

The Mentor



“All experience is an arch to build upon” —Henry James

Winter 2020

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LETTER TO THE EDITOR OF *THE MENTOR*

One Lawyer's Opinion: Even our Supreme Court Can Error. The adoption of Rules Concerning State Bar 3(F)(1) OR be careful when you elect Emeritus membership.

I have a personal opinion. I believe our Supreme Court overstepped its jurisdictional bounds and I challenge it or its disciplinary arm to correct me if I'm wrong. Our Court adopted Rule 3(F)(1), of the Rules Concerning the State Bar of Michigan (RCSB) on June 1, 2004 via ADM File No 2001-16. Rule 3 created the Emeritus class of membership for active and inactive members who are at least 70 years of age or have been a member of the bar for at least 30 years. Presently there are approximately 6,400 Emeritus "members" of the SBM. They not licensed, cannot practice law or hold themselves out as active lawyers; they are exempt from both dues and disciplinary fees. If they decide to reenter the practice of law, they are required to re-take the bar examination and pass Charter and Fitness requirements. In effect, Emeritus members are retirees who want to some continuing connection to their profession, including the right to continue Section membership. Well, both the Attorney Grievance Commission and the Attorney Discipline Board have found another "continuing connection" by implementation and enforcement of Rule 3(F)(1) which on its face, bestows continuing AGC/ADB disciplinary jurisdiction over unlicensed Emeritus members!

As a former federal prosecutor, I understand the concept of low hanging fruit. Recently I have had the charge of representing an Emeritus member who fully retired from the practice of law in 2010 with no previous or outstanding disciplinary history but elected Emeritus status because he wanted to continue to read the Bar Journal. Unfortunately in 2017 while suffering a major depressive disorder following prostate cancer surgery, he committed a criminal act (fully unrelated to the practice of law). The AGC/ADB seized the opportunity under Rule 3(F)(1) to discipline or depending on your political view, to prosecute and judge this unlicensed Emeritus retiree.

Coming back to the theme of this challenge and buyer beware tale, when examining the origins of Rule 3(F)(1), there is no discernible policy history in ADM File 2001-16 justifying the AGC / ADM jurisdiction over a lawyer who had or has no pending disciplinary issue outstanding when he or she elected Emeritus status. In fact, ADM file 2001-16 has no written justification of why sub-rule 3(F)(1) was adopted at all. And to the point and even more grievous is the fact that our Supreme Court (its 2004 version), had no legislative authorization to adopt a rule creating a class of members who were, by Rule 3's language, non-licensed and non-dues paying but subject, in retirement to continuing AGC/ADM disciplinary jurisdiction. Our court has jurisdiction over the SBM via the Revised Judicature Act, specifically, RJA 600.901 which states: The state bar of Michigan is a public body corporate, *the membership of which consists of all persons who are now and hereafter licensed to practice law in this state....* Further, under RJA 600.904, the legislature empowered the court "... to provide for the organization, government and membership of the state bar of Michigan and to adopt rules and regulations concerning the conduct and activities of the state bar of Michigan and *its members, the schedule of membership dues* therein, the discipline, suspension, and disbarment of *its members* for misconduct...." Simply stated, by legislative edict, state bar "*members*" are limited to those licensed or hereinafter licensed to practice law in this state. Our court had and has no authority to create a class of unlicensed former lawyers who remain subject to AGC/ADB disciplinary jurisdiction. If you are interested in a good case analysis of definitions of licensed and lawyer, consider reading Judge Kathleen Jansen's opinion in *Morris & Dougherty v Lockwood*, 259 Mich. App. 38 (2003).

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My message to our Emeritus brothers and sisters – buyer beware! My respectful message to our current court – in light of your legislative mandates and limitations, please revisit RCSB 3(F)(1). Isn't the logical policy solution addressing retiree criminal conduct to simply cancel an Emeritus member's status? Doesn't the AGC/ADB have more important work to address,

especially given that the licensed lawyers of the SBM fully underwrite the expense of our disciplinary system?

Michael Hayes Dettmer

Chair Elect, Senior Lawyers Section
59th President, SBM

A Message from the Senior Lawyers Section Chair



Charles Fleck,
Senior Lawyers Section Chair

The news is good: the Master Lawyers Section lives on as the Senior Lawyers Section.

After our annual meeting held in September at the Lansing Center, a full council and executive committee were elected with additional committee members appointed.

The current issues before the council deal with a final revision of our bylaws and a possible name change back to Master Lawyers.

New business of the council includes expanding our support for the Michigan Indian Legal Services Pro-

gram and involvement with the Interim Administrative Program being advanced by the State Bar. We also are looking for legal and non-legal volunteer services for our members.

Collaboration is being sought for partnerships with Young Lawyers and the Elder Law sections to cohost some seminars and presentations for the Bar.

The annual meeting is being planned for September, and fundraising is being sought since this section no longer receives State Bar support but is wholly funded by the section.

If you need any further information before my next report to the section, you can contact me by email at caf208@aol.com or phone me at (517) 927-8052.



Fade Gradually! Consider Joining the Senior Lawyers Section

By Mike Dettmer, Senior Lawyers Section Council Member

Given the Senior (Master) Lawyers Section has “downsized” from 15,000 members to 300+, it’s really important that we (all of us) take on the responsibility of growing our new section and attempt to be relevant to our SBM membership. As a council member and as the council as a whole, we would like your input on programs and missions. Here are a few that need your input.

1. Growing the section. We still control the Mentor that Roberta Gubbins continues to produce and edit, and it will continue to be distributed to the greater senior Bar membership of approximately 15,000. Your input and comments and contributions are important. One idea is simply to use your networks to spread the word about senior membership.
2. Here is the council page and membership. If you want to participate now or in the years to come, let us know.
https://higherlogicdownload.s3.amazonaws.com/MICHBAR/fc913a9d-5592-47a1-8724-005c6c1ed1f5/UploadedImages/pdfs/section_council.pdf
3. And here are our bylaws: <https://higherlogicdownload.s3.amazonaws.com/MICHBAR/fc913a9d-5592-47a1-8724-005c6c1ed1f5/UploadedImages/pdfs/bylaws.pdf>
4. Possible programs we are or should be involved with:
 - A. Michigan Indian Legal Services—volunteer pro bono services. MILS recently received a grant to grow its pro bono programs, and we supported its grant application. We now serve on its advisory committee; more to come.
 - B. Succession Planning: The Bar is in the process of finalizing a draft of court rule changes to be submitted to the court in order to create a formal succession plan for every Bar member. Essentially, we will be asked to name a “receiver” or “administrator” on our bar dues form each

year. If we don’t or chose not to, the Bar, via the court, will assess a dollar amount (in addition to our disciplinary assessment) to appoint staff or an attorney to act in such capacity. If you want to familiarize yourself with the program, here is a link to the spring 2019 Mentor: <file:///F:/!%20SBM%20MLS%20and%20Misc/Mentor%20Spring19.pdf>

- C. In the Master Lawyers Section, we had a mentor relationship with the Young Lawyers Section. We should consider renewing, continuing and enhancing that relationship.
- D. If you are an emeritus member of the SBM, you should read State Bar Member Rule 3 and especially 3F(1) that allows the AGC and the ADB to have continuing disciplinary jurisdiction over you (even though you cannot practice law or pay any form of dues, other than section membership). It is bizarre and needs to be overturned. I think the SLS needs to advocate a rewrite and I have a companion *Mentor* article herein voicing my position. We would like to know yours.
- E. Many state bars have pro bono rules that allow senior/retired lawyers to practice without a paid malpractice insurance. We should start to study if we could advocate such a rule.

It would be beneficial if we could get a good and continuing discussion about the section and where we should be going.

What are your thoughts? How can each of us help the profession? You and I are too young to fade!



About the Author

Michael H. Dettmer has a mediation practice in Traverse City and sits on the Senior Lawyers Section council. He also served as the 59th president of the SBM.

Michigan Indian Legal Services Seeks Volunteers for *Pro Bono* Legal Services

By Vince Romano

Michigan Indian Legal Services (MILS) has launched a major initiative involving the expansion of its statewide pro bono legal services—and other non-legal services—which it provides to Michigan’s low-income Native communities. The Senior Lawyers Section has been supportive of this matter since the initiative’s beginning because we know, from surveys, that many of our members search for volunteer opportunities involving both legal and non-legal engagements.

With respect to MILS, the need is clear. Among Michigan’s Native communities—especially those located in rural areas of the state—the percentage of individuals living below the poverty level is generally much higher than Michigan’s overall poverty level. Poverty—and scarce legal resources—contribute to a significantly greater need for effective legal counsel and other community engagements.

You can be part of the solution by volunteering as a pro bono attorney, or in non-legal capacities, with MILS. There are opportunities to fit your schedule, your location, and your practice area or other interests.

You can sign up as a volunteer to:

- Directly represent MILS clients;
- Provide community legal education presentations to Native communities in Michigan;
- Provide mentoring or case consultation to MILS staff attorneys in your area of expertise.

You will find the application form at: <https://drive.google.com/file/d/1xa9CD958fdLhivxzR3jI6PVgAyTD95Ng/view>

For more information, contact Norika Kida Betti or Hank Fields at probono@mils3.org, or by calling 800-968-6877.

What Can We Learn from History and Literature?

By Lee Hornberger

Introduction

There are three books that I read at least once a year: *The Destruction of the Bismarck*,¹ *Hell in a Very Small Place: The Siege of Dien Bien Phu*,² and *Vietnam: A History*.³ *Bismarck* is about the British, with some background American support, sinking of the German battleship *Bismarck* during World War II. *Hell in a Very Small Place* is about the fall of *Đien Biên Phu* to the *Việt Minh* in 1954. *Vietnam* is primarily about the French and American wars in Vietnam. Each of these books teaches us some lessons about negotiating and dealing with other people.

The Destruction of the Bismarck

The Destruction of the Bismarck teaches us about the vital need to listen. Admiral Günther Lütjens, the German fleet admiral on the *Bismarck*, did not believe the radio messages he was receiving from German naval headquarters in Paris. Paris headquarters told him that the British had lost track of the *Bismarck*. He did not believe headquarters, even though the British had indeed lost track of the *Bismarck*. Headquarters told him to stop sending radio messages, albeit in code, of every movement the *Bismarck* made. Not appreciating that the British had actually lost contact with the *Bismarck* [but the British knew how to triangulate], he ignored

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the warnings from headquarters. He was not listening. This, among other things, led to his doom, the sinking of the *Bismarck*, the death of over 2,000 *Kriegsmarine* sailors, and the failure of his mission. In short, listening to what other people are trying to tell us can be extremely useful.



A photo of a remnant of a B-52 bomber in a Hanoi lake. This B-52 was shot down over Hanoi during the December 1972 bombing campaign. The Vietnamese view the “defeat” of this bombing campaign as America’s “Điên Biên Phủ.”

Hell in a Very Small Place: The Siege of Dien Bien Phu

Hell in a Very Small Place teaches us to respect the other side and, especially at negotiation sessions, to treat the other side with courtesy. The French, exercising their implicit bias, underestimated the Việt Minh. Because of this, the French failed to develop realistic options and strategies. The French parachuted their forces into a valley floor that was surrounded by mountains which were eventually occupied by the Việt Minh. The French subjected their artillery crews at Điện Biên Phủ to firing from open artillery pits without providing the crews with flak jackets. The French had their infantry and airborne troops fighting from trenches without providing them with trench periscopes. The U.S. secretary of state, John Foster Dulles, failed to exercise common courtesy when he refused to shake the hand of the premier of the People’s Republic of China, Zhou Enlai, during the 1954 Geneva negotiations. This was rectified almost

20 years later when President Richard M. Nixon shook Zhou Enlai’s hand in 1972.



A photo of the Vietnamese monument to Senator John McCain near where he was shot down and rescued by the Vietnamese in a Hanoi lake.

Vietnam: A History

In *Vietnam: A History*, the Americans, like the French before them, following their implicit bias, underestimated the other side, and did not develop realistic options and strategies. The Americans did not understand that bombing the North Vietnamese would unite them, rather than demoralize them. The Americans did not appreciate the North Vietnamese viewpoint that the war might last “five, ten, or twenty years.” The American “war of attrition, calculated to grind down the North Vietnamese . . . , instead wore out [its] own forces and . . . gradually exhausted the patience of the American public.”⁴ After more than a decade of war, the Americans discovered their Best Alternative to a Negotiated Agreement was simply to come home.

Conclusion

History and literature teach us that there is virtue to listening to and understanding the other side. We are not, individually, the font of all knowledge. Today’s opponent might be tomorrow’s ally. There is something to be said for careful planning and treating everybody with dignity and respect.

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About the Author

Lee Hornberger was chair of the State Bar's ADR Section, editor of *The Michigan Dispute Resolution Journal*, a member of the State Bar's Representative Assembly, president of the Grand

Traverse-Leelanau-Antrim Bar Association, and chair of the Traverse City Human Rights Commission. He is a member of the Professional Resolution Experts of Michigan and a diplomate member of The National Academy of Distinguished Neutrals. He has received the ADR Section's George N. Bashara, Jr. Award.

He is in *The Best Lawyers of America 2018 and 2019* for arbitration, and 2020 for arbitration and mediation. He is on the 2016, 2017, 2018, and 2019 Michigan Super Lawyers lists for ADR. He received a First Tier ranking in Northern Michigan for Arbitration by U.S. News—Best Lawyers® Best Law Firms in 2019 and 2020.

While serving with the U.S. Army in Vietnam, he was awarded the Bronze Star and Army Commendation medals. The unit he was in was awarded the Meritorious Unit Commendation and the Republic of Vietnam Gallantry Cross Unit Citation with Palm.

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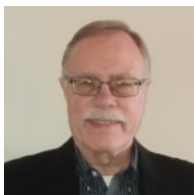
Endnotes

- 1 Paul J. Bercuson and Holger H. Herwig, *The Destruction of the Bismarck* (Overlook Press, 2001).
- 2 Bernard B. Fall, *Hell in a Very Small Place: The Siege of Dien Bien Phu* (Da Capo Press, 1966).
- 3 Stanley Karnow, *Vietnam: A History* (Penguin Books, 1997).
- 4 *Id.* at 478.

Meet Your Featured Senior Lawyers Section Council Members

Charles A. Fleck, Chair

Charles Fleck is chair of the Senior Lawyers Section and past chair of the Law Practice Management and Legal Administrators Section of the State Bar of Michigan. Mr. Fleck started Charles Fleck Attorney at Law in 1983 after graduating from Thomas M. Cooley Law School. He has also owned and operated Fleck Detective Agency since 1992. Mr. Fleck served as a purchasing agent and vice president of purchasing for 12 years before and during law school and has a degree in business administration from the University of Toledo.



Charles A. Fleck

I am a 1976 graduate of the Detroit College of Law. I was among the group of students that reestablished the *Law Review*, and I served one term as its editor in chief. Upon graduation, I spent a few years with a downtown corporate firm, then went on my own as a small business attorney.



Vincent A. Romano

The year after I graduated from DCL, the US Supreme Court, in *Bates v State Bar of Arizona*, upheld the right of lawyers to advertise. For many years before law school, I had worked in marketing positions with both private and public entities. After about 10 years of legal practice, post *Bates*, my marketing experience told me that lawyers could do better in their marketing endeavors.

Vincent A. Romano, Vice Chair

I am the vice chair of the Senior Lawyers Section (SLS). Formerly, I was an officer of the Master Lawyers Section (MLS). My MLS leadership position, along with those of the other former MLS officers, carried over to the new SLS.

I set out to make that happen, and did so, by forming Attorney Services Marketing, a full-service marketing company specializing in the marketing needs of the legal profession. My clients included firms of all sizes as

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well as sole practitioners. I operated Attorney Services Marketing for over 35 years, retiring in 2014.

My pro bono experience, which continues, includes helping to create and maintain affordable housing for low-income senior citizens in Detroit. I've served for over 10 years as the president, in a voluntary capacity, of the corporation that owns that housing. We intend to build more. I've also handled, pro bono, many expungement hearings on behalf of low-income offenders.

I have served the State Bar in many voluntary leadership roles including numerous ad hoc committees as well as a task force or two. I've also served several terms on the Representative Assembly. I was the longtime treasurer, and twice served as chair, of the Law Practice Management & Legal Administrators Section. I have been an adjunct professor at Cooley Law School teaching Law Office Management. I am also a director of the Lakeshore Bar Association and a fellow of the Michigan State Bar Foundation.

I look forward to building this section into a truly useful resource for Michigan's senior lawyers. If you have any suggestions as to how we can best accomplish that, please contact me. I would enjoy talking with you.

You can reach me at varomano@comcast.net or 313-333-2129.

Paula Cole, Secretary

It's hard to believe that in 2020, it will be 40 years since I graduated from Wayne State Law School. I became a member of the Senior Lawyers Section over three years ago at the request of my dear friend Cynthia Johnson who was the chair of the section which was then known as Master Lawyers.

Having recently retired as a personal injury defense attorney from the city of Detroit, I was glad to be part of this energetic section of interesting and committed lawyers working on issues of concern for lawyers who have practiced over 20 years and are at least 50 years of age. I have really enjoyed meeting lawyers with practices from all over the state of Michigan. There is so much knowledge and energy in this group. As a result, I have made some great connections.



Paula Cole

I am currently on a committee where we are working on developing volunteer activities for retired lawyers who are willing to commit their time and energy to assist those less fortunate in both legal and non-legal activities such as literacy. Currently, I chair the fundraising committee of this section. I look forward to any ideas that members of the section might want to share with me to help raise funds since we are solely supported by State Bar dues.

Presently, I am part of the Detroit Board of Education's SOAR program where volunteers go into elementary schools and work with second- and third-graders on reading and vocabulary. I also volunteer at the Grosse Pointe Animal Adoption Society (GPAAS). There are so many opportunities for retired attorneys to give back if they have the time and energy.

I have a cottage in historic Idlewild, Michigan which is called "the Black Eden." It's a great spot for respite and meeting old and new friends. There is an annual jazz concert and many recreational activities. Warren Evans and several judges have cottages there.

NEWSLETTER EDITOR

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