

The Mentor

THE NEWSLETTER OF THE STATE BAR OF MICHIGAN'S
MASTER LAWYERS SECTION



"The voice of trust through experience."

Spring 2019

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Message from the Chair

Greetings and happy spring, section members. That is the good and welcome news.

The balance of my message as chair relates to the direction that the MLS may take at the end of this bar year, i.e., September 30, 2019. The State Bar of Michigan anticipates dissolving the section as a formal state bar section serving the current master lawyers demographic. This anticipated action comes out of some major changes being implemented by the SBM via its Strategic Plan of 2017.



Kathleen Williams Newell, Chair

Another major change driven by the Strategic Plan is the reduction of activities and events surrounding the current NEXT Conference/Annual Meeting to core elements of swearing in officers, meetings of the Representative Assembly and Board of Commissioners, and presentation of annual awards. All section leadership was notified of these major changes to the SBM NEXT Conference/Annual Meeting program by President Jennifer Grieco on February 7, 2019.

Once the current MLS Council learned of the proposed dissolution of the section, as chair I appointed an ad hoc committee to determine the section's options. The committee met and made its report to the council at our March meeting in Lansing. The committee recommended that there be an alternate option to dissolution. Please stay tuned for developments on this issue. The council will keep members informed via the *Mentor* publication or e-blasts in the near future.

—Kathleen Williams Newell, Chair

2018-2019

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News from the Editor

Spring has arrived. It says so on the calendar. And the robins and red-winged blackbirds are returning, which makes the change of season official. There is also a change in the Master Lawyers Section. Without your help, it will cease to exist. The article by Charles Fleck gives the facts and tells you how you can help.

There is an article about the trailblazing women who occupied state Supreme Courts' chief justice positions by Otto Stockmeyer, a flash fiction story by Judith Ralston Ellison titled "Gotch'a Coming and Going" and "The Importance of Mentoring" by Julie Fershtman.

Mike Dettmer brings us up to date on a proposed program to address the serious problem of the four D's: Death, Disability, Discipline, or Disappearance of a lawyer leaving clients without representation. We hope you enjoy this issue and please consider sending your name to Vince Romano as one who wants the section to continue.

—*Roberta*



Roberta M. Gubbins, Editor



The Master Lawyers Section Needs You

By Charles Fleck



Charles Fleck

The State Bar Board of Commissioners (BOC) has begun the implementation of the Strategic Plan, which is an outgrowth of the work of the 21st Century Task Force. As part of that process, the BOC decided to discontinue the Master Lawyers

Section and its State Bar subsidy. Because the Master Lawyers Section Council believes that there is need for a section equipped to address the needs of and provide appropriate programming for the senior members of the Bar, an ad hoc committee to address the issue was created by Chair Kathleen Newell.

The committee met on March 6, 2019. The members developed the following statement of need for a Master Lawyers Section. The Master Lawyers Section intends to promote its members' interests by:

- Planning and carrying out programs, publications and activities of interest to its members;
- Coordinating programs with local, affiliate and national bar associations;
- Protecting the public by providing resources on the ethical and practical issues related to

transitioning from the practice of law including succession planning and the education and training of interim administrators;

- Serving as a resource for attorneys as they plan their retirement;
- Acting as mentors for the younger leadership of the SBM;
- Expanding volunteer opportunities for its members to contribute to their community and its public interest; and
- Continue publication of the Mentor

The committee proposed that the new section adopt the bylaws recently re-drafted with the addition of a clause providing for \$25 membership dues. In order for the new Master Lawyers Section to appear as an option for membership in the fall dues notice, we need 50 active members of the SBM who have signed statements that they will apply for membership in the new section.

Please support this valuable section of the Bar. Send your Statement of Interest in joining the Master Lawyers Section to Vince Romano at varomano@comcast.net. Include your name and P#.



Trailblazing Women Chief Justices

By Otto Stockmeyer

This article is prompted by the selection of Bridget Mary McCormack as Michigan's newest chief justice.

The role of women in the law. The role of women in the practice of law has changed dramatically since the 1872 U.S. Supreme Court case of *Bradwell v. Illinois*. There the high court upheld a state statute barring women from the practice of law. The concurring opinion stated that it was God's intention that women should stay at home to bear children and care for their husbands.

Today half of all law students are women. And 38 percent of the licensed attorneys in the United States are women, over 400,000 strong.

The disparity between the sexes in the practice of law has been diminishing for many years. Yet it was not until 1965 that a woman first became chief justice of a state Supreme Court, the pinnacle of the judicial branch of state government. Since that time, many more women have followed in her steps—at least 58 as of 2017. Among them, a few were of particular significance as trailblazers.



Hon. L. Lockwood

First of the firsts. The year 1965 was a pioneering one for women in the judiciary when, by a vote of her fellow justices, Lorna E. Lockwood became chief justice of the Supreme Court of Arizona and thus the nation's first woman chief justice. She was elected to the high court in 1960 and served two terms as chief justice, 1965-66 and 1971. She retired from the court in 1975.

Chief Justice Lockwood was a great niece of Abraham Lincoln and the daughter of Alfred C. Lockwood, who served on the Arizona Supreme Court from 1925 to 1942. The only woman in her law school class at the University of Arizona, she went on to hold the positions of state legislator, assistant attorney general, and Superior Court judge. During her long and distinguished career she was thus able to create, enforce, and interpret the law.



Hon. S. Sharp

First to be popularly elected. Ten years after Lockwood's selection, in the November 1974 election Suzie Marshall Sharp of North Carolina became the nation's first popularly elected female state chief justice. She had been her state's first female judge, and an associate justice since 1962. She served as chief justice until 1979.



Hon. R. Bird

First to be appointed. Not far behind Sharp's election, in 1977 Rose Elizabeth Bird was appointed by Governor Jerry Brown of California to be the nation's youngest chief justice at age 40. In her state, she was the first woman cabinet officer. Unfortunately, in 1986 she became the first chief justice to lose a retention election (due largely to her unpopular position against California's death penalty law).



Hon. E. Peters

First to come from academia. Ellen Ash Peters was appointed chief justice of the Connecticut Supreme Court in 1984 by Governor William A. O'Neill. The first female chief justice to come from academia, she was also the first tenured female professor at Yale Law School prior to her appointment to the high court in 1978.



Hon. J. Rogers

First African American. In 1988 Judith W. Rogers became the first African-American woman to head the equivalent of a state court of last resort. She was named by a judicial nominating commission to be chief judge of the District of Columbia Court of Appeals, the District's highest court. She had served on the court by appointment of President Ronald Reagan since 1983.

The first African-American woman to head a state Supreme Court was Chief Justice Leah Ward Sears of Georgia, 17 years later (2005-2009).

Longest serving. At 15 years (1993-2008), Judith S. Kaye holds the record for the longest service. As chief judge of the New York Court of Appeals, the largest state's highest court, she presided over a court system with 16,000 employees.

As of January 2019, a woman has headed the judiciary of 40 states at one time or another since Chief Justice Lockwood's selection more than 50 years ago. Several states' court systems have been led by multiple women. No state can top Michigan in that regard, with six female chief justices: Mary S. Coleman (1979-1982), Dorothy Comstock Riley (1987-1991), Elizabeth A. Weaver (1999-2000), Maura D. Corrigan (2001-2004), Marilyn J. Kelly (2009-2010), and now Bridget Mary McCormack.

Michigan may not have been the first to select a woman chief justice, but we sure have made up for it in numbers.

About the Author



Otto Stockmeyer

Otto Stockmeyer is an emeritus professor at Western Michigan University-Cooley Law School. He can be contacted at stockmen@cooley.edu. This article is derived from his publication "Hail to the Chiefs: A Tribute to America's Women Chief Justices" in Women Lawyers Journal.

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Michigan Supreme Court Highlights Women's History Month

The Michigan Supreme Court recently highlighted the beginning of Women's History Month by noting that 38 percent of judges statewide are women. This compares to 34 percent in 2017 after the 2016 election and only 5 percent (26 judges) in 1979. Including appointments and the 2018 election, the number of female judges grew by 12.5 percent (200 to 225 judges) from 2017 to 2019 – the biggest increase on record.

"Women in leadership positions are working together to solve problems," said Chief Justice Bridget M. McCormack. "In the judiciary, our perspectives, life experiences, and skillsets help us focus on our core principles of independence, accessibility, engagement, and efficiency."

Michigan is the only state in the nation with women serving in the top four leadership positions: Governor Gretchen Whitmer; Secretary of State Jocelyn Benson; Attorney General Dana Nessel; and Chief Justice McCormack. Justice Elizabeth T. Clement and Justice Megan K. Cavanagh are also currently serving on the Court. Chief Justice McCormack is the 6th woman to serve as the Chief Justice.

In 2018, women judges in Michigan made history as all the leaders of the major judicial groups in Michigan

were led by women for the first time (Michigan Judges Association, Michigan District Judges Association, Michigan Probate Judges Association, and the Judicial Section Council of the State Bar of Michigan). Also in 2018, women outnumbered men in law school for the third year in a row nationally, according to the American Bar Association.

Looking at women in other fields:

- 22 percent of C-Suite executives are women ([McKinsey & Company, Women in the Workplace 2018](#))
- 23.7 percent of the U.S. Congress are women ([Center for American Women & Politics at Rutgers University, CAWP](#))
- 35.8 percent of the Michigan Legislature are women (compared to 28.7 percent nationwide, [CAWP](#))

To learn about the pioneering women on the Michigan Supreme Court, visit the [Learning Center](#) in the Michigan Hall of Justice and experience the "First Women on the Court" interactive exhibit. The new display is aimed at elementary-aged students to encourage girls at a young age to learn more about important women that have been historic leaders in the legal profession.

FLASH FICTION

Gotch'a Coming and Going

By Judith Ralston Ellison

You know how they do business, those selling risk shields; call it, *in-sure-ants*. Damage occurs: they put it right like it never happened. Yeah sure! Even when you sign all those papers and pay all the money, they fight paying or fixing. Force proof-hoops for you to jump through.

In-sure-ants have all the money and keep the amount a secret. Don't believe me? Try to find out, ask around, research the library. No mystery, why in-sure-ants office every street corner.

I'm high: mumbling and thinking, paying in-sure-ants premiums with drops of money from an empty pocket.

The little guy, you and me, get on their bus by the law of liability. We ride to the disappointing destination of in-sure-ants paying little or never and blaming you. Scares the pajamas right off you. That's what you were wearing when it happened, right?

In the car on the road, she, no pajamas but a tank top; not hers, donned in a hurry to go quick to the store. A crash. Dent, glass cracked, phone home.

"Are you alright? Shit what happened? Be right there. Call cops. No wait 'til I get there." Thinking, you can't keep doing this . . . being scared to live. "Did anyone see you in the dark?"

Drive there but careful in buzzed drink state. Don't need the other dented, smashed. Collision deductible is high. Don't want to spend it this way. Got other things to spend it on like: kids shoes. In head lights looks bad: knocked sign over.

"How fast?"

Jeez we really didn't need this got so many other things." Lost my job, on unemployment. Small savings in 401k paying for food.

"No, I'm not blaming you" but then you turn away and twist mouth in secret.

Asking: "Can you drive it home?" Maybe we can fix it without calling the cops." Looking, thinking.

What about the sign: got same paint on it. Town is small. Known who drives what color. Better phone cops or be blamed for leaving scene of accident.

"Let me do the talking. No, not going to say was driving."

"Yeah, there was an accident. Hit a road sign out here at the crossroads . . ." of blame and despair due to not wanting to deal with expensive unexpected events.

"We will wait. No hurry. No bodily injury." But it hurts.

"Can you pass the drink test? Breathe deep, try to get the smell gone, walk around, look sober. Why wearing my old big tank top? Everything you got showing."

Damn . . . doesn't look good anyway it's sliced. She has the only paying job, need the money.

"God, what if you don't pass the sober test? Keep breathing, walking, take a mint."

Headlights from town, silent flash. Pulls over.

"Well the car is not too bad, can live with it but the sign . . . thought better call . . . not want any trouble by leaving scene of accident. Jerry off duty? Live couple miles away needed milk from the store for kids' cereal in morning. Yeah, they sell it at the liquor store in the back . . . nearest to us. Anyway big store closed. Here's her license insurance registration. Why want mine? Not driving: came after she called. OK . . . not argue. New co . . . officer right?"

Think: stand in headlights of his car, stay in the official video. Where is she? God, all will see her hanging out the tank top. "Cover yourself; OK please." What will our kids say; her judging parents blame you anyway.

Both have to walk toe to heel, touch finger to nose, take breath test.

"Blow, blow, blow . . . you're not trying hard enough; better cooperate or else . . . take you in."

Pass, pass. Both just below legal limit. "Better leave the cars here; will drive you home."

“Thanks officer.”

Moves our car straight on the side of road behind the other one. Locks. Hands both sets keys over.

“Call insurance in the morning. Police report goes automatically to CLUE. They will know and your premium may go up even if no repairs are done. You will have to pay for the sign damage. Sorry, Jerry would have done same thing.”

Quietly shut the rear door of police cruiser after she is out. Sober now. Don't want to talk. Wrap your arms around her for warmth and forgiveness. Should have covered her nakedness earlier.

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About the Author



Judith Ralston
Ellison

Judith Ralston Ellison retired from state employment as Administrative Law Judge in 2009. She is now writing and submitting short stories. Along with her volunteer work for the Detroit Institute of Arts and Detroit Film Theatre, Judith had won two awards from Rochester Writers for Flash Fiction. In 2015, and Third Wednesday published *The Family Star* in the Spring 2015 issue.

The Importance Of Mentoring

By Julie Fershtman

Mentors should have a genuine interest in helping others advance in their careers. Mentors should encourage others to perform at their highest levels. As a lawyer, I sincerely believe we have an obligation to help the next generation in our profession succeed.

Mentoring relationships are tremendously powerful. Of necessity, mentoring involves deliberative decision-making, planning for a successful future, and positive collaboration with others. No matter what decisions the mentoring relationship generates, these processes, on their own, are always a plus in everyday business and in life.

What does it take to be a good mentor?

People might assume that they're unqualified to be mentors as they bring nothing to the table. That's rarely the case, in my opinion. Effective mentors don't have all the answers but share *options* for action and decision-making, recommend great resources, discuss how their own experiences apply to the matter at hand, and sometimes offer names of others who have been through

similar situations. Good mentors never preach. They're not judgmental. They keep confidences secure. They help mentees find their own voices. They're trustworthy. Above all, they listen—and they listen *carefully*.

In my 32 years as a lawyer, I've grappled with several complicated issues such as simplifying and articulating complex case law for judges and juries, working with obstructive opposing counsel, helping clients find the best solutions for their matter, and deciding which professional organizations fit best on a tight schedule. If I can help mentees make better-informed choices for themselves based on good and bad decisions I've made over the years—or that I've observed others make—then I've succeeded as a mentor.

How does mentoring benefit the profession in general?

Ultimately, the greatest beneficiary of mentoring is the *public* we serve. From the standpoint of the legal profession, mentors help those who are younger do their

jobs better and handle the fine points of law practice that law schools usually don't teach. When we take the time to listen and to help mentees who are less experienced in the profession, they are better equipped to avoid mistakes we've made.

What topics have you covered with your mentees?

Some of the topics are as easy as reviewing a resume. Others are more complicated such as dealing effectively with challenging coworkers, how to bring in business, or how to make partner in a firm. Before a job change, mentees sometimes ask for little-known insights on firms in town such as their culture, turnover rates, reputations for having a supportive environment, diversity, and emphasis on community service. Given my background, mentees sometimes want advice on bar association involvement, and I can easily draw upon decades of state, local, and national bar association service to offer plenty of ideas. Over the years, I've even taken the initiative of nominating my mentees for awards and recognition.

Have you benefited from your own mentors?

Mentors have guided me throughout my career as a lawyer. They believed in me when I doubted myself. Never would I have been elected president of the State Bar of Michigan were it not for mentors along the way. They encouraged me to lead by example, seek consensus when possible, be creative, and speak up. All of this helped me become a well-rounded lawyer, leader, and business person. If I can give mentees a needed confidence boost and help them identify their strengths, just as my own mentors did for me, I will have paid it forward.

What would you consider to be the biggest challenge in mentoring?

Time. In a perfect world, I'd set aside time every month to take each mentee to lunch. But that's not possible. More often, I rely on mentees to step up when questions and matters arise. I hope mentees find it empowering and comforting to know that their mentors are just a phone call, e-mail, or text away.

You're a seasoned lawyer. Do your mentees make a difference for you?

Definitely. Mentoring is not a one-sided activity. Mentees keep me focused on the future and have helped keep me abreast of new technology. I credit my active Twitter presence to a mentee's suggestion to try it. Twitter has improved how I serve my clients by giving access to up-to-the minute developments in law and business.

Mentoring instills a positive outlook. When mentees ask questions, I'm reminded of why I entered my profession years ago and what it was like to be their age when the legal profession was much different, less diverse, and far less dependent on technology. When mentees and I discuss ideas, often on recurring issues, I'm encouraged that the profession has advanced in so many ways. I'm grateful for the collaboration and exchange that mentoring provides. I'm proud that people who are new to business and professional environments value mentoring to help them make deliberative, reasoned decisions involving their future. I'm likewise reminded to apply fresh thinking to my own challenges, just as my mentees often do. I'm enthusiastic about the future. My enthusiasm, I hope, is infectious.

About the Author



Julie I. Fershtman

Julie I. Fershtman, a shareholder with Foster Swift Collins & Smith, PC in its Southfield office, focuses her practice on commercial litigation, insurance law, and equine law. She is listed in The Best Lawyers in America for commercial litigation and insurance law. She is a past president of the State Bar of Michigan.



Update on Succession Planning and the Proposed Interim Administrator Program (IAP)

By Michael H. Dettmer

Every year a significant number of Michigan attorneys in small or solo firms become disabled, die, disappear, or are disciplined without a plan in place to protect existing clients' interests or to wind down the practice. When this happens, there is little guidance for clients, the attorney's family members, or others who are left to handle the aftermath.

Various Bar-based groups including the SBM's Receivership Work Group, Professional Standards, and the Master Lawyers Section have, over the last number of years, been studying and developing a proposed program to address the serious problem of the four D's: Death, Disability, Discipline, or Disappearance when that lawyer had a continuing client-based practice.

In the spring of 2017, I wrote an article for the *Mentor* titled "Spoiler Alert--We're Dying." Essentially, it was an update on where the Bar was on the issue of succession planning. Its then status was that the Bar had, for the moment, accepted a voluntary approach to the issue. It consisted of a guideline and planning document titled "Planning Ahead," which can be found at the Practice Management Resource Center pages of the SBM website: <http://www.michbar.org/pmrc/planning-ahead>. Additionally, the Bar's Ethics Committee with the Master Lawyers Section's input, adopted ethical guidelines to accompany the succession process and planning. That opinion is RI-374 and can be found at https://www.michbar.org/opinions/ethics/numbered_opinions/RI-374. The Bar urged its members to be aware of this succession issue and take steps to address it.

The need for a succession plan is not debatable. Private practitioners make up a large percentage of lawyers in our state and the lawyer population is aging. Currently there are over 13,000 lawyers in firms with fewer than 10 lawyers; of those, over 8,700 are over 50 years old. In fact, 55 percent of attorneys licensed in Michigan are over 50 and only 5 percent are under 30 (State Bar of Michigan 2018-2019 Statewide and County Demographics). Of course age is not the only reason to

require a succession plan. Lawyers of all ages pass away unexpectedly, become temporarily disabled due to accidents, or face discipline.

We encourage all of our clients, regardless of age or financial status, to create estate plans when they have children, but many of us do not take the same steps to protect our clients. The staggering number of practitioners without a backup in place should give all of us pause. The work of protecting clients and the public when an active lawyer dies or is seriously disabled under the present voluntary framework fails to properly address this issue and does not adequately meet our obligation of protecting our clients and the public.

In the event of a sudden cessation of practice, to protect clients and the interests of the affected attorney, a number of things should happen, including notifying clients, staying pending litigation, transferring pending cases to a new attorney, managing client files, returning unearned fees, winding down or continuing the practice, paying the practice's bills, and collecting outstanding fees. A "volunteer" approach simply does not address the myriad of the profession's responsibilities owed to the client and the public, nor does it protect the lawyer and the lawyer's family.

While a form of receivership appointment does presently exist within the Attorney Grievance Commission jurisdiction under MCR 9.119(G), it is apparent that the AGC does not have the necessary staff nor the funds to find and pay appointed lawyer receivers willing to wind down an active practice. Further, the Rule does not provide for funding or the ability to manage the firm or access to the operating accounts in order to properly manage the office and staff through closure. Under the present Rule, often the receiver's role is limited to returning files to clients. This leaves non-attorney family or staff members with the responsibility of winding down the law practice, with the myriad of ethical problems that entails.

When a lawyer fails to appear in court because he or she is hospitalized, what should you do? In most cases,

other lawyers and judges do not take any steps to notify the AGC or Bar. What if the lawyer was arrested and is in jail? Died in an auto accident? You receive a call from someone looking for a deceased lawyers files, because they include original estate plan documents? Every lawyer and judge should know where to look for the answers to these questions.

To that end, during the last year, the Receivership Workgroup has been working on a recommendation that SBM implement an Interim Administrator Program (SBM IAP). In January, Professional Standards Assistant Division Director Alecia Ruswinckel presented this concept to the Board of Commissioners. The memorandum may be located on page 47 here: https://www.michbar.org/file/generalinfo/pdfs/1-18-19_BoC_agenda.pdf. In April, on behalf of the Receivership Workgroup, I will present the workgroup's proposed solution to the Representative Assembly. The RA proposal may be located here: https://www.michbar.org/file/generalinfo/pdfs/4-13-19consideration_interim.pdf.

Under this proposal, attorneys in private practice would be required to designate an attorney or law firm to act as interim administration or, for an annual fee, participate in a program where SBM would provide a

SBM IA in the event of the affected attorney's death, disability, discipline, or disappearance. The proposal is outlined more specifically in the RA proposals and Board memorandum referenced above. Stay tuned for the next update!

About the Author



Michael H.
Dettmer

Michael H. Dettmer, Workgroup member and on behalf of the Master Lawyers Section. Dettmer has a mediation practice in Traverse City and sits on the Master Lawyers Section Council. He also served as the 59th president of the SBM.

Much thanks to Alecia Runswinkel, Assistant Division Director, SBM for her kind help and input.

Workgroup members: AGC administrator Alan M. Gershel P29652, Rhonda Pozehl P38854, Erin Bednarski (AGC paralegal), Yuily Osipov P59486, David M. Findling P43256, former SBM President Michael H. Dettmer P12709, Judge Tomas Byerley P28937, and SBM staff counsel Alecia Ruswinckel P62825.

