

# THE JUSTICE SYSTEM AND YOU: THE IMPORTANCE OF THE RULE OF LAW

The government derives its just powers from the consent of the governed.  
[...] No [person] in this country is above the law.

*Mohrman v Fry*, 266 Mich 422, 432, 254 NW 153, 156 (1934)

In general terms, the “rule of law” refers to a political system involving a government of laws, not individuals. Its origins can be traced to Aristotle, who wrote, “It is more proper that law should govern than any one of the citizens.” The rule of law implies that all members of society are equally subject to the law—presidents, governors, legislators, law enforcement, and judges are just as subject to the law as ordinary citizens. Governments based on the rule of law stand in contrast to monarchies and oligarchies where rulers are held to be above the law. Likewise, upholding the rule of law requires equal and fair access of all to the judicial system.

The rule of law means fairly and impartially applying and administering the law to all who are seeking justice. But is not enough for the rule of law to be upheld; the judicial process and its outcomes must also be perceived to be legitimate and fair by the general public, even if they disagree with the result. So when a judge rules, it is accepted as the law, not as a personal exercise of power or political in nature.

## **The public and the rule of law**

Understand how the rule of law is part of our constitutional system. Democracy in our constitutional republic is not always based upon simple majority rule. There are certain principles that are so important to the nation that the majority has agreed not to interfere in these areas. For instance, the Bill of Rights was passed because concepts such as freedom of religion, speech, equal treatment, and due process of law were deemed so important that, barring a constitutional amendment, not even a majority should be allowed to change them. Thus, a judge supports our Constitution by striking down a law, even a popular one, which violates these fundamental freedoms. Similarly, when a judge enforces a law passed by the legislature and signed by the governor, that judge is also enforcing the rule of law: the statute, passed by the representatives of the people, is the law. It is not a judge’s job to make the law in light of the statute, and the judiciary will not overturn it so long as it is not unconstitutional, even if the judge personally disagrees with it.

Participate as a citizen in our democracy: jury duty. John Adams wrote that, “Representative government and trial by jury are the heart and lungs of liberty.” The founding fathers included jury trials in the Constitution because jury trials prevent tyranny. Jury trials are the opposite of tyranny because the citizens on the jury are given the power to make the final decision. A “jury must be drawn from sources reflecting a fair cross section of the community in order to effectuate the purpose of a jury: guarding against the exercise of arbitrary power [by making] available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge.” *People v Bryant*, 491 Mich 575, 596, 822 NW2d 124, 134

(2012)(cleaned up). And most jurors who participate in a case find that they come away from the experience with a greater respect for and understanding of our justice system.

Work to improve our system. Like anything else, the judicial system can be improved, made more accessible and more just. The legislature, the court itself, the State Bar of Michigan, and various groups all work toward this goal.

- The [Michigan Justice for All \(JFA\) Commission](#) is committed to providing 100% access to our civil justice system and welcomes citizen input.
- The SBM has many [resources](#) available on civics and civic engagement.

## **Judges and the Rule of Law**

The Founding Fathers created three independent and equal branches of government – the executive, the legislative and the judicial – specifically to establish checks and balances on other branches of government. The fact that a judge does or does not agree with the actions of another branch of government does not make the judiciary political – it simply reflects checks and balances at work.

What if a judge's ruling is unjust? Sometimes a judge might make a wrong decision by misunderstanding the law or facts. We're all human. Our judicial system has various ways to review judges' decisions, including appeals to the Court of Appeals and the Supreme Court. And if a judge is truly acting outside of the law, the judge can be investigated and potentially removed from office. These safeguards are all part of our justice system.

But sometimes a judge rules in accordance with the law and people disagree with the outcome. That's okay, but it should not lead to personal attacks on the judge, especially by those in other branches of government. Nobody, especially dedicated public servants, should live in fear for trying to uphold our Constitution and laws. Everyone has the right to disagree with a court's decision. But those who openly mock a judge's legitimacy, engage in personal attacks, or threaten retaliation due to an unfavorable ruling not only contribute to public mistrust of the judiciary, but also undermine the very foundation of our democracy. Democracy can be dismantled by words as well as actions.

Should we look at judges' rulings as political? The judge's role is to interpret and apply the law. On sensitive topics, these rulings can appear political because one side "won" and the other side "lost." But that is just a result of the judicial system applying the law. U.S. Supreme Court Chief Justice John Roberts said: "We do not have Obama judges or Trump judges, Bush judges or Clinton judges...what we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for." We should never presume that a judicial decision was a product of political affiliation. And if the ruling was wrong, that is why we have appellate courts.

## **Lawyers and the rule of law**

When Shakespeare wrote, "The first thing we do, let's kill all the lawyers," it was a compliment; the line was spoken by a rebel who thought that if he disturbed law and order,

he could become king. Lawyers have historically been the bulwark in support of the rule of law; eliminating them weakens the rule of law.

The Michigan Supreme Court has given the State Bar of Michigan the mission to aid in promoting improvements in the administration of justice and advancements in jurisprudence. [Rule 1, Supreme Court Rules Concerning the State Bar of Michigan](#). To that end, numerous SBM [committees](#) engage directly in that work.

*Why do lawyers defend people accused of horrible things?* Our system is built on principles like equality, fairness, tolerance, and freedom. These values are inherent in the legal profession; they are inculcated as a part of attorney training, they are socialized to understand that these principles transcend differences in matters of policy and politics. It's why Anthony Griffin, an African American lawyer at the ACLU, represented the Ku Klux Klan, or Ted Olsen, a prominent conservative and Republican, argued against California's ban on same-sex marriage in the Supreme Court. It's why John Adams defended British soldiers accused of killing colonists in the Boston Massacre. Lawyers are not defending the crime. They are defending rights and liberties—to which we all are entitled—that are enshrined in the Constitution. They are ensuring that the procedures are fair, that the accused has not been mistreated and that the government has met its burden of proof beyond any reasonable doubt. These safeguards ensure that justice is there for the innocent and the guilty, the sympathetic as well as the unsympathetic defendant. These rights are defended so that all of us can have confidence in the fairness of the rule of law.

*What if I can't find or afford a lawyer?*

[The SBM Legal Resource and Referral Center](#) has resources to help. If you cannot afford to hire an attorney, the [Guide to Legal Help](#) is a new tool developed by MichiganLegalHelp.org that can assist you in determining if you qualify for legal aid or other resources.

### **Michigan Milestones in Defense of the Rule of Law**

Many important legal milestones in Michigan reflect upon the rule of law. Here are links to four fascinating stories of our common legal heritage:

- [https://www.michbar.org/programs/milestone/milestones\\_protectingtheimpaired](https://www.michbar.org/programs/milestone/milestones_protectingtheimpaired)
- [https://www.michbar.org/programs/milestone/milestones\\_theuninviteddear](https://www.michbar.org/programs/milestone/milestones_theuninviteddear)
- [https://www.michbar.org/programs/milestone/milestones\\_sojournertruth](https://www.michbar.org/programs/milestone/milestones_sojournertruth)
- [https://www.michbar.org/programs/milestone/milestones\\_ossiansweettrial](https://www.michbar.org/programs/milestone/milestones_ossiansweettrial)

### **The State Bar of Michigan and the Rule of Law**

The State Bar of Michigan is a “public body corporate” and consists of all persons licensed to practice law in Michigan. MCL 600.901. The regulation of the practice of law, the maintenance of high standards in the legal profession, and the discharge of the profession's duty to protect and inform the public are fundamental purposes of the Bar. The Bar provides

resources for the public and attorneys at [www.michbar.org](http://www.michbar.org), including self-help and education resources, consumer tips and alerts, and guidance to help navigate the legal system. The Bar works to strengthen the rule of law in numerous ways in order to preserve and enhance its core value to all citizens of our State.

#### Resources:

- Michigan Supreme Court Learning Center, which includes an exhibit about the rule of law: <https://courts.michigan.gov/education/learning-center/pages/default.aspx>
- Relevant articles from the Michigan Bar Journal:
  - <http://www.michbar.org/file/barjournal/article/documents/pdf4article3755.pdf>
  - <https://www.michbar.org/news/newsdetail/nid/5748/The-Good-Lawyer-A-Letter-to-My-Son>
  - <https://www.michbar.org/file/barjournal/article/documents/pdf4article704.pdf>
- U.S. Courts: <https://www.uscourts.gov/educational-resources/educational-activities/rule-law>
- American Bar Association: [https://www.americanbar.org/advocacy/rule\\_of\\_law/what-is-the-rule-of-law/](https://www.americanbar.org/advocacy/rule_of_law/what-is-the-rule-of-law/) See also <https://www.americanbar.org/groups/litigation/initiatives/committee-on-american-judicial-system/>
- Judges discuss the importance of the rule of law: <https://www.uscourts.gov/news/2019/08/08/judges-explain-rule-law-why-it-matters#:~:text=Key%20to%20the%20rule%20of,against%20the%20safety%20of%20others.>
- Statement of Federal Bar Association: <https://www.fedbar.org/government-relations/fba-statements-letters-and-testimony/statement-on-the-rule-of-law-and-an-independent-judiciary/>