J. Hood				
Alissa Mae Hurley				
Kevin Kalczynski				

Committee Meeting Schedule:

Meeting Type	Date and Time	Location
Regularly scheduled meeting	May 2, 2014, 10 a.m.	State Bar of Michigan Michael Franck Building 306 Townsend Street Lansing, MI 48933
Regularly scheduled meeting	June 27, 2014, 10 a.m.	State Bar of Michigan Michael Franck Building 306 Townsend Street Lansing, MI 48933
Regularly scheduled meeting	October 31, 2014, 10 a.m.	State Bar of Michigan Michael Franck Building 306 Townsend Street Lansing, MI 48933
Regularly scheduled meeting	March 13, 2015, 10 a.m.	State Bar of Michigan Michael Franck Building 306 Townsend Street Lansing, MI 48933

Resources provided by the State Bar of Michigan in support of committee work:

The State Bar provides staff support for the work of the Committee through three staff counsel and the administrative assistance of a legal secretary. The State Bar also provides meeting facilities, food and beverage for meetings, SharePoint, teleconferencing services, meeting materials, document production services, and other ethics resources as needed to support the work of the Committee.

Committee Activities: During each Committee meeting, Members discuss proposed topics for ethics opinions; receive updates about pending matters; and discuss and debate opinions in progress. Additionally, members receive information about and discuss inquiries received through the State Bar’s ethics helpline and address other matters as they arise, such as proposed changes to the Michigan Rules of Professional Conduct. Between meetings, the Members review materials, form recommendations about whether to respond to opinion requests with a letter or an opinion, and research and draft opinions for discussion and approval by the Committee as a whole.

The Committee has discussed and continues to review the ABA 20/20 Commission proposed changes to the Model Rules of Professional Conduct. Members will identify proposed changes that appear to be most relevant to Michigan practitioners to begin the process of making its recommendations.

Since its last Annual Report, the Committee approved five ethics opinions for publication addressing the ethical concerns described below.

- 1) Lawyers or law firms may ethically participate as members of a limited liability entity, where the sole purposes of the entity are marketing through a website, promotion of “brand awareness” about the entity, and providing information about the lawyers and law firm members, so long as the entity provides sufficient information about the nature of the relationships among members that it is reasonably understood that the limited liability entity is not providing legal services.

- 2) MRPC 1.11 pertaining to successive government and private employment is inapplicable when a lawyer concurrently serves as a public officer or government employee and represents private clients.
- 3) When a lawyer represents a client in a personal injury matter and the client dies during the pendency of the litigation, the lawyer may represent the deceased client's estate in the personal injury litigation and the personal representative in probating the decedent's estate if the personal representative agrees to both. The lawyer may represent the personal representative on an hourly basis for probate administration and the decedent's estate in the personal injury litigation on a contingency basis. Prior to his or her death, an individual plaintiff-client cannot compel the personal representative appointed after the client's death to choose a particular attorney to represent the decedent's estate in the personal injury litigation or probate administration. If an individual defendant dies during the pendency of personal injury litigation, the plaintiff becomes a potential creditor of the decedent's estate, and the plaintiff's lawyer may open a decedent's estate for the defendant as authorized by law.
- 4) A lawyer cannot ethically abdicate the lawyer's responsibilities under MRPC 1.15 and MRPC 1.15A by relinquishing control of a dedicated client trust account to the client which happens to be the bank at which such accounts are maintained. There are no exceptions under these Rules which absolve a lawyer from liability for overdrafts to the lawyer's trust account. A lawyer is subverting the intent and spirit of MRPC 1.15(a)(3) by establishing a dedicated IOLTA account as requested by a bank client and relinquishing control of the account to the bank.
- 5) A provision in a fee agreement, purporting to require the parties to arbitrate any future dispute relating to the representation that might arise between them is ethically permissible only if, prior to signing the fee agreement, the client either consults with independent counsel or consults with the lawyer and is fully informed in writing regarding the scope and effect of the arbitration provision. A provision in a fee agreement purporting to shorten the statute of limitations within which the client might assert a malpractice claim is ethically impermissible unless the provision is permitted by law, the client is independently represented in entering into the fee agreement, and the provision is objectively fair and reasonable in the circumstances.

The Committee continues to work on two ethics opinions and will consider other requests for ethics opinions in the upcoming months.

Future Goals and Activities: The Committee continues to identify issues of interest to Michigan lawyers as evidenced by questions posed by letter or ethics helpline inquiry that might be the appropriate subject of an opinion either because the topic has not previously been addressed or because changes in the area have rendered previous opinions no longer appropriate. To the extent that the Committee's input is sought by the Board of Commissioners, the Representative Assembly, or the Supreme Court on discrete issues or projects, the Committee stands ready to respond with appropriate research and commentary.

The Committee's last two quarterly meeting for this bar year are scheduled for May 8, 2015, and June 26, 2015.

Other Information: Not applicable.