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OF INTEREST

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Inside the Michigan Hall of Justice, view from the 6th floor rotunda toward the Capitol in downtown Lansing, Michigan. Photo by Sarah Lawrence Brown | State Bar of Michigan.

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FROM THE PRESIDENT

DANA WARNEZ

Welcoming all new attorneys

AND THE EVOLUTION OF OUR PROFESSION

A very dear friend and colleague of mine in Macomb County has for several years been the "Captain" of our local swearing-in ceremonies, and, among other things, he loves the Beatles. After the bailiff calls the courtroom to order, the Captain welcomes those gathered wearing his latest Fab Four specialty tie. I start to wonder if he's wearing the "Sgt. Pepper" one or maybe the "Revolver" one until my daydreaming expands into a full-blown "Ally McBeal" Broadway thought bubble where I'm up there with a baton conducting the crowd in singing a resounding chorus of "I Get By With A Little Help From My Friends." Until … POP! The daydream is over, and I'm back in the courtroom.

"I also encourage more experienced lawyers, like myself, to keep an open mind and share the innovation that may be coming along with our collective wisdom.

As we all know, what really happens at these swearing-in ceremonies is each motioning leader-type lawyer takes a turn to introduce the new lawyer being admitted to the community, and the presiding judge asks questions about each new lawyer's experiences, hopes, and dreams — like what employment has been procured and who's clerked for whom. Then, of course, the judge acknowledges family members in attendance and grants each and every motion to admit each new lawyer into practice. The new lawyer then can enjoy a brief celebration and hopefully a dinner with family and friends before reality sets in: Work as a lawyer begins the next day.

In larger firms, associates typically are tasked with doing lots of things, sometimes less-than-glamorous tasks like extensive research and writing, filing pleadings, and shadowing and supporting senior partners at trials and motion calls — all with the intention that this type of working model is how a newer lawyer hones her skills. Further, whether in a firm or in a solo/small firm setting, we all know it's essential for new attorneys to network and rain-make to develop new client relationships as well as become competent and effective in their chosen areas of expertise.

And everyone works, and works, and works, and works, and works some more. This top-down mode of training and mentoring has come to be the dominant way the profession thinks about how to succeed in the practice of law.

As it has been, so it shall always be. "Nothing's gonna change my world," right?

Enter COVID-19. It takes the lives of colleagues, friends, and loved ones. It places unprecedented stresses on working families with school-age children. We aren't able to freely accompany one another to in-person events. God forbid an elderly parent needs medical treatment and we are not able to personally visit them in care facilities. Even our own health is put on hold. Out of (not irrational) fear, we put off getting routine annual medical checkups. Meanwhile, our court system struggles to find a way to fulfill its duties to the public in delivering justice without putting the public it serves,

as well as the staff and professionals working within the system, at risk.

And so we all, judges and lawyers alike, begin the adventure of Zooming together. And day by day, change by change, it becomes clear that the new generation of legal professionals — who pre-COVID had to wait, stay in their lanes, and work their way up the ladder — might just be uniquely poised, right now, to move up to the front of the pack in shaping new ways to practice law using new practices that will improve our profession and society, so long as we do not abandon the bedrock ethics of our profession.

No matter how much and how fast things change, I am counting on all of us, old and new lawyers alike, to maintain our tradition of collegiality and professionalism. I hope and believe that our new lawyers will be as generous as the prior generation of lawyers has been in bringing the next wave into the practice.

I say this selfishly, because I fully acknowledge that as I age, I am likely to fall back into traditional top-down thinking. I will have to work harder to learn how to effectively use new technology or communication platforms or have the best software to protect my clients' privacy. I will need the energy and conviction of youthful people to inspire me to be true to the promises I made when I took the Lawyer's Oath 25 years ago. I also encourage more experienced lawyers, like myself, to keep an open mind and help inform and shape the innovation that may be coming with our collective wisdom.

The profound disruption that COVID-19 wreaked throughout the world has brought a profound reexamination of everything we do, including how we work and live our lives. Our Chief Justice, Bridget Mary McCormack, is being quoted everywhere for her observation that the pandemic may not be the disruption we wanted but could very well be the disruption we need to bring more access and transparency to our justice system. I think the same could be true about how we practice law. Our profession has long struggled with wellness and work-life balance, and that struggle was reaching epidemic proportions even before COVID-19. Let's make this a breakthrough moment in attorney wellness by focusing on the lessons the pandemic taught us about mental health and the practice of law.

I have no clue what internal music will be going on in the minds of future motioning lawyers as they attend swearing-in ceremonies and welcome the newest members of our profession, but whatever the beat or rhyme, I hope the lyrics in their minds are as affirming and optimistic as the sampling from the Captain at my Macomb swearing-in:

"Life is very short and there's no time for fussing and fighting, my friend."

"You know we'd all love to change the world."

"Don't carry the world upon your shoulders."

"It's going to be alright."

FROM THE EDITOR

CELEBRATING 100 YEARS BY MODERNIZING

BY MIKE EIDELBES

To our readers:

We knew we wanted to do something special to celebrate the 100th anniversary of the Michigan Bar Journal. Ultimately, we decided the best way to honor this historic milestone is by modernizing the Bar Journal in both its print and online forms.

We hope you like what you see.

Credit goes to brand designer Sarah Lawrence Brown for the new look of the Bar Journal that arrives in your mailboxes 11 times each year. Our goal was simple: To provide a clean, fresh presentation to readers. Online, we will still provide the PDF version of the magazine, but now also offer a more robust website with accessible versions of our articles that are easier to share across a variety of platforms.

The reason? The Michigan Bar Journal is the flagship publication of the State Bar of Michigan, and our primary goal is always to serve you better.

For those of you used to getting most of your information online, this will serve you better. For those of you who wish to share what you read each month on social media or through text messages, this will serve you better. And, if you occasionally search online for legal news and information, this will serve you better. You can access the online version of the Bar Journal at michbar.org/journal or follow the State Bar of Michigan on your favorite social media platform to get links to the articles.

That's a lot of changes, but one facet of the Bar Journal remains the same: It will continue to offer analysis of diverse areas of law and insights on important current legal news through feature articles and columns written by lawyers for lawyers.

A special thank you goes to the Michigan Bar Journal Committee, whose dedicated members volunteer their time and work tirelessly to plan themes for every edition, coordinate with authors and edit their submissions with an eye on the expectations of our audience, and provide valuable advice to me.

In this month's edition, we are tackling access to justice as a cornerstone topic worthy of being featured in the issue marking the Bar Journal's 100th year. You will find articles dissecting what has been done — and what can be done — to make strides in this fundamental issue of justice with contributions from Michigan's leading experts, including two state Supreme Court justices.

Our centennial celebration will continue over the next 11 issues with flashbacks dedicated to a specific decade to highlight our history and important legal milestones, along with occasional reflections from people with long-standing connections to the Bar Journal. It starts this month with a deep dive into why bar journals like ours exist in the first place.

Our commitment to better serving Michigan attorneys remains steadfast, and we will continue to make improvements to our design, delivery systems, and content platforms. Please let us know what you think. We would love to hear your opinion on the refreshed Bar Journal, ideas for content you would like to see, and other ways we can continue to make it better. All input is welcomed. Please feel free to contact me now or any time in the future at barjournal@michbar.org.

Thank you for reading.

Why we have a Bar Journal

BY GEORGE STRANDER

The Michigan State Bar Association (MSBA) began publishing the Michigan State Bar Journal 100 years ago in November 1921. Now known simply as the Michigan Bar Journal, it is one of the oldest such legal periodicals in the country.[1]

Since the Bar Journal was instituted as a tool to further the MSBA's objectives, we can explain its creation on at least two levels. First, we can illustrate the emergence of the MSBA, the body whose founding goals were still being sought when the Bar Journal was started. Second, we can describe the factors that specifically led the MSBA in 1921 to begin publishing the Bar Journal.

EMERGENCE OF THE MSBA

Starting in 1890 up until the 1935 when it transitioned to the integrated State Bar of Michigan,[2] the MSBA was a largely selective voluntary organization.[3] It was formed by a group of leading Michigan attorneys[4] to promote certain substantive ends — the honor of the profession, the administration of justice, wise uniform laws, the science of jurisprudence, a lawyer's code of ethics, and the welfare of the profession and the public — with standing committees including those focusing on law reform, judicial

administration, legal education, admission to the bar, and grievances.[5] Importantly, modern American bar associations — namely those initiated since 1870 — adopted similar goals,[6] and each used its journal indirectly to further those ends.[7] Hence, for the root cause of the MSBA's emergence we must examine what led to the formation of these bar associations with these goals.

New York City is credited with creation of the first modern bar in 1870, but did not start a journal until 1928.

When looking at the span of the American 19th century, several interrelated trends and factors suggest themselves as important in explaining the rise of bar associations: a constant strain of professionalism within the ranks of the law, "Jacksonian democracy," economic development and urbanization, the changing nature of attorney work, and the rise of secular scientific thought. It appears that interest amongst a certain portion of the bar to act to improve law existed for decades before 1870, and yet the opportunity for action, as well as the form of that action, had to wait for the development of these trends, especially in the aftermath of the Civil War.

LEGAL PROFESSIONALISM

Throughout this country's history there has always been a subset of attorneys at any given time who viewed their work as more than a means to make a living; they saw themselves as judges and counselors uniquely entrusted with the operation of the state-established system for deciding civil and criminal controversies.[8] This subset has consistently over time called for all to reflect the professional status of the bar, including thorough education, high admission standards, and adherence to ethical canons.

JACKSONIAN DEMOCRACY

Andrew Jackson's election as president in 1828 had far-reaching consequences. Rebelling against the built-in elitism of much of the politics and its institutions up to that time, Jackson pushed a populist agenda, elements of which endured long after he was dead.[9] He championed voting rights regardless of income (although still exclusively for white males) as well as a relaxation of societal barriers to the advancement of the poor and uneducated. He is also credited with creating the spoils system — that is, a winning candidate's rewarding of governmental offices and perquisites based merely on political support. And he opposed the market economy to the extent that it worked against his brand of egalitarianism.[10]

Before Jackson's election, most states had a variety of requirements for would-be attorneys to gain admittance to the bar.[11] To the horror of legal professionals, the reduction of standards for becoming an attorney swept through the country as part of Jackson's egalitarian revolution and lingered for decades.[12] What bar associations existed were driven out of existence or into moribundity.[13] The idea of an honorable profession was abandoned for one of an egalitarian pursuit.

The political popularity of Jacksonian democracy lay in its ability to appeal to an ethnically defined version of egalitarianism while the galvanizing slavery question was still up for national debate, a situation which made meaningful uniformity of laws impossible. The Civil War both destroyed the perfect storm that had allowed Jacksonianism to survive as long as it did and made uniform laws truly possible.[14]

ECONOMIC DEVELOPMENT AND URBANIZATION

Throughout the 19th century, the Industrial Revolution, along with immigration and advances in medicine, increased the country's population over fourteen-fold; by 1900 there were more than 76 million people living in the United States.[15] Urbanization, of course, also increased, with the country leaping from about 5% urban in 1800 to nearly 40% urban (in the northeast U.S., better than 50% urban) in 1900.[16]

Development, population growth, and urbanization brought a host of new social challenges as well as opportunities (including a greater ability to exchange ideas, albeit impersonally through anonymous corporate interactions.)[17] How justice was administered in quieter antebellum days did not fit post-war urban life.[18] And the cause of uniform laws, already bolstered by the national resolution brought with the end of the Civil War, was promoted further by the rapid increase in interstate commerce.[19]

THE PRACTICE OF LAW

Attorneys in the early 19th century were mainly general sole practitioners earning their keep in the courtroom.[20] Although some specialized law offices offered a kind of legal schooling and a few universities started law schools, the vast majority of lawyers were trained through apprenticeship.[21] As the economy transformed — especially after the Civil War — business burgeoned, wealth increased, and attorneys took on more narrowly defined tasks less focused on litigation, reflecting "a more matter-of-fact, cost-conscious approach to human relations."[22] Generalists were being replaced by "experts with specialized knowledge about the growing needs of business" (think Wall Street lawyers) and law firms of some significance started to emerge.[23]

The first issue of the Michigan Bar Journal, then called the Michigan State Bar Journal, published in November 1921

THE RISE OF SECULAR, SCIENTIFIC THOUGHT

The United States was a deeply religious (mainly Protestant Christian) nation for decades after its creation, and continues to this day to be more religious than most other western developed countries.[24] With the impact of Darwin's "Origin of Species" in 1859 and the Civil War, the subsumption of science under religion was questioned and a movement to secularly professionalize a number of fields started.[25] Specialized

knowledge was seen more and more as the proper, progressive way to deal with all sorts of challenges.[26] In legal philosophy, positivism — the theory that law is simply based on its status as a command from the state — gained in popularity to the detriment of divine natural law theory,[27] and the case method was introduced in legal education whereby actual appellate opinions were studied as opposed to treatises often based on a given writer's own "principles."[28]

These factors combined to make the modern bar association movement possible.[29] After the Civil War, professionally minded attorneys, chafing at the derogation of standards regarding attorneys and judges as well as rampant political corruption, both brought on by Jacksonian democracy, continued to look for ways to improve their profession.[30] With the proliferation of attorney roles, especially outside of the courtroom, professional connections became less personal; however, urbanization brought more attorneys closer together in work centers, thus more easily allowing for formal organization.[31] The time was ripe for the use of expertise to solve problems, even if those problems were to be solved by a recapturing of standards. In essence, leading attorneys wanting to make a difference — specifically, improving the law — needed only an opportunity to organize as a respected advisory body and through provision of expertise wield the power to make the changes that they sought.[32]

That opportunity came in the late 1860s in New York City. When robber barons Cornelius Vanderbilt, Jay Gould, and Daniel Drew fought in court over control of the Erie Railroad, the aftermath resulted in very public allegations of corruption, implicating the trial judge as well as William "Boss" Tweed, the leader of the city's powerful Tammany Hall political machine. Prominent observers called on the bar to associate in the face of such corruption, and in 1870 a select group of New York City attorneys formed the Association of the Bar of the City of New York (ABCNY), now recognized as the first of the modern-day bar associations.[33] It, like the MSBA 20 years later, focused on achieving higher standards for attorneys and the law.

The creation of the ABCNY was the catalyst necessary to start the modern bar association movement.[34] Immediately after the ABCNY was formed, several other cities and states started to form their own bar associations, all along the same law reform bases and almost all selective voluntary in nature.[35] In 1881, the Michigan Legislature enacted a bar association statute; by 1890, when the MSBA was formed under that statute, more than 15 states had instituted bar associations.[36]

As selective voluntary bar associations, the MSBA, ABCNY, and others were established to harness and wield power both as a laudatory example to the bar and the public and, as professionals with expertise, influence the transformation of statutes and standards relating to judges, attorneys, procedure, and substantive law.[37] This model expected much from the subsection of the bar that would end up being association members.[38]

THE EMERGENCE OF THE BAR JOURNAL

The avowed reason for the MSBA starting a bar journal in 1921 was to stimulate interest in the association, especially among "reputable practicing attorneys."[39] By 1920, the MSBA was feeling the tension between its selective nature and its lofty aims — there were not enough "acceptable" attorneys as members to realize the critical mass necessary to effectively provide the example and influence desired. The Bar Journal, as a vehicle to increase membership among the leaders of the bar, was an effort to perfect the MSBA's selective voluntary model.[40] Interestingly, the MSBA took special notice of the development of the journal the Massachusetts Bar Association had started as inspiration for its own publication.[41]

By the 20th century, periodicals in America were coming into their own as a cost-effective means of communication. Throughout the 19th century and into the next, the costs of production and distribution came down and the market for periodicals increased.[42] By the 20th century, postal rates had decreased and people had more leisure time for reading.[43]

42,000 active members of the State Bar of Michigan receive either the print or email version of the Bar Journal — making the Michigan Bar Journal larger than most sister publications, including the New York State Bar Association Journal (circulation 41,000). However, it remains smaller than the bar journals in Texas (124,000), the District of Columbia (111,000), and Virginia (50,000).

The Michigan Bar Journal prints 11 issues a year, monthly except for the combined July/August issue. Readers also can find it online at michbar.org/journal

Our Bar Journal, begun under the auspices of the University of Michigan Law School faculty, initially combined in each edition MSBA news and other general legal information with reprints of the school's Michigan Law Review[44] and was initially published eight months a year, November

through June, inclusive.[45]

While one bar association initiative starting in the early part of the 20th century focused on improving the selective voluntary model through bar journals, another idea arising contemporaneously (and consistent with the existence of journals) argued that the model should be abandoned for a mandatory bar.[46] In fact, Michigan has been credited with being the first state to propose such an integrated bar, although the political system ended up delaying its integration until the mid-1930s.[47]

OUR BAR JOURNAL IN CONTEXT

Perhaps only after reviewing the survival rates of legal periodicals throughout the history of America can one fully appreciate a bar journal having been in existence for a century. Legal periodicals did not emerge in America until the early 19th century.[48] Almost all had very short lifespans, seemingly because they could not establish a financially successful niche between too great a similarity to the case reporters of the day and the generality of a newspaper, which was unusable to most members of the bar.[49] By one count, of the 30 American legal periodicals that went into business before 1850, the vast majority had stopped publication by that year and only one survived beyond 1866.[50] Even in the decades after the Civil War, when there was a marked increase in legal periodicals being published in any given year, the most successful legal periodical of the period — the Albany Law Journal — ceased publication before 1910 after less than 40 years in print.[51]

Hence, reaching the centennial of the Michigan Bar Journal —one of the very oldest state bar journals in the country — is cause for recognition and celebration. As the Illinois Bar Journal noted a few years ago in its own 100th anniversary volume, this is a time to reflect on your Bar Journal's history.[52] And, hopefully, it is also a time to recognize the role the Bar Journal has played, and still plays, as a forum where lawyers communicate with lawyers to help all practice law more effectively.

George M. Strander is court administrator for the 30th Circuit Court in Lansing. A graduate of the University of Michigan Law School, he serves on the State Bar of Michigan Bar Journal Committee and Civil Procedure and Courts Committee as well as the Governor's Mental Health Diversion Council.

ENDNOTES

1 Of state bar journals still in publication, it appears that only the Illinois Bar Journal (1912) and the Massachusetts Law Review (1915) are older. See Hunter, Happy 100th, Illinois Bar Journal, 100 Ill B J 20 (2012) and The Michigan State Bar Journal, 1 Mich B J ii (1921).

2 Representative Assembly History, SBM <michbar.org/generalinfo/origin> [https://perma.cc/P9ER-3EPM]. All websites cited in this article were accessed October 25, 2021.

3 Wickser, Bar Associations, 15 Corn L R 390 (1930), available at <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1298&context=clr> [https://perma.cc/8Z8W-7AZQ]. Wickser makes the useful distinction between voluntary associations that at least nominally appealed to all attorneys (typical of antebellum associations, essentially now defunct), selective voluntary associations that sought out the "best of the bar" for membership (the typical early form of the associations we know today, all founded after the Civil War), and integrated bars mandating membership to practice (the form that several selective voluntary associations took in the first half of the 20th century).

4 229 names of "members of the Bar of Michigan in good standing" appear as original MSBA members. Constitutions and By-Laws of the Michigan State Bar Association and Proceedings of First Meeting (Detroit: Speaker Printing Co, 1890), pp 16-20.

5 The Michigan State Bar Journal, 1 Mich B J at ii, vi-vii, 9.

6 Consider the goals of the 1870-founded association in New York City, Webber, Origin and Uses of Bar Associations, 7 ABA J 297, 298 (1921), available at <https://www.jstor.org/stable/25700871?seq=1#metadata_info_tab_contents> [https://perma.cc/DW6Y-MGCQ]), that of Cincinnati in 1872 (Cincinnati Bar Association Celebration of Fiftieth Anniversary (Cincinnati: Cincinnati Bar Ass'n, 1922), p 11, available at <https://archive.org/details/cincinnatibarass00cinc/page/n9/mode/2up> [https://perma.cc/934H-6JFV]), and the 1911 Massachusetts body (Fifth Annual Report of the Massachusetts Bar Association (Boston: Rockwell & Churchill Press, 1915), p 10).

7 The Illinois Quarterly Bulletin (1912) was "aimed to bring [Association] members 'into closer touch with each other' and to provide a medium to exchange information 'for the betterment of the practice and the profession . . .' Happy 100th, Illinois Bar Journal. In Massachusetts, its journal was proposed in 1914 to aid "the stability and sound development of the law" and help the bar in "explaining to people their own institutions," Fifth Annual Report of the Massachusetts Bar Association, p. 5. And the announced "reason for being" of the State Bar Journal of California was service and necessity — "[t]here has always been necessity for contact between the lawyers of California; that necessity has never been so great as now, when the public is asking for an accounting of the lawyers' stewardship of the administration of justice and taking account of conditions as they exist in the courts today," Our Reason for Being, 1 Cal B J 1 (1926).

8 This is emphasized by Norman W. Spaulding in The Discourse of Law in Time of War: Politics and Professionalism During the Civil War and Reconstruction, 46 Wm & Mary L Rev 2001, 2034 (2005), available at <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1300&context=wmlr> [https://perma.cc/NK7X-ZMLX]. Spaulding focuses on Joseph Story's antebellum charge that the lawyer is a "public sentinel" against oppression. Importantly, since colonial days the law, along with medicine and the clergy, was at least nominally considered a "learned profession," Law & Kim, Specialization and Regulation: The Rise of Professionals and the Emergence of Occupational Licensing Regulation, 65 J Economic History 723 (2005).

9 Anti-elitist individualistic egalitarianism has a long tradition in this country given America's two centuries as a "pioneer, rural, and agricultural" country, Bar Associations, 15 Corn L R at 392.

10 Jacksonian Democracy, History.com (June 7, 2019) <https://www.history.com/topics/19th-century/jacksonian-democracy> [https://perma.cc/GK76-U92E].

11 Matzko, The Early Years of the American Bar Association, 1878-1928 (August 1984) (unpublished PhD dissertation, Univ of Virginia), pp 4-5.

12 Bar Associations, 15 Corn L R at 393. "[T]he Jacksonian era brought intense distrust of elitism and with it, sustained efforts to eliminate entry requirements and open lawyering to all," Remus, Reconstructing Professionalism, 51 Geo L R 839, 839 (2017). "Several states adopted constitutional provisions similar to that of Michigan which permitted 'every person of the age of twenty-one years, of good moral character' to practice law," The Early Years of the American Bar Association, p 5.

13 "[Bar associations] are wrong in principle, betray competition, delay professional freedom, degrade the Bar," Bar Associations, 15 Corn L R at 393, quoting an 1838 edition of the Southern Literary Messenger.

14 Jacksonian Democracy. See also Maxeiner, Uniform Law and its Impact on National Laws, Limits and Possibilities: US National Report, Intermediary Congress of the Int'l Academy of Comparative Law (2009), available at <scholarworks.law.ubalt.edu> [https://perma.cc/QT4L-5YSR].

15 United States Resident Population by State: 1790-1990 <https://nj.gov/labor/lpa/census/1990/poptrd1.htm> [https://perma.cc/KQ43-CCVN]. As this source shows, Michigan's population rise during this time was even more meteoric.

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17 In the Progressive Era (1870-1914) there was a renewed impetus to solve social problems, Duchan, Emergence of Professionalism in Late 19th and Early 20th Century America (2021) <https://www.acsu.buffalo.edu/~duchan/new_history/hist19c/professionalism.

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30 "This revulsion against low professional standards, and a like revulsion against national, state, and municipal political corruption were chief among the forces which gave rise to the new instrumentality which the bar was to forge. This was the selective voluntary bar association," Bar Associations, 15 Corn L R at 396.

31 Urbanization has been found to be a significant factor in the adoption of regulations for attorneys and other professionals, Specialization and Regulation.

32 These actions to raise legal education, admission, and practice standards, and thus penalize the less affluent and more marginalized of the bar, have been interpreted by some as fundamentally self-serving. See Moliterno, The American Legal Profession in Crisis: Resistance and Responses to Change (New York: Oxford Univ Press, 2014), pp 18-46, and Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (New York: Oxford Univ Press, 1977). However, a better interpretation is to see these leaders of the bar to be acting on their own ideas of professionalism and how the law should be, The Early Years of the American Bar Association, p 4. A distinction between intent and consequence is apt here; while some actions by bar associations may have had an inordinate effect on some categories of attorneys, it appears unlikely that such an effect was the main goal. "The desire to eliminate charlatans and quacks" is natural, Specialization and Regulation, 65 J Economic History at 728. "Thriving off of the late-nineteenth century fascination with science and expertise . . . the legal elite justified its special role in society . . . as a result of the ability to refine liberal legal science and engage in the expert management of public affairs," A History of Professionalism, p 42.

33 Bar Associations, 15 Corn L R at 396.

34 For Roscoe Pound, this event ended the American bar's "era of decadence," which began with the demise of the Suffolk County (Boston) Bar Association in 1836, The Early Years of the American Bar Association, pp 5-6.

35 Thirteen cities and states formed bar associations in the eight years following the creation of ABCNY: Cincinnati (1872), New Hampshire (1873), Cleveland (1873), Iowa (1874), Chicago (1874), Washington, DC (1874), St. Louis (1874), New York State (1876), Boston (1876), Illinois (1877), Alabama (1878), Vermont (1878), and Wisconsin (1878), Hylton, The Bar Association Movement in Nineteenth Century Wisconsin, 81 Marq L R 1029, 1029-1030 (1998), available at <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1028&context=facpub> [https://perma.cc/9ZXZ-6Y7R].

36 Constitutions and By-Laws of the Michigan State Bar Association, p viii.

37 These new associations expected to use what Spaulding has termed the "discursive authority of law" — "the power to superimpose legal discussion and analysis onto social questions, to shape and direct public opinion with the language of law," The Discourse of Law in Time of War, 46 Wm & Mary L Rev at 2038.

38 The initial members of these associations were the "decent part" of the profession — mostly well-to-do business lawyers from old American stock, A History of American Law, pp 648-652. The MSBA's initial officers were obviously leading lights. All respected attorneys, they included, among others, a former brigadier general in the Union Army, a University of Michigan law professor, a college trustee and future state senator, someone who would go on to be a U.S. congressman and state supreme court justice, and a future ambassador.

39 The MSBA officers in 1921 included a future state supreme court justice, a county prosecutor, and a University of Michigan law professor.

40 In the days before teleconferencing and Zoom, journals were seen to "serve the purpose of giving the associations they serve a continuing existence between annual meetings," Value of State Bar Journals, 9 J of the Am Jud Soc 4 (1925). A journal is a means by which an association can produce and control the authoritative communication of its field, Hudson & Hudson, Associations and their Journals: The Search for an "Official" Voice, 48 Soc Pers 271 (2005). In the early 1920s the MSBA was still grappling with the issues of the administration of justice and the welfare of the profession and the public, Potter, Organization of the Michigan State Bar, 3 Mich B J 42 (1923).

41 The Michigan State Bar Journal, 1 Mich B J at ii.

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43 "Magazine readership flourished in the 1900s. More people were able to read, more people found leisure time in which to read, and more people had discretionary income to spend on magazines," Id.

44 At the time, this model received national attention, Value of State Bar Journals.

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47 Id., p 47.

48 The Historical Origins, Founding, 36 Hast L J at 750-751.

49 Id. at 753. See also Davies, The Original Law Journals, 12 Green Bag 2d 187 (George Mason Law & Economics Research Paper No 09-15, March 2, 2009), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1351928> [https://perma.cc/K6MB-4A4E].

50 Id.

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52 Happy 100th, Illinois Bar Journal.

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Building toward a breakthrough

BY HON. BRIDGET MARY McCORMACK

Welcome to the access to justice issue of the Michigan Bar Journal. I can't think of a better topic for the Journal's centennial edition. Facilitating justice has always been the singular purpose of our profession and in modern times, we have been working under an explicit ethical obligation to promote access to justice for all who need it. In case you needed a reminder, this issue makes clear how far we still must go, despite centuries of effort.

The good news is that there is reason to believe we may have arrived at a breakthrough moment. Rapidly developing technology offers ways to provide elements of legal services "to scale;" that is, more affordably. And the pandemic that has so profoundly and comprehensively disrupted, well … everything has freed up our imaginations to see new pathways to meaningful and universal access to justice. More good news: our history gives us plenty of reason to believe Michigan is exceptionally well positioned to take advantage of this moment.

THE STRONG MICHIGAN INFRASTRUCTURE

Michigan has long been a national leader in access to justice. I know of no other state that has been able to build a stronger network of partnerships regarding access to justice initiatives. In 1935, the state created the strongest possible infrastructure for access to justice work by incorporating the State Bar of Michigan into the justice system: the Supreme Court would set the rules and oversee regulatory operations, and the State Bar would advance attorneys' ethical obligations and the practice of law.

The creation of the Michigan State Bar Foundation (MSBF) by bar leaders in 1987 sharpened Michigan's focus on access to justice. The article, "IOLTA: An Opportunity to Increase Access to Justice," by Jennifer Bentley and Edward H. Pappas, explains how interest on lawyers' trust accounts, one of MSBF's essential tools, continues to play an essential role in advancing access to justice and how you can help. The addition of the State Planning Body in 2001 supported statewide coordination and reinforced Michigan's partnerships to grow access to justice.

Here is how Michigan's recent history positions us for this breakthrough moment:

1995: The SBM Access to Justice Task Force work led to the development of the Access to Justice Campaign, a collaborative fundraising campaign administered by the Michigan State Bar Foundation to increase resources for civil legal aid and promote Legal Services Corporation funding and pilot projects that helped to establish the statewide Counsel and Advocacy Law Line.

2009: The broad scope of the State Bar Judicial Crossroads Task Force opened the door to seeding advancements on several fronts related to access to justice including problem-solving courts, language access, indigent defense reform, and statewide self-help initiatives.

2010: Building on the Judicial Crossroads Task Force work, Chief Justice Marilyn Kelly formed a Solutions on Self-Help (SOS) Task Force to promote centralization, coordination, and quality of support for self-represented litigants.

The names of more than 500 individuals who actively worked to improve access to justice in Michigan form the word "justice" in the illustration above. These individuals all served on one — and often more than one — committee or task force on the issue since 1995. In general, the size of an individual's name reflects the number of volunteer committees on which they served. To get a closer look at all the names, check out the interactive version on Michigan Bar Journal website: michbar.org/journal.
Photo: Inside Michigan's Hall of Justice. By Sarah Lawrence Brown | State Bar of Michigan

ACCESS TO

IN MICHIGAN

ACCESS TO JUSTICE

THROUGH THE YEARS

1995
ACCESS TO JUSTICE TASK FORCE

2009
STATE BAR JUDICIAL CROSSROADS TASK FORCE

2010
SOLUTIONS ON SELF-HELP (SOS) TASK FORCE

2012
MICHIGAN LEGAL HELP (MLH) PROGRAM

2017
21ST CENTURY PRACTICE TASK FORCE

2019
JUSTICE FOR ALL TASK FORCE

2021
JUSTICE FOR ALL COMMISSION

2012: The Michigan Legal Help (MLH) Program, developed through the work of the SOS Task Force, launched. MLH has grown in proficiency and impact with the support of the Michigan Supreme Court, State Bar, and Michigan State Bar Foundation and now has a well-earned national recognition for excellence.

2014: With more than 150 participants actively involved in committees and workgroups, the 21st Century Practice Task Force inspired access to justice initiatives throughout the state including online dispute resolution, modest means programming for the State Bar lawyer referral service, and limited scope representation. Check out "Limited-Scope Practice in Michigan: Tales from the Field" by Angela Tripp and Krenissa D. Hicks for a boots-on-the-ground view of a new paradigm for serving clients and expanding access.

2019: Because of prior partnerships and successful collaborations already in place, the Supreme Court had a core group of knowledgeable stakeholders ready to help lead the way when the Court formed the Justice for All Task Force anchored by the State Bar, the Michigan State Bar Foundation, and the Michigan Legal Help program.

2020: With an aspirational goal of achieving 100% access to justice, the Justice for All Task Force report concluded that the goal could only be met when everyone has access to meaningful and effective help navigating and resolving their civil legal needs through a continuum of appropriate services. To achieve this, the report recommended adequate resources at every step of the process and a legal system that is clear and easily navigable regardless of whether one is represented by a lawyer.

2021: In January, the Supreme Court approved the task force's recommendation to create a standing Justice for All Commission designed to build upon the work of the earlier task forces. Its signature enhancement is broader community and public outreach and participation. Don't miss "Justice for All Commission Embraces Goal of 100% Access to Civil Justice System" from commission co-chairs Justice Brian Zahra and MLH Director Angela Tripp to understand the latest important development in Michigan's access to justice.

TECHNOLOGY AS AN ACCESS ACCELERATOR

Legal aid organizations and pro bono volunteers provide a necessary and important service to thousands of households each year. Yet millions still go to court unrepresented and need assistance. The surest way to expand access to justice without sacrificing quality is driving down the cost of legal services while maintaining regulatory vigilance. Kimberly Paulson's article, "Technology: The Future of Access to Justice," shows us some of the ways in which technology is already being used to make legal services more affordable, convenient, and accessible while helping us envision further advancements. And we're more ready than ever. Our need to conduct

Exterior of Michigan's Hall of Justice. Photo by Sarah Lawrence Brown | State Bar of Michigan.

court business safely during a pandemic has forced judges and lawyers into a previously unimaginable familiarity with technology that allows us to conduct business remotely. Without the pandemic, we would still be gently (and anxiously) investigating legal tech. But here we are, like it or not, all of us Zoom experts. ("Sorry, what was that? You're on mute.")

This is the moment to embrace and expand the breakthrough advantages that technology brings to the legal system in lower costs, access, and convenience while actively monitoring, managing, mitigating, and, in some cases, eliminating the downsides. I am grateful to the State Bar of Michigan for its thoughtful and ongoing engagement in this work. It is critical to the continued mission to build upon Michigan's robust history as a leader in access to justice. I am grateful to the members of our Lessons Learned Committee and the many others who have responded to the committee's report.

THANKS TO THE PANDEMIC

The access to justice lessons we are learning from living through a pandemic are certainly not all about technology. The legal profession has long been tagged — not entirely unfairly — as stalwart defenders of the status quo, whatever the status quo happens to be. We come by this honestly; after all, we are trained to look first to precedent to determine what to do. But when faced with a crisis that has literally made the status quo impossible, we have stepped up. "Responding to the COVID-19 Eviction Crisis: The Large-Scale Development of Eviction Diversion Programs in Michigan" by Karen Merrill Tjapkes and Ashley Lowe is one example of what a coordinated response looked like.

There's much to be improved, including how to apply rapidly developing technology to court operations and the delivery of legal services, and lots to learn to make those changes work best for the public. But here's what we know: we're never going back to pre-pandemic business as usual.

Together, let's seize this moment.

Hon. Bridget Mary McCormack is chief justice of the Michigan Supreme Court.


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Inside the Hall of Justice, exterior view of the Court of Appeals Courtoom.
Photo By: Sarah Lawrence Brown | State Bar of Michigan

Commission embraces goal of 100% access to civil justice system

BY HON. BRIAN ZAHRA AND ANGELA TRIPP

The American Bar Association Standing Committee on Pro Bono and Public Service has eloquently stated, "[W]hen society confers the privilege to practice law on an individual, he or she accepts the responsibility to promote justice and make justice equally accessible to all people."[1] Part of our responsibility as lawyers is to provide pro bono services when our professional obligations permit.[2] But the legal profession must do more. It is also critically important for us to work together to improve the justice system as a whole and collaborate with organizations outside of our profession to satisfy this responsibility and increase access to justice for all.

As stewards entrusted by the public to ensure equal justice under law, we should take stock of the things we do well while looking for opportunities for improvement. We do some things very well. For example, Michigan Legal Help (MLH) built a website that shares critical legal information and self-help tools to empower self-represented litigants to navigate the courts on their own.[3] It is looked at as a national leader in self-help resources. We created statewide court forms for hundreds of legal processes, allowing more people to adequately bring their claims before judges.[4] We set up eviction diversion programs across the state, giving courts, legal aid programs, and housing assessment and resource agencies the opportunity to collaborate on solutions to the eviction crisis in the wake of the COVID-19 pandemic.[5]

Michigan's legal community can be proud of these accomplishments. But there remain vast areas in need of improvement. The newly created Justice for All Commission is charged by the Michigan Supreme Court with developing strategies to address those areas of need.[6]

HISTORY OF THE JUSTICE FOR ALL COMMISSION

In 2015, the Conference of Chief Justices and Conference of State Court Administrators (CCJ/COSCA) urged state supreme courts to take up the challenge of ensuring 100% access to the civil justice system.[7] In response, in March 2019, the Michigan Supreme Court formed the Justice for All Task Force; in October 2019, it received a $100,000 grant from the National Center for State Courts (NCSC) to support its work.[8] The task force brought together the many different stakeholders in Michigan's civil justice arena — judges, State Court Administrative Office (SCAO) staff members, a legal librarian, a domestic violence advocate, representatives of the State Bar of Michigan, and lawyers from the legal aid community — to devise ways to increase access to justice. The task force featured geographic diversity, diversity of backgrounds, and philosophical diversity of thought.

Following the standard set by CCJ/COSCA, the Justice for All Task Force launched with a simple goal everyone could embrace: Michigan should provide 100% access to our civil justice system. Justice for all means access to the civil justice system for our neighbors, our communities, and people in every corner of Michigan. Following a framework created by the NCSC and gathering crucial information from across Michigan through focus groups, stakeholder summits, and town hall meetings, the task force's first step was taking inventory of the resources available in the state and identifying strengths, gaps, barriers, and opportunities.

After the inventory was complete, the task force engaged in a strategic planning process, and agreed upon a vision that justice for all resides in the overlap of a welcoming, understandable, collaborative, adaptive, and trusted environment.[9] A welcoming environment means that those engaged in the civil justice system do not perceive it as intimidating; if someone needs help, it will be available and accessible, and everyone is treated with dignity and respect. An understandable environment allows people to

AT A GLANCE

Just as we appreciate personal service at a restaurant or store, court consumers should be able to expect quality, innovative legal service that addresses their individual needs based on the complexity of their problems.

meaningfully engage with the civil justice system and use its tools to help address their problems regardless of their level of education, experience, or income. At every step, people feel informed and understand what has happened while gaining an understanding of what to do next.

The task force's vision for a collaborative system requires community organizations to be integral partners in achieving better outcomes for their clients' civil legal problems and problems that may give rise to future legal issues. The vision for an adaptive environment suggests that all partners in the civil justice system will embrace a culture of service — just as we appreciate personal service at a restaurant or store, court consumers should be able to expect quality, innovative legal service that addresses their individual needs based on the complexity of their problems. Finally, we envisioned a trusted environment in which people see the civil justice system as necessary and useful — a place that helps address their problems. The civil justice system must be accountable to its communities and responsive to community needs.[10]

The task force released its Strategic Plan and Inventory Report in December 2020 and identified four goals necessary to achieve 100% access to the civil justice system.[11] Reaching those goals will require collaboration from lawyers, libraries, noncourt government offices, and court staff from across Michigan.

The first goal is promoting a culture of service, which will help our justice system be more approachable and navigable, leading to more effective engagement with the people of Michigan.[12]

The second goal is simplifying and streamlining processes, rules, and laws. This is no small matter; it will require SCAO to revise forms, the Supreme Court to reconsider Michigan Court Rules, and the legislature to update and simplify pertinent laws.[13]

The third goal is providing a spectrum of affordable, easy-to-access legal resources, available to everyone, to match their individual needs. This includes expanding the continuum of services and availability of self-help centers and legal aid and may require regulatory reform in the practice of law as well as changes to the ways lawyers do business.[14]

The fourth goal reflects the notion that the civil justice system is at its best when it works with and integrates local resources and community-based organizations and requires the commission to study successful collaborative efforts in Michigan and across the country and find ways to replicate them statewide.[15]

The strategic plan also called for the creation of a Justice for All Commission, which was established in January by a Michigan Supreme Court administrative order.[16] The commission includes representatives from a variety of justice partners — judges, court administrators, prosecutors and criminal defense attorneys, legal services providers, tribal courts, the Michigan State Bar Foundation, and the State Bar of Michigan.[17] It also incorporates members from the other branches of government including two state legislators, an at-large gubernatorial appointee, and representatives from the Michigan Department of Health and Human Services and the Michigan State Housing Development Authority, and includes representatives from areas not commonly associated with the civil justice system — education, health care, libraries, and nonprofit organizations including faith-based groups, business and professional organizations, and civic groups.[18]

THE COMMISSION'S ONGOING WORK

Creating the commission was easy. Getting the work started was a challenge; this organization has never existed in Michigan. We developed an executive team to lead the commission, along with four permanent committees to be supplemented by project-based workgroups. Currently, we have six workgroups; that number may vary depending on need and demand. In addition to commission members, we sought innovative and motivated people to fill the rosters of the committees and workgroups.

The inventory and strategic planning process revealed many positives related to access to justice in Michigan along with many short-term and long-term projects with the potential to dramatically improve how our justice system functions, especially for people without lawyers. The commission's work is guided by these efforts.

Many proposals outlined in the strategic plan build upon the foundation of Michigan Legal Help and enhancing the use of technology to increase access to justice. The MLH website currently reaches more than 50,000 people weekly, giving them access to easy-to-understand legal information; tools to create forms and address legal problems; and referrals to lawyers, community organizations, and other resources.[19] One of the commission's six workgroups is leading an effort to improve the MLH Guide to Legal Help and other triage and referral resources in Michigan through usability testing and better coordination of referrals.[20] Another workgroup will work with MLH and SCAO as they integrate MiFile, the statewide standard electronic filing solution, with MLH's do-it-yourself tools (which complete court forms). Website visitors currently use the DIY tools to create upwards of 400 sets of legal forms per day which they can file in court.[21]

MLH also teams up with local courts, libraries, legal aid programs, bar associations, and community organizations to form and

launch self-help centers across the state. Currently, there are 21 self-help centers operating in courthouses, libraries, and buildings of community organizations. Some are staffed by non-lawyer navigators who can answer questions that do not require legal advice; all centers give people access to computers, internet, and printers — tools they might need to help them address a pressing legal problem in addition to the information and tools on MLH.[22] There is a workgroup dedicated to improving efforts related to self-help centers across the state ranging from advocating for funding to open more centers, providing more support to existing centers, helping centers collect data on the services they provide, and improving technological tools that support their work.

There are also many projects the commission is currently working on that do not involve Michigan Legal Help. One workgroup is dedicated to studying the summary proceedings process and advocating for changes that improve access, efficiency, just results, and uniformity across the state. Similar work is being done by a workgroup looking at the debt collection process.[23] The commission has attracted funding and technical assistance from the NCSC and Pew Charitable Trusts. Both organizations are helping with research (including gathering information about similar efforts in other states), data collection and analysis, and creating visual process maps to help outline the barriers and shortcomings of the current summary proceedings and debt collection processes.

There is also a committee tasked with creating shared frameworks and standards to make data sharing possible among justice system partners as well as improving the consistency, accuracy, transparency, and accessibility of court data.[24] This committee will partner with Pew and possibly other organizations across the country on these efforts. These data-related goals have been prioritized because at many points in the inventory process, survey respondents and focus group participants pointed to the lack of usable data as a barrier to collaborating with courts and their ability to help people with legal needs.

Better data and the capacity to share it have also been flagged as a method to improve existing collaborations between courts and other justice system partners such as expungement clinics and eviction diversion programs. Other committees and workgroups within the commission are studying these successful collaborative efforts to determine how to best replicate them throughout the state and in other practice areas to increase access to justice.[25] Workgroups and committees are also looking for opportunities to gather and incorporate user feedback and incorporate more user-centered design principles into more aspects of the justice system.

The Justice for All Commission will likely bring about regulatory reform, building on the steps already taken with limited-scope representation allowing people to access the exact legal services they need at an affordable cost. It is important to note that any regulatory or practice reform advanced by the commission will be geared toward improving access to justice to those unserved or underserved by the legal profession; the committee will not advocate change solely for the sake of change.

These are but some of the commission's current projects, and the intention is to add new items to our agenda as we accomplish others. We are honored and excited to chair this commission. The plan is very ambitious but setting lofty goals is the only way to achieve the outcome the people of Michigan so desperately need: a civil justice system that works for everyone. Through this effort, we aim to make Michigan a model for the nation.

Michigan Supreme Court **Justice Brian K. Zahra** and Michigan Legal Help Director **Angela Tripp** are cochairs of the Michigan Justice for All Commission.

ENDNOTES

1 A Guide and Explanation to Pro Bono Services, ABA (May 13, 2021) <https://www.americanbar.org/groups/legal_education/resources/pro_bono/> [https://perma.cc/87Z4-6YJV]. All websites cited in this article were accessed October 8, 2021.

2 The Voluntary Pro Bono Standard is a policy adopted by the SBM Representative Assembly < https://www.michbar.org/programs/atj/voluntarystds> [https://perma.cc/XDL9-B77A]. Active SBM members are encouraged to support the direct delivery of pro bono legal services to low-income people or to make financial contributions to support civil legal services for low-income individuals. Thankfully, each year, many Michigan attorneys do both.

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FROM THE COMMITTEE ON CRIMINAL MODEL JURY INSTRUCTIONS (CONTINUED)

(2) First, that the vehicle belonged to someone else.
(3) Second, that the defendant took possession of the vehicle and [drove / took] it away.

(4) Third, that these acts were both done [without authority / without the owner's permission].

(5) Fourth, that ~~the defendant intended to take possession of the vehicle and [drive / take] it away.~~ when the defendant took possession of the vehicle and drove or took it away, [he / she] did so knowing that [he / she] did not have authority to do so. It does not matter whether the defendant intended to keep the vehicle.*

[(6) Anyone who assists in taking possession of a vehicle or assists in driving or taking away a vehicle knowing that the vehicle was unlawfully possessed is also guilty of this crime if the assistance was given with the intention of helping another commit this crime.]

Use Note
To distinguish unlawfully taking and using from UDAA, see M Crim JI 24.4.

~~This is a specific intent crime~~

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes to amend M Crim JI 3.13 [Penalty] to remove any possible implication that the jury should find the defendant guilty so that the court could perform its duty of imposing a penalty. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 3.13 Penalty

Possible penalty should not influence your decision. If you find the defendant guilty, it ~~I~~t is the duty of the judge to fix the penalty within the limits provided by law.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes a new instruction, M Crim JI 34.6 [Food Stamp Fraud], for crimes charged under MCL 750.300a.

[NEW] M Crim JI 34.6 Food Stamp Fraud

(1) The defendant is charged with food stamp fraud. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] food stamps, coupons, or access devices. F*ood stamps* or *coupons* means the coupons issued pursuant to the food stamp program established under the Food Stamp Act. An *access device* means any card, plate, code, account number, or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value or that can be used to initiate a transfer of funds pursuant to the food stamp program.

(3) Second, that the defendant [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] food stamps, coupons, or access devices by [*specify alleged wrongful conduct*].

(4) Third, that the defendant knew that [he / she] had [*specify alleged wrongful conduct*] when [he / she] [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] the food stamps, coupons, or access devices.

[Use the following where the aggregate value of food stamps allegedly exceeded $250:]

(5) Fourth, that the aggregate value of the food stamps, coupons, or access devices was [more than $250.00 but less than $1,000 / $1,000 or more]. The aggregate value is the total face value of any food stamps or coupons resulting from the alleged [s*pecify alleged wrongful conduct*] plus the total value of any access devices. The value of an access device is the total value of the payments, allotments, benefits, money, goods, or other things of value that could be obtained, or the total value of funds that could be transferred, by use of the access device at the time of the violation. You may add together the various values of the food stamps, coupons, or access devices [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] by the defendant over a period of 12 months when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.

INCREASING ACCESS

Technology: The future of access to justice

BY KIMBERLY PAULSON

Accessibility to legal services takes many forms. Before the internet, the primary obstacles to accessing legal services were geography and the ability to travel to a legal aid office or courthouse. Websites and email changed that, and smartphones have further bridged that divide. Now, people can access legal information from the comfort of their homes. So, why are so many unserved?

The limited resources of legal aid providers is one obvious answer. If humans are required to serve clients' legal needs, staff constraints will always be a broken spoke in the wheel of justice. Courts, legal aid providers, and pro bono attorneys are also evolving to try to meet indigent clients where they are, both figuratively and literally.

Many believe that the answer is not just more technology but using existing technology in a way that better meets the needs of both legal aid providers and underserved populations — innovations that not only reduce the level of human interaction required, but provide a more familiar, simple experience for those involved in the justice system. The COVID-19 pandemic brought some of these technologies to the forefront as courts and legal aid providers scrambled to better serve individuals from afar. As a result, we can picture a future where technology narrows the justice gap.

ZOOM ZOOM

Since the start of the pandemic, lawyers

have gained a greater familiarity with online meeting applications such as Zoom and Microsoft Teams. Remote court hearings, client interviews, and staff meetings suddenly became easier and more efficient. These applications hold great potential for increasing access to justice. Low-income clients often miss attorney meetings and court hearings because they cannot leave work, can't afford childcare, and/or have no money for bus fare or parking. If the client could simply download a free app and attend the scheduled event remotely, the number of missed court dates would undoubtedly drop. Data collected during the pandemic will shed more light on the accuracy of that statement, but the fact remains that the traditional model of in-person appearances and meetings is an inherent disadvantage to low-income clients. Online meetings are one key to greater participation in the justice system.

While online meetings have the potential to increase access for some, they can also create barriers to access for others, including people with disabilities.[1] Not everyone has access to a reliable internet connection, a computer, or a smartphone with a strong enough signal and a sufficient data plan to participate in remote hearings. The digital divide is still very much a problem in Michigan;[2] to fully realize the potential benefits of remote hearings, courts and others in the justice community must work to provide litigants with the proper tools to fully participate in remote hearings and meetings.

MAGIC FORM-ULA

Automated document assembly software has emerged as an important way to help unrepresented parties with the daunting task of selecting and properly completing court forms. The software, which may be included as part of a comprehensive law practice management system or a stand-alone tool, auto-populates customized templates of legal forms and documents.[3] The data input into the templates may come from a database linked to the software or may be collected from the user, often through online interviews using branching logic, a concept discussed in more detail below. Using the information obtained during these question-and-answer sessions, the tools can determine whether the litigant is eligible for the relief they want, find the appropriate court form, and automatically fill out the form with the user's information.[4] Once the forms are completed, the user can then print them out and file them with the court. Tools like these are crucial to providing those who cannot afford attorneys real access to the courts.

Michigan leads the way in this area. The Michigan Legal Help (MLH) program operates a comprehensive website that includes 50 do-it-yourself (DIY) tools using this technology.[5] MLH also supports self-help centers across the state in courthouses, libraries, and other locations, many of which are staffed with individuals who can help

with the DIY tools. Legal aid providers and pro bono attorneys can use these tools to complete forms for their clients, making the process more efficient and giving pro bono attorneys the information and confidence needed to help people in areas outside of their expertise. Adoption of statewide court forms and document assembly solutions by all 50 states and U.S. territories — the ultimate goal — would open courthouse doors to countless unrepresented individuals and increase the efficiency of legal aid providers nationwide.

IT'S NOT JUST ROBOT BUTLERS

Artificial intelligence (AI) is increasingly becoming part of our everyday lives. Just ask Alexa. But despite the mental image of robot butlers, most AI used today is not flashy. It is embedded in computer programs and websites to make tasks faster and easier. AI is also being used in not-so-obvious ways to increase access to justice.

Natural language interpretation (NLI), also known as natural language understanding (NLU), is one function of AI that is particularly relevant to access to justice. Computers can only understand what they are programmed to understand. The varying cadence, vocabulary, and nuances of the natural way people speak and write have always posed challenges to programmers. Computers can typically recognize certain terms or phrases typed into a search engine (e.g., "eviction" or "expunge my felony") through a matching algorithm, but problems arise when users do not use the anticipated keywords or spell them differently. Slang, misspelled words, and colloquialisms are often incompatible with conventional matching algorithms, resulting in the inability to access relevant information for the user.

That's where NLI comes in. NLI technology can be trained to interpret the natural use of language by using familiar words and phrases to find answers to the user's legal questions.[6] Instead of the user slowly working through a logic tree and hopefully selecting the correct options along the way or typing in a query that produces no results, AI with NLI abilities should take the user directly to the resources they need, resulting in a more efficient search and more accurate results.

One example of NLI is an AI issue spotter aptly named Spot, created by Suffolk University's Legal Innovation and Technology Lab (LITL) and provided to non-profit and government organizations at no cost. Spot is an application programming interface; a building block third parties can use in its applications or on its websites.[7] Spot offers NLI capabilities that then become part of the final program or application. AI with NLI capabilities is ideal for incorporating into an online legal resource directory such as michiganlegalhelp.org.[8] In fact, according to MLH Director Angela Tripp, the program is looking to incorporate Spot or a similar tool as part of its 2022 website redesign.

NLI is especially useful because it can learn to understand users' intent.[9] In creating Spot, LITL used publicly available historic questions posted on Reddit's legal advice forum to train its AI to recognize how people use natural language to seek legal information.[10] LITL continues to use crowdsourced data obtained from the Learned Hands online game[11] and organizations using Spot to continuously improve the product. As explained by LITL Director David Colarusso, the more Spot is used, the better it becomes. It's a collaborative effort in which current users help make Spot's NLI better for future users.

The use of symbolic AI (SAI) is also important for access to justice because it uses logic and reasoning to reach a conclusion or accomplish a task, enabling machines to complete specific functions typically performed by humans.[12] Think of SAI as a flowchart using "if x, then y" logic, a concept often referred to as branching logic.[13] It allows computers to ask further questions and reach conclusions based on the user's responses to previous questions. In the context of legal services, SAI can automate routine tasks or processes, making them more efficient and less time consuming. SAI is used in the document assembly solutions discussed above.

SAI can also be used for client intake because it understands which questions to ask at each step based on the information previously provided by the prospective client. It can arrive at conclusions after evaluating input information — including whether the prospective client qualifies for services and to which attorney or group that person should be referred — and flag special considerations that may affect representation, such as whether the client is a senior citizen or veteran.

Legal Server, an online case management platform designed for non-profit and government legal service organizations, exemplifies the benefits of SAI in client intake.[14] By incorporating SAI into its online intake module, the automated process has a conversational, human-like approach without requiring staff involvement, resulting in more time those people can devote to tasks that can't be performed by machines. Coupled with NLI, SAI can become even more adept at interactive conversations.[15]

With the available technology, the goal should be expanding its use nationwide to provide low-income populations with greater accessibility to legal information and

AT A GLANCE

Key to increasing access to justice is using existing technology in a way that better meets the needs of legal aid providers and underserved populations — innovations that not only reduce the level of human interaction required, but provide a more familiar, simple experience for those involved in the justice system.

services.

"TXT ME PLZ"

Automated text messaging is certainly not a new concept. We receive automated texts every day from pharmacies, restaurants, and doctors' offices, but this technology has only recently become part of the discussion regarding access to justice. It is another critical tool in narrowing the access to justice gap. Attorneys working with low-income clients know that the best way to communicate with their clients is via text message, and courts are coming to the same realization with respect to unrepresented parties.

Courts across the country are using automated methods to send parties text reminders of upcoming court dates and other appointments.[16] Their stated goals are reducing the number of bench warrants issued (and the resulting expenditures of time and money) and improving case flow by eliminating delays caused by no-shows, while also reducing the collateral effects of bench warrants and defaults on the parties against whom they are issued. Statistics show that the use of automated texting has had the desired effects; failures to appear have decreased in courts using the technology.[17]

Legal services providers are also working to increase automated texting to follow up with clients and visitors. According to Tripp, MLH launched its Next Steps Text program in July. Visitors who prepared certain forms such as divorce or eviction answers can opt into a series of automated text messages that prompt them to take actions (such as filing or service), remind them of timelines (such as life of a summons), and help MLH learn more about the outcomes for people using its tools. The system can also provide just-in-time information or guidance at later steps in the legal process.

Tripp provided an example of how this works. A text may be sent automatically a week after opt-in asking if the litigant filed the complaint drafted on the MLH website. Using branch logic, the system will analyze that person's response and send another context-appropriate text. If the person responds "yes," the system may ask questions to ensure the complaint was properly served and/or remind them how long the defendant has to answer. If the answer is "no," the system may send a link to a page on the MLH website where the litigant can learn more about how to serve the other party.

Automated texting has two primary benefits for access to justice. First, it reaches low-income individuals in a way that makes them more likely to respond. Second, it performs tasks that would otherwise need to be handled by humans, leaving staff more time to do work that machines cannot. Finally, automated texting allows organizations and courts to operate at scale; effectiveness and efficiency lead to better accessibility to legal services and the justice system.

Kimberly Paulson is a freelance attorney, author, editor, and passionate advocate for access to justice. She is a member of the State Bar of Michigan Justice Initiatives Committee and former chair of the SBM Information Technology Law Section. She served as pro bono counsel for Bodman PLC, was founder of the Capuchin Soup Kitchen Legal Clinic, and was an adjunct professor at University of Detroit Mercy School of Law.

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IN OUR BEST INTEREST

History and opportunity to increase access to justice

BY JENNIFER BENTLEY AND EDWARD H. PAPPAS

Interest on lawyers' trust accounts (IOLTA) is an innovative way to increase access to justice for individuals living in poverty. The legal community, in partnership with financial institutions, can help increase this significant source of funding for civil legal services programs. Nationally, more than 90% of grants awarded by IOLTA programs support legal aid offices and pro bono programs.[1] Without IOLTA funding, many low-income families would have nowhere to turn for help with civil legal needs.

The Michigan State Bar Foundation (MSBF) was established in 1947 and for the first 40 years, it supported many worthwhile projects including judicial conferences, state law revision committees, jury instructions, and teacher training.[2] Civil legal aid for low-income individuals became a focus for the foundation when longtime access to justice leader and trustee John Cummiskey suggested a way to increase funding for the network of legal aid organizations throughout Michigan.[3] In 1990, the Michigan Supreme Court adopted mandatory IOLTA and designated the Michigan State Bar Foundation to administer the program.[4]

Annual IOLTA grants from the foundation strengthened the legal aid delivery system through more stable annual funding which

served to attract other local or philanthropic funds to the mix. In 1994, the Michigan Legislature recognized the foundation's central role in supporting civil legal aid in the state and assigned to it administration of filing fee funds to be distributed annually to legal aid programs.[5] In 2020, as part of the statewide eviction diversion program established by the Michigan State Housing Development Authority, the foundation began administering legal aid grants for representing tenants.[6] The foundation also administers the Access to Justice Campaign.[7]

HISTORY OF IOLTA

The idea for IOLTA accounts was developed in Scotland after a legal challenge to the practice of solicitors keeping money they were holding on behalf of clients in a separate account from which the solicitor kept the interest.[8] The House of Lords determined that the interest did not belong to the lawyer,[9] and common law jurisdictions started exploring alternatives. In 1965, Canadian lawyer George Reilly wrote an article suggesting that a foundation be formed and that IOLTA funds be used to support legal aid.[10] In 1967, Australian lawyers created the Law Foundation of New South Wales to receive IOLTA interest and use it for legal aid, education, and research.[11]

AT A GLANCE

As financial institutions understand the commitment of the legal community and the impact of legal aid services, and as the legal community encourages financial institutions to pay higher rates on IOLTA accounts, these partnerships will result in a significant increase in funding for access to justice in Michigan.

In 1969, the Law Foundation of British Columbia became North America's first IOLTA program.[12] By 1986, foundations had formed in all other Canadian jurisdictions, all by statute and supported by the legal profession.[13]

In 1978, Florida became the first state to adopt IOLTA as a result of the leadership of state Supreme Court Chief Justice Arthur En-

gland.[14] England learned of the British Columbia IOLTA program from a former colleague in Vancouver. After researching that program, England proposed to the Florida Bar adopting a program funded by interest on lawyers' trust accounts. England wrote the opinion approving creation of a program to generate interest on lawyers' trust accounts and designated the Florida Bar Foundation as program administrator.[15] The program started operations in 1981.[16]

The American Bar Association established its Commission on IOLTA in 1986.[17] Commission members, including England, led the effort, meeting with state supreme court justices, legislators, bar association presidents, and bar foundation staff to explain the concept and help implement IOLTA programs.[18] That same year, the National Association of IOLTA Programs (NAIP) was created to enhance legal services and access to justice for low-income and vulnerable individuals through the growth and development of IOLTA programs as effective grant-making organizations.[19] NAIP and the commission have worked closely since their inception, serving as the central source of critical information and expertise essential to the effective management of IOLTA programs.

By the early 1990s, most states, the District of Columbia, and the U.S. Virgin Islands had developed IOLTA programs.[20] Since 2013, 19 programs have converted to mandatory IOLTA in an effort to increase revenue.[21] All but six of the 53 IOLTA statutes in the U.S. require lawyers holding client funds to participate in IOLTA.[22]

ONGOING REVENUE ENHANCEMENT STRATEGIES

Because revenue is subject to fluctuation due to interest rate changes and because there is a significant unmet need for civil legal aid, it is imperative that IOLTA programs seek innovative ways to enhance revenue. Virtually every IOLTA program, including Michigan's, has negotiated with participating financial institutions to reduce or waive service fees or charges on IOLTA accounts,[23] and many require that financial institutions pay the highest interest rate or dividend generally available to its customers when IOLTA accounts meet the same minimum balance or other qualifications.[24]

PARTNERSHIP WITH FINANCIAL INSTITUTIONS

Many states have implemented programs to recognize financial institutions that go above and beyond comparability requirements and pay higher interest rates. Financial institutions may choose to participate in these programs and pay higher rates for a variety of reasons including attracting new customers from the legal community and earning credit through the Community Reinvestment Act, which encourages financial institutions to serve low- to moderate-income individuals.[25] Since IOLTA revenue primarily funds civil legal aid programs and supports projects that improve administration of justice, there is a direct correlation between the purpose of the Community Reinvestment Act and the services legal aid organizations provide.

Based on successful models from other states, the Michigan State Bar Foundation in 2018 launched its Leadership Bank program.[26] Each state sets a threshold for participation in its program based on the market value in their specific region. Initially, program eligibility was set at two levels — a net yield of 75% and a net yield of 60% of the effective federal funds target rate.[27] The Bank of Ann Arbor and CIBC joined the Leadership Bank program, and a large bank significantly increased interest paid on IOLTA accounts but chose not to be recognized.[28] The increase in interest paid by these finan-

cial institutions resulted in a 61% increase in IOLTA revenue for the 2019 fiscal year.[29]

In March 2020, the Federal Reserve cut its target for the federal funds rate by 1.5%, bringing it down to a range of 0% to 0.25%.[30]

Based on this drastic cut, the MSBF modified its program and now recognizes financial institutions that agree to waive all fees on IOLTA accounts and pay a flat-rate net yield of either 0.5% or 0.75% of the effective federal funds target rate.[30] The foundation tracks net weighted interest rate paid by all financial institutions participating and all three banks that committed to paying higher rates have continued to do so. It has been a difficult year to approach new financial institutions to participate in the program, but the foundation plans to continue with outreach.

BANKING ON JUSTICE

The foundation recently launched its Banking on Justice campaign to encourage the legal community to hold IOLTA accounts with financial institutions that are part of the Leadership Bank Program or pay higher interest on IOLTA accounts.[31] Interest rates on IOLTA accounts vary between 0.01% and 1% and most financial institutions waive fees.[32] Attorneys may not notice when rates are low because earned interest is paid directly to the foundation.

Based on experiences from other states that have implemented similar efforts, changing the culture in Michigan and further developing a stronger partnership between the legal community and financial institutions regarding increased interest rates on IOLTA accounts will take time. One Michigan bank told the MSBF that when a lawyer initially called to open an IOLTA account, they indicated that they didn't care what the rate was because they did not receive the interest but called back a few days later and said after doing more research, the rate mattered because it supports access to justice.

Many in the legal community actively support local and statewide access to justice efforts through contributions to the ATJ Campaign, pro bono work, participation on committees related to access to justice, and other ways. As financial institutions understand the commitment of the legal community and the impact of legal aid services and as the legal community encourages financial institutions to pay higher rates on IOLTA accounts, these partnerships will result in a significant increase in funding for access to justice in Michigan. If every Michigan lawyer with an IOLTA account chose a Leadership Bank, even based on current rates, it would mean an annual increase of approximately $1.8 million for free civil legal aid to people in need.

Visit msbf.org for more information about the Michigan State Bar Foundation.

Edward H. Pappas is president of the Michigan State Bar Foundation. He is chairman emeritus of Dickinson Wright and a former State Bar of Michigan and Oakland County Bar Association president. He also serves on the Access to Justice Campaign Steering Committee.

Jennifer Bentley is executive director of the Michigan State Bar Foundation and serves on the leadership team of the Justice for All Commission and the State Bar of Michigan Justice Initiative Committee. She is current president of the National Association of IOLTA Programs and a board member of Management Information Exchange.

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COVID-19 EVICTION CRISIS

Large-scale development of eviction diverison programs in Michigan

BY KAREN MERRILL TJAPKES AND ASHLEY LOWE

Long before the COVID-19 pandemic, Michigan was struggling with high eviction rates. In 2018, more than 191,000 eviction cases were filed in Michigan, a rate of 17% or about one for every six rental housing units in the state.[1] Eviction rates in urban areas and southeast Michigan were significantly higher including Detroit at 21.9%, Pontiac at 31.2%, and Southfield at 32.8%.[2] While landlords were represented by legal counsel in more than 83% of eviction cases filed between 2014 and 2018, tenants were represented in fewer than 5% of eviction cases during the same period.[3]

For renters who are evicted, the consequences can have substantial long-term effects, often prolonging residential instability that leads to economic instability and educational disparities. Evictions often cause households to move into lower-quality housing in neighbor-

hoods with higher crime rates, more concentrated poverty, and fewer educational and employment opportunities.[4] Recent studies indicate that the likelihood of losing employment is significantly higher for those who experienced a preceding forced move,[5] and studies have also found an increased likelihood of eviction when there are children in the household. Further, children who experience high rates of residential instability tend to perform worse on standardized tests, have lower school achievement and delayed literacy skills, and are more likely to be truant and drop out of school.[6]

Additionally, studies have shown that eviction has significant negative impacts on the health of families. Mothers who have been evicted are more likely to experience parenting stress and depression and report worse health for themselves and their children.[7] Evictions also disproportionately harm racial minorities, women, and families with children.[8]

When the COVID-19 pandemic caused historically high unemployment rates and financial instability for many Michigan families, housing experts feared a wave of evictions resulting in an unprecedented number of families being homeless. A team of stakeholders, including representatives from the Michigan Supreme Court, the Michigan Poverty Law Program, the Michigan State Bar Foundation, Governor Gretchen Whitmer's office, and other state agencies came together to plan and deploy a statewide response to the anticipated increase in eviction filings, building on eviction diversion program models already successfully piloted in several Michigan courts.

EVICTION DIVERSION PROGRAMS BEFORE THE PANDEMIC

Legal services programs, recognizing the importance of homelessness prevention, have prioritized representing tenants facing eviction. Michigan legal aid programs have led the nation in creating eviction diversion programs (EDP) where courts, landlords, tenants, legal services programs, housing agencies, and financial assistance partners collaborate to prevent evictions due to non-payment of rent. The programs seek to keep tenants in their homes while ensuring landlords receive the money owed to them.

In 2010, the city of Kalamazoo launched one of the first EDPs in the state. The program brought together Housing Resources Inc. of Kalamazoo, the Kalamazoo branch of the state Department of Health and Human Services, the 8th District Court, Legal Aid of Western Michigan, landlords, and tenants. The program sought to coordinate legal and social services to prevent homelessness by offering tenants access to appropriate agencies onsite at the courthouse. In a report to the U.S. Department of Housing and Urban Development, which provided funding for the program, the partners said 97% of tenants it helped had stabilized their housing.[9]

Based upon the success of the Kalamazoo program, more Michigan district courts replicated the model, including the 54-A and 55th courts in Ingham County, the 12th District Court in Jackson County, and the 10th District Court in Calhoun County. A 2017 study evaluating the 54-A District Court program found a marked decrease in evictions, a lower default rate in eviction diversion cases, and more than 40% of tenants in non-default cases accepting an offer of free legal assistance.[10] While these successful programs became a model duplicated in other parts of the country,[11] eviction diversion programs were not available to tenants in most Michigan courts.

MICHIGAN'S RESPONSE TO THE COVID-19 PANDEMIC AND IMPENDING EVICTION CRISIS

Under the federal CARES Act passed in March 2020 to address needs arising from the COVID-19 pandemic, Michigan received substantial funding for rental assistance and eviction prevention. The Michigan State Housing Development Authority (MSHDA), in collaboration with the Michigan Supreme Court, legal aid programs, and the Michigan State Bar Foundation, used the funds to develop a statewide eviction diversion program model. Of the $60 million in CARES Act funds, $50 million was dedicated rental assistance and $10 million was allocated to cover case management, legal services for tenants, and administrative costs.[12]

Tenant assistance funds were administered by housing assessment and resource agencies (HARAs) in each county, private agencies already selected and tasked by each community to administer other housing assistance programs. The $4 million in legal services was directed to the Michigan State Bar Foundation, which granted the funds to regional programs including Lakeshore Legal Aid, Legal Aid of Western Michigan, Legal Services of Eastern Michigan, Legal Services of Northern Michigan, Michigan Advocacy Program/Legal Services of South Central Michigan, and Michigan Legal Services and statewide programs including the Counsel and Advocacy Law Line and the Michigan Poverty Law Program.[13]

AT A GLANCE

When the COVID-19 pandemic caused historically high unemployment rates and financial instability for many Michigan families, housing experts feared a wave of evictions. A team of stakeholders came together to plan and deploy a statewide response to the anticipated increase in eviction filings, building on eviction diversion program models already successfully piloted in several Michigan courts.

"With the infusion of CARES Act money, legal services organizations began intensive hiring campaigns to increase staff to provide legal representation to tenants participating in the EDPs "

Early in the COVID-19 pandemic, Gov. Whitmer suspended evictions to protect public health[14] and in June 2020, she signed an executive order extending Michigan's eviction moratorium through July 15, 2020, while further defining the EDP.[15]

As the end of the eviction moratorium grew closer, the Michigan Supreme Court and the State Court Administrator's Office adopted Administrative Order 2020-17 establishing special processing rules for eviction cases to address the backlogs created by the pandemic moratorium and directives for implementation of the new EDP. This order provided for remote hearings, automatic adjournments, and notification to tenants about the right to be represented by counsel and resources available under the program. [16]

As the MSHDA and the Michigan Supreme Court established the structure and procedures for large-scale eviction diversion processing, stakeholders in each community built local service delivery programs. In most districts, HARAs, legal services programs, district courts, state Department of Health and Human Services offices, and other interested groups began meeting weekly to develop local EDP procedures.[17] This included creating educational materials for landlords and tenants, arranging for HARAs and legal services staff to be virtually present for eviction dockets at district courts (often via Zoom) and creating lines of communication among stakeholders.[18] With the infusion of CARES Act money, legal services organizations began intensive hiring campaigns to increase staff to provide legal representation to tenants participating in the EDPs.[19]

LESSONS LEARNED FROM COVID-19 EVICTION DIVERSION PROGRAMS

Preliminary studies of EDPs developed in response to the pandemic have been over-

whelmingly positive.[20] An evaluation of Michigan's EDP found that the program dramatically increased the number of tenants receiving legal assistance in eviction cases and in cases where legal services provided extended representation, 97% of tenants avoided eviction.[21]

Moreover, partners in Michigan's EDP learned important lessons about the program including:

The importance of collaborative partnerships: The most successful EDPs brought together partners from the courts, legal services, HARAs, and other agencies. Having all partners present and involved in planning allowed each organization to better understand the process, resources, and barriers that each partner faced in its own service delivery, allowing them to work together more effectively to prevent evictions. COVID-19 conditions and EDP requirements have continued to change. Close collaboration has enabled partners to shift resources, update processes, and make ongoing improvements in response to changes.

A better understanding of the resources necessary to implement a right-to-counsel model for eviction cases: While significant funding allowed legal services programs to hire substantial numbers of new graduates, attorneys, and support staff, it also highlighted the need for additional resources. These programs involve high levels of community engagement, coordination, and cooperation.

CONCLUSION

Michigan's EDP successfully distributed $50 million to tenants unable to pay their rent due to the COVID-19 pandemic, while $10 million was allocated to cover case management, legal services for tenants, and administrative costs. Legal aid programs helped more than 15,000 households in the last six months of 2020. In a matter of months, the state created a coordinated program with delivery systems responsive to the needs of local communities. Based on the success of the program in 2020, EDP continued into 2021 with additional funding. The state's EDP partners continue to work together to provide stability by helping landlords receive the rent they are owed while helping tenants avoid homelessness.

Karen Merrill Tjapkes is director of litigation at Legal Aid of Western Michigan in Grand Rapids, where she is responsible for overseeing LAWM's advocacy and service delivery. Her practice is concentrated primarily on housing and consumer and bankruptcy law. She earned her bachelor's degree from James Madison College at Michigan State University in 1997 and her law degree from Loyola University Chicago School of Law in 2000.

Ashley Lowe is chief executive officer at Lakeshore Legal Aid. Active in the State Bar of Michigan, she chairs the Justice Initiatives Committee and is a member of the Justice for All Commission, the State Planning Body, and Legal Services Association of Michigan. She earned her law degree and master of business administration degree at Georgetown University.

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LIMITED-SCOPE REPRESENTATION **IN MICHIGAN**

Tales from the field

BY ANGELA TRIPP AND KRENISSA D. HICKS

Michigan's Court Rules and Rules of Professional Conduct changed in 2018 to explicitly permit limited-scope representation (LSR), giving practitioners guidelines on how to provide this more affordable form of representation in a way that protects clients and makes the attorney-client relationship clear to courts, opposing counsel, and clients.[1] To learn more about how attorneys are taking advantage of limited-scope rules, we spoke to a few about their experiences.

Erika L. Butler is a solo practitioner in the Detroit area representing local nonprofits, small businesses, and individual clients in litigation and transactional matters in the areas of commercial litigation, family law, probate and trust administration, and real estate. Limited-scope representation accounts for 15-20% of her practice, which consists primarily of guardianships, conservatorships, uncontested divorces, and consultations with clients handling their own family and probate matters.

"There are people who need help, but their matter doesn't require full representation," Butler said. "Often, lower-income communities and communities of color believe they cannot afford legal help and must face legal matters on their own. However, I can offer a little bit of guidance and information that empowers them to navigate the matter and move forward.

"With the gift of having practiced as long as I have, I can tell clients very quickly what

it will take for me to do my portion of the work on their legal matter and what resources they will need to handle their tasks."

Zachary Backlund is an associate attorney at Sterling Law, a five-attorney firm with offices in Traverse City and Gaylord. Limited-scope representation accounts for about 17% of his practice, which consists of family law, estate planning, and real estate. His firm started providing limited-scope services shortly after the rule change.

"In northern Michigan, we serve many limited-scope clients who would not otherwise be able to afford an attorney," Backlund said. "They can't fork over a big retainer. When they hear about limited-scope representation, they sigh with relief.

"I use the analogy of controlling the flow of water through a hose — with full-scope representation, the hose is on; with limited scope, they control the flow. The attorney is here when you need him and not when you don't."

Rebecca Tooman, a solo practitioner at Innovative Law Services in Novi, focuses on family law and estate planning. She estimates that 20% of her clients have limited-scope engagements.

"My favorite attorney was Abraham Lincoln," said Tooman, who has been offering limited-scope services for 14 years and promotes this as her opening product and the one where she adds the most value. "As a small-town attorney, he had to know all areas of the law and promoted compromises — but these days we specialize, and limited scope allows us to draft documents without filing an appearance. This is very beneficial for clients that cannot afford representation or prefer to manage their own case."

Tooman finds the feedback she receives from LSR clients rewarding; they are happy to save their hard-earned money while also getting the right amount of help.

Mechelle Woznicki is a solo practitioner serving Kalamazoo and southwest Michigan specializing in collaborative law and mediation in the areas of family law and estate planning. Limited-scope representation initially accounted for 75% of her practice but because of limited-scope clients converting to full representation after deciding they want more assistance, it now accounts for one-quarter to one-half of her business.
"It was a good way for me as a new lawyer

to get my feet wet," Woznicki said. "Limited-scope representation also gives you and the client a chance to see if you are a good fit before entering into a business relationship. Mostly, I love offering people services that they desperately need and never knew they could afford."

Limited-scope practice is not just for private practitioners. Legal aid programs across the state — including many of their pro bono attorneys — frequently engage in limited-scope practice.

"Offering limited-scope pro bono opportunities helps attract attorneys from larger firms and transactional attorneys who don't want to go to court," said Shannon Lucas, director of advocacy at the Michigan Advocacy Program (MAP) in Ypsilanti. "They can assist with a part of the case where their expertise is needed, including business evaluations, real estate issues, qualified domestic relations orders, and bankruptcies. What might have been a consultation in the past can now be a limited-scope case."

Many pro bono attorneys are more attracted to these opportunities than taking on an entire family law case, for example, which can be emotionally and legally complex and unpredictable in terms of the time and work involved in completing the case.

AT A GLANCE

Limited-scope representation is not a lesser form of legal representation. In fact, it can enable skilled professionals to help more people. Limited-scope attorneys help bridge the justice gap by providing affordable legal assistance and pro bono expertise in critical legal matters to lower-income people.

Lucas added that the new LSR rules "let our staff attorneys focus on where they can be the most effective in a case. In some cases, our staff attorneys will provide the necessary legal work and leave the other details that clients can generally handle on their own to the client. When attorneys can concentrate their efforts on legal aspects of a case, they are able to focus on maximizing services to clients, being more efficient, and providing services to more people."

DIFFERENCE BETWEEN LSR AND FULL-SCOPE REPRESENTATION

While the legal and administrative work involved in limited-scope representation is like full-scope representation, there are differences, a few of which were described above. In some ways, the relationships with these clients can be easier to maintain.

"Full-scope clients tend to be more litigious, more challenging, needing the attorney to act as an emotional buffer between the parties," Tooman said. "This leads to additional stress on the attorney. This typically isn't the case with clients who are primarily representing themselves."

"There is a teacher-pupil dynamic that doesn't really exist with full representation clients," Backlund said. "I provide more explanation of legal terms and practices for my LSR clients and prepare them to appear in court, so I need to use more careful, precise, and plain language when communicating with them."

On the business end, Tooman said she spends less time in court on limited-scope cases, allowing her to be more productive and eliminate hours spent traveling and waiting in courtrooms. Several attorneys also mentioned the importance of automation and lean business practices in building a successful limited-scope practice.

"I'm all about lean and if I can't do it lean, then I don't want to do it at all," Woznicki said. "Family law is ideal for limited scope because the stages of family law cases are so segmented."

"Efficiency is the key," she added. "Think of this example: If you bill a flat fee of $1,500 for a process that takes an attorney an average of six hours to complete, that's $250 an hour. If you can refine your processes to get the same work done in one to three hours, your effective hourly rate is anywhere from $500 to $1,500 an hour. You to earn more money while helping more clients in the same amount of time another lawyer can only help one."

DRAWBACKS TO LSR PRACTICE

There are many advantages to limited-scope representation, but there are also challenges. In the early days of the new LSR rules, attorneys experienced some pushback from judges and clerks, but that has improved as more people learn the rules and become familiar with the practice.

Tooman prepares clients to answer questions regarding LSR from court staff and has sent opposing counsel copies of the court rules when questioned.

"It always ends up being a positive experience after jumping through some hoops," Tooman said.

Another challenge of LSR is ensuring everyone stays within the scope of the agreement.

"It doesn't happen often, but on occasion, a client wants to come back after the scope has ended with additional questions," Butler said. "During the consultation, I am clear about the parameters of my representation and there should be no expectation of ongoing representation."

"It takes a lot of discipline to stick to the scope of representation," Woznicki said. "Naturally, when you represent someone, you want to keep helping them as much as you can, but with limited scope it is important to remember you have only been hired to do certain discrete tasks.

"The most important thing is to make sure the client understands this, and that it is ar-

ticulated well in the representation agreement. Checklists help here."

"It is hard to prepare a client to present a case in trial or contested motion hearing," Backlund said. "Some things get lost in translation. It can also be hard to manage client expectations since you can't predict or influence what ultimately happens in court."

Backlund shared the story of a client with a multi-day trial in which the other side had counsel. Backlund met with his client every day to recap that day's events and prepare for the following day. They often spoke during lunch breaks as well. Backlund wanted to be sure he was conveying all of the information correctly, which was difficult because he was hearing everything secondhand.

"There are often details that aren't important to the client but if I were representing them, I would need to know," he said. "Knowing you can't be with the client throughout the process can be hard." Ultimately, the trial was a success — the client was satisfied and proud to be able to represent himself with Backlund's assistance.

"[There are] proud teacher moments," he said, "when clients come back and things went as planned."

When clients are responsible for many aspects of their case, communication and keeping up with paperwork can be a challenge.

"When you are engaged in full-scope representation, everything comes through the attorney," Backlund said. "With LSR, that is not the case. Occasionally, a client will forget to provide an important document or tell you about a hearing recently scheduled in the case. You need to emphasize to the client the importance of telling you everything that is happening. This challenge can be overcome by effective communication and client management."

HOW CAN I DO MORE LSR?

The attorneys we talked to were unanimous in their support of limited-scope practice and wish that more attorneys would engage in LSR.

Butler encourages attorneys to familiarize themselves with the court rules and develop a set of forms to use as a part of their LSR practice. She also recommended speaking to colleagues with LSR experience and studying LSR resources.

The SBM website has many free resources to help you build your limited-scope practice, including a Limited Scope Toolkit michbar.org/limited-scope with sample practice forms including an engagement letter and consent, end of representation letter, and task checklist. There are also sample court forms, sample flow charts for attorneys and clients, and marketing tools to help you advertise the limited-scope aspects of your practice. Finally, there are links to training materials including a free ICLE webinar, national resources, and an opportunity to join a limited-scope discussion group where you can confer and consult with other LSR attorneys.

Networking is critical to growing an LSR practice; most clients are word-of-mouth referrals from satisfied clients.

"Limited-scope practice is not just for private practitioners. Legal aid programs across the state -- including many pro bono attorneys -- frequently engage in LSR."

"Find clients who are the right fit," Tooman said. "Go to seminars and ICLE functions to meet attorneys who might refer clients who can't afford them or only want limited-scope services."

Backlund recommends talking about limited scope at the first meeting with a client and having brochures available that explain both limited and full scope. All of the attorneys we spoke to recommended advertising limited-scope services on the State Bar website in addition to your own and talking about your practice on social media outlets.

LSR IN REAL LIFE

Like Backlund, each attorney we interviewed had success stories to share. Woznicki talked about a client who hired her just for coaching. They met twice, the client paid her $500, and the client successfully represented herself in a divorce without minor children. Tooman had a divorce client with a complex case requiring more than 30 forms to be filed. The client was overwhelmed, but with limited-scope assistance from her attorney, they broke down the process step by step, assigned action items to the appropriate parties, and successfully completed every form. Both enjoyed the team approach, and the client was happy with the result.

Butler represented a client in a high-conflict divorce case where the other party was self-represented. As the trial neared, the adverse party hired a limited-scope attorney to negotiate a settlement; the parties and their attorneys were able to finalize the divorce without a trial.

"That attorney's involvement saved me the time of a trial and saved my client from the emotional energy and toll that a contested divorce trial will often take," Butler said. "It gave both parties a better outcome."

LSR has also opened the doors to new pro bono opportunities.

"Our recent expungement clinics have been wonderful ways to involve new pro bono partners," Lucas said. "The NAACP reached out to get involved in a recent clinic, which was the first time we have ever partnered with them. Of the 23 attorneys who participated in a MAP expungement clinic, 15 of them were volunteering for the first time.

MEMBER ANNOUNCEMENTS

When your office has something to celebrate, let the Michigan legal community know about it with a member announcement in the *Bar Journal* and michbar.org/newsandmoves for one month.

- Announce an office opening, relocation, or acquisition
- Welcome new hires or recognize a promotion
- Celebrate a firm award or anniversary
- Congratulate and thank a retiring colleague

Contact Stacy Ozanich for details
517-346-6315 | sozanich@michbar.org

"We also hope that by offering one successful pro bono opportunity, some volunteers will decide to take on the expungement case for full representation after having gotten to to know the client at the clinic."

Tooman sums up her role as a limited-scope attorney as being equal parts lawyer and project manager.

"When I team up with a limited-scope client, I become their contact, their calendar, their task list," she said. "I send them reminders of what to expect before court and how to prepare. I step in to help with complex issues but, overall, it is an educational approach."

What we learned from these experienced practitioners is that limited-scope representation is not a lesser form of legal representation. In fact, it can enable skilled professionals to help more people. Limited-scope attorneys help bridge the justice gap by providing affordable legal assistance and pro bono expertise in critical legal matters to lower-income people.

Angela Tripp is director of Michigan Legal Help (MLH), which operates a website for self-represented litigants at MichiganLegalHelp.org and 21 affiliated self-help centers around the state. She is also co-managing attorney of the Michigan Poverty Law Program and co-director of Michigan Statewide Advocacy Services, which manages five statewide programs including MLH and MPLP.

Krenissa D. Hicks is a solo practitioner focusing on the areas of family law, civil litigation, estate planning, and criminal defense. She believes everyone should have the opportunity to obtain quality and affordable legal services and, as a new practitioner, has incorporated limited-scope representation into her practice to help close the access to justice gap.

ENDNOTES

1 From the Michigan Supreme Court, 96 Mich B J 72, 74 (Nov 2017).

IN MEMORIAM

JACK H. BINDES, P10803, of Bloomfield Hills, died October 5, 2021. He was born in 1936, graduated from Wayne State University Law School, and was admitted to the Bar in 1959.

ARTHUR R. BUTLER, P34036, of Plymouth, died December 11, 2020. He was born in 1947 and was admitted to the Bar in 1982.

J. TIMOTHY ESPER, P27971, of Detroit, died September 16, 2021. He was born in 1951, graduated from Wayne State University Law School, and was admitted to the Bar in 1977.

MARTIN L. FRIED, P13712, of Bingham Farms, died September 1, 2021. He was born in 1944 and was admitted to the Bar in 1973.

JANA L. KURRLE, P32712, of Corunna, died September 22, 2021. She was born in 1948, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1981.

KEITH F. LOBERT, P32509, of Remus, died July 23, 2021. He was born in 1937, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1981.

VICTOR PAPAKHIAN, P18622, of Grosse Pointe Park, died December 9, 2020. He was born in 1941, graduated from Wayne State University Law School, and was admitted to the Bar in 1968.

RODNEY PIUS, P83026, of Roseville, died June 16, 2021. He was born in 1982 and was admitted to the Bar in 2018.

JAMES A. SULLIVAN, P21142, of Palmetto, Fla., died September 20, 2021. He was born in 1941, graduated from University of Detroit School of Law, and was admitted to the Bar in 1967.

DINA TASEVSKA, P52781, of Bingham Farms, died July 19, 2021. She was born in 1969, graduated from Detroit College of Law at Michigan State University, and was admitted to the Bar in 1995.

ROBERT J. WALLACE, P21934, of Novi, died January 11, 2021. He was born in 1933, graduated from Wayne State University Law School, and was admitted to the Bar in 1961.

In Memoriam information is published as soon as possible after it is received. To notify us of the passing of a loved one or colleague, please email barjournal@michbar.org.


REACH
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LIBRARIES & LEGAL RESEARCH

Cutting research costs to improve access to justice

BY DARYL THOMPSON

Access to justice involves many barriers, including a cost barrier. In the spirit of finding ways to reduce that cost barrier, you may want to consider the resources below for researching Michigan law. Some resources such as Nexis Uni and Westlaw Public Access provide unified research solutions. Alternatively, you may find opportunities to combine sources (e.g., using Google Scholar to locate a case and using State of Michigan resources to find a referenced statute.) Most of these resources are publicly available, something you may keep in mind if you find you do not have time to take on a client.

The bulleted lists below provide some places you might find secondary sources, cases, statutes, and regulations. This is followed by alphabetically organized descriptions of those resources.

SECONDARY SOURCES
- Benchbooks and model jury instructions
- FindLaw
- Google Scholar
- Law libraries
- Law reviews and journals
- Michigan eLibrary (MeL)
- Michigan Legal Help
- Nexis Uni
- Westlaw Patron Access

CASES
- Caselaw Access Project
- Fastcase
- Google Scholar
- Law libraries
- Nexis Uni
- State of Michigan
- Westlaw Patron Access

STATUTES
- Fastcase
- FindLaw
- Law libraries
- Nexis Uni
- State of Michigan
- Westlaw Patron Access

REGULATIONS
- Fastcase
- Law libraries
- Nexis Uni
- State of Michigan
- Westlaw Patron Access

BENCHBOOKS AND MODEL JURY INSTRUCTIONS

Benchbooks are designed to provide the basics of the law for judges and clerks. The Michigan Judicial Institute provides benchbooks on several different subjects and one might apply to your issue.[1]

You also might find something on topic with model jury instructions. These often address narrow questions. The Michigan Supreme Court has provided model civil[2] and criminal[3] jury instructions.

CASELAW ACCESS PROJECT

The Caselaw Access Project[4] is a digitization of U.S. caselaw held by Harvard Law Library. It is extensive and entirely free. As of the publishing of this article, it has caselaw through 2018. It is keyword searchable. This collection goes back considerably further than the online cases provided by the state government websites, although it is not as up to date.

FASTCASE

Your State Bar membership provides you with access to a legal research platform called Fastcase. Casemaker, the SBM's previous research platform, has merged with Fastcase. Fastcase provides free access to cases, statutes, and regulations. It can help you determine if your case is based on good law or find which cases cite a particular section of a code. Another big advantage is that it includes a robust search engine similar to Westlaw and Lexis. While Fastcase lists secondary sources, it charges for most of them. Log in to the SBM member area at e.michbar.org, and you will find a link to Fastcase.[5]

FINDLAW

FindLaw[6] is like a legal teaser: Thomson Reuters provides a little information for free and encourages users to locate an attorney through its service. You can find secondary information and links to unannotated stat-

utes. It is a good first step into the legal lingo and concepts surrounding a topic, but you will likely need to supplement its findings with Michigan-specific searches.

GOOGLE SCHOLAR

Google Scholar[7] provides links to many court cases and legal articles. The court cases are generally freely accessible. Unfortunately, while review articles are frequently freely available through the publisher (particularly if the publisher is a law school), Google Scholar often places links to paid services such as Hein Online more highly in the search rankings. However, you may be able to access articles found using Google Scholar by using your bar membership or through that journal's web page (see law reviews and journals below).

LAW LIBRARIES

Libraries and institutions of higher education are good resources for finding freely accessible materials. Academic law libraries frequently have print resources available to the public or attorneys including practice guides, forms, treatises, annotated codes, and case reporters. Less frequently, they may have electronic resources for the public. Also check your local public library to see which resources it has. Most libraries, even those without extensive legal collections, will have some freely accessible legal information. The Library of Michigan has published an invaluable directory of libraries with designated legal collections and the types of available resources.[8]

LAW REVIEWS AND JOURNALS

As a State Bar of Michigan member, you can search archived versions of the Michigan Bar Journal and most other U.S. law reviews and journals using Hein Online. To use Hein Online, click on the link for Bar Journal Search in the SBM members area.

Law reviews are often freely accessible. Law Review Commons[9] provides an easy search through a large collection of open-access journals. Searching articles across an even larger aggregation of law reviews, however, may involve a two-step process. One trick is to search using Google Scholar and then go to the journal's website to check if you can access the article for free.

MICHIGAN eLIBRARY

Electronic resources are convenient, and the Michigan eLibrary[10] is a response to that reality. Through EBSCO Information Services, the Library of Michigan provides access to legal resources such as e-books, forms, and articles on several topics.

MICHIGAN LEGAL HELP

As attorneys, the most effective way for you to help clients access justice is representing the client. Sometimes, however, you will not be able to do so due to time constraints. Arguably, the single best starting tool for laypersons facing civil legal issues is Michigan Legal Help.[11] It includes an online platform accessible from anywhere and self-help centers statewide that offer support.

NEXIS UNI

Nexis Uni[12] includes much of Lexis Nexis's core legal research capabilities including Shepardizing,[13] annotated codes, and some secondary sources. Generally, Nexis Uni is a tool for educational institutions, and you can connect to it from the campuses of some universities, colleges, and libraries. Because it is meant to be a broader tool than just legal research, you may need to click on Advanced Search, and then select Legal to focus your search. Check an institution near you for Nexis Uni; many have it.

STATE OF MICHIGAN

Michigan's government offers freely accessible cases, statutes, and regulations online. Michigan Court Case Search[14] provides access to recent cases. The search covers published Court of Appeals and Supreme Court opinions back to 2001. There you can also find unpublished Court of Appeals opinions back to July 1996, Court of Appeals orders back to 2005, and Supreme Court orders back to September 21, 2005.

The Michigan Legislature site[15] allows for searching of current Michigan Compiled Laws, bills back to 1989, and executive orders back to 1993. It provides several filters you can use to narrow your search in addition to keyword searching. The Michigan Administrative Code site[16] is searchable and lets users narrow searches by department.

AT A GLANCE

Michigan attorneys have many options available to them to to conduct legal research, which can reduce office costs and client fees.

WESTLAW PATRON ACCESS

Public access terminals to Westlaw[17] are tremendously helpful. Treasure a public terminal if you have access to one. Some places that have one — this list is not exhaustive — include the Kalamazoo Public Law Library, the Marquette County Law Library, and the Muskegon County Law Library. You may find more public access terminals using the aforementioned Library of Michigan law library directory.

CONCLUSION

Michigan attorneys have many free legal research resources available to use. Hopefully, you can use them to cut costs and help people gain access to justice.

Daryl Thompson is a reference librarian at the Michigan State University College of Law. He received his law degree from MSU and earned his master's degree in library and information science from San José State University.

ENDNOTES

1 <https://mjieducation.mi.gov/benchbooks> [https://perma.cc/H9QW-LKQ6]. All websites cited in this article were accessed October 8, 2021.

2 Model Civil Jury Instructions, One Court of Justice, Michigan Courts, available at <https://www.courts.michigan.gov/rules-administrative-orders-and-jury-instructions/current-rules-and-jury-instructions/model-civil-jury-instructions/> [https://perma.cc/AJM8-RQ6L].

3 Model Criminal Jury Instructions, One Court of Justice,

Michigan Courts, available at <https://www.courts.michigan.gov/rules-administrative-orders-and-jury-instructions/current-rules-and-jury-instructions/model-criminal-jury-instructions2/> [https://perma.cc/EB2U-W7S4].

4 <https://case.law> [https://perma.cc/KJB9-Z9X6].

5 You Now Have Access to Fastcase Legal Research, SBM (July 27, 2021) <https://www.michbar.org/News/NewsDetail/nid/5803/You-Now-Have-Access-to-Fastcase-Legal-Research> [https://perma.cc/8FGX-ZCG9].

6 <https://www.findlaw.com> [https://perma.cc/S52Z-LRXY].

7 <https://scholar.google.com> [https://perma.cc/7L3E-QSNH].

8 <https://www.michigan.gov/libraryofmichigan/0,9327,7-381-88854_89989_89990-52451--,00.html> [https://perma.cc/2HHR-5U5M].

9 <https://lawreviewcommons.com.> [https://perma.cc/C4ZR-K9RY].

10 <https://mel.org/libraries/public/legal> [https://perma.cc/EE5D-JHSJ].

11 <https://michiganlegalhelp.org> [https://perma.cc/L494-R3Y8].

12 <https://www.lexisnexis.com/en-us/professional/academic/nexis-uni.page> [https://perma.cc/CB26-J3G2].

13 Shepardizing a citation is ascertaining the subsequent treatment of a legal decision, putting its precedential value in a complete context. The term originates from the common historical use of Shepard's Citation Service to track treatment of specific decisions. Shepardize, Legal Information Inst, Cornell Law School (July 2021). <https://www.law.cornell.edu/wex/shepardize#:~:text=To%20Shepardize%20a%20citation%20is,the%20treatment%20of%20specific%20decisions> [https://perma.cc/2KL4-M75Q].

14 Cases, Opinions, & Orders, available at One Court of Justice, Michigan Courts <https://www.courts.michigan.gov/case-search/> [https://perma.cc/LC6A-Q5BT].

15 <https://www.legislature.mi.gov> [https://perma.cc/34ZQ-C9MF].

16 <https://ars.apps.lara.state.mi.us/AdminCode/AdminCode> [https://perma.cc/3JHY-RK8P].

17 <https://legal.thomsonreuters.com/en/products/westlaw/patron-access> [https://perma.cc/S6MS-S4V9].

DUTY TO REPORT AN ATTORNEY'S CRIMINAL CONVICTION

All Michigan attorneys are reminded of the reporting requirements of **MCR.9120(A)** when a lawyer is convicted of a crime:

WHAT TO REPORT:

A lawyer's conviction of any crime, including misdemeanors. A conviction occurs upon the return of a verdict of guilty or upon the acceptance of a plea of guilty or no contest.

WHO MUST REPORT:

Notice must be given by all of the following:

1. The lawyer who was convicted;
2. The defense attorney who represented the lawyer; and
3. The prosecutor or other authority

WHEN TO REPORT:

Notice must be given by the lawyer, defense attorney, and prosecutor within 14 days after the conviction.

WHERE TO REPORT: Written notice of a lawyer's conviction must be given to:

Grievance Administrator
Attorney Grievance Commission
PNC Center
755 W. Big Beaver Road, Suie 2100
Troy, MI 48084

AND

Attorney Discipline Board
333 W. Fort St., Suite 1700
Detroit, MI 48226

MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-months intervals in January and July of each year from when the complaint was filed as is compounded annually.

For a complaint filed after December 31, 1986, the rate as of July 1, 2021, is 1.739%. This rate includes the statutory 1%.

A different rule applies for a complaint filed after June 30, 2002, that is based on a written instrument with its own specific interest rate. The rate is the lesser of:

13% per year, compounded annually; or

The specified rate, if it is fixed — or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see courts.michigan.gov/publications/interest-rates-for-money-judgments.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.

PLAIN LANGUAGE

Better rule drafting

BREAK IT DOWN; USE MORE HEADINGS; PRUNE CLUTTER

BY IAN LEWENSTEIN

Adopting a rule in Minnesota requires state agencies to follow Minnesota's rulemaking law, the Administrative Procedure Act.[1] To combat legislative distrust of agency rulemaking, the act emphasizes public participation and agency transparency by requiring compliance with several notice requirements when holding a public rule hearing. The notice requirements help ensure that the agency properly notifies affected public members about the rule. Yet the importance of notice requirements is not reflected in the statute, which neglects the clarity of plain language and substitutes confusion and shoddy drafting, making the notice requirements not easily discernible to even the most veteran of rulemaking agencies, let alone public members unfamiliar with rulemaking.

The current statute that lists the notice requirements[2] is problematic for three reasons. First, it begins with a short vertical list — a homage of sorts to plain language — and then proceeds to a block-left monstrosity. Second, this uninviting text block consists of long clauses that bury important information that affected parties need to understand and comply with the statute. Third, cross-references to the statute are useless because affected parties must exert themselves to find the relevant information while working through redundant and poorly worded language.

As has been discussed in this column many times, neglecting plain language results in confusion, frustration, and increased costs for affected parties. And in this statute, turgid drafting decreases the likelihood of public participation that keeps agencies accountable under the act.

ORIGINAL STATUTE

Subd. 1a. Notice of rule hearing.

(a) Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. Persons may register to receive notice of rule proceedings by submitting to the agency:

(1) their electronic mail address; or

(2) their name and United States mail address.

The agency may inquire as to whether those persons on the list wish to remain on it and may remove persons for whom there is a negative reply or no reply within 60 days. The agency shall, at least 30 days before the date set for the hearing, give notice of its intention to adopt rules by United States mail or electronic mail to all persons on its list, and by publication in the State Register. The mailed notice must include either a copy of the proposed rule or an easily readable and understandable description of its nature and effect and an announcement that a free copy of the proposed rule is available on request from the agency. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or an amended rule in the form required by the revisor under section 14.07, together with an easily readable and understandable summary of the overall nature and effect of the proposed rule, a citation to the most specific statutory authority for the proposed rule, a statement of the place, date, and time of the public hearing, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that the agency intends to adopt a rule and other information required by law or rule. When an entire rule is proposed to be repealed, the agency need only publish that fact, along with an easily readable and understandable summary of the overall nature of the rules proposed for repeal, and a citation to the rule to be repealed.

(b) The chief administrative law judge may authorize an agency to omit from the notice of rule hearing the text of any proposed rule,

the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if:

(1) knowledge of the rule is likely to be important to only a small class of persons;

(2) the notice of rule hearing states that a free copy of the entire rule is available upon request to the agency; and

(3) the notice of rule hearing states in detail the specific subject matter of the omitted rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose and motivation.[3]

A REVISION

My main goal when redrafting this statute was to break up distinct requirements — from the text block — into separate subdivisions and arrange them logically,[4] making sure to generously use vertical lists with hanging indents to present easily digestible information. I also changed a few *shall*s and removed clutter. My redraft makes the section more easily citable, easier to follow, and easier to read and understand, encouraging more public participation in agency rulemaking.

Subd. 2. Agency rulemaking list.

(a) Getting placed on list. An agency must keep a rulemaking list of all persons who have registered with the agency to receive notice of agency rule actions. To be placed on an agency's list, you must submit your email address or name and US mail address.

(b) Being removed from list. You may be removed from the list if you:

(1) ask to be removed; or

(2) do not respond to the agency within 60 days after the agency asks if you want to remain on the list.

Subd. 3. Notice of proposed rule.

(a) Giving notice. At least 30 days before the hearing date, an agency must give notice of its intent to adopt a rule by publishing a notice in the State Register and by notifying persons on the rulemaking list through US mail or email.

(b) Notice to rulemaking list. The notice to persons on the rulemaking list must:

(1) either include a copy of the proposed rule or summarize the rule in plain language; and

(2) state that a free copy of the rule is available upon request.

(c) Notice in State Register. The notice in the State Register must include the rule in the required form under section 14.07 and:

(1) summarize the rule and its effect in plain language;

(2) cite the most specific statutory authority for the rule;

(3) state the hearing's place, date, and time; and

(4) state that a person may register for the agency's rulemaking list to receive notice of all agency rule actions.

(d) Notice repealing rules. When an agency proposes only to repeal one or more rule parts, the agency need only publish a notice that:

(1) cites each rule part to be repealed; and

(2) summarizes, in plain language, each rule part's subject matter.

Subd. 4. Omitting rule text from State Register.

The chief administrative law judge may authorize an agency to omit the rule text from the notice under subdivision 3, paragraph (c), if publishing the text would be unduly expensive and:

(1) the rule is likely important to only a small class of persons;

(2) the notice states that a free copy of the rule is available upon request; and

(3) the notice:

(i) specifies the rule's subject matter;

(ii) cites the statutory authority for the rule; and

(iii) briefly summarizes why the rule is needed.

Subd. 5. Additional notice.

In addition to the notices under subdivision 3, an agency must make reasonable efforts to notify persons or classes of persons whom the rule may significantly affect by giving notice:

(1) in newsletters, newspapers, or other publications; or

(2) through other means of communication.

A SIMPLE QUESTION

Let me ask: Which statute would you rather read?

Ian Lewenstein has worked for the Minnesota Legislature and several state agencies, helping write clear regulations in plain language. He also runs his own consulting business, which tracks state and federal rulemaking and provides writing expertise to businesses, nonprofit organizations, city governments, and individuals.

ENDNOTES:

1 Minn Stat 14.001–.69.

2 Minn Stat 14.14(1a).

3 Id.

4 I renumbered as if I were drafting this section from scratch (subdivision 1 is not shown).

BEST PRACTICES

Best practices for drafting settlement agreements

BY DIRK A. BEAMER

Those of us who litigate routinely seek to sharpen our pre-trial and in-trial techniques. We read about successful trial lawyers, or we attend an ICLE workshop. We want to be best positioned to push every advantage available in the courtroom for the benefit of our client or cause. However, we know that based on published statistics and personal experience, few of our cases will be decided at trial. Some will be dismissed by the court or the claimant, but most will be resolved through settlement. That being the case, it makes sense that we devote the same level of craft to drafting settlement agreements as we do to conducting depositions.

PREPARE IN ADVANCE

When building a case for trial, we develop timelines, case themes, and evidentiary checklists. We should develop a settlement checklist as well. Identify the specific takeaways your client needs for a settlement to be plausible. Likewise, identify the unique issues that will require customized handling. We can predict that certain events on the calendar will likely prompt settlement conversations, so we want to enter those conversations with our key objectives solidly in mind.

In particular, mediation sessions require advance planning. Most mediators, if successful in bringing the parties to resolution, want to secure the result with a signed memorandum of some sort, possibly with the final settlement agreement itself. You do not want to find yourself in the heat of the moment trying to identify and articulate the details you need in a final agreement. Have your checklist in hand and consider taking a pre-drafted settlement agreement to the mediation.

DISTINGUISH SETTLEMENT NEGOTIATIONS FROM SETTLEMENT AGREEMENTS

Remember, a settlement agreement is simply a contract. It must meet the requirements for a valid contract — offer, acceptance, mutual assent on essential terms, and consideration.[1] An email exchange, for example, can constitute a valid offer and acceptance, even if one party assumed (but did not stipulate) that a mutually agreed, signed settlement agreement was necessary to cement the deal.[2] As you explore settlement options, take pains to distinguish whether all essential terms have been identified and communicated before a potentially binding offer is made.

BE WARY OF BOILERPLATE

I will not pretend that I cut every settlement agreement I draft from whole cloth. Most of us have a stockpile of favorite forms and provisions from which we draw when creating a document. The danger in drafting a settlement agreement is assuming that a customary provision should be included without sufficiently analyzing whether it needs modification or whether it is even appropriate under the circumstances. Here are a few examples:

Integration

Typically, we include an integration clause to avoid a future argument about whether one party to a settlement retains claims against the other that derive from a different source or agreement. Sometimes, however, separate agreements do exist, and our client very much intends to rely on their continued enforceability. Consider an employment dispute in which an employer settles a former employee's discrimination claim but still intends to enforce a free standing, non-competition agreement. Likewise, a supplier and a manufacturer may have an open, blanket purchase order for production parts while disputing a separate order for tooling. Resolving the latter should not foreclose claims under the former.

Confidentiality and non-disparagement

In many instances — especially from a defense perspective — we find it appropriate to protect against disclosure of a settlement's terms and future badmouthing by the other party. I have had multiple cases, however, where my defendant client wanted the freedom

to talk about the settlement (perhaps feeling the size of the settlement payment vindicated its position.) Similarly, an organization may not trust its personnel — or an individual may not trust him or herself — to bite their tongue, making non-disparagement commitments ill-advised under the circumstances.

Releases

A party making a settlement payment expects to buy peace. Therefore, the release is a critical component of most settlement agreements. This may explain the lengthy, laborious, and even incomprehensible language we sometimes encounter:

> In consideration of the foregoing, Plaintiff does hereby waive, release, settle, discharge, terminate, exempt, and forgive for himself and his agents, heirs, successors, and assigns, any and all rights, claims, demands, suits, promises, pledges, obligations, causes of action, liability, interest, request, or commitment, arising from the beginning of time to the date of this agreement and any time thereafter, sounding in tort, contract or equity, known or unknown, absolute or contingent, owed by or arising from or asserted against Defendant, its successors, assigns, insureds, officers, directors, employees, agents, attorneys, insurance carriers, independent contractors, lenders, and lienholders.

Did we cover it all? I'm not sure. I do fear, however, that the more ways we attempt to define or list a claim, the more we implicitly suggest that our language is insufficient. If we can find 12 ways to say what is released, does that beg the question whether there is a 13th we failed to include?

Think about the actual claims your client expects to be released and identify them. If there is a white elephant lurking in the room, call it out and make sure you have specifically released it rather than depend on a vague litany of released claims.

Likewise, determine whether the party entering the settlement agreement has the legal capacity to release the claims at issue. A release from a minor requires court approval. A release from an injured party does not bar reimbursement claims from Medicaid or Medicare. Make sure you understand the scope of what can and cannot be released in your agreement.

TALK TO TAX COUNSEL

Most settlement agreements involve settlement payments, which will carry tax consequences for the payor and recipient. Will a former employee plaintiff receive a W-2 for back wages? Will a former member of a limited liability company receive a K-1 on company earnings in which he did not share? Understand those consequences in advance so you do not make commitments that your payer client cannot lawfully keep or your payee client lives to regret.

INCLUDE ENFORCEMENT PROVISIONS

If drafted well, a settlement agreement should end a dispute without creating a new one. However, whether because of poor drafting, buyer's remorse, or bad faith, disputes arise concerning the construction and enforcement of settlement agreements. Anticipate those disputes and determine in advance how and where they will be resolved. You might agree to arbitrate such disputes — perhaps with the mediator who helped settle the case. If so, make sure you have an enforceable agreement to arbitrate consistent with the Uniform Arbitration Act.[3] You may choose to return to the court where the litigation occurred. Include the appropriate agreement on jurisdiction and venue. In either event, specify whether the losing party will bear the costs and reasonable fees associated with enforcement.

Additionally, you may want to include a consent or "pocket" judgment provision allowing a settlement payee to convert the settlement agreement to an enforceable court order for damages following the payer's default under the agreement.

REVIEW WITH CLIENT

I regularly send documents to clients with an admonition to "review carefully to make sure this draft is consistent with your understanding and expectations." But I know from experience that many clients will not take the time to review my work product and, even if they do, they often bring a layman's perspective insufficient to appreciate subtleties and distinctions the law provides. If I want to make sure clients understand a legal document, I need to review it with them and explain the provisions as we go.

This is especially important with settlement agreements. Typically, the client has a substantial investment in the cost of litigation. The client may have a significant emotional investment as well. As lawyers, we must ensure that the settlement agreement protects the client's interests as fully as possible and consistent with the client's expectations. Michigan case law makes clear that settlement agreements will be strictly enforced consistent with their unambiguous terms. This

AT A GLANCE

Based on published statistics and personal experience, few of our cases will be decided at trial. Some will be dismissed by the court or the claimant, but most will be resolved through settlement. That being the case, it makes sense that we devote the same level of craft to drafting settlement agreements as we do to conducting depositions.

is true even where one party misunderstands or overlooks an important provision.

A case decided by the Michigan Court of Appeals in 2015 involved a dispute over the scope of the release in the settlement of a personal injury protection (PIP) claim between the insured and her insurance company.[4] The agreement did not include payment of a $28,942 charge for shoulder surgery. However, this claim was plainly included in the agreement's release of all PIP benefits incurred as of the date of settlement. Reversing the trial court, the Court of Appeals ruled that the settlement agreement barred recovery of the additional charge. In its opinion, the Court minced no words placing blame for the client's plight with her lawyer:

> It is the obligation of plaintiff's attorney to ensure his client knows that a settlement, like the one at issue here, encompasses all claims. If plaintiff or her lawyer had any doubt about such an agreement, it was the responsibility of plaintiff's lawyer to demand a different kind of settlement.[5]

As noted above, a settlement agreement should end a dispute without causing a new one. Take the time to review a draft settlement agreement carefully — both on your own and with your client — to ensure it addresses the intended issues. While you are at it, you might ask a colleague to take a look as well.

CONCLUSION

Ideally, a settlement agreement represents the culmination of a job well done. Having worked diligently to advocate your client's position, exercise the same diligence in this final step to truly seal the deal.

Dirk Beamer brings a broad range of experience to the small and mid-size companies who rely on Wright Beamer. Historically rooted in business litigation and management-side employment law, he continues to spearhead the firm's efforts in those arenas. Given his close working relationship with clients' ownership and management, he is regularly called upon for guidance on commercial transactions, mergers and acquisitions, and succession planning.

The author thanks Wright Beamer attorney Emily M. Sullivan for research and editorial assistance.

ENDNOTES

1 Kloian v Domino's Pizza, 273 Mich App 449, 452; 733 NW2d 766 (2006).
2 Id. at 454.
3 MCL 691.1681 et seq.
4 Clark v Progressive Ins Co, 309 Mich App 387; 872 NW2d 730 (2015).
5 Id. at 390.

IN BRIEF

MICHIGAN STATE BAR FOUNDATION WELCOMES 2021 FELLOWS

The Michigan State Bar Foundation announced 22 attorneys accepted nominations to join the approximately 1,500 Michigan lawyers who are active MSBF fellows. The fellows program recognizes lawyers for professional excellence and service to the community.

The 2021 MSBF fellows are:

- Martha Rabaut Boonstra, Holland
- Steven Bylenga, Grand Rapids
- Emily A. Calabrese, Warren
- Nakisha N. Chaney, Northville
- Alisha L. Cieslak, Wyoming
- Tracy M. Clark-Flaherty, Southfield
- Julie H. Cotant, Southfield
- Matthew S. Fedor, Southfield
- Debra A. Freid, Saginaw
- Julie A. Gafkay, Saginaw
- Laura J. Genovich, Grand Rapids
- Hon. Michael L. Jaconette, Battle Creek
- Michael S. Leib, Bloomfield Hills
- Homer W. McClarty, Southfield
- Nicholas M. Ohanesian, Grand Rapids
- Laura K. Reilly, Marquette
- Beth Ann Richardson, Warren
- Robert F. Riley, Birmingham
- Larry J. Saylor, Detroit
- Mark H. Shapiro, Southfield
- Katherine K. Strickfaden, Southfield
- Kimberly L. Ward, Southfield

The Michigan State Bar Foundation provides leadership and grants to improve access for all to the justice system, including support for civil legal aid to the poor, law-related education, and conflict resolution. For more information, visit msbf.org.

SECTION BRIEFS

APPELLATE PRACTICE SECTION

The 2021-2022 section election results are: Stephanie Morita, chair; Joseph Richotte, vice chair; Jonathan Koch and Ann Sherman, secretaries; and council members Kahla Crino, Beth Wittman, Barbara Goldman, Marcelyn Stepanksi, Elizabeth Sokol, and David Herskovic.

The section thanks panelists participating in the "Post-Pandemic: Surviving the New Normal" discussion in September: Michigan Supreme Court justices Elizabeth Clement and Megan Cavanagh; Court of Appeals Judge Amy Ronayne Krause; and appellate practitioners Jill Wheaton, Liisa Speaker, Ann Sherman, Kenneth Mogill, and Fawzeih Daher.

ENVIRONMENTAL LAW SECTION

The annual Joint Environmental Conference will be held virtually on November 3-5 and November 8. For a detailed agenda, registration information, and the latest issue of the Michigan Environmental Law Journal, visit connect.michbar.org/envlaw.

HEALTH CARE LAW SECTION

The Health Care Law Section hosted its annual meeting which included two seminars. "Cybersecurity & Incident Reports: The Nuts and Bolts of Detecting, Avoiding, and Responding to a Security Incident" was presented by Debra Geroux of Butzel Long and Scott Wrobel of N1 Discovery. It was followed by "Telehealth Enforcement: DME, Genetic Testing, and Other Telehealth Fraud Schemes," a presentation by Raymond Beckering and Andrew Hull from the U.S. Attorney's Office for the Western District of Michigan.

LABOR & EMPLOYMENT LAW SECTION

The Labor and Employment Law Section council cordially invites members to the following events: The LELS annual holiday party is Thursday, December 9, at 5 p.m. at Birmingham Country Club, and the section's midwinter and annual meeting is scheduled for Friday, January


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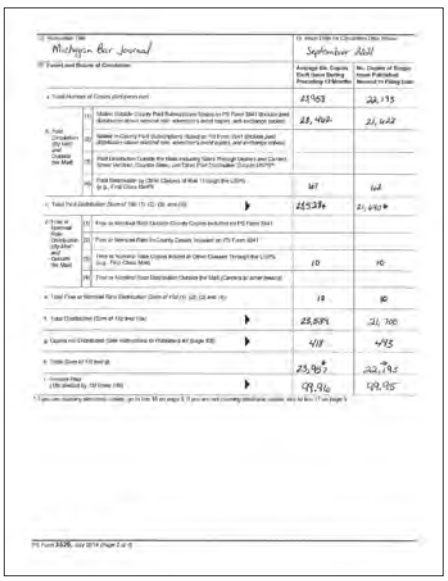
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IN BRIEF (CONTINUED)

21, 2022, at the Detroit Athletic Club.

LGBTQA SECTION

The LGBTQA section supported a proposal to amend Michigan Court Rule MCR 3.613 to provide for either a finding or a presumption of good cause to waive publication in cases of gender identity. Section members also gave a presentation titled "Becoming a Culturally Competent Court: Fairness and Access to Justice for LGBTQ+ Users" to the Michigan Judicial Institute.

One case to watch is *Rouch World LLC v. Department of Civil Rights*, which is presently before the Michigan Supreme Court.

PARALEGAL/LEGAL ASSISTANT SECTION

Join the Paralegal/Legal Assistant Section for happy hour at Granite City Food & Brewery in Troy on November 4 from 5:30 to 8:30 p.m. Virtual social events have been the norm lately, but we feel it's time for an in-person opportunity to partake in an evening of networking with other paralegals over cocktails and great food! Open to members and non-members. Please RSVP to fwatson@fraserlawfirm.com.

RELIGIOUS LIBERTY LAW SECTION

The Religious Liberty Law Section held its annual meeting and educational event on September 25. The keynote speaker was Lori Windham, senior counsel at Becket, who presented oral arguments before the United States Supreme Court in *Fulton v. City of Philadelphia*.

WORKERS' COMPENSATION LAW SECTION

Join us at Crowne Plaza Lansing West on December 10 for our winter meeting. We anticipate presentations from Michigan Workers' Disability Compensation Agency director Jack Nolish and section chairperson Daryl Royal. Also expected is a presentation on orthopedic foot and ankle injuries and a special discussion on mindfulness.

2021 Stephen H. Schulman Outstanding Business Lawyer Award

Great Lawyers, Doing Great Things!

(l to r) Hon. Christopher Yates, Treasurer; Ian Williamson, Secretary; Douglas Toering, Schulman Award Recipient, Chair of Business Courts & Commercial Litigation Committees, Former Section Chair; Julia Dale, Immediate Past Chair; John Schuring, Chair; Mark Kellogg, Vice Chair

The State Bar of Michigan Business Law Section congratulates:

Douglas Toering

on being honored with the 15th Annual

Stephen H. Schulman Outstanding Business Lawyer Award

(right): Mantese Honigman Partner Douglas Toering with the 2021 Schulman Award

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FROM THE MICHIGAN SUPREME COURT

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 2.117, 3.708, 3.951, 6.005, 6.104, 6.445, 6.610, 6.625, 6.905, 6.907, 6.937, and 6.938 of the Michigan Court Rules are adopted, effective January 1, 2022.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 2.117 Appearances

(A) [Unchanged.]

(B) Appearance by Attorney.

(1)-(2) [Unchanged.]

(3) Appearance by Appointing Authority.

(a) In some actions, an appointing authority independent of the judiciary determines the attorney that will represent a party for the entirety of the action. In some actions, an appointing authority independent of the judiciary determines that an attorney will represent a party for a single hearing—like an arraignment.

(b) In actions where an attorney is appointed for the entirety of the action, the appointed attorney shall file an appearance with the court.

(c) In actions where an attorney is appointed for a single hearing, the attorney should orally inform the court of the limited appointment at the time of the hearing. It is not necessary for the appointing authority to file an notice of appointment or for the attorney to file an appearance

(~~4~~3) [Renumbered but otherwise unchanged.]

(C) Duration of Appearance by Attorney.

(1)-(2) [Unchanged.]

(3) In appointed cases, substitute counsel shall file an appearance with the court after receiving the assignment from the appointing authority.

(~~4~~3) [Renumbered but otherwise unchanged.]

(D)-(E) [Unchanged.]

Rule 3.708 Contempt Proceedings for Violation of Personal Protection Orders

(A)-(C) [Unchanged.]

(D) Appearance or Arraignment; Advice to Respondent. At the respondent's first appearance before the circuit court, whether for arraignment under MCL 764.15b, enforcement under MCL 600.2950, 600.2950a, or 600.1701, or otherwise, the court must:

(1)-(2) [Unchanged.]

(3) advise the respondent that he or she is entitled to a lawyer's assistance at the hearing and, if the court determines it might sentence the respondent to jail, that the court, or the local funding unit's appointing authority if the local funding unit has determined that it will provide representation to respondents alleged to have violated a personal protection order, will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one,

(4) if requested and appropriate, appoint a lawyer or refer the matter to the appointing authority,

(5)-(6) [Unchanged.]

(E)-(I) [Unchanged.]

Rule 3.951 Initiating Designated Proceedings

(A) Prosecutor-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition designating the case for trial in the same manner as an adult.

(1) [Unchanged.]

(2) Procedure.

(a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile. Attorney appointments, even if just for the arraignment, are to be done by the court's local funding unit's appointing authority.

(b) The court shall read the allegations in the petition and advise the juvenile on the record in plain language:

(i) of the right to an attorney at all court proceedings, including the arraignment ~~pursuant to MCR 3.915(A)(1);~~

(ii)-(vi) [Unchanged.]

(c)-(d) [Unchanged.]

3) [Unchanged.]

(B) Court-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition charging an offense other than a specified juvenile violation and requests the court to designate the case for trial in the same manner as an adult.

(1) [Unchanged.]

(2) Procedure.

(a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile. Attorney appointments, even if just for the arraignment, are to be done by the court's local funding unit's appointing authority.

(b) The court shall read the allegations in the petition, and advise the juvenile on the record in plain language:

(i) of the right to an attorney at all court proceedings, including the arraignment~~pursuant to MCR 3.915(A)(1);~~

(ii)-(vii) [Unchanged.]

(c)-(d) [Unchanged.]

(3) [Unchanged.]

Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings.

(A) Advice of Right. At the arraignment on the warrant or complaint, the court must advise the defendant

(1) of entitlement to a lawyer's assistance at all ~~subsequent~~ court proceedings, and

(2) that the defendant is entitled to~~court will appoint~~ a lawyer at public expense if the defendant wants one and is financially unable to retain one. The court must ask~~question~~ the defendant ~~to determine~~ whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one.

(B) Questioning Defendant About Indigency. If the defendant requests a lawyer and claims financial inability to retain one, the court must determine whether the defendant is indigent unless the court's local funding unit has designated an appointing
authority in its compliance plan with the Michigan Indigent Defense Commission. If there is an appointing authority, the court must refer the defendant to the appointing authority for indigency screening. If there is no appointing authority, or if the defendant seeks judicial review of the appointing authority's determination concerning indigency, the court's determination of indigency must be guided by the following factors:

(1)-(3) [Unchanged.]

(4) availability and convertibility, without undue financial hardship to the defendant and the defendant's dependents, of any personal or real property owned; ~~and~~

(5) the rebuttable presumptions of indigency listed in the MIDC's indigency standard;
and

(6~~5~~) [Renumbered but otherwise unchanged.]

The ability to post bond for pretrial release does not make the defendant ineligible for appointment of a lawyer. The court reviews an appointing authority's determination of indigency de novo and may consider information of indigency de novo and may consider information not presented ot the appointing authority.

(C) [Unchanged.]

(D) Appointment or Waiver of a Lawyer. Where~~If~~ the court makes the determination ~~determines~~ that ~~a~~the defendant is financially unable to retain a lawyer, it must promptly refer the defendant to the local indigent criminal defense system's appointing authority for appointment of a lawyer ~~appoint a lawyer and promptly notify the lawyer of the appointment.~~ The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first.

(1)-(2) [Unchanged.]

The court should encourage any defendant who appears without counsel to be screened for indigency and potential appointment of counsel.

(E) Advice at Subsequent Proceedings. If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the

defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,

(1) [Unchanged.]

(2) if the defendant requests a lawyer and is financially unable to retain one, the court must refer the defendant to the local indigent criminal defense system's appointing authority for the appointment of~~appoint~~ one; or

(3) [Unchanged.]

The court may refuse to adjourn a proceeding for the appointment of ~~to appoint~~ counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

(F) Multiple Representation. When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the local indigent criminal defense system~~court~~ must appoint separate lawyers unassociated in the practice of law for each defendant. Whenever two or more defendants who have been jointly charged or whose cases have been joined are represented by the same retained lawyer or lawyers associated in the practice of law, the court must inquire into the potential for a conflict of interest that might jeopardize the right of each defendant to the undivided loyalty of the lawyer. The court may not permit the joint representation unless:

(1)-(3) [Unchanged.]

(G)-(H) [Unchanged.]

(I) Assistance of Lawyer at Grand Jury Proceedings.

(1) [Unchanged.]

(2) The prosecutor assisting the grand jury is responsible for ensuring that a witness is informed of the right to a lawyer's assistance during examination by written notice accompanying the subpoena to the witness and by personal advice immediately before the examination. The notice must include language informing the witness that if the witness is financially unable to retain a lawyer, the chief judge in the circuit court in which the grand jury is convened will on request refer the witness to the local indigent criminal defense system for appointment of an attorney~~appoint one for the witness~~ at public expense.

Rule 6.104 Arraignment on the Warrant or Complaint

(A) Arraignment Without Unnecessary Delay. Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of this rule, or must be arraigned without unnecessary delay by use of two-way interactive video technology in accordance with MCR 6.006(A). The arrested person is entitled to the assistance of an attorney at arraignment unless:

(1) the arrested person makes an informed waiver of counsel or

(2) the court issues a personal bond and will not accept a plea of guilty or no contest at arraignment.

(B)-(D) [Unchanged.]

(E) Arraignment Procedure; Judicial Responsibilities. The court at the arraignment must

(1) [Unchanged.]

(2) if the accused is not represented by a lawyer at the arraignment, advise the accused that

(a)-(c) [Unchanged.]

(d) if the accused does not have the money to hire a lawyer, the local indigent criminal defense system~~court~~ will appoint a lawyer for the accused;

(3) advise the accused of the right to a lawyer at all ~~subsequent~~ court proceedings ~~and, if appropriate, appoint a lawyer~~;

(4)-(6) [Unchanged.]

The court may not question the accused about the alleged offense or request that the accused enter a plea.

(F)-(G) [Unchanged.]

Rule 6.445 Probation Revocation

(A) [Unchanged.]

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

(1) [Unchanged.]

(2) advise the probationer that

(a) [Unchanged.]

(b) the probationer is entitled to a lawyer's assistance at the

hearing and at all ~~subsequent~~ court proceedings, including the arraignment on the violation/bond hearing, and that a lawyer~~the court~~ will be appointed ~~a lawyer~~ at public expense if the probationer wants one and is financially unable to retain one,

(3) if requested and appropriate, refer the matter to the local indigent criminal defense system's appointing authority for appointment of a lawyerappoint a lawyer,

(4)-(5) [Unchanged.]

(C)-(H) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A)-(C) [Unchanged.]

(D) Arraignment; District Court Offenses

(1) Whenever a defendant is arraigned on an offense over which the district court has jurisdiction, the defendant must be informed of

(a)-(b) [Unchanged.]

(c) the defendant's right

(i) to the assistance of an attorney at all court proceedings, including arraignment, and to a trial;

(ii)-(iii) [Unchanged.]

The information may be given in a writing that is made a part of the file or by the court on the record.

(2) [Unchanged.]

(3) The right to the assistance of an attorney, to an appointed attorney, or to a trial by jury is not waived unless the defendant

(a)-(b) [Unchanged.]

If the defendant has not waived the right to counsel, the court must refer the matter to the appointing authority for the assignment of counsel.

(4) [Unchanged.]

(E)-(F) [Unchanged.]

(G) Sentencing.

(1)-(3) [Unchanged.]

(4) Immediately after imposing a sentence of incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that:

(a) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the local indigent criminal defense system's appointing authority~~court~~ will appoint a lawyer to represent the defendant on appeal, and

(H)-(I) [Unchanged.]

Rule 6.625 Appeal; Appointment of Appellate Counsel

(A) [Unchanged.]

(B) If the court imposed a sentence of incarceration, even if suspended, and the defendant is indigent, the local indigent criminal defense system's appointing authority~~court~~ must ~~enter an order~~ appoint~~ing~~ a lawyer if, within 14 days after sentencing, the defendant files a request for a lawyer or makes a request on the record. If the defendant makes a request on the record, the court shall inform the appointing authority of the request that same day. Unless there is a postjudgment motion pending, the appointing authority~~court~~ must act~~rule~~ on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the appointing authority~~court~~ must act~~rule~~ on the request after the court's disposition of the pending motion and within 14 days after that disposition. If a lawyer is appointed, the 21 days for taking an appeal pursuant to MCR 7.104(A)(3) and MCR 7.105(A)(3) shall commence on the day of the appointment.

(C) If indigency was not previously determined or there is a request for a redetermination of indigency, the court shall make an indigency determination unless the court's local funding unit has designated this duty to its appointing authority in its compliance plan with the Michigan Indigent Defense Commission. The determination of indigency and, if indigency is found, the appointment of counsel must occur with 14 days of the request unless a postjudgment motion is pending. If there is a postjudgment motion pending, the appointing authority must act on the request after the court's disposition of the pending motion and within 14 days after that disposition.

(D) If a lawyer is appointed, the 21 days for taking an appeal pursuant to MCR 7.104(A)(3) and MCR 7.105(A)(3) shall commence on the day the notice of appointment is filed with the court.

Rule 6.905 Assistance of Attorney

(A) [Unchanged.]

(B) ~~Court~~ Appointed Attorney. Unless the juvenile has a retained attorney, or has waived the right to an attorney, the magistrate or the court must refer the matter to the local indigent criminal defense

system's appointing authority for appointment of~~appoint~~ an attorney to represent the juvenile.

(C)-(D) [Unchanged.]

Rule 6.907 Arraignment on Complaint or Warrant

(A)-(B) [Unchanged.]

(C) Procedure. At the arraignment on the complaint and warrant:

(1) The magistrate shall determine whether a parent, guardian, or an adult relative of the juvenile is present. Arraignment may be conducted without the presence of a parent, guardian, or adult relative provided the local funding unit's appointment authority~~magistrate~~ appoints an attorney to appear at arraignment with the juvenile or provided an attorney has been retained and appears with the juvenile.

(2) [Unchanged.]

Rule 6.937 Commitment Review Hearing

(A) Required Hearing Before Age 19 for Court-Committed Juveniles. The court shall schedule and hold, unless adjourned for good cause, a commitment review hearing as nearly as possible to, but before, the juvenile's 19th birthday.

(1) [Unchanged.]

(2) Appointment of an Attorney. The local funding unit's appointing authority~~court~~ must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained or is waived pursuant to MCR 6.905(C).

(3)-(4) [Unchanged.]

(B) Other Commitment Review Hearings. The court, on motion of the institution, agency, or facility to which the juvenile is committed, may release a juvenile at any time upon a showing by a preponderance of evidence that the juvenile has been rehabilitated and is not a risk to public safety. The notice provision in subrule (A), other than the requirement that the court clearly indicate that it may extend jurisdiction over the juvenile until the age of 21, and the criteria in subrule (A) shall apply. The rules of evidence shall not apply. The local funding unit's appointing authority~~court~~ must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained or the right to counsel waived. The court, upon notice and opportunity to be heard as provided in this rule, may also move the juvenile to a more restrictive placement or treatment program.

Rule 6.938 Final Review Hearings
(A)-(B) [Unchanged.]

(C) Appointment of Counsel.
If an attorney has not been retained or appointed to represent the juvenile, the local funding unit's appointing authority~~court~~ must appoint an attorney and the court may assess the cost of providing an attorney as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(D)-(E) [Unchanged.]

Staff comment: The amendments shift the responsibility for appointment of counsel for an indigent defendant in a criminal proceeding to the local funding unit's appointing authority. The proposal was submitted by the Michigan Indigent Defense Commission, and intended to implement recently-approved Standard Five of the MIDC Standards.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

By orders dated March 10, 2021, this Court amended Rules 3.903, 3.925, and 3.944 of the Michigan Court Rules, effective immediately. Notice and an opportunity for comment at a public hearing having been provided, the amendments are retained, and Rule 3.944 of the Michigan Court Rules is further amended as indicated below.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 3.944 Probation Violation

(A) Petition; Temporary Custody.

(1) Upon receipt of a sworn supplemental petition alleging that the juvenile has violated any condition of probation, the court may:

(a) [Unchanged.]

(b) order that the juvenile be apprehended and brought to the court for a detention hearing, which, except as otherwise provided in this rule, must be commenced within 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined in MCR 8.110 (D)(2).

(2) [Unchanged.]

(B)-(F) [Unchanged.]

Staff Comment: The amendment of MCR 3.944 provides an exception to the requirement for courts to hold a detention hearing within 24 hours of a juvenile being taken into custody when a status offense violation requires a mental health or substance abuse interview.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

Retention of the Amendments of Rules 3.903, 3.945, 3.966, 3.975, and 3.976 and Retention of the Addition of Rule 3.947 of the Michigan Court Rules

On order of the Court, notice and an opportunity for comment having been provided, the April 14, 2021 amendments of Rules 3.903, 3.945, 3.966, 3.975, and 3.976 and addition of Rule 3.947 of the Michigan Court Rules are retained.

Adoption of Administrative Order No. 2021-6: Mandatory Submission of Case Data to the Judicial Data Warehouse

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, Administrative Order No. 2021-6 is adopted, effective January 1, 2022.

Administrative Order No. 2021-6 – Mandatory Submission of Case Data to the Judicial Warehouse

For two decades, the Judicial Data Warehouse has been an essential tool allowing users to locate trial court records from throughout the state, informing judicial decisions, enhancing court administration, improving public policy through data-driven research, and promoting transparency.

Nearly all trial courts provide a daily or weekly feed of case-level data to the JDW, but frequently, certain data elements are missing or reported inconsistently by different courts, and several courts do not participate at all, creating problematic data gaps. To address these problems, courts should be required to submit data in a uniform manner and across all courts. Doing so will ensure the JDW contains uniformly reported data that will be more useful to courts, law enforcement, researchers, and other users. In addition, a more complete database will relieve courts of the requirement to submit certain reports that are currently prepared manually or with special programming, and ultimately is intended to be a resource for the general public about how courts in Michigan operate.

Therefore, on order of the Court, pursuant to 1963 Const, Art VI, §4, which provides for the Supreme Court's general superintending control over all state courts, all trial courts must submit all case data including nonpublic and financial records to the Judicial Data Warehouse in a format and frequency defined by the SCAO. This order replaces all existing Memoranda of Understanding between SCAO and any trial courts regarding the JDW.

This order shall remain in effect until further order of the Court.

Staff Comment: This administrative order makes it mandatory for all courts to submit case information to the Judicial Data Warehouse in a uniform manner as required by SCAO.

This order is, first and foremost, concerned with ensuring that data is submitted by courts in a uniform and comprehensive way. As several commenters noted, however, there remains some concern about how information in the JDW will be used and accessed in the future. Under current policies, data is available only to authorized users or under a specific data sharing agreement. Before making information in the JDW more widely available in the future, the Court will carefully consider new policies necessary to ensure appropriate security/privacy and address other considerations raised during the comment period.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

On order of the Court, notice and an opportunity for comment having been provided, Rule 8.128 of the Michigan Court Rules is retained. Further, the following amendment is adopted with immediate effect:

Rule 8.128 Michigan Judicial Council

(A) Duties. There shall be a Judicial Council ~~to plan strategically for the Michigan judicial branch, to enhance the work of the courts, and~~ to make recommendations to the Supreme Court on matters pertinent to the administration of justice, <u>including development of a strategic plan for the Michigan judicial branch and suggestions for proposals that would enhance the work of the courts.</u>

(B)-(K) [Unchanged.]

Staff comment: The amendment of MCR 8.128 refines the duties of the Michigan Judicial Council.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

Retention of Rule 8.128 of the Michigan Court Rules and Amendment of MCR 8.128

Amendments of Rule 2, Rule 3, Rule 4, Rule 5, Rule 6, and Rule 7 and Addition of Rule 3a and Rule 4a of the Rules for the Board of Law Examiners

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 2, Rule 3, Rule 4, Rule 5, Rule 6, and Rule 7 and additions of Rule 3a and Rule 4a of the Rules for the Board of Law Examiners are adopted, effective March 1, 2022, and will be in effect for the first time for the July 2022 administration of the bar examination in Michigan.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 2. Admission by Examination

(A)-(C) [Unchanged.]

(D) Every applicant for admission must achieve a passing score, as determined by the board, on the Multistate Professional Responsibility Examination (MPRE) prepared and administered by the National Conference of Bar Examiners.

(E)-(F) [Unchanged.]

Rule 3. Examination Administration~~Subjects and Grading~~
(A) The examination shall be the Uniform Bar Examination (UBE) as prepared and defined by the NCBE and administered on dates and under regulations set by NCBE. The UBE consists of ~~two sections~~:

(1) The Multistate Bar Examination (MBE)~~prepared by the National Conference of Bar Examiners and administered on dates and under regulations set by the Conference.~~

(2) The Multistate Essay Examination (MEE)

(3) Two Multistate Performance Test items (MPT)

~~(2) An essay examination prepared by or under the supervision of the Board or by law professors selected by the Board, on these subjects:~~
~~(a) Real and Personal Property~~
~~(b) Wills and Trusts~~
~~(c) Contracts~~
~~(d) Constitutional Law~~
~~(e) Criminal Law and Procedure~~
~~(f) Corporations, Partnerships, and Agency~~
~~(g) Evidence~~
~~(h) Creditor's Rights, including mortgages, garnishments and attachments~~
~~(i) Practice and Procedure, trial and appellate, state and federal~~
~~(j) Equity~~
~~(k) Torts (including no-fault)~~
~~(l) The sales, negotiable instruments, and secured transactions articles of the Uniform Commercial Code~~
~~(m) Michigan Rules of Professional Conduct~~
~~(n) Domestic Relations~~
~~(o) Conflicts of Laws~~
~~(p) Worker's Compensation~~

(B) The NCBE~~National Conference of Bar Examiners~~ will grade the MBE~~Multistate section~~. The Board or its agents will grade the MEE and the MPT~~essay section~~, with the Board having final responsibility. The Board will adopt policies for grading that are consistent with the sound testing practices followed by all jurisdictions that administer the UBE. The policies shall include a provision for the NCBE to convert the raw scores on the written portion of an examination to the
MBE scale by the methodology used for UBE jurisdictions. The Board will determine a method for ~~combining the grades and~~ selecting a passing score.

(C) To earn a portable UBE score that is transferable to other UBE jurisdictions, persons taking the UBE in Michigan shall sit for and take all components of the bar examination in a single administration.

(D) An applicant's raw bar examination score shall be provided to the NCBE to calculate scaled scores. Upon request by an applicant, the NCBE will certify and transfer the applicant's scaled score, scaled MBE score, and total UBE score to other UBE jurisdictions. The NCBE may also release to an applicant, upon request by the applicant, the applicant's scaled MBE score, scaled written score, and total UBE score.

[NEW] Rule 3a. Michigan Law Component

(A) Before being admitted to the practice of law in Michigan by UBE examination, by transferred UBE score, or on Application for Admission Without Examination, an applicant shall take any Michigan Law Component course required by the Board and provide proof of completion to the Board of Law Examiner's office.

(B) If a Michigan Law Component course is required by the Board, the course shall contain relevant Michigan-specific topics attorneys licensed in Michigan are reasonably expected to know as deter-

mined by the Board. The course shall be in the form prescribed by the Board.

(C) An applicant shall pay any fee determined by the Board that is associated with taking the Michigan Law Component.

Rule 4. Post-Examination Procedures; Appeal; Application for Re-Examination

(A) Except where a mathematical or clerical error has been made, scores determined in accordance with these rules shall be final. In the unlikely event of a mathematical or clerical error, the Board shall issue a corrected score.

(B~~A~~) The Executive Director will release examination results at the Board's direction. Any b~~B~~lue books will be kept for 3 months after results are released.

~~(B) Within 30 days after the day the results are released, the applicant may ask the Board to reconsider the applicant's essay grades. The applicant shall file with the Executive Director two (2) copies of~~

~~(1) the request;~~
~~(2) the answer given in the applicant's blue books; and~~
~~(3) an explanation why the applicant deserves a higher grade.~~

(C) An applicant who has failed and seeks to retake the UBE in Michigan shall file an Application for Reexamination. An applicant for re-examination may obtain an application from the Executive Director. The application must be filed at least sixty (60) days before the examination. If the applicant's character and fitness clearance is more than three (3) years old, the applicant must be approved by the State Bar Committee on Character and Fitness.

[New] Rule 4a. Admission by Transferred UBE Score

(A) An applicant may apply for admission to the practice of law in Michigan by filing an application to transfer a UBE score if all of the following apply:

(1) The applicant earned a UBE score that meets or exceeds the minimum score required by the Board of Law Examiners.

(2) The score that the individual elects to use was achieved on a uniform bar examination administered within the 3 years immediately preceding the uniform bar examination in this state for which the individual would otherwise sit.

(3) The applicant has taken the MPRE prepared and administered by the NCBE and earned the scaled score required by the Board.

(4) The applicant has met all requirements of these rules, including successful completion of any Michigan Law Component.

(B) An applicant who desires to be admitted as a member of the Michigan bar shall file with the Board of Law Examiners an Application for Admission to the Practice of Law by Transferred UBE Score. The application shall include the following:

(1) An affidavit stating that the applicant has studied the Michigan Court Rules, the Michigan Rules of Professional Conduct, and the Michigan Code of Judicial Conduct.

(2) An application provided for use by the State Bar of Michigan Standing Committee on Character and Fitness for the purpose of conducting a character and fitness investigation of the applicant and the required fee.

(3) An application fee as prescribed by BLE Rule 6.

(C) An applicant under review shall have a continuing duty to update the information contained in the State Bar of Michigan Standing Committee on Character and Fitness application and to report promptly to the State Bar of Michigan Standing Committee on Character and Fitness all changes or additions to information in the application that occur prior to the applicant's admission to practice.

(D) An applicant under this section shall successfully complete any required Michigan Law Component within the time period required by the Board.

(E) An applicant under this section who has been approved for admission under this section shall be entitled to take the oath of office under Rule 15, section 3, of the Rules Concerning the State Bar of Michigan. An applicant under this section shall not engage in the practice of law in Michigan before approval and administration of the oath. An application under this section shall be considered withdrawn if the applicant does not take the oath of office within three years after being approved for admission to the practice of law in Michigan.

Rule 5. Admission Without Examination

(A) An applicant for admission without examination must

(1)-(4) [Unchanged.]

(5) have, after being licensed and for 3 of the 5 years preceding the application,

(a)-(c) [Unchanged.]

The Board~~Supreme Court~~ may, for good cause, increase the 5-year period. Active duty in the United States armed forces not satisfying Rule 5(A)(5)(c) may be excluded when computing the 5-year period.

(6) Complete any Michigan Law Component requirement set out in Rule 3a.

(B)-(C) [Unchanged.]

(D) An applicant for whom a certificate of admission is issued must take the oath and become a member of the State Bar of Michigan within three years of the date the certificate is issued. Otherwise, the applicant must reapply.

(D)-(E) [Relettered (E)-(F) but otherwise unchanged.]

Rule 6. Fees

The fees are as follows:

(A) ~~an application for~~ examination under the Uniform Bar Exam,

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

$400 and an additional fee for the late filing of an application or transfer of an application for examination, $100; an application for re-examination, $300;

(B) application for admission by transferred UBE score, $400;

(C) ~~an~~ application for recertification, $300;

(D) ~~an~~ application for admission without examination, $800 plus the requisite fee for the National Conference of Bar Examiners' character report. Certified checks or money orders must be payable to the State of Michigan. Online bar examination payments for first time takers must be paid by credit card.

(E) Any fee for a Michigan law component as determined by the Board.

Rule 7. Exceptions

An applicant may ask the board to waive any requirement except the payment of fees and the administration of the UBE. The applicant must demonstrate why the request should be granted.

Staff comment: The amendments implement a Uniform Bar Examination in Michigan with implementation set for the July 2022 administration of the bar examination. Delay in companion legislative action may defer implementation of these rules. The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

CAVANAGH, J. (concurring). I concur in the Court's order adopting amendments to Rule 2, Rule 3, Rule 4, Rule 5, Rule 6, and Rule 7 and adding Rule 3a and Rule 4a to the Rules for the Board of Law Examiners. As a result, Michigan now joins the ranks of 38 other jurisdictions who utilize the Uniform Bar Examination. This change seeks to ensure a standard level of competency for lawyers across the country, allows for score portability, and makes the practice of law more accessible to law school graduates facing employment challenges and rising debt. I write to briefly address the concerns expressed by my dissenting colleague. First, while I appreciate the reservation in regard to whether the practical-skills-oriented Multistate Performance Test (MPT) portion of the Uniform Bar Examination is adequate to assess an applicant's ability to practice law in the real world, the same concerns are certainly present in any standardized test that operates under artificial time constraints. While not a perfect measure of competence, the MPT is the best tool we possess at present to gauge practical lawyering skills beyond the ability to memorize and apply principles of law. Second, I emphasize that today's rule change neither prohibits nor discourages the Board of Law Examiners (BLE) from adopting a Michigan-specific component to administer in addition to the Uniform Bar Examination. As Rule 3a provides, an applicant to the State Bar of Michigan will be required to take any Michigan law component required by the BLE in order to be admitted to practice in this state. In keeping with the concerns expressed by my colleague, I urge the BLE to ensure that the bar examination will continue to serve the interests of new attorneys as well as their future Michigan clientele.

BERNSTEIN, J. (dissenting). I do not support the implementation of the Uniform Bar Examination in Michigan for two reasons. First, although I understand the purpose behind a practical-skills-oriented performance test, I struggle to understand how testing those skills under the artificial time constraints set by a standardized test would allow the Board of Law Examiners to meaningfully assess an applicant's ability to practice. Second, it is yet unclear whether the Board of Law Examiners will adopt a Michigan-specific component to an otherwise multistate test. I strongly believe that the Michigan-specific
essay component of our current bar examination promotes a comprehensive introduction to Michigan law. Any changes we make to the bar examination should keep in mind the best interests of both new attorneys and the public they will be serving; I believe both groups stand to lose if we fail to focus on Michigan law in the Michigan bar examination.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN

NOTICE OF AMENDMENTS AND PROPOSED AMENDMENTS TO LOCAL RULES

The United States District Court for the Eastern District of Michigan publishes proposed amendments and approved amendments to its Local Rules on its website at **mied.uscourts.gov**. Attorneys are encouraged to visit the court's website frequently for up-to-date information. A printer-friendly version of Local Rules, which includes appendices approved by the court, can also be found on the website.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes to amend M Crim JI 20.11 [Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person] to eliminate the element requiring that the defendant know of the complainant's mental impairment because the applicable statute, MCL 750.520b(1)(h), does not require proof of such knowledge. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 20.11
Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person

(1) [Second / Third], that *[name complainant]* was [mentally incapable / mentally disabled / mentally incapacitated / physically helpless] at the time of the alleged act.

[Choose one or more of (2), (3), (4), or (5):]

(2) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(3) Mentally disabled means that [*name complainant*] has a mental illness, is intellectually disabled, or has a developmental disability. "Mental illness" is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary demands of life. "Intellectual disability" means significantly subaverage intellectual functioning that appeared before [*name complainant*] was 18 years old and impaired two or more of [his / her] adaptive skills.[1] "Developmental disability" means an impairment of general thinking or behavior that originated before the age of eighteen, has continued since it started or can be expected to continue indefinitely, is a substantial burden to [*name complainant*]'s ability to function in society, and is caused by [intellectual disability as described / cerebral palsy / epilepsy / autism / an impairing condition requiring treatment and services similar to those required for intellectual disability].

(4) Mentally incapacitated means that [*name complainant]* was [temporarily] unable to understand or control what [he / she] was doing because of [drugs, alcohol or another substance given to (him / her) / something done to (him / her)] without [his / her] consent.

(5) Physically helpless means that [*name complainant*] was unconscious, asleep, or physical incapable to communicate that take part in the alleged act.

~~(6) [Third / Fourth], that the defendant knew or should have known that [name complainant] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.~~

[Choose the appropriate option according to the charge and the evidence:]

(6) ~~[Fourth / Fifth~~ Third / Fourth], that the defendant and *[name complainant]* were related to each other, either by blood or marriage, as [*state relationship, e.g., first cousins*].

(6) ~~[Fourth / Fifth~~ Third / Fourth], that at the time of the alleged act the defendant was in a position of authority over [*name complainant*], and used this authority to coerce [*name complainant*] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes to amend M Crim JI 24.1 [Unlawfully Driving Away an Automobile] to correct the fourth element currently addressing "intent" to be in accord with the statutory language of MCL 750.413 and *People v Crosby* 82 Mich App 1 (1978). Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 24.1
Unlawfully Driving Away an Automobile

(1) The defendant is charged with the crime of unlawfully driving away a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

FROM THE COMMITTEE ON CRIMINAL MODEL JURY INSTRUCTIONS (CONTINUED)

(2) First, that the vehicle belonged to someone else.
(3) Second, that the defendant took possession of the vehicle and [drove / took] it away.

(4) Third, that these acts were both done [without authority / without the owner's permission].

(5) Fourth, that ~~the defendant intended to take possession of the vehicle and [drive / take] it away.~~ when the defendant took possession of the vehicle and drove or took it away, [he / she] did so knowing that [he / she] did not have authority to do so. It does not matter whether the defendant intended to keep the vehicle.*

[(6) Anyone who assists in taking possession of a vehicle or assists in driving or taking away a vehicle knowing that the vehicle was unlawfully possessed is also guilty of this crime if the assistance was given with the intention of helping another commit this crime.]

Use Note
To distinguish unlawfully taking and using from UDAA, see M Crim JI 24.4.

~~This is a specific intent crime~~

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes to amend M Crim JI 3.13 [Penalty] to remove any possible implication that the jury should find the defendant guilty so that the court could perform its duty of imposing a penalty. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 3.13 Penalty

Possible penalty should not influence your decision. If you find the defendant guilty, it ~~I~~t is the duty of the judge to fix the penalty within the limits provided by law.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes a new instruction, M Crim JI 34.6 [Food Stamp Fraud], for crimes charged under MCL 750.300a.

[NEW] M Crim JI 34.6 Food Stamp Fraud

(1) The defendant is charged with food stamp fraud. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] food stamps, coupons, or access devices. F*ood stamps* or *coupons* means the coupons issued pursuant to the food stamp program established under the Food Stamp Act. An *access device* means any card, plate, code, account number, or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value or that can be used to initiate a transfer of funds pursuant to the food stamp program.

(3) Second, that the defendant [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] food stamps, coupons, or access devices by [*specify alleged wrongful conduct*].

(4) Third, that the defendant knew that [he / she] had [*specify alleged wrongful conduct*] when [he / she] [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] the food stamps, coupons, or access devices.

[Use the following where the aggregate value of food stamps allegedly exceeded $250:]

(5) Fourth, that the aggregate value of the food stamps, coupons, or access devices was [more than $250.00 but less than $1,000 / $1,000 or more]. The aggregate value is the total face value of any food stamps or coupons resulting from the alleged [s*pecify alleged wrongful conduct*] plus the total value of any access devices. The value of an access device is the total value of the payments, allotments, benefits, money, goods, or other things of value that could be obtained, or the total value of funds that could be transferred, by use of the access device at the time of the violation. You may add together the various values of the food stamps, coupons, or access devices [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] by the defendant over a period of 12 months when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes a new instruction, M Crim JI 35.12 [Cyberbullying / Aggravated Cyberbullying], for crimes charged under MCL 750.411x.

[NEW] M Crim JI 35.1 Cyberbullying / Aggravated Cyberbullying

(1) The defendant is charged with [cyberbullying / aggravated cyberbullying]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant posted a message or statement about or to any other person in a public media forum used to convey information to others, such as the internet.

(3) Second, that the message expressed an intent to commit violence against any other person and was intended to place any person in fear of bodily harm or death.

(4) Third, that the defendant intended to communicate a threat with the message or [he / she] knew that the message would be viewed as a threat.

[Use the following only where an aggravating element has been charged:]

(5) Fourth, that the defendant committed two or more separate non-continuous acts of harassing or intimidating behavior on different occasions.

(6) Fourth/Fifth, that the defendant's actions in this case caused [(*name complainant or other person*) to suffer permanent, serious disfigurement, serious impairment of health, or serious impairment of a bodily function / the death of *(decedent's name)*].

ORDERS OF DISCIPLINE & DISABILITY

SUSPENSION (BY CONSENT)

Kevin E. Clinesmith, P70962, Washington, D.C., by the Attorney Discipline Board Tri-County Hearing Panel #25. Suspension, two years, effective August 19, 2020.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contains the respondent's acknowledgment that he was convicted by guilty plea of false statements, a felony, in violation of 18 § USC 1001(a)(3), in *United States of America v Kevin E. Clinesmith*, United States District Court, District of Columbia Case No. 20cr00165JEB1, as well as the parties' agreement to certain facts and background as specifically set forth in the parties' stipulation. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended effective August 19, 2020, the date of his felony conviction.

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent engaged in conduct that was prejudicial to the proper administration of justice, in violation of MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); engaged in conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); engaged in conduct that violated the standards or rules of professional conduct adopted by the Supreme Court, in violation of MCR 9.104(4); and engaged in conduct that violated a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, in violation of MCR 9.104(5).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for two years effective August 19, 2020, as agreed to by the parties. Costs were assessed in the amount of $1,037.10.

DISBARMENT AND RESTITUTION (PENDING REVIEW)

Scott E. Combs, P37554, Plymouth, by the Attorney Discipline Board Tri-County Hearing Panel #14. Disbarment, effective September 29, 2021.[1]

After proceedings conducted pursuant to MCR 9.115, the panel found that the re-

spondent committed professional misconduct during his representation of a client in a wrongful discharge from employment claim.

The panel specifically found that the respondent failed to keep his client reasonably informed about the status of his matter and comply properly with reasonable requests for information including, but not limited to, notifying his client promptly as to the status of settlement proceeds, in violation of MRPC 1.4(a); failed to explain a matter to his client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of MRPC 1.4(b); after having modified his fee agreement to accept as his attorney fee for the employment matter the amount his client decided was fair, the respondent charged and/or collected a clearly excessive fee, in violation of MRPC 1.5(a); after having modified his fee agreement to accept as his attorney fee for the employment matter the amount his client decided was fair, and upon keeping the entire $3,600 settlement check for himself, the respondent failed to communicate the basis or rate of his fee to his client, in violation of MRPC 1.5(b); failed to promptly deliver funds that his client was entitled to receive, in violation of MRPC 1.15(b)(3); failed to promptly render a full accounting to his client of the funds in his possession, in violation of MRPC 1.15(b)(3); when two or more persons, one of whom was the respondent, and the other of whom was his client, claimed an interest in all or part of the June 29, 2017, settlement check in the amount of $3,600, respondent failed to keep it separate in trust until the dispute is resolved, in violation of MRPC 1.15(c); failed to safeguard and hold property (funds) of a client in connection with the representation separate from the lawyer's own property, in violation of MRPC 1.15(d); and engaged in conduct that involved deceit or misrepresentation, where such conduct reflected adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b). The respondent was also found to have violated MCR 9.104(1)-(3); and MRPC 8.4(c).

The panel ordered that the respondent be disbarred from the practice of law and pay restitution in the total amount of $3,100.00. The respondent filed a timely petition for review and the matter has been scheduled for hearing before the Attorney Discipline Board.

ENDNOTE:

1 The respondent has been continuously suspended from the practice of law in Michigan since October 14, 2020. Please see Notice of Suspension and Restitution (Pending Review), issued October 16, 2020, Grievance Administrator v Scott E. Combs, Case No. 15154GA.

NOTICE OF TRANSFER TO INACTIVE STATUS PURSUANT TO MCR 9.121(A)

Mitchell R. Dittman, P44513, Orion, by the Attorney Discipline Board. Transfer to inactive status, effective October 15, 2021.

The grievance administrator filed a formal complaint which charged that the respondent committed acts of professional misconduct warranting discipline. Prior to any scheduled proceedings, Tri-County Hearing Panel #73 was presented with a copy of an Order Regarding Appointment

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

of Guardian of Incapacitated Individual entered August 28, 2019, in a matter titled *In the Matter of Mitchell Ronald Dittman, Legally Incapacitated Individual,* Oakland County Probate Court Case No. 2019-389,807-GL, that ordered the appointment of a guardian for the respondent based on the presentation of clear and convincing evidence that the respondent was incapacitated. The respondent's guardianship was continued without modification in an order entered April 27, 2021, by the Oakland County Probate Court.

The Attorney Discipline Board concluded that the August 28, 2019, and April 27, 2021, orders of the Oakland County Probate Court constitute proof that the respondent has been judicially declared incompetent within the meaning of MCR 9.121(A) and issued an order transferring respondent to Inactive Status Pursuant to MCR 9.121(A) effective immediately for an indefinite period and until further order of the board. Formal Complaint 21-18-GA was dismissed without prejudice.

SUSPENSION

Christopher S. Easthope, P53097, Saline, by the Attorney Discipline Board affirming, in part, modifying, in part, and reversing, in part, the Washtenaw County Hearing Panel #5 findings of misconduct and reducing discipline from a one-year suspension to a 180-day suspension, effective October 16, 2021.

After proceedings held pursuant to MCR 9.115, the hearing panel found that while the respondent was a judge at the 15th District Court, he engaged in numerous ex parte communications with his friend, an attorney who routinely appeared in front of him, and failed to disclose his personal friendship or disqualify himself from matters in which his friend was involved. The hearing panel found multiple violations of Canons 2A and B; and Canon 3A(4)(a) of the Code of Judicial Conduct; MRPC 3.5(b); 8.4(a)-(c); and MCR 9.104(1)-(4) and ordered that respondent's license to practice law in Michigan be suspended for one year effective November 22, 2019. The respondent filed a timely petition for review and for a stay of the order of suspension. On November 21, 2019, the board stayed the order of discipline on an interim basis pending further consideration. On December 18, 2019, an order was entered granting the respondent's request for a stay of the panel's October 31, 2019, order of suspension.

After review proceedings held pursuant to MCR 9.118, the board issued an order that affirmed, in part, modified, in part, and reversed, in part, the hearing panel's findings of misconduct as set forth in an accompanying opinion. The board's order also reduced the discipline imposed from a one-year suspension to a 180-day suspension effective October 16, 2021, and until further order of the Supreme Court, the Attorney Discipline Board, or a hearing panel, and until respondent complies with the requirements of MCR 9.123(B) and (C) and MCR 9.124. Costs were assessed totaling $5,660.63.

DISBARMENT

Stephen Michael Jones, P76182, Orlando, Fla., by the Attorney Discipline Board, ef-

fective October 6, 2021.

The grievance administrator filed a notice of filing of reciprocal discipline pursuant to MCR 9.120(C) that attached, in relevant part, a certified copy of an order entered by the Supreme Court of Florida on April 8, 2021, that immediately disbarred the respondent, Stephen Michael Jones, and required him to pay restitution in the amount of $111,001.95, in a matter titled *The Florida Bar v. Stephen Michael Jones,* SC20-1593.

An order regarding imposition of reciprocal discipline was issued by the board on July 20, 2021, ordering the parties to, within 21 days from service of the order, inform the board in writing (i) of any objection to the imposition of comparable discipline in Michigan based on the grounds set forth in MCR 9.120(C)(1) and (ii) whether a hearing was requested. The 21-day period set forth in the board's July 20, 2021, order expired without objection or request for hearing by either party.

On September 7, 2021, the Attorney Discipline Board ordered that the respondent be disbarred from the practice of law in Michigan effective October 6, 2021. Costs were assessed in the amount of $1,547.40.

NOTICE OF SUSPENSION AND RESTITUTION WITH CONDITION

Gary D. Nitzkin, P41155, Scottsdale, Arizona, by the Attorney Discipline Board, affirming the Tri-County Hearing Panel #69 order of a 90-day suspension and restitution with condition and ordering additional restitution. Suspension, 90 days, effective September 22, 2021.

Tri-County Hearing Panel #69 found that the respondent committed professional misconduct in connection with his consumer credit protection practice, his advertising for his practice, and his representation of various clients in actions pertaining to the Fair Credit Reporting Act and Fair Debt Collection Practices Act. The panel found that the respondent had a "troubling pattern of practice, which was designed to deceive unsuspecting and/or unsophisticated clients who had been subjected to debt collection actions and/or inaccurate credit reporting into signing engagement agreements with the mistaken belief that they would receive 'free' representation" when in fact they would not. The panel found multiple violations of MRPC 1.4(a) and (b), 1.5(b), 1.16(d), 5.3(a)(c), 7.1(a), and MCR 9.104(4) as well as a violation of MRPC

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

1.15(b)(1), 1.15(b)(3), 1.15(c), 1.15(d) as charged in the formal complaint. The panel did not find violations of MRPC 1.2(a), 1.5(a), 5.1(a)(c), 8.4(a) and (b), and MCR 9.104(1), (2), or (3), as charged in the formal complaint.

The panel ordered that the respondent's license to practice law in Michigan be suspended for a period of 90 days, that he pay restitution to five clients as set forth in the order, and that he be subject to a condition relevant to the established misconduct.

On August 24, 2021, and August 25, 2021, respectively, the respondent and complainant Stephan Wilson filed petitions for review of the panel's decision pursuant to MCR 9.118. The respondent requested and received an automatic stay of the hearing panel's order pursuant to MCR 9.115(K). After review proceedings held in accordance with MCR 9.118, the board issued an order on April 27, 2021, that affirmed the hearing panel's order of suspension and restitution with condition in its entirety and ordered that additional restitution be paid to Wilson.

On May 25, 2021, the respondent filed a motion for reconsideration which resulted in an automatic stay of the board's order pursuant to MCR 9.118(E). On August 24, 2021, the board issued an order denying respondent's motion for reconsideration. As a result, the board's order of suspension and restitution with condition and ordering additional restitution became effective on September 22, 2021. Costs were assessed in the total amount of $7,935.88.

DISBARMENT AND RESTITUTION

Lukasz Wietrzynski, P77039, Rochester Hills, by the Attorney Discipline Board affirming the Tri-County Hearing Panel #61 order of disbarment and restitution. Disbarment, effective October 14, 2021.

After proceedings conducted pursuant to MCR 9.115, the panel found, by default, that the respondent committed professional misconduct as charged in a nine-count formal complaint. The panel found (counts I-VIII) that between June 2013 and November 2017, the respondent, his sister, and his then girlfriend/fiancée engaged in a number of fraudulent actions/transactions with the intent to deprive the respondent's employer and the employer's clients of fees and funds to which they were entitled; (count VIII) that in 2015, the respondent engaged in a conflict of interest with a litigation funding company; and, knowingly provided false testimony during his February 11, 2019, sworn statement taken by the administrator's counsel (count IX).

The panel specifically found that the respondent collected an illegal or clearly excessive fee, in violation of MRPC 1.5(a) (counts I-V); engaged in representation of a client that was directly adverse to another client and he could not reasonably believe the representation would not adversely affect the client, in violation of MRPC 1.7(a) (count VIII); engaged in a representation of a client when that representation was materially limited by the respondent's responsibilities to a third person, in violation of MRPC 1.7(b) (count VIII); failed to promptly notify a client when funds or property in which a client has an interest in is received, in violation of MRPC 1.15(b)(1) (counts I-VII); failed to promptly pay or deliver funds to which a client was entitled, in violation of MRPC 1.15(b)(3) (counts I-VII); knowingly made a false statement of material fact in connection with a disciplinary matter, in violation of MRPC 8.1(a)(1) (count IX); failed to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, in connection with a disciplinary matter, in violation of MRPC 8.1(a)(2) (count IX); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b) (counts I-IX); and, engaged in conduct that violated a criminal law of a state or of the United States, in violation of MCR 9.104(5) (counts I-VI). The respondent was also found to have violated MCR 9.104(2)-(4) and MRPC 8.4(a) (counts I-IX).

On June 3, 2021, the respondent filed a timely petition for review and stay of discipline pursuant to MCR 9.118. The board granted an interim stay of discipline. After review proceedings held in accordance with MCR 9.118, the board issued an order on September 15, 2021, that affirmed the hearing panel's order of disbarment and restitution in its entirety.

Total costs were assessed in the amount of $3,602.84.

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LAWYERS & JUDGES ASSISTANCE
MEETING DIRECTORY

The following list reflects the latest information about lawyers and judges AA and NA meetings. Meetings marked with "*" have been designated for lawyers, judges, and law students only. All other meetings are attended primarily by lawyers, judges, and law students, but also are attended by others seeking recovery. In addition, we have listed "Other Meetings," which others in recovery have recommended as being good meetings for those in the legal profession.

For questions about any of the meetings listed, please contact the Lawyers and Judges Assistance Program at (800) 996-5522 or jclark@michbar.org.

PLEASE DO NOT HESITATE TO CONTACT LJAP DIRECTLY WITH ANY QUESTIONS PERTAINING TO VIRTUAL OR ONLINE 12-STEP ATTENDANCE DURING THE COVID-19 PANDEMIC. LJA COMMITTEE MEMBER ARVIN P. CAN ALSO BE CONTACTED FOR VIRTUAL LJAA MEETING LOGIN INFORMATION AT (248) 310-6360.

ALCOHOLICS ANONYMOUS & OTHER SUPPORT GROUPS

Bloomfield Hills
WEDNESDAY 6 PM*
Kirk in the Hills Presbyterian Church
1340 W. Long Lake Rd.
1/2 mile west of Telegraph

Detroit
MONDAY 7 PM*
Lawyers and Judges AA
St. Paul of the Cross
23333 Schoolcraft Rd.
I-96 south service drive, just east of Telegraph
(This is both an AA and NA meeting.)

East Lansing
WEDNESDAY 8 PM
Sense of Humor AA Meeting
Michigan State University Union
Lake Michigan Room
S.E. corner of Abbot and Grand River Ave.

Houghton Lake
SECOND SATURDAY OF THE MONTH 1 PM
Lawyers and Judges AA Meeting
Houghton Lake Alano Club
2410 N. Markey Rd.
Contact Scott with questions (989) 246-1200

Kalamazoo
WEDNESDAY 12 PM*
First Presbyterian Church
321 W. South St., 3rd Floor, Rm 301

Lansing
THURSDAY 7 PM*
Central Methodist Church, 2nd Floor
Corner of Capitol and Ottawa Street

Royal Oak
TUESDAY 7 PM*
Lawyers and Judges AA
St. John's Episcopal Church
26998 Woodward Ave.

Stevensville
THURSDAY 4 PM*
Al-Anon of Berrien County
4162 Red Arrow Highway

West Bloomfield Township
THURSDAY 7:30 PM*
Maplegrove
6773 W. Maple Rd.
Willingness Group, Room 21

GAMBLERS ANONYMOUS

For a list of meetings, visit
gamblersanonymous.org/mtgdirMI.html.

Please note that these meetings are not specifically for lawyers and judges.

OTHER MEETINGS

Bloomfield Hills
THURSDAY & SUNDAY 8 PM
Manresa Stag
1390 Quarton Rd.

Detroit
TUESDAY 6 PM
St. Aloysius Church Office
1232 Washington Blvd.

Detroit
FRIDAY 12 PM
Detroit Metropolitan Bar Association
645 Griswold
3550 Penobscot Bldg., 13th Floor
Smart Detroit Global Board Room 2

Farmington Hills
TUESDAY 7 AM
Antioch Lutheran Church
33360 W. 13 Mile
Corner of 13 Mile and Farmington Rd., use back entrance, basement

Monroe
TUESDAY 12:05 PM
Professionals in Recovery
Human Potential Center
22 W. 2nd St.
Closed meeting; restricted to professionals who are addicted to drugs and/or alcohol

Rochester
FRIDAY 8 PM
Rochester Presbyterian Church
1385 S. Adams
South of Avon Rd.
Closed meeting; men's group

Troy
FRIDAY 6 PM
The Business & Professional (STAG)
Closed Meeting of Narcotics Anonymous
Pilgrim Congregational Church
3061 N. Adams
2 blocks north of Big Beaver (16 Mile Rd.)

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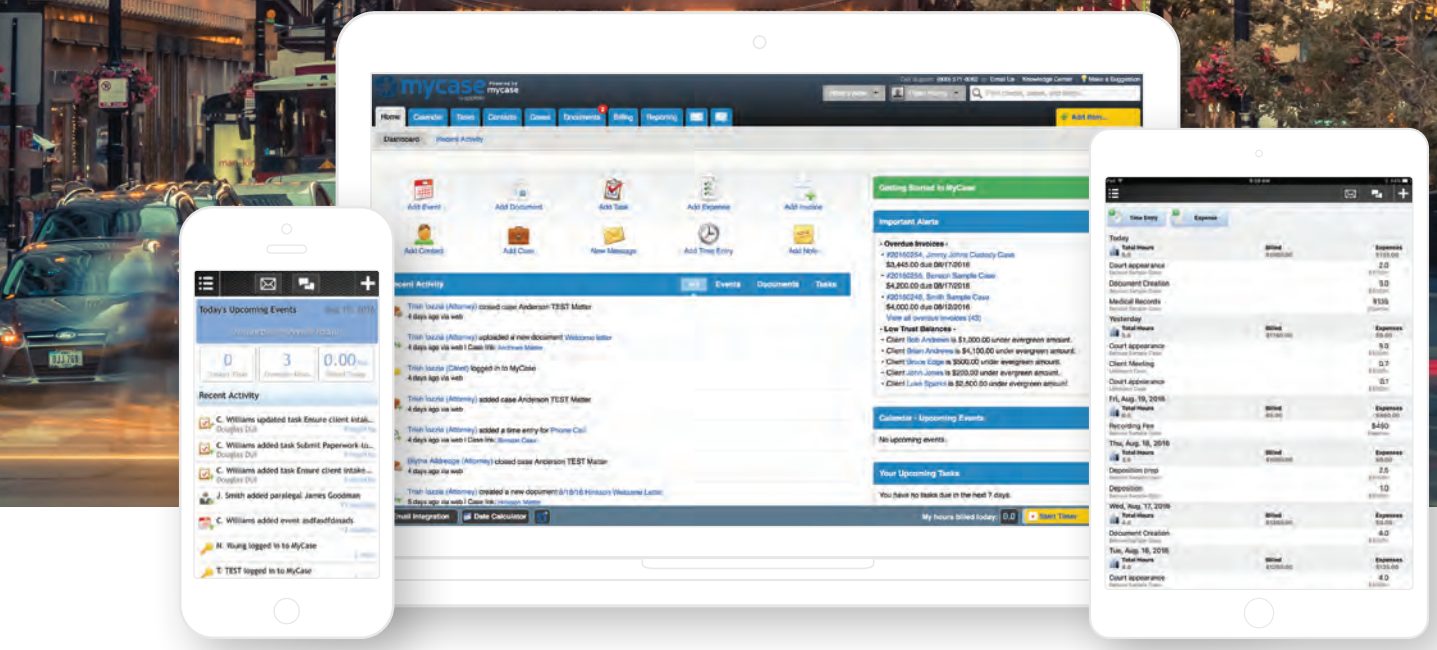

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