

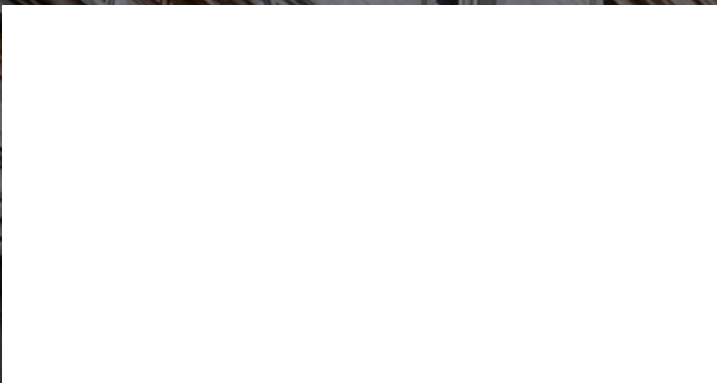
MICHIGAN

# BAR JOURNAL

DECEMBER 2021

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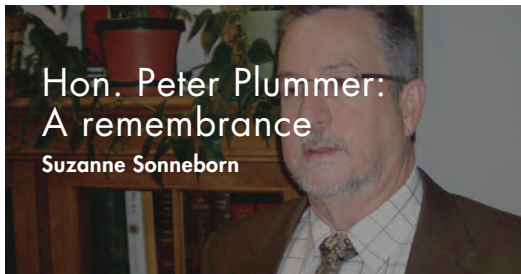
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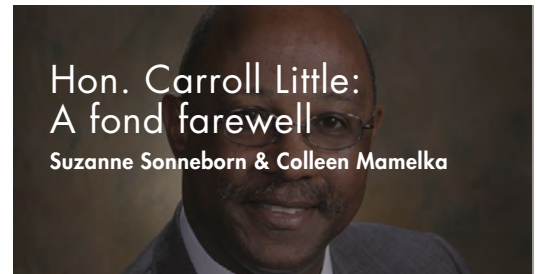
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Exterior of the Michigan State Capitol in Lansing at golden hour.  
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### MEMBER SUSPENSIONS FOR NONPAYMENT OF DUES

The list of active attorneys who are suspended for nonpayment of their State Bar of Michigan 2021-2022 dues is published on the State Bar's website at [michbar.org/generalinfo/pdfs/suspension.pdf](http://michbar.org/generalinfo/pdfs/suspension.pdf).

In accordance with Rule 4 of the Supreme Court's Rules Concerning the State Bar of Michigan, these attorneys are suspended from active membership effective February 12, 2021, and are ineligible to practice law in the state.

For the most current status of each attorney, see our member directory at [directory.michbar.org](http://directory.michbar.org).

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# FROM THE PRESIDENT

DANA WARNEZ



# The future is bright

## THANKS TO THE LEADERSHIP OF JANET WELCH

The natural world brings us darkness this time of year. From the start of our day to our trip home from work, it's just always so dark. Still, among all this darkness, there is always hope and light to be found. This hopeful brightness is at the heart of the holidays and the holy days many of us celebrate during these dark months. Whether it's the flames of the menorah, the twinkling of a Christmas tree, or the candles lit for the first fruits of Kwanzaa, it is an eternal light that pulls us through to a new beginning.

At the State Bar of Michigan, we've had the extreme blessing of having the shining leadership of Janet Welch as our executive director for the past 14 years and even before that, when Janet served as our general counsel. Throughout her time with the State Bar, Janet has been a constant source of light, illuminating our path forward toward numerous improvements in our justice system. Many of you know Janet is approaching her planned retirement at the end of this calendar year, and that her torch is poised, ready to be passed.

Before we say goodbye and move toward our new future, I think it is important to recognize all that Janet has done for the State Bar of Michigan and the legal system here in Michigan because she has accomplished so much.

Looking back, one of the first things I recall being a priority for Janet was supporting those working for indigent defense reform. I was a seated Representative Assembly member (16th Circuit) when the Representative Assembly endorsed the Michigan Campaign for Jus-

tice report outlining the 11 principles of a public defense delivery system in April 2002. This provided the gateway for the State Bar of Michigan, on a policy basis, to work toward improvements to the justice system that would ensure constitutionally adequate services be rendered to criminal defendants in the state.

---

**“Janet helped facilitate all these monumental steps toward innovation by bringing people together.”**

---

In 2009, with our economy in depression and statewide budget shortfalls threatening funding of our court system, Janet felt it imperative to support the efforts of past Bar President Edward Pappas and Hon. Barry L. Howard as they convened 29 leaders from the bar, business, civic, and political communities to take part in the Judicial Crossroads Task Force, which looked for better and more efficient ways to provide justice to the citizens of Michigan. The task force recommendations largely looked at ways to preserve the best of our traditions while streamlining courts and using technology and data-driven innovation to expand access to justice. I remember visiting the Upper Peninsula as RA chair with Janet and then SBM President Bruce Courtade; implementation of these recommendations

---

The views expressed in From the President, as well as other expressions of opinions published in the Bar Journal from time to time, do not necessarily state or reflect the official position of the State Bar of Michigan, nor does their publication constitute an endorsement of the views expressed. They are the opinions of the authors and are intended not to end discussion, but to stimulate thought about significant issues affecting the legal profession, the making of laws, and the adjudication of disputes.



Executive Director Janet Welch circa 2009

was a very hot topic of conversation with many we met on tour.

In 2014, Janet helped facilitate the Summit on the Future of Legal Services, which brought together then Chief Justice Robert P. Young Jr., then State Bar President Thomas Rombach, then ABA President William C. Hubbard, and approximately 70 leaders to discuss these same issues. Their work helped illuminate the need for another deep dive into assessing which improvements might be necessary to keep advancing toward an open, accessible, and efficient justice system driven by technology.

All of this eventually culminated into the largest and greatest collective effort of Janet's tenure when she supported past presidents Courtade and Julie Fershtman as co-chairs of the 21st Century Practice Task Force, bringing together approximately 40 lawyers, judges, professors, regulators, and other stakeholders in our legal community to once again tackle many of the obstacles identified by the Crossroads Task Force. This time, however, the focus intensified

on innovations and improvements to keep our profession relevant and effective in light of the changes and external pressures being put on our legal system by platforms using artificial intelligence to deliver services that lawyers often see as their exclusive domain.

As a member of this task force, I recall being handed a set of eight Crayola crayons with the charge to think and draw outside the lines. No idea was off the table. Ultimately, the task force recommendations led to the creation of broader public access to the legal system, the State Bar investing in a statewide legal resource and referral center, and the Bar collaborating with the legal aid community and the Michigan State Bar Foundation to create the Michigan Legal Help online resource. Plus, the task force explored ways to innovate lawyer competence with specialty certificates, and making technical competency and a commitment to diversity, equity, and inclusion a part of a lawyer's ethical duty. It also researched the possible benefits of regulatory reform allowing multi-disciplinary practices and opening the door for non-lawyers to play an expanded role in delivery of legal services. This is just some — not all — of the topics covered in the 21st Century Task Force. Some of these ideas are not yet implemented, but very well may be on the horizon.

Janet helped facilitate all these monumental steps toward innovation by bringing people together. She has a keen ability to see the need, at just the right time, to charge the best and brightest in the profession, including lawyers and judges of all points of view as well as experts in fields of technology and regulatory practices, to forge a better future for the benefit of the public we all serve. This is the legacy of Janet's work. I hope our future executive director and leaders follow the path Janet has so astutely lit for us. If so, we will certainly be successful, and we will certainly not stagnate. We will keep making our justice system an open one that is fair and equitable for all, and we will push our members to be the best advocates we can be.

Janet, I wish you all the best in your future endeavors. I know Ben is looking down with love and pride, and Andrew, Mara, and their families are going to bask in the opportunity to spend more time with you. I am very glad that you will not be entirely absent from the bar world as you continue to serve in the ABA House of Delegates and the Justice for All Commission.

May your light always shine. If Kim were here, she'd quote Bono, saying "Baby, baby, baby, light my way!"

## IN BRIEF

## SECTION BRIEFS

**ANTITRUST, FRANCHISING, AND TRADE REGULATION SECTION**

The Antitrust, Franchising, and Trade Regulation Section will host its annual forum on Thursday, January 20, via Zoom. Thomas Ayres of Witmer Karp Warner & Ryan in Boston will speak on the development of the independent contractor/employee issue in franchising before the introduction of the PRO Act in Congress and how the act may change the analysis of the issue if passed. Contact Mark Burzych at (517) 381-3159 or mburzych@fsbrlaw.com, or Howard Lederman at (248) 639-4696 or hledermanlaw@gmail.com for more information or the Zoom link.

**BUSINESS LAW SECTION**

Congratulations to Douglas Toering, recipient

of the 2021 Stephen Schulman Outstanding Business Lawyer Award. He was honored at the section's annual meeting on September 28. The Fourth Annual Business Law Symposium will be held on Thursday, January 20, in Detroit. It promises to be an exciting event. For information, visit [www.bizsymposium.com](http://www.bizsymposium.com). Visit <http://connect.michbar.org/businesslaw/home> to learn about the section and its upcoming events.

**CANNABIS LAW SECTION**

The Cannabis Law Section held its annual meeting and conference at the Soaring Eagle Casino and Resort in late September. Allison Arnold was elected section chair, Thomas Lavigne as chair-elect, Barton Morris as secretary, and Michelle Donovan as treasurer. The section looks forward to continuing its regular webinars as well as in-person seminars to be

announced after the first of the year.

**ENVIRONMENTAL LAW SECTION**

The section welcomes its 2021-2022 leaders: Sue Sadler, chair; Scott Sinkwitz, chair-elect; and Todd Schebor, secretary-treasurer. The annual Joint Environmental Conference was held virtually in November. For recordings and presentation materials and the latest issue of the Michigan Environmental Law Journal visit <http://connect.michbar.org/envlaw>.

**FAMILY LAW SECTION**

The Family Law Section's January council meeting will take place on Saturday, January 15, at the Doubletree by Hilton on 42100 Crescent Blvd in Novi. All section members are welcome to attend. Due to the midwinter conference, there will not be a February meeting. The next council meeting will occur on Satur-

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day, March 5, in Grand Rapids.

## LABOR AND EMPLOYMENT LAW SECTION

The Labor and Employment Law Section invites nominations for its 2022 Distinguished Service Award which will be presented at its annual/midwinter Meeting on Friday, January 21. We hope you take this opportunity to highlight the accomplishments of a colleague deserving of the award. Please send nominations and a statement of qualifications for the award to the attention of chair John Runyan at jrunyan@michlabor.legal no later than Tuesday, November 30.

## PROBATE & ESTATE PLANNING SECTION

The section recently filed an amicus brief in *In Re Estate of Hermann Von Grieff* (SC No. 161535) asking the Michigan Supreme Court to reverse the Court of Appeals holding that the determination whether the survivor spouse was willfully absent from the decedent spouse for one year or more preceding death — causing forfeiture of statutory spousal inheri-

tance rights — should not include any period when a divorce action was pending.

## WORKERS' COMPENSATION LAW SECTION

Please join us at Crowne Plaza Lansing West on Friday, December 10, for our winter meeting. We anticipate presentations from the Michigan Workers' Disability Compensation Agency director, the state's Workers' Compensation Board of Magistrates, and our section chair. Also scheduled are presentation on orthopedic foot and ankle injuries, and mindfulness.

## YOUNG LAWYERS SECTION

The section held its board retreat in October, where it had the opportunity to brainstorm and plan for the coming year as well as engage in team building and fellowship. Also, the YLS was the proud recipient of a Michigan Center for Civic Education award for our partnership during the previous year and moving forward. Finally, the section held a statewide virtual town hall meeting, and looks forward to engaging its constituents in the coming months.



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A single mother with a physical disability contacted legal aid because she was facing eviction from her home. She had lost a leg and requested reasonable accommodations be made to her home including rails added to her shower. Additionally, her home had numerous issues including needed repairs to her stove and refrigerator, and water damage from flooding. Legal aid was able to get rental arrears waived, accommodations and repairs made to her home, and a settlement for damages caused from the flooding.

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# 1920s

Almost perfectly bookended by the end of World War I and the beginning of the Great Depression, the 1920s was a decade of change on numerous levels. Building upon the military mobilization of the war years, the United States became a manufacturing giant, churning out cars, telephones, radios, and appliances. Many countries expanded women's voting rights, including the U.S. by passage of the 19th Amendment. The Prohibition movement reached its apex when the 18th Amendment to the U.S. Constitution passed, banning the manufacture, import, and sale of beer, wine, and hard liquor.

Meanwhile at the University of Michigan Law School, faculty members in November 1921 supervised publication of the first edition of the Michigan State Bar Journal. From those humble beginnings, the magazine now known as the Michigan Bar Journal celebrates its 100th anniversary.

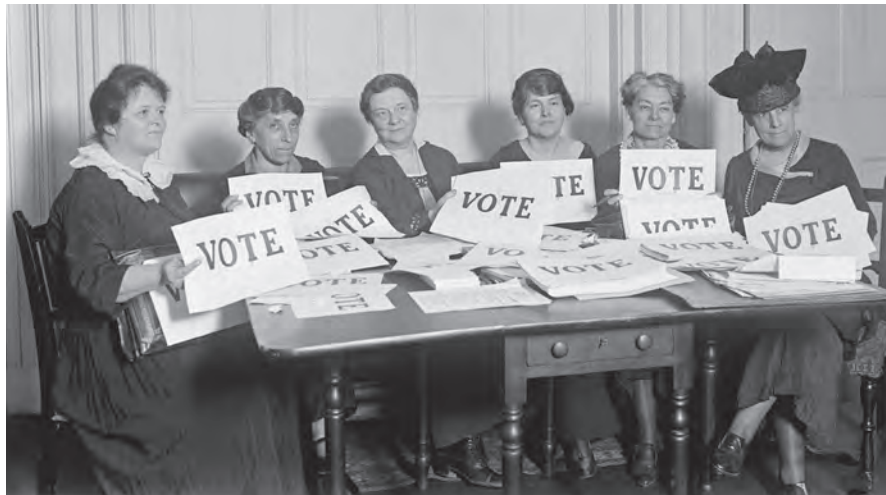
## JAN. 16, 1920

The 18th Amendment ushering in Prohibition takes effect.



## JAN. 26, 1920

The U.S. Supreme Court in *Silverthorne Lumber v. U.S.* decides that evidence developed and obtained unconstitutionally is "fruit of the poisonous tree" and cannot be used at trial.



## AUG. 18, 1920

The 19th Amendment giving women the right to vote is ratified.



## NOV. 2, 1920

Grand Rapids teacher Eva Hamilton becomes the first woman elected to the Michigan legislature.





## JULY 14, 1921

Nicola Sacco and Bartolomeo Vanzetti, Italian immigrant anarchists, are found guilty of murder in Massachusetts and later executed. Based on doubtful evidence and infused with anti-communist sentiments, the trial was then and now seen as a gross miscarriage of justice.

## NOVEMBER 1921

The first issue of the Michigan Bar Journal — then called the Michigan State Bar Journal — is published. The debut issue consists of three pages.

## 1922

Munising Public Works Superintendent Edward Levy develops the first practical highway snowplow.

## DEC. 30, 1922

The Soviet Union comes into existence.

## 1923

Insulin begins to be mass produced for treatment of diabetes.

# Looking back: 1920s

BY GEORGE M. STRANDER

In the 1920s, America, and Michigan specifically, were dominated by several major trends, including continued industrialization and urbanization, further progressive reform, and a turn inward following the ravages of “the war to end all wars.” The state, its government, its laws, and its bar, bar association, and bar journal were all, to a greater or lesser extent, transformed during this time. This was all within the context of a simpler time: Though most homes had telephones and many households had cars, homes were typically heated by coal or wood and neither indoor plumbing, refrigerators, nor radios were standard.

The automobile industry accelerated its re-making of the Michigan economy and led to massive population increases in the Detroit metropolitan area and Flint. Detroit had become the fourth largest city in the country and over the decade, Dearborn’s population rose an astonishing 2,000%. Much of Michigan’s population surge was the result of immigrants, especially those from the southern United States and foreigners from southern and eastern Europe.

Early in the decade, the 18th and 19th amendments to the U.S. Constitution took effect; the former banned the manufacture, sale, and consumption of alcohol, while the latter guaranteed women the right to vote. However, in Michigan these did not represent complete sea changes. Since 1867, taxpaying women in Michigan had had some voting rights and a 1918 amendment to the state constitution gave all women the

right to vote in all state elections. Like the suffragist movement, advocacy of temperance already had a long history in the U.S. and Michigan — our state actually enacted its own prohibition measure in 1916.

These changes — the growing use of automobiles, the burgeoning labor movement, increasing racial and religious diversity, greater rights for women, and illicit business opportunities created by Prohibition — all led to specific consequences. A “good roads movement” advocated paved roads, and the reincarnated nativist Ku Klux Klan gained adherents in the white community, pushing back against non-whites, unions, and Roman Catholic and Jewish communities. Importantly, in the famous Ossian Sweet trial, a Detroit resident, a Black medical doctor, was acquitted of murdering a member of an attacking white mob. Presiding Judge Frank Murphy noted that the right to reasonably defend one’s home is given to all people regardless of race.

During the 1920s, Michigan saw the first woman elected to the state senate (Eva Hamilton in 1920); the first woman elected to the state house (Cora Anderson in 1924); and the first woman in the nation’s history to successfully defend a murder case (Emilia Schaub in 1926). Meanwhile, criminal syndicates like Detroit’s Purple Gang (originally made up of disaffected Russian immigrant teens) took over much of the illegal liquor trade; this activity in our state was especially relevant given that about 75% of all alcohol illegally imported into the country was smuggled into Detroit from Canada.

**NOV. 27, 1924**

The first Macy's Thanksgiving Day Parade is held in New York City.



**JUNE 6, 1925**

The Chrysler Corporation is organized.



**JUNE 8, 1924**

The U.S. Supreme Court decision in *Gitlow v. N.Y.* extends freedom of speech and freedom of the press protections of the First Amendment in relation to government action of states through the due process clause of the 14th Amendment.



**JULY 1924**

The Scopes Monkey Trial takes place in Tennessee. Science teacher John Scopes was found guilty of violating a state law prohibiting the teaching of evolution; former presidential candidate William Jennings Bryan acted for the prosecution with Clarence Darrow defending Scopes.



**JAN. 27, 1926**

Scientist John Logie Baird conducts the first public demonstration of a television at his London laboratory.



**MARCH 1926**

Attorney Alvin D. Hersch pens "The Public Defender" in the Michigan State Bar Journal, advocating indigent defense counsel in order to give "justice to the poor."



**MAY 21, 1927**

Charles Lindbergh, then an obscure U.S. Air Mail pilot, becomes the first person to fly solo nonstop across the Atlantic Ocean, piloting The Spirit of St. Louis from Long Island to Paris in 33.5 hours.



**1928**

Ford's River Rouge Plant is completed; it employed 100,000 people and at the time was the largest integrated factory complex in the world.



**1928**

Michigan develops yellow lines on roadways to indicate no-passing zones.



**NOV. 11, 1929**

The Ambassador Bridge connecting Detroit and Windsor opens. At the time, it was the longest bridge in the world

During the decade, Michigan's executive branch was streamlined from a large and somewhat unruly collection of commissions and agencies to an efficiently small set of state departments. Important legislation from the decade included the massive Code of Criminal Procedure (1927), creation of the Department of Agriculture (1921), codification of Supreme Court Reports (1927), institution of the State Tax Commission (1927), and regulation of pharmacies and drug stores (1927).

One seminal Michigan Supreme Court opinion of the decade came in the 1926 *Collins v. Gerhardt* case concerning the public's right to navigable waters in the face of property owners' riparian rights. In *Collins*, the Court concluded that the Pine River riverbed was not owned by the adjacent landowner but held in trust by the state, thereby allowing, for instance, a fisherman to wade in the stream without trespass.

Michigan incidents gave rise to two important U.S. Supreme Court cases of the 1920s — *Newberry v. U.S.* (1921) and *Carroll v. U.S.* (1925). In *Newberry*, the Court struck down part of the Federal Corrupt Practices Act (FCPA) limiting election spending in political party primaries. Prior to winning his party's nomination and going on to be elected to the U.S. Senate from Michigan, Thomas Newberry had expended funds in excess of then legal limits. The *Newberry* Court struck down the FCPA spending limits as an improper extension of Congress's Article I powers. Interestingly, campaign finance cases since have come to focus on the extension of free speech powers rather than a limit on Congress's remit.

The underlying facts in *Carroll* were that George Carroll and John Kiro were convicted of transporting liquor in violation of Prohibition laws after law enforcement, without a warrant but with knowledge of Carroll and Kiro's activities and of their vehicle, stopped their car east of Grand Rapids and found bottles of liquor inside. The *Carroll* Court overturned the conviction, carving out the "automobile exception" to the proscription against warrantless search — warrantless search of a vehicle is allowed if officers have probable cause to believe the vehicle contains evidence or contraband.

As for the Michigan bar and the Michigan State Bar Association, the decade presented changes that are clearly reflected in the pages of the Bar Journal during that era. In one issue, an article titled "Our Changing Law Practice" encouraged attorneys to run their practices and offices by adopting efficient business methods. Just as workmen's compensation and blue-sky laws had modernized different areas of liability and as a response to increased competi-

tion from banks, trust companies, title companies, collection agencies, and arbitration, attorneys were told to eliminate waste, keep good time records and filing systems, use time on suitably important work, and not forget they have a life outside the office.

Two articles of the period reflect interesting changes in the law and courts. In one, the dean of the University of Michigan Law School announced that entrance requirements for the institution would soon be raised to require that a candidate not only have some coursework in an approved college or university, but actually have graduated with a bachelor's degree. (This article came on the heels of an earlier piece reporting American law schools were returning to normal following the disruption of World War I.) In another article, the beginning of the Friend of the Court system in Michigan is heralded, explaining that the office exists to enforce alimony decrees to ensure dependent minor children receive the funds they are decreed.

Finally, the Michigan State Bar Association exhibited some soul searching in the 1920s. Outwardly, the association showed signs of health, almost doubling its voluntary membership over the course of the decade (to about 1,350) and expanding both the number and complexity of its committees. However, as former association President William Potter argued in the Journal in "Organization of the Michigan State Bar," the group, in reality, lacked the power and mandate to effect substantive change, and only in the form of a mandatory bar association could it realize its goals. Earlier in the decade, the Bar Journal details how the association called for preparation of a bill incorporating the state bar to be forwarded to the Michigan Legislature for consideration.

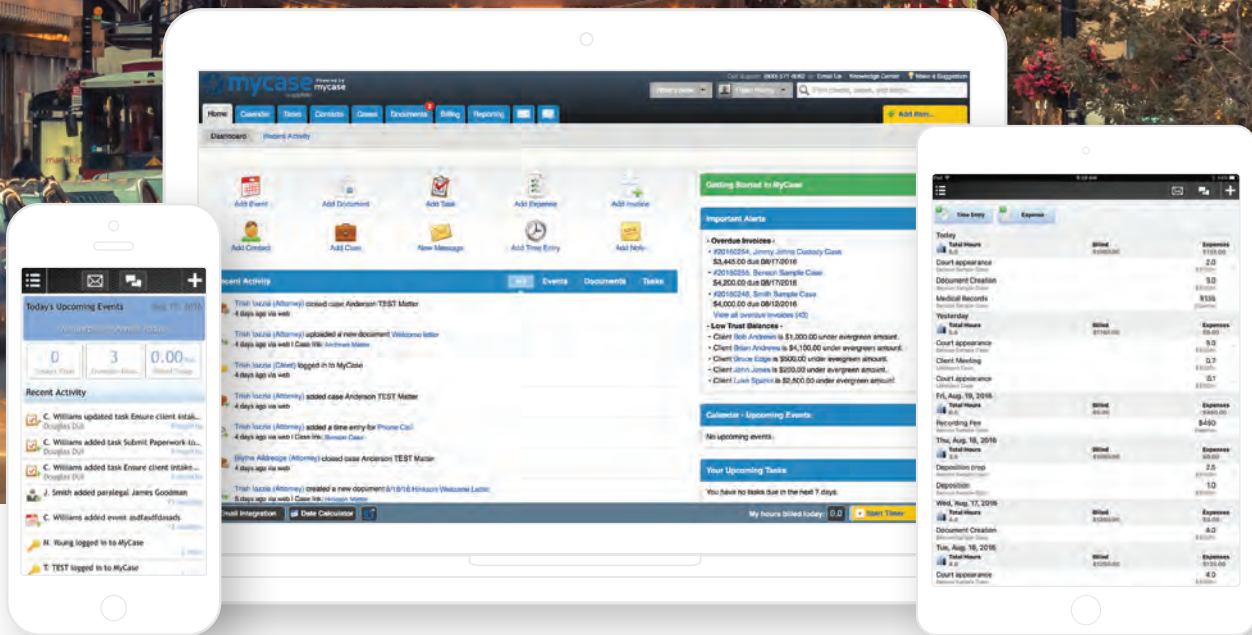
Later in the decade, a different association president noted in the Bar Journal that the body was not as strong as it should be and lacked adequate involvement by membership. The solution: annual meetings would be revised to give more attention to planning concrete improvements in court procedure and matters of practice and stop reading academic papers

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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.



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# ADMINISTRATIVE LAW

The December issue of the Michigan Bar Journal is dedicated to administrative law. More specifically, the focus is on a key component of administrative law in this state: The Michigan Office of Administrative Hearings and Rules, or MOAHR. MOAHR is the centralized panel that holds administrative hearings on behalf of most of the state's departments and agencies including the Michigan Department of Health and Human Services, the Unemployment Insurance Agency, and the Michigan Department of Corrections.

While each of the feature articles in this issue center on MOAHR, the first two are closely aligned to each other as are the second two. In "A Teachable Moment: How the Pandemic Changed the State Administrative Hearing Process," MOAHR Executive Director Suzanne Sonneborn describes how the shift to remote hearings in response to the COVID-19 pandemic has resulted in some unexpected — but significant — benefits to parties in administrative hearings, spurring the adoption of continued remote hearings going forward, where appropriate. In addition to conducting administrative hearings, MOAHR oversees the promulgation of administrative rules for all state departments and agencies, a critical function that has been particularly important during the pandemic. In her article, "Administrative Rulemaking in Michigan," Katie Wienczewski, MOAHR's Administrative Rules Division director, explains the rulemaking process.

The last two articles in this theme issue honor the passing of two dedicated and pivotal figures in MOAHR's history. Hon. Carroll Little, who passed in August at age 99, holds the distinction of being Michigan's longest-serving state employee. He worked for the state for 64 years, starting as a tax collector in 1957 when G. Mennen "Soapy" Williams was governor. Little spent 47 years as an administrative law judge, working right up until his death, and was widely recognized as an expert in unemployment law. Hon. Peter Plummer, who passed away in November 2020, was integral in the creation of the predecessor to MOAHR and Michigan's first centralized hearing panel, the State Office of Administrative Hear-

ings and Rules. Gov. Jennifer Granholm in 2005 named him as the agency's executive director, just one of the many highlights of a 45-year career in the law.

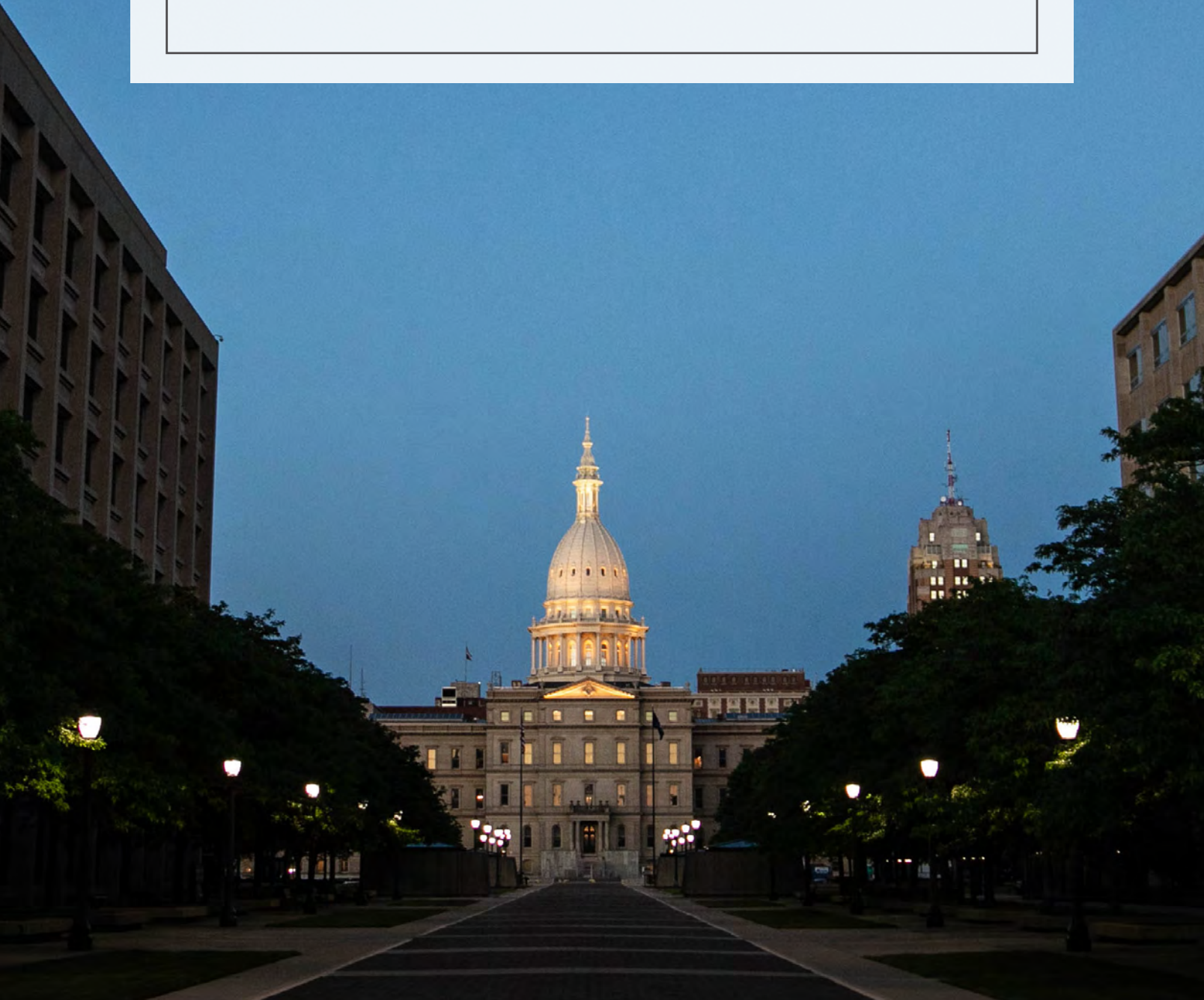


Exterior of the Michigan State Capitol dome at nightfall | Photo by Sarah Lawrence Brown | State Bar of Michigan

Coincidentally, Plummer himself wrote in the introduction to the Bar Journal administrative law theme issue exactly 11 years ago. What he said then remains true today: "Michigan's citizens are well served by the advocates who represent them and the administrative law judges who find the facts, reach conclusions of law, and author either a proposal for decision or the final decision in each case."

The Administrative and Regulatory Law Section of the State Bar of Michigan provides education, information, and analysis on issues of concern through meetings, seminars, programs, and its SBM Connect site. Visit [connect.michbar.org/adminlaw/](https://connect.michbar.org/adminlaw/) for more information.

# A TEACHABLE MOMENT



The state Capitol is flanked by the Ottawa Building, home of the Michigan Office of Administrative Hearings.  
Photo by Sarah Lawrence Brown | State Bar of Michigan

# Pandemic changes to the state administrative hearing process

BY SUZANNE SONNEBORN

Much has been written about how the world has radically changed in the past year, including the practice of law.<sup>1</sup> “From informal fact-gathering as part of a lawyer’s pre-suit diligence all the way through closing arguments at trial, one would be hard-pressed to find an aspect of modern litigation practice that has not been touched, and altered, by COVID-19.”<sup>2</sup> The same may be said regarding the administrative hearing process managed by the Michigan Office of Administrative Hearings and Rules (MOAHR).

Created by Executive Order No. 2019-06 and modified by Executive Order No. 2019-13, MOAHR is an agency housed within the Michigan Department of Licensing and Regulatory Affairs with the core organizational mission of conducting administrative hearings and aiding in the promulgation of rules by providing a timely, professional, sound, impartial, and respectful process consistent with all legal requirements for all hearing participants and for all departments and agencies engaged in the rulemaking process.<sup>3</sup>

As a centralized administrative hearing system, the portfolio of case types adjudicated by MOAHR’s administrative law judges is extensive and comprised of many areas:

- **Benefit services:** Includes hearings related to Medicaid program eligibility, services, and providers; food assistance; cash assistance; and hearings for adoption subsidy services;
- **Unemployment:** Appeals referred by the Unemployment Insurance Agency related to worker benefit entitlement, employer liability, and identity fraud issues;
- **Licensing:** Includes hearings referred by various agencies and bureaus such as the Liquor Control Commission; the Department of Insurance and Financial Services; the Michigan State Police and Michigan Commission on Law Enforcement

Standards; the Bureau of Services for Blind Persons Business Enterprise Program Licensing; Corporations, Securities, and Commercial Licensing and Corporate Oversight; Health Care Professional Licensing; and Occupational Licensing;

- **Tax appeals:** All Michigan tax issues including business and residential property and poverty disputes, principal residence and qualified agricultural exemption appeals, and other state tax issues;<sup>4</sup> and
- **Regulatory actions:** Including issues originating with the Michigan Occupational Safety and Health Administration (worker safety issues); the Department of Education (special education, teacher tenure, nutrition, etc.); the Department of Environment, Great Lakes, and Energy (environmental issues); the Department of Insurance and Financial Services (financial and insurance matters); Transportation (traffic standards, road construction, etc.); the Public Service Commission (utilities and telecommunications); the Michigan Employment Relations Commission (unfair labor practices, public strikes, petitions for representation elections, etc.); the Department of Civil Rights; and others.<sup>5</sup>

With these being just a few of the case types handled by MOAHR, it is safe to say that many of the administrative adjudicatory processes handled in state government come through MOAHR’s door.

Before the pandemic, MOAHR conducted certain administrative hearings by remote means based on existing administrative rule authority to do so.<sup>6</sup> For example, many unemployment and cash and food assistance appeal hearings were (and continue to be) held by telephone. Most administrative hearings were nonetheless traditionally held in person at MOAHR’s offices in Lansing, Detroit, Saginaw, and Traverse City — or at a branch office of the

Michigan Department of Health and Human Services (for benefits hearings), a local school district (for education hearings), or a designated local government venue (for tax hearings.)

This all changed in March 2020, when Michigan confirmed the state's first two COVID-19 cases and Governor Gretchen Whitmer declared a state of emergency. Thereafter, MOAHR swiftly established remote hearing capabilities for MOAHR's 82 administrative law judges (ALJs) and Michigan Tax Tribunal members and telework capabilities for all staff so MOAHR's operations could continue safely without interruption — and, importantly, Michigan residents, businesses, and companies could achieve resolution of disputes in a timely fashion and with due process.

MOAHR's adaptation to remote hearings included developing processes to allow for review of documents and submission of exhibits and other filings entirely through electronic means, acquiring Zoom licenses, and ALJs learning new technologies and modified existing procedures to accommodate virtual hearings. This transition led to the creation of the MOAHR Remote Hearing Manual Workgroup consisting of four ALJs representing a broad range of case types within MOAHR and a final work product called "Standards and Guidelines for Remote Hearings"<sup>7</sup>, a 35-page manual containing useful information and best practices for all hearing participants using either Zoom or Microsoft Teams.<sup>8</sup>

In the end, MOAHR's forced transition to remote technology for most proceedings has led to numerous benefits. These include increased accessibility, convenience, and time management for all parties and hearing attendees, including persons with disabilities who may have difficulty appearing in person; elimination of the need to secure transportation and take time off from work or away from child care responsibilities; reduced costs associated with travel and parking and the related reduced negative impact to the environment; and greater efficiencies for MOAHR and all parties in

the increased number of cases adjudicated.<sup>9</sup> For example, MOAHR closed a total of 55,964 cases in 2020 and will easily exceed this total in 2021, having already closed a total of 46,565 cases as of August 31<sup>st</sup>.<sup>10</sup> These numbers establish the tangible efficiencies gained in a remote work environment while maintaining the tenets of procedural fairness and MOAHR's underlying mission.

Similar benefits appear to have been realized at the trial court level; as of April 2021, Michigan trial courts had logged more than 3 million hours of Zoom hearings.<sup>11</sup> A preliminary report authored by the State Court Administrator's Office's Lessons Learned Committee observed that despite "countless stories of frustration over technology and connectivity ... universally, if not begrudgingly by some, the trial courts acknowledge Zoom provides for efficient and effective access to the courts for most hearings except extended evidentiary hearings and trials."<sup>12</sup> And according to the committee's findings, 82% of nearly 1,500 attorneys surveyed indicated the desire for Zoom hearings to continue after the pandemic.<sup>13</sup> In doing so, "these attorneys reported their clients appreciated Zoom for the convenience and time savings from not having to travel to the court, park, and personally attend a hearing."<sup>14</sup> In fact, "[c]lients also expressed they were less intimidated by the process on Zoom without losing respect for the procedure and decorum."<sup>15</sup> The report further indicated:

Zoom hearings will reduce the cost of litigation by reducing the billable hours normally associated with travel, waiting in court for hearings or completing settlement conferences, etc. This cost saving will be a benefit to the public that pays for legal services, as well as to members of the public who otherwise could not afford legal services and would be forced to handle a matter in pro per. Moreover, Zoom hearings (especially when scheduled for a specific time or window of time) have the additional benefit of allowing attorneys to more easily manage their calendar without the potential of being stuck in court all day.<sup>16</sup>

Although "attorneys were less enthusiastic about evidentiary hearings involving multiple days, witnesses, and exhibits," the report noted that the "[u]se of Zoom in trials and lengthy evidentiary hearings creates greater flexibility to coordinate appearances by experts or other witnesses who would need to travel to court for an in-person hearing" — a benefit that may lessen the need for adjournments or rescheduling.<sup>17</sup>

Significantly absent from the committee's findings was any indication by the trial courts, district courts, or attorneys surveyed that credibility determinations and the ability to evaluate a witness's demeanor were any less effective in virtual hearings.<sup>18</sup> This notion was reinforced in a recent study conducted by the Center for Legal and Court Technology on behalf of and with the support of the Administrative Conference of the United States.<sup>19</sup> The purpose of the study was analyzing how federal adjudicatory agencies are using remote appearances and virtual hearings.<sup>20</sup> According to the center, information gathered from interviews with senior adjudicators from 12 agencies "supports a conclusion that virtual hearings do not differ in result from in-person hearings."<sup>21</sup> For example, regarding judges' ability to make credibility determinations from remote witnesses, "every adjudicator interviewed in this project reported the ability to adequately evaluate demeanor despite the use of videoconferencing."<sup>22</sup>

However, recognizing that the primary legal question posed by remote appearances and hearings is that of constitutional due process, the study also asked, "Can a remote party fully participate in the virtual hearing so as to present all relevant evidence, adequately challenge adverse evidence, fully observe proceedings, make appropriate argument, and communicate effectively?"<sup>23</sup> The data collected from adjudicators and other agency staff revealed the following answer:

*The ordinary virtual hearing fully accords with due process requirements by providing participating persons with all of the rights and protective pro-*



cedures present at in-person hearings (emphasis added). Note, however that in any specific case, special circumstances may raise due process issues. That would include a hearing with serious technology issues, such as substantial bandwidth or equipment failures. Further, the involvement of one or more people with conditions (disabilities) that interfere with the ability to fully use videoconferencing likely would necessitate an in-person hearing.<sup>24</sup>

Ultimately, the center provided several recommendations grounded in its findings, the first of which is that remote appearances and virtual administrative hearings should continue post pandemic “to the degree consistent with the agency’s goals and needs and, to a reasonable degree, that of the parties or claimants” and that “[o]bjections by counsel to virtual hearings merely because they are virtual should not be given substantial weight.”<sup>25</sup> Instead, “[g]iven due process requirements, parties or claimants without adequate equipment, bandwidth, or technology competence should be afforded in-person hearings unless those deficiencies can be remedied adequately by the agency.”<sup>26</sup>

Consistent with the findings of SCAO’s Lessons Learned Committee and the Center for Legal and Court Technology, MOAHR’s transition to a virtual administrative courtroom has largely been well received by hearing participants but has not been without some technological challenges. Most are rooted in the complexity of the evidentiary hearing and the volume of the record, as is the case with certain licensing and regulatory hearings — for example, adjudication of Consumers Energy’s most recent electric rate case entailed six days of cross-examination held remotely using Microsoft Teams, a record consisting of almost 5,000 pages and hundreds of exhibits, and a proposal for decision that was more than 400 pages. Of equal significance, however, is the digital divide resulting from a lack of access to and/or a working understanding of the technology required for remote hearing participation, as is the case with some self-rep-

resented claimants or petitioners with cases scheduled for hearings before MOAHR.

These challenges notwithstanding, it would be counterintuitive for MOAHR not to harness and retain virtual practices that have improved the hearings system for parties, practitioners, and the public. MOAHR’s Administrative Standard 2021-1 endeavors to do so.<sup>27</sup> This standard is premised on the realization that many proceedings can and should continue to be conducted remotely except in specific circumstances where it may not be possible or workable due to accessibility limitations, specific evidentiary issues, or other unique circumstances that preclude its effective use.

In ways both large and small, the pandemic has offered up teachable moments for rethinking traditional business models, including in the practice of law and in our judicial and administrative systems. Michigan Supreme Court Chief Justice Bridget M. McCormack observed that the pandemic “is not the disruption courts wanted, but it is the disruption courts needed.”<sup>28</sup> It behooves us to embrace this opportunity to create long-term, lasting improvements to the administrative hearings process with service to the public and access to justice as our guideposts — and MOAHR is here for it.



**Suzanne Sonneborn** is executive director of the Michigan Office of Administrative Hearings and Rules. Prior to her appointment, she served as chief legal counsel to Attorney General Dana Nessel and has also served as an administrative law judge, deputy legal counsel to former Gov. Jennifer Granholm, and an assistant attorney general under three previous attorneys general. Sonneborn is a 1996 graduate of Western Michigan University Cooley Law School.

## ENDNOTES

1 Hammon, *The Practice of Law During COVID-19*, *Law Practice Today* (April 15, 2021) <<https://www.lawpracticetoday.org/article/the-practice-of-law-during-covid-19/>> [<https://perma.cc/YR39-ZR9Y>]. All websites cited in this article were accessed November 4, 2021.

2 *Id.*

3 Michigan Office of Administrative Hearings and Rules, Mich Dep’t of Licensing and Regulatory Affairs <[https://www.michigan.gov/lara/0,4601,7-154-89334\\_10576-,00.html](https://www.michigan.gov/lara/0,4601,7-154-89334_10576-,00.html)>

[<https://perma.cc/E26X-M93T>].

4 Michigan Tax Tribunal (MTT) members adjudicate these tax appeals. Welcome to the Michigan Tax Tribunal, LARA Tax Tribunal, available at <<https://www.michigan.gov/taxtrib/>> [<https://perma.cc/VK6Z-R9CN>].

5 Michigan Office of Administrative Hearings and Rules.

6 Rules 114(4) and 121 of the Michigan Administrative Hearing System Administrative Hearing Rules, Mich Admin Code, R 792.10114(4) and R 792.10121(1), authorize administrative law judges, hearing officers, and tax tribunal members to conduct prehearing conferences and hearings “by telephone, by videoconference, or other electronic means,” and Rule 121(2) further provides that “[a]ll substantive and procedural rights apply to all hearings under this rule.” These rules do not apply to proceedings before the Michigan Employment Relations Commission and the Public Service Commission. See Mich Admin Code, R 792.10101(3) and (4).

7 Standards and Guidelines for Remote Hearings, MOAHR (February 1, 2021), available at <[https://www.michigan.gov/documents/lara/Remote\\_Hrgs\\_723701\\_7.pdf](https://www.michigan.gov/documents/lara/Remote_Hrgs_723701_7.pdf)> [<https://perma.cc/F58B-BTTA>].

8 The Michigan Tax Tribunal, located within MOAHR, also developed the MTT Video Guides for Participants, remote hearing manuals for participants appearing at videoconference hearings before the tribunal. MTT Video Guides for Participants, LARA Tax Tribunal, available at <[https://www.michigan.gov/taxtrib/0,4677,7-187-100353\\_102724-540853-,00.html](https://www.michigan.gov/taxtrib/0,4677,7-187-100353_102724-540853-,00.html)> [<https://perma.cc/JR2A-YQMR>].

9 For example, see Michigan Trial Courts: Lessons Learned from the Pandemic of 2020-2021, Lessons Learned Comm, SCAO (June 29, 2021), pp 20-21, available at <<https://www.courts.michigan.gov/4a4803/sites/assets/covid/covid-19/lessonslearned.pdf>> [<https://perma.cc/PBN5-3T2Q>].

10 MOAHR Scorecards, data.Michigan.gov <<https://data.michigan.gov/stories/s/y92e-gnwt>> [<https://perma.cc/X87N-3HAS>].

11 Michigan Trial Courts, p 3.

12 *Id.* at p 19.

13 *Id.* at p 20.

14 *Id.* at p 21.

15 *Id.*

16 *Id.* at p 23.

17 *Id.* at pp 21, 23.

18 *Id.* at pp 20-23.

19 Lederer, *Analysis of Administrative Agency Adjudicatory Hearing Use of Remote Appearances and Virtual Hearings*, The Center for Legal & Court Technology (June 3, 2021), available at <<https://www.acus.gov/sites/default/files/documents/virtual-hearings-final-report.pdf>> [<https://perma.cc/S48D-6NNU>].

20 *Id.* at p 4.

21 *Id.* at p 5.

22 *Id.* at p 10.

23 *Id.* at p 13.

24 *Id.* at p 14.

25 *Id.* at p 18.

26 *Id.*

27 Administrative Hearing Standard No 2021-1: Administrative Law Judges, Hearing Officers, and Tax Tribunal Members to Conduct Proceedings Remotely with Limited Exceptions, directive from MOAHR Executive Director and Chief Regulatory Officer Suzanne Sonneborn (August 12, 2021), available at <[https://www.michigan.gov/documents/lara/MOAHR-Administrative\\_Hearing\\_Standard\\_2021-1\\_Remote\\_Proceedings\\_-\\_August\\_12\\_2021\\_732584\\_7.pdf](https://www.michigan.gov/documents/lara/MOAHR-Administrative_Hearing_Standard_2021-1_Remote_Proceedings_-_August_12_2021_732584_7.pdf)> [<https://perma.cc/P2ET-SDLC>].

28 Michigan Trial Courts, p 18.

# ADMINISTRATIVE RULEMAKING

## Providing the detail and substance in Michigan law

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BY KATIE WIENCZEWSKI

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Although not part of the Michigan Compiled Laws, an administrative rule promulgated in accordance with the Administrative Procedures Act of 1969 (APA), MCL 24.201 et seq., or applicable law has the force and effect of law once filed with the Office of the Great Seal within the Secretary of State, and administrative rules play an integral role in the regulatory aspect of Michigan's government by providing the detail and substance often missing from statute. State agencies are granted permissive or mandatory rule promulgation authority via their governing statutes. The rulemaking process is governed by Chapter 3 of the APA, MCL 24.231 to MCL 24.266. A "rule" is defined in the APA as "an agency regulation,

statement, standard, policy, ruling, or instruction of general applicability that implements or applies laws enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency."<sup>1</sup>

The Office of Regulatory Reform, initially created through Executive Reorganization Order 1995-5 and later codified in MCL 10.151, was charged with the duty to "review proposed rules, coordinate processing of rules by agencies, work with agencies to streamline the rule-making process, and ... improve public access to the rule-making process."<sup>2</sup> While a series of ensuing executive reorga-



nization orders moved the office to various state departments and renamed it, its core functions have remained the same. Most recently, Executive Reorganization Order No. 2019-1 created the Michigan Office of Administrative Hearings and Rules (MOAHR) as an agency within the Department of Licensing and Regulatory Affairs.<sup>3</sup> MOAHR, charged with overseeing the rule promulgation process for all state agencies, is the successor to the Office of Regulatory Reinvention, formerly known as the State Office of Administrative Hearings and Rules and the Office of Regulatory Reform.

There are five ways to promulgate administrative rules in Michigan:

- The full process;
- The shortened process under section 44(1) of the APA;
- Emergency rules;
- The Michigan Occupational Safety and Health Administration process under section 44(2) of the APA; and
- The Department of Environment, Great Lakes, and Energy process through the Environmental Rules Review Committee.

## THE FULL PROCESS

The full process is the most frequently utilized method by which agencies amend, add, or rescind rules. It begins with the state agency submitting to MOAHR a request for rulemaking, which must include the statutory authority for the proposed rule or change; the

problem that the rule will focus on and its significance; and, if applicable, the decision record.<sup>4</sup> Once MOAHR has approved the request for rulemaking, the agency submits draft rules to MOAHR.<sup>5</sup> MOAHR reviews the proposed rules to ensure the agency is within its statutory authority and edits the rules to conform to rulemaking style guide standards.<sup>6</sup>

Next, the agency submits the regulatory impact statement (RIS) and cost benefit analysis, which includes a small business impact statement. The RIS must contemplate, among other things, the economic impact of the proposed rule, any burdens placed on the regulated community, and the expected benefits.<sup>7</sup> Following the approval of the RIS by MOAHR and after giving proper notice, the agency holds a public hearing where individuals may offer written or verbal comment regarding the proposed rules.<sup>8</sup>

Once the public hearing has been held and the public comment period has ended, the agency's final rules, which may incorporate any suggested edits provided in public comment, are sent to the Legislative Service Bureau (LSB) for formal certification and then to MOAHR for legal certification.<sup>9</sup> The rules are then sent to the Joint Committee on Administrative Rules (JCAR), a bipartisan state legislative committee made up of five members from each chamber. JCAR has 15 session days to consider the proposed rules; the committee may object to the rule, propose that it be changed,

introduce bills to enact the subject of the rule into law, or waive any remaining session days.<sup>10</sup> If JCAR does not object to the rules, propose changes, or introduce bills, MOAHR may file the rules with the Office of the Great Seal within the Secretary of State once the 15 session days have expired.<sup>11</sup>

## THE SHORTENED PROCESS

Alternatively, if certain conditions are met, agencies may promulgate rules under the shortened process provided for in section 44(1) of the APA.<sup>12</sup> It provides that “[s]ections 41, 42, and 66 do not apply to an amendment or rescission of a rule that is obsolete or superseded, or that is required to make obviously needed corrections to make the rule conform to an amended or new statute or to accomplish any other solely formal purpose, if a statement to that effect is included in the Legislative Service Bureau certificate of approval of the rule.”<sup>13</sup>

Under this shortened process, agencies are exempt from submitting a regulatory impact statement and JCAR report, holding a public hearing, and submitting the rules to JCAR.<sup>14</sup> Instead, agencies are only required to submit a request for rulemaking and draft rules for approval by MOAHR. Once MOAHR has approved the request for rulemaking and the draft rules, the proposed rules are sent to the LSB for formal certification. MOAHR may then legally certify the rules, and they may be filed with the Office of the Great Seal.<sup>15</sup>

## EMERGENCY RULES

On average, the full promulgation process takes one year from the submission of the request for rulemaking to the filing of the rules. Prior to the COVID-19 pandemic, there were occasional instances where immediate development of emergency rules was necessary to protect the health, safety, and welfare of Michigan citizens. The current global health threat has proven how vital this process is to state agencies in emergent situations.

Section 48 of the APA provides, in part, that, “[i]f an agency finds that the preservation of the public health, safety, or welfare requires promulgation of an emergency rule without following the notice and participation procedures required by sections 41 and 42 and states in the rule the agency’s reasons for that finding, and the governor concurs in the finding of emergency, the agency may dispense with all or part of the procedures and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule.” The emergency rule process requires agencies to draft a finding of emergency explaining why the rules are necessary immediately and how the public health, safety, and welfare would be jeopardized by following the full rulemaking process. The governor must concur with the finding of emergency. The emergency rules are sent to the LSB for formal certification, legally certified by MOAHR, and filed with the Secretary of State.<sup>16</sup>

Emergency rules are effective immediately and remain in effect until

a date fixed in the rules or six months after the filing, whichever is earlier. A one-time extension of up to six months is possible if the governor concurs that the emergency continues to exist. If the agency desires to have the emergency rules remain effective beyond the final expiration date, it must promulgate an identical or similar rule in the customary manner.<sup>17</sup>

## MIOSHA RULES

Section 44(2) of the APA provides that the Michigan Occupational Safety and Health Administration (MIOSHA) may enact rules that are “substantially similar” to federal regulations adopted under the Occupational Safety and Health Act<sup>18</sup> without following the notice and participation requirements of the APA. MIOSHA must submit a request for rulemaking and draft rules to MOAHR.<sup>19</sup> After MOAHR’s initial approval, the rules must be published in the Michigan Register at least 35 days prior to being filed with the Secretary of State.<sup>20</sup>

Once the proposed rules are published, MIOSHA must allow no more than 21 days for the submission of written comments regarding the proposed rules. Once these timelines have been met and MIOSHA has incorporated any desired changes to the rules based on public comment, the rules must be formally certified by the LSB and MOAHR, respectively. The rules may then be filed with the Secretary of State.<sup>21</sup>

## ENVIRONMENTAL RULES REVIEW COMMITTEE

2018 PA 267 amended the APA and created the Environmental Rules Review Committee (ERRC). Executive Reorganization Order No. 2019-1 transferred the ERRC as an independent body to the Department of Environment, Great Lakes, and Energy (EGLE). The purpose of the ERRC is overseeing all rulemaking for EGLE. The ERRC is comprised of four ex officio department heads and 12 members, appointed by the governor, who represent various industries and organizations from across the state.<sup>22</sup>

The rule promulgation process through the ERRC is like the full process, with additional review and input permissible by the ERRC. Once a request for rulemaking is approved by MOAHR, the ERRC chair and vice chair may determine that no further action by the ERRC is necessary, and the rules continue through the full process. However, members may vote to override that determination, or the chair and vice chair may determine the rules should continue to be reviewed by the ERRC. In that case, the draft rules are sent to the ERRC members for review.<sup>23</sup>

The APA requires the ERRC to determine whether EGLE’s proposed draft rules meet the following criteria:

- The rules do not exceed the rulemaking authority provided in statute;
- The rules “reasonably implement and apply the statute ... and

are consistent with all other applicable law”;

- The rules are “necessary and suitable to achieve their purposes in proportion to the burdens they place on individuals and businesses”;
- The rules are “as clear and unambiguous as reasonably appropriate considering the subject matter of the proposed rules and the individuals and businesses that will be required to comply with the proposed rules”; and
- The rules are “based on sound and objective scientific reasoning.”<sup>24</sup>

Within 35 days of receiving the draft rules, and after considering these five criteria, the ERRC members must vote to allow the rules to proceed through the full process instead of continuing to undergo ERRC review; determine that the proposed draft rules meet the five criteria and may be presented at public hearing; or decide that the rules do not meet the five criteria. If the ERRC fails to decide within 35 days, the proposed rules may proceed to public hearing.<sup>25</sup> If the members determine the proposed rules do not meet the five criteria, the ERRC must notify EGLE in writing and include an explanation as to why the rules do not meet the criteria or why additional review is necessary. EGLE, in response to this determination, must meet with stakeholders, provide additional information to the members, or revise the proposed draft rules. If the ERRC makes no determination on revised proposed draft rules or additional information supplied by EGLE within 90 days (a period which may be extended up to 180 days) of providing notice to EGLE, the proposed rules may proceed to public hearing.<sup>26</sup>

After holding a public hearing, EGLE must submit to the ERRC within 120 days a report that includes a summary of the comments received from the public hearing and, if it submits modifications to the draft rules in response to the comments, an explanation for any changes EGLE proposes. If EGLE does not submit this report within 120 days, the rules must be withdrawn.<sup>27</sup> If EGLE submits the rules to the ERRC in a timely manner, the ERRC must then meet; after considering the report and the public comments, ERRC votes to approve the proposed rules with modifications it suggested, approve the proposed rules as submitted by EGLE, or reject the rules. If the ERRC does not decide within 120 days or if the ERRC approves the draft rules, MOAHR must, within one year, send the rules to JCAR along with a JCAR report containing the request for rulemaking, a summary of the public comments, a description of the changes made to the rules after public hearing, LSB’s formal certification, and MOAHR’s legal certification.<sup>28</sup>

If the ERRC either approves the draft rules with modifications or rejects the draft rules within 120 days, it must submit a notice of objection to the EGLE director and the governor explaining the reason for its decision. EGLE must then attempt to resolve any ERRC concerns and may submit a revised draft of the rules. If the ERRC and EGLE can resolve all concerns, the draft rules are submitted to

JCAR.<sup>29</sup> If, after 15 session days, JCAR does not object to the rules, propose changes, or introduce bills, MOAHR may file the rules with the Office of the Great Seal.<sup>30</sup>

## CONCLUSION

Although the rulemaking process can seem daunting and laborious, the APA and executive orders and reorganizations provide detailed guidance for state agencies to navigate the process. In doing so, the rulemaking process allows for agencies, with input from interested stakeholders, to close statutory gaps — often left intentionally open to allow for agency and public input — with specific regulations that provide guidance to both the regulated communities and the regulators themselves.



**Katie Wienczewski** is director of the Administrative Rules Division within MOAHR. She is a graduate of James Madison College at Michigan State University and Michigan State University College of Law.

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- 3 MCL 324.99923.
- 4 MCL 24.239.
- 5 MCL 24.239a.
- 6 MCL 24.234 and MCL 24.236.
- 7 MCL 24.245(3).
- 8 MCL 24.239a, 24.242, and 24.245.
- 9 MCL 24.245 and 24.246.
- 10 MCL 24.245a(1)(a) - (1)(d).
- 11 MCL 24.245a(3).
- 12 MCL 24.244(1).
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- 15 MCL 24.234(2), MCL 24.239(3), MCL 24.245(1), and MCL 24.246.
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# HON. PETER L. PLUMMER: A REMEMBRANCE

BY SUZANNE SONNEBORN



With the passing of Hon. Peter Plummer on November 30, 2020, a light dimmed in the legal community and within state government, especially at the Michigan Office of Administrative Hearings and Rules (MOAHR).

At the time of his death, Plummer served as an administrative law judge assigned to MOAHR's General Adjudication Division, responsible for deciding a wide range of complex case types. From 2011 to 2014, he also served as an administrative law manager, overseeing the agency's administrative law judges and staff handling utility and other Public Service Commission matters.

Prior to 2011, Plummer was executive director and chief administrative law judge of MOAHR's predecessor, the State Office of Administrative Hearings and Rules (SOAHR), a role to which he was appointed in 2005 by Gov. Jennifer Granholm. Created by an executive order in 2005, SOAHR represented the first centralized hearing panel in the country whereby state government functions relating to processing and promulgating administrative rules and the conduct of administrative hearings were assigned to one agency. Subsequently reorganized as the Michigan Administrative Hearing System and later as MOAHR, the agency takes on many different administra-

tive case types and, under Plummer's leadership, developed processes, policies, and administrative rules for handling thousands of cases each year as well as oversight of promulgation of all rules in the state.

My friendship with Plummer began more than 20 years ago when he joined the Michigan Department of Attorney General and was assigned to the same division that I was in. His ability to quickly connect with people and treat everyone equally regardless of their station in life was one of the skills that I most immediately admired in him. Yet his legal acumen was equally impressive and made more relatable by his quick wit and kind humor, which he delivered often and made for a lighter work environment. I was grateful for the opportunity to again work with and learn from him in 2010 when I became an administrative law judge at SOAHR under his leadership, and once more in 2020 when I returned to MOAHR in my current role.

It is almost impossible to quantify the loss of a friend, colleague, and mentor in a few words or a paragraph on the pages of the Bar Journal. But following his passing, one of his friends and colleagues shared with me an old English idiom that he thought described Plummer well: a hail fellow well met.

The phrase is used, according to the Oxford English Dictionary, "when referring to a person whose behavior is hearty, friendly, and congenial." Plummer was a hail fellow well met; here at MOAHR, we are still not used to a world without him in it.

Several months before his passing, Plummer poignantly wrote the following in response to the unexpected loss of another colleague at MOAHR:

[T]rying times like these remind us of who we are by nature. We have faith in each other. We have faith in humankind's ability to face tragedy with perseverance. It reminds us that it is our nature to care for each other. It reminds us to include love and kindness in our every deed and thereby avoid the regret that we missed that chance. The highest honor we can pay those who have passed is to redouble our efforts to show compassion, love, and kindness as they would were they still with us.

May we all heed Peter Plummer's wisdom and pay him this highest honor by treating one another with more compassion and kindness in our work and in our lives — as he would were he still with us.



# HON. CARROLL LITTLE: A FOND FAREWELL

BY SUZANNE SONNEBORN & COLLEEN MAMELKA

Administrative law judge Hon. Carroll Little, Michigan's longest serving state employee, passed away on August 12, 2021, at age 99. Little graduated from the University of Michigan and attended Wayne State University Law School at night while working at the Ford Willow Run plant during the day. He took a job with the state in 1957 and became an administrative law judge 47 years ago, adjudicating unemployment benefit cases up until his death. He served under nine different governors and was regarded as the dean of the administrative law judicial corps.

Here's another way to frame Little's longevity: according to a 2015 Detroit News column about him, the state computer system crashed while trying to calculate his service time.

"We had to roll it back to zero," a spokesperson for the Michigan Department of Licensing and Regulatory Affairs said at the time.

Little was a true subject matter expert in unemployment law, a tough but fair adjudicator, and a beloved colleague to everyone at the Michigan Office of Administrative Hearings and Rules.

The following is a personal note from

Hon. Colleen Mamelka, a former colleague:

I met Judge Carroll Little shortly after beginning my employment with the state of Michigan in 2007. I was hired as a limited-term administrative law judge with the then State Office of Administrative Hearings System (SOAHR). Although we both conducted unemployment hearings, our offices were on separate floors, so my encounters were limited to meetings or occasional social functions. Looking back, I don't recall engaging in any conversations with Judge Little, truly a missed opportunity on my part. Eventually, I was offered a permanent position in a different area of SOAHR; at that point, I knew Judge Little, but did not know him.

Fortunately, that changed when I returned to the unemployment arena as the administrative law manager, now under the Michigan Administrative Hearing System (MAHS). It was during that time that I had that pleasure and honor of getting to know Judge Little. Throughout the years, he graciously shared his knowledge of unemployment law — not just the statutes themselves, but the background and historical perspective as to why they were

written. His depth of understanding was unsurpassed.

During my time as administrative law manager, several major changes were implemented, including a move to electronic files. To put this in perspective, when Judge Little started his career, computers as we now know them did not exist! Naturally, there were some hiccups along the way, but he never complained. Instead, he continued to seek help when necessary and adapted accordingly. This ability to change and grow in his position served him well throughout his long and distinguished career with the state that spanned more than 60 years. Celebrating that milestone — Little's six decades with the state — is yet another fond memory.

Finally, on a personal note, I loved talking with him. I feel incredibly privileged to have been able to have those conversations with him in his courtroom, surrounded by mementoes of accomplishments hanging on the walls. He was always so gracious and kind. He was truly an amazing individual with a rich history that I am so thankful to be a small part of.

Judge Little, I will miss you.

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## IN MEMORIAM

**CRAIG J. DELANEY**, P39409, of Cadillac, died October 6, 2021. He was born in 1952, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1986.

**HON. JOHN E. DEWANE**, P12735, of St. Joseph, died October 14, 2021. He was born in 1940, graduated from University of Michigan Law School, and was admitted to the Bar in 1970.

**MICHAEL D. LEWIS**, P16635, of Traverse City, died November 3, 2021. He was born in 1944, graduated from Wayne State University Law School, and was admitted to the Bar in 1969.

**ANTHONY P. MARCHESI JR.**, P17070, of Bloomfield Hills, died October 17, 2021. He was born in 1932, graduated from University of Detroit School of Law, and was admitted to the Bar in 1957.

**CRAIG S. NECKERS**, P24349, of Grand Rapids, died October 7, 2021. He was born in 1949 and was admitted to the Bar in 1974.

**HON. JONATHAN TUKEL**, P41642, of Detroit, died September 17, 2021. He was born in 1961, graduated from University of Michigan Law School, and was admitted to the Bar in 1988.

**WILLIAM L. WEBER JR.**, P22078, of Seattle, Wash., died October 17, 2021. He was born in 1934 and was admitted to the Bar in 1970.

**RODGER D. YOUNG**, P22652, of Farmington Hills, died September 30, 2021. He was born in 1946 and was admitted to the Bar in 1973.

**A. ROBERT ZEFF**, P22704, of St. Clair Shores, died June 6, 2021. He was born in 1934 and was admitted to the Bar in 1957.

*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](mailto:barjournal@michbar.org).*

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## PRACTICING WELLNESS

# Cultivating healthy lawyers: Good for business

BY MOLLY RANNS

For more than three decades, study after study has shown that legal professionals struggle with mental health and addiction issues — including depression, anxiety, stress, and even suicidal ideation — at higher rates than both the general population and other high-stress professions.<sup>1</sup> The recurrence of this data over the last 30 years indicates that up until recently, it has gone largely ignored.

In 2016, however, a report called “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys” (often referred to as “the lawyer study”) presented these harrowing statistics in such a way that as stakeholders in the legal profession, we can no longer turn a blind eye<sup>2</sup> and we shouldn’t. Not only is fostering healthy lawyers the right thing to do from a humanitarian perspective, but it also contributes to organizational success, influences ethics, and supports professionalism.<sup>3</sup> In other words, it’s good for business and, in turn, good for clients.

Historically, it seems that calls for help to facilitate change in the well-being of legal professionals have been overlooked; some research suggests this is due in part to these pleas resting primarily on moral grounds.<sup>4</sup> Although advocating for lawyer well-being is certainly a humanitarian issue, as we’ll soon discuss, many claim focusing on the

bottom line would be a more impactful way to drive attention to this vital cause.<sup>5</sup>

To start, let’s look at how fostering lawyer well-being is good for business.<sup>6</sup> In order for an organization to be optimally effective, its individual employees must be mentally healthy — output depends on how effectively its people, or human capital, function.<sup>7</sup> The National Alliance on Mental Illness identifies the following as signs of declining mental health: excessive worry, confused thinking or problems concentrating, mood changes, difficulty understanding or relating to other people, feeling tired or having low energy, experiencing physical ailments without obvious causes, and an inability to carry out daily activities or handle routine problems and stress.<sup>8</sup> Think about how well even the best attorney can practice law while struggling with the aforementioned troubles.

At more than \$200 billion each year,<sup>9</sup> employers in the United States are increasingly more burdened by the costs of mental health disorders than the costs of heart disease, cancer, stroke, and obesity. Additionally, the annual estimated cost of alcohol abuse to U.S. employers is \$249 billion, with nearly \$180 billion of that resulting from losses in workplace productivity.<sup>10</sup> If an attorney is impaired because of an untreated mental health or substance use issue, this in-

dividual’s work will be negatively impacted and the firm or corporation suffers. Lawyer health is a form of human capital that cannot be denied.<sup>11</sup>

As one can likely surmise, if lawyer well-being is good for business, then it’s also good for clients.<sup>12</sup> We now understand that impaired attorneys can struggle with even the smallest competencies; not surprisingly, authors suggest that between 40% and 70% of all disciplinary proceedings are related to substance abuse, depression, or both.<sup>13</sup> In looking at the ABA’s Model Rules of Professional Conduct, Rule 1.1 references a lawyer’s duty to provide competent representation and Rule 1.3 addresses diligence in client representation.<sup>14</sup> We’ve seen that mental health dramatically impacts competence, and a lawyer bears the responsibility of competently practicing law. It would seem, then, that an attorney has a duty to ensure their mental health is intact. Employers’ support of employee well-being is not only good for business, but good for the clients the business serves.

Finally, though some may argue that pulling upon the humanitarian heartstrings of stakeholders in the legal profession is not overly impactful in evoking change, it must be noted that improving lawyer well-being is the right thing to do.<sup>15</sup> As a therapist specializing in work with impaired profession-

## PRACTICING WELLNESS (CONTINUED)

als and, even more specifically, in addictive disorders, I have seen untreated addictions and other mental illnesses ruin not only careers, but also lives. With more than half of all mental illnesses left untreated,<sup>16</sup> it's time we destigmatize seeking help — especially among a population that is so concerned about someone finding out they need help that they often don't seek it.<sup>17</sup> Each and every stakeholder in the field of law is impacted by the collective legal culture, and we all are responsible for its well-being. Taking one small step in the right direction regarding one's mental health can lead to a wave of change for every law student, lawyer, and judge tomorrow. Cultivating healthy lawyers is good for business, good for clients, and the right thing to do.

**Molly Ranns** is director of the State Bar of Michigan Lawyers and Judges Assistance Program.

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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](http://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.



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## PLAIN LANGUAGE

# Celebrating plain English in Michigan

BY BRYAN A. GARNER

Editor's note: This article from the *ABA Journal* is reprinted with thanks for the recognition it brings to the Plain Language column and the *Michigan Bar Journal*. The article was first published in the October/November 2021 print issue of the *ABA Journal* and ran on the *Journals* website on Oct. 1.

In 2006, when interviewing Justice Ruth Bader Ginsburg about advocacy and writing, I asked her whether lawyers should become more dedicated to using plain English. "It would be a very good idea," she said, adding: "There have been movements about using plain English in contracts and wills. Those movements tend to start with great enthusiasm and then sort of fizzle out." Perhaps she was thinking of ABA President Charles A. Beardsley, who in 1940 dedicated his presidency to promoting sounder methods of drafting wills and contracts, as well as streamlined judicial opinions. His efforts were soon forgotten.

But we have a major exception to the idea that plain-language reforms tend to fizzle: the *Michigan Bar Journal*. It has just reached a landmark of 37 years in sustaining its monthly column on plain language in the law. Established in 1984 by George Hathaway, the column has been edited since 1988 by Professor Emeritus Joseph Kimble of Western Michigan University Thomas M. Cooley Law School.

The column is widely read outside Michigan. Contributors have included major figures in legal writing from throughout the English-speaking world, including the Bars of Australia, Canada, New Zealand, South Africa, and the United Kingdom. Among the guest writers have been federal judges and state high-court justices.

Over the years, the Michigan column has exploded all the various myths about plain language in the law.

Part of its success has been Professor Kimble's consistent dedication to empirical testing of legal documents. In 1987, for example, he tested before-and-after versions of various jargon-laden passages, including one with variations of *Now comes the Plaintiff*. ... Judges were asked whether they preferred the standard forms of court papers, with traditional jargon, or revised versions either translating the jargon or else jettisoning it altogether. The questions were posed as objectively as possible. Overwhelmingly, the judges showed a dislike for the traditional but unnecessary legal jargon.

That particular study was then replicated in three other states — Florida, Louisiana, and Texas — all of which had similar results.

In a groundbreaking 2011 study, the Michigan column tested footnoted citations in judicial opinions. A cross-section of the Michigan Bar was asked to consider two judicial opinions: one with legal citations strewn amid the text in the conventional way, and one written with all citations footnoted (but no substantive footnotes). Mind you, the text must be written a little differently when citations are footnoted so that little or no glancing down is necessary while reading. To the surprise of many, the revised opinion won resoundingly as being more readable and appealing: 58% to 42%.

That's an interesting point about empirical testing. If you just ask lawyers and judges, in the abstract, whether they'd like citations

up in the body or down in footnotes, they'll vote for the former. But if you show them actual examples of well-written opinions in which the citations are subordinated, the results are very different.

It's the difference between these two passages:

- In *Tanabe Seiyaku Co. v. United States International Trade Commission*, 109 F.3d 726, 732 (Fed. Cir. 1997), the court held that extrinsic evidence may be considered when ...
- In a 1997 case [footnote], the Federal Circuit held that extrinsic evidence may be considered when ...

Once you multiply that instance by 50, you see an extreme difference in the accessibility of the writing. The date and source of the authority often matter, but not necessarily the case name and certainly not the volume and page numbers. Not in the text.

Because the legal profession is unhurried about and often resistant to reform, the innovation has been slow to catch on. But there are salutary signs. In a few states, such as Delaware and Alaska, footnoted citations have been the norm for many years. Chief Justice Nathan Hecht of Texas has written that way for nearly 25 years (much to his credit). And Justice Neil Gorsuch has recently experimented with the idea.

Anyway, the *Michigan Bar Journal* was the first to publish empirical findings on the point.

In the rulemaking of federal courts, plain English has been at the forefront of revisions since the early 1990s. Since that time, the Standing Committee for Rules of Practice and Procedure — an arm of the U.S. Judicial Conference — has issued wholesale revisions of four sets of rules: Appellate, Civil, Criminal, and Evidence. Professor Kimble and I, together with Joseph F. Spaniol Jr. (former clerk of

the U.S. Supreme Court), have been style consultants. We've done the initial revisions of all those rules and are currently reworking the Bankruptcy Rules.

How does this tie back to Michigan? Once again, the American Bar has been introduced to the streamlined revisions not just through the standing committee's published drafts put out for public comment but also through side-by-side examples in the *Michigan Bar Journal* column. The box at the bottom of this page contains an example that Professor Kimble published in November 2020.

The individual edits may seem trivial, but the cumulative effect greatly enhances readability and clarity for the law.

Plain language, you see, advances the rule of law and the sound administration of justice. It's not just about elegant expression. It's about clear thinking, as ABA President Beardsley was insisting in 1940.

For 37 years now, the *Michigan Bar Journal* has promoted the cause of clarity in law. There's no hint of flagging or fizzling, to use Justice Ginsburg's word. That's cause enough for celebration.

What's the ultimate benefit? Here's what the late beloved Justice said: Apart from shorter, more readable contracts, "the public would understand what lawyers do, what judges do. They might understand it even from reading an opinion or from reading a brief instead of getting it filtered through the lens of a journalist. ... I hope that, in most cases, what I write is clear enough for a lay audience."

That's something that every lawyer might aspire to.

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**Bryan A. Garner** is president of LawProse Inc., author of *The Winning Brief* and *The Winning Oral Argument*, and editor in chief of *Black's Law Dictionary*. He is on Twitter at @BryanAGarner.

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### Rule 1003. Involuntary Petition

(a) TRANSFEROR OR TRANSFEREE OF CLAIM. A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.

### Rule 1003. Involuntary Petition: Transferred Claims; Joining Other Creditors; Additional Time to Join

(a) **Transferred Claims.** An entity that has transferred or acquired a claim for the purpose of commencing an involuntary case under Chapter 7 or Chapter 11 is not a qualified petitioner. A petitioner that has transferred or acquired a claim must attach to the petition and to any copy:

- (1) all documents evidencing the transfer, whether it was unconditional, for security, or otherwise; and
- (2) a signed statement that:
  - (A) affirms that the claim was not transferred for the purpose of commencing the case; and
  - (B) sets forth the consideration for the transfer and its terms.

## BEST PRACTICES

# Plaintiff workers' compensation attorneys

BY JOEL L. ALPERT

Inscribed on the southeast portico of the Jefferson Memorial is an excerpt from Thomas Jefferson's letter to Samuel Kercheval dated July 12, 1816:

"I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors."<sup>1</sup>

Likewise, attorneys' best practices constantly evolve. New court decisions; changes in statutes, ordinances, and regulations; societal changes; and changing technology all have an impact.

This article is based upon the way in which I engage in the ever-changing, highly specialized practice of plaintiff's workers' compensation law in Michigan.<sup>2</sup> There's something in here for everyone, but my comments about technology are directed mostly to baby boomers. And I wouldn't hazard a guess at best practices for workers' compensation defense attorneys.

## CONTINUING LEGAL EDUCATION

Michigan is one of four states and the District of Columbia that does not require continuing legal education. However, comments to the Michigan Rules of Professional Conduct (MRPC) 1.1 reference the need to maintain competence by engaging in continuing study and education — including the use of existing technology.

To be able to properly present your case, continuous study of the law is necessary. For instance, in 1993, the Michigan Supreme

Court ruled that a return to "favored work" for less than 250 weeks does not establish a wage-earning capacity. This eased the burden required to prove disability.<sup>3</sup> In 2007, the Court ruled that a worker shot while sitting in his car in a parking lot waiting to return to work after lunch is in the course and scope of his employment,<sup>4</sup> easing the burden of proving the nature of the activities leading to injury on the employer's premises. In 2008, *Stokes v. Chrysler LLC* was decided, increasing the burden of proving disability.<sup>5</sup>

Then, in 2011, extensive amendments to the Worker's Disability Compensation Act, in essence codifying *Stokes*, were enacted.<sup>6</sup> In *Omer v. Steel Technologies, Inc.*, a 2021 case regarding pre-December 19, 2011, injury dates, the Court held that credible medical testimony of physical limitations, combined with credible vocational testimony that there are no jobs paying maximum wage, can satisfy the injured worker's burden of proof of disability — even if he/she did not look for work.<sup>7</sup> This eased the injured worker's burden regarding job searches and proving disability. Since the statute has since changed,<sup>8</sup> how will *Omer* apply to post-2021 cases?

Gov. Gretchen Whitmer's executive orders regarding COVID-19 presumptions have now been invalidated.<sup>9</sup> Are they valid for any purpose? Are they valid if someone relied upon them? These and other issues remain to be decided.

The Medicare Secondary Payer Act (MSP)<sup>10</sup> has thrust new, uncertain, and constantly changing requirements into every case. One court described the MSP as one of "the most completely impenetrable texts within human experience."<sup>11</sup> In 2012, the U.S. Third Circuit Court of Appeals held that under the MSP, a Medicare advantage organization (MAO) has a private cause of action against primary payers and the same double recovery rights against primary payers as allowed to original Medicare.<sup>12</sup> This compounded the complexity of resolving workers' compensation cases. Court decisions regarding the MSP continue to be issued. It's hard to stay current.

Attorneys' best practices can change due to changes in our society. If an employee is working remotely from home and is injured, is the injury compensable? Are Uber drivers employees or independent contractors? Proposition 22, a recent California ballot initiative defining app-based transportation and delivery drivers as independent contractors, was passed; then, a court ruled that it is unconstitutional. That case is on appeal.<sup>13</sup> The final disposition of that case could have a ripple effect across the country. How could you approach these and similar issues?

Attorneys' best practices can change due to advances in technology. Is 2020 PA 246 regarding remote notarization retroactive? When you can't meet face-to-face with your clients, is DocuSign valid? Are Zoom depositions effective? Zoom trials? We can only guess what the future will hold.

To be proficient in this area of the law and avoid mistakes, participation in voluntary continuing legal education is a best practice even though formal participation is not required to maintain your license to practice law. The Michigan Association for Justice, Workers' Injury Law and Advocacy Group, State Bar of Michigan Workers' Compensation Section, and many other workers' comp-specific organizations provide educational programs for practitioners.

## PREPARATION IS KEY TO FAVORABLE OUTCOMES

Preparation begins before the initial client interview. Although MCL 418.853 provides that process and procedure under the Workers' Compensation Act "shall be as summary as reasonably may be," that's no longer how it works. With the need for vocational proofs, objective evidence of injury, Medicare, Medicaid, Friend of the Court, offsets, coordination of benefits, and medical liens, workers' comp claims are now extremely complex and time consuming. The statute and rules limit plaintiff attorneys' contingent fees, resulting in high-volume law practices. As a result, it is not feasible to pursue every injured worker's case.

It may not be a best practice, but the first question I ask any potential client is, "Do you have an attorney, or have you had an attorney representing you in the past regarding this case?" If the answer is yes, unless that attorney is deceased, I will automatically reject the case. Best practice: To maintain a viable practice, be selective in the cases you choose to handle.

As a full-time workers' comp practitioner, I was aware of the former Appellate Commission's constantly changing and almost Sisyphean burden of complying with the mandates of *Stokes*. Shortly after *Stokes* was issued — and years before my trial in *Omer* — I refined my game plan for my trials. I studied *Stokes* and created a list of questions that, step-by-step and almost verbatim, followed the Supreme Court's new multifactor test required to establish disability. I always read these questions during direct examination of my vocational expert so when the expert's testimony is considered by the court, it precisely lines up with the requirements laid out in

*Stokes*. Regarding the subject of preparation, the *Omer* Court in its per curiam opinion in support of affirming the award of benefits pointed to specific testimony in the trial record. The *Omer* Court stated:

"We find the deposition testimony of the claimant's vocational expert [Feldman] particularly significant. ... Indeed, Feldman's testimony traced, step-by-step, the multifactor test required to establish disability that this court laid out in *Stokes*."<sup>14</sup>

Had I not been prepared to ask the proper questions, the outcome in *Omer* and its impact on pending and future cases may have been different.

Whether it's alternative methods of proving your case or running your practice, always have a backup plan. No matter how well you prep a witness, you never really know what their testimony will be. Don't ask questions you haven't previously discussed with the witness, have a second line of questioning, an exhibit to help rehabilitate the witness, or have another witness ready to clarify any inconsistency created by a witness's damaging statement.

You never know when a staff member will leave you in a lurch. In the late 1980s when we purchased our first personal computer, my legal assistant and I took classes to learn how to operate it. I wanted to make sure that I knew how to do every job in my office. In 1993, while I was working on a Supreme Court brief, she gave me two weeks' notice and left before the brief was finished. I was much less adept but using the knowledge of WordPerfect I had learned in the classes, I did my own keyboarding, worked late into the evenings, and filed the brief on time. Anticipate hurdles and prepare for them.

There is a commonality of issues in our cases so standardized intake, correspondence, pleading, deposition, and trial outlines should be used and constantly refined. This will help you avoid lapses and errors. Although we are competitors for business, most of us are committed to our cause. In the spirit of helping all injured workers, many of our fellow practitioners are happy to share their forms, deposition and trial outlines, and expertise. For instance, my contingent fee agreement can be found in the ICLE publication, *Attorney Fee Agreements in Michigan*.<sup>15</sup> I've already shared them, and I'll gladly continue to make my *Stokes* questions available.

## AT A GLANCE

There is a commonality of issues in workers' compensation cases so standard intake, correspondence, pleading, deposition, and trial outlines should be used and constantly refined. In the spirit of helping all injured workers, many of our fellow practitioners are happy to share their forms, deposition and trial outlines, and expertise.

Following my own advice to be prepared — while keeping my fingers crossed and clearing this through the State Bar of Michigan Ethics Helpline — for the past 11-plus years, my contingent fee agreement form has provided:

“Attorney is entitled to charge the greater of the maximum fee allowable by the Rules of the Workers’ Compensation Agency at the time of the redemption hearing or the maximum fee allowable at the time this agreement is signed.”

I hope I’m prescient. Just ask around and you’ll find the forms you need. Best practice: Be prepared.

## SUCCESS

These may sound trite, but:

Learn. Stay current. Prepare. Be honorable. Be respectful. Have integrity. Get involved.

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Exclusively representing injured workers and military veterans for more than 44 years, **Joel L. Alpert** is a member of the College of Worker’s Compensation Lawyers; past chair of the SBM Workers’ Compensation Law Section and the Michigan Association for Justice Workers’ Compensation Committee; and has been a member of the board of directors, state captain, and legislative committee member of the Worker’s Injury Law and Advocacy Group.

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## ENDNOTES

- 1 Quotations on the Jefferson Memorial, Thomas Jefferson Encyclopedia <<https://www.monticello.org/site/research-and-collections/quotations-jefferson-memorial>> [<https://perma.cc/EZT4-VW6G>]. All websites cited in this article were accessed November 8, 2021.
- 2 The article is abridged as it exceeds the space available in this publication. The complete and unabridged article can be found in Worker’s First Watch magazine to be published in late 2021 or 2022.
- 3 Wade v GMC, 199 Mich App 267, 273; 501 NW2d 248 (1993).
- 4 Vaughn v Severstal North America, Inc, 480 Mich 959; 741 NW2d 361 (2007).
- 5 Stokes v. Chrysler LLC, 481 Mich 266; 750 NW2d 129 (2008).
- 6 2011 PA 266.
- 7 Omer v Steel Technologies, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (2021) (Docket No 161658). Other than Stokes, these are issues raised in just a few of the cases I’ve handled that have had an impact on the practice of workers’ compensation law.
- 8 MCL 418.301(4).
- 9 In re Certified Questions from the United States District Court, Western District of Michigan, Southern Division, 506 Mich 332, 343; 958 NW 2d 1 (2020).
- 10 42 USC 1395y.
- 11 Cooper University Hosp v Sebelius, 636 F3d 44, 45 (CA 3, 2010).
- 12 In Re Avandia Marketing, 685 F3d 353 (CA 3, 2012).
- 13 Said, Lawsuit seeks to overturn Prop. 22, measure that keeps gig workers from becoming employees, San Francisco Chronicle (January 13, 2021) <<https://www.sfchronicle.com/business/article/Lawsuit-seeks-to-overturn-Prop-22-measure-that-15864699.php>> [<https://perma.cc/8BTD-TUMP>] and Park, Federal court rules California’s gig economy applies to another group of workers, The Sacramento Bee (April 29, 2021) <<https://www.msn.com/en-us/news/us/federal-court-rules-california-s-gig-economy-law-applies-to-another-group-of-workers/ar-BB1g9XD5>> [<https://perma.cc/VZ5X-GDWQ>].
- 14 Omer v Steel Technologies, \_\_\_ Mich at \_\_\_; slip op at 4.
- 15 Stephens & Allen (Eds.), Attorney Fee Agreements in Michigan (5th Ed) (Ann Arbor: ICLE, 2017), Chapter 16, Worker’s Compensation Form 16.01.

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FY 2022

# BUDGET SUMMARY

## STATE BAR OF MICHIGAN

OCTOBER 1, 2021 - SEPTEMBER 30, 2022 ADMINISTRATIVE FUND

On July 23, 2021, the Board of Commissioners adopted a budget for the 2022 fiscal year that continues the funding of the State Bar of Michigan's Strategic Plan.

The budget and the Strategic Plan are available at [michbar.org/generalinfo](http://michbar.org/generalinfo)

<b>OPERATING AND RELATED REVENUES:</b>	
License Fees and Related	\$7,653,000
All Other Operating Revenues	1,467,850
Total Operating Revenues	9,120,850
<b>OPERATING EXPENSES:</b>	
Salaries	5,437,140
Benefits and Payroll Taxes	1,912,006
Total Labor-Related Expenses	7,349,146
<b>NON-LABOR OPERATING EXPENSES:</b>	
Legal	224,875
Public and Bar Services	1,079,949
Operations and Public Policy	2,587,570
Total Non-Labor Operating Expenses	3,892,394
Total Operating Expenses	11,241,540
<b>Total Operating Income (Loss)</b>	<b>(2,120,690)</b>
<b>NON-OPERATING REVENUE (EXPENSES)</b>	
Investment Income	33,000
<b>BUDGETED INCREASE/(DECREASE) IN NET POSITION</b>	<b>(2,087,690)</b>

## ETHICAL PERSPECTIVE

# A guide to locating ethics resources

BY ALECIA M. CHANDLER AND ROBINJIT K. EAGLESON

It's Friday at 10 p.m. You have just discovered that your client has provided false evidence which was submitted to the court. You know that the State Bar of Michigan Ethics Helpline is closed,<sup>1</sup> but you try to call anyway to no avail. What do you do?

We've all been there. We try to navigate the complexities of the ethical world while balancing our duties to our clients. But what happens when you need to find an answer sooner rather than later, if for no other reason than to get some sleep?

First, start at the SBM ethics homepage.<sup>2</sup> Here, you will find links to all the ethics resources to help you with your query. To help you navigate the website, let's break it down a bit.

Next, review the Michigan Rules of Professional Conduct or, for judicial officers, the Michigan Code of Judicial Conduct. Links to both can be found on the left side of the ethics page. Once you find the rule you need to help with your query, you may have additional questions regarding how to apply the rule.

Then, search ethics opinions. You can:

- Find an opinion by number using three digits. For example, if you are searching for ethics opinion R-4, you would enter it as "R-004."
- Perform a full-text search using keywords or if you would like to "Shepardize" a search, use the short form of the opinion number (for example, R-4.)
- Search by topic, which allows you to choose a topic (for example, conflicts of interest.) It will generate a list of relevant opinions with short descriptions.
- Look for several opinions under a particular rule by searching for opinions under that rule — "opinions interpreting MJCJ" or "opinions interpreting MRPC." This is good place to start since opinions are divided under each rule the opinion addresses.

Additional information may also be found under the SBM ethics frequently asked questions page and the ethics resources at the bottom of the ethics homepage. Further, ethics-related materials including information regarding managing a practice — records retention policies, succession planning materials, limited scope representation materials,

non-engagement letters, and more — can be found under the SBM Practice Management Resource Center webpage at [www.michbar.org/pmrc/content](http://www.michbar.org/pmrc/content) [<https://perma.cc/4T84-YEN6>] and the SBM Unauthorized Practice of Law page at [www.michbar.org/professional/upl](http://www.michbar.org/professional/upl) [<https://perma.cc/WC4A-P8Y3>].

If you need additional assistance, the American Bar Association ethics opinions are at [www.americanbar.org/groups/professional\\_responsibility/publications/ethics\\_opinions](http://www.americanbar.org/groups/professional_responsibility/publications/ethics_opinions) [<https://perma.cc/V2L3-PLM9>]. It should be noted that the ABA model rules are not the same as the Michigan Rules of Professional Conduct and, therefore, the ABA ethics opinions, while helpful, should be used with caution and reviewed alongside the Michigan Rules of Professional Conduct.

The SBM ethics webpage offers a wide variety of resources including samples, FAQs, opinions, rules, and more. These resources will help you determine your next steps in navigating your ethical conundrum and may assist in the late-night turmoil and help you get some much-needed, peaceful sleep.

So, now that you have found ethical guidance, what is the result? The Michigan Rules of Professional Conduct and Code of Judicial Conduct provide a framework for attorney and judicial ethics. Violating these rules may result in discipline, but what effect does that have on your pending case?

MRPC 1.0 provides:

(b) Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules do not, however, give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with an obligation or prohibition imposed by a rule. In a civil or criminal action, the admissibility of the Rules of Professional Conduct is governed by the Michigan Rules of Evidence and other provisions of law.

You may recall several years ago that an attorney drafted an estate plan in violation of MRPC 1.8(c), which prohibits an attorney from preparing an estate plan for a non-relative that provides a substantial gift to the attorney or the attorney's close family members. The attorney was disciplined by the Attorney Discipline Board, but the estate plan remained in full force and effect despite the ethical breach. The court determined that the violation of MRPC 1.8 was not the basis to invalidate otherwise valid estate planning documents; it was only the basis for discipline. This case upheld the notion that violating rules of professional conduct does not give rise to a cause of action for violation of the rules.<sup>3</sup>

The ethics helpline often receives calls questioning the enforceability of the MRPC or the Judicial Code. The attorney calling with the question is exasperated about the conduct of another attorney and wants to know how to enforce the rules against opposing counsel in pending litigation. Ethics counsel explains that the only recourse under the rules is filing a complaint with the Attorney Grievance Commission or Judicial Tenure Commission, a process that takes a very long time and is unlikely to affect the current litigation. Unless there is a conflict

of interest or similar reason to disqualify an attorney, the proper course may be filing a motion.

However, there are numerous occasions when the MRPC can and should be used to represent a client in litigation proceedings. Most often this is within the context of necessitating withdrawal,<sup>4</sup> candor to the tribunal,<sup>5</sup> and lawyers as witnesses.<sup>6</sup>

The point of ethics opinions and the ethics helpline is helping you avoid disciplinable

**The SBM Ethics Helpline is available Monday-Friday during normal business hours at (877) 558-4760**

action. The first step to ensuring that is helping you determine your conduct is ethical and providing sound reasoning for how to proceed given the set of circumstances. If you are unable to find the answer or are in doubt, call the ethics helpline!

Calls to the ethics helpline are returned by members of the ethics team, all of whom are licensed attorneys employed by the State Bar of Michigan. It is important to note that the helpline is not a hotline. The Ethics Helpline is open 9 a.m. to 5 p.m. Monday through Friday, excluding holidays. Callers are asked to leave a message and a staff member will generally return the call within one business day. The helpline is completely confidential, and we do not maintain records of calls. When an attorney calls, we liken the confidentiality to protecting secrets under MRPC 1.6<sup>7</sup>: Unless you threaten to commit an action for which it doesn't apply, everything you tell us is completely confidential.<sup>8</sup> Be honest and open to ensure proper guidance. It is preferred that when you leave a message, provide a few details about the circumstance that prompted your call so staff attorneys may begin research before calling you back.

There are additional limitations to what we may discuss, especially pertaining to mat-

ters pending before the Attorney Grievance Commission or a legal proceeding against a lawyer. In these situations, it is recommended that the attorney retain independent counsel. Limitations as to what staff counsel cannot advise on may be found at [www.michbar.org/opinions/ethicsopinions#helpline](http://www.michbar.org/opinions/ethicsopinions#helpline) [<https://perma.cc/QVC5-BGCL>].

The SBM ethics team cannot substitute its opinion for that of a judicial officer or disciplinary officer. If a judge has rendered a decision, neither the ethics helpline nor the Professional Ethics Committee will provide you with an opinion regarding your conduct.

Moreover, we cannot address questions of law, only those related to the rules of professional conduct. If you have a question of law that sways into the ethics realm, it is recommended that if you have malpractice insurance, you should contact your carrier. Carriers often have ethics helplines that assist with both legal and ethical guidance.

Still, the State Bar of Michigan Ethics Helpline remains a valuable resource available to provide guidance to help you navigate your ethical responsibilities. Please do not hesitate to call!

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**Alecia M. Chandler** is professional responsibility programs director at the State Bar of Michigan.



**Robinjit K. Eagleson** is ethics counsel at the State Bar of Michigan. She is also a member of the State Bar of Michigan and staffs the Professional Ethics Committee and the Judicial Ethics Committee.

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## ENDNOTES

1 The State Bar of Michigan Ethics Helpline is open Monday through Friday from 9 a.m. to 5 p.m. excluding holidays. Callers are asked to leave a message; your call is generally returned within one business day. See Ethics, SBM < <https://www.michbar.org/opinions/ethicsopinions#helpline> > [<https://perma.cc/QVC5-BGCL>] (website accessed November 5, 2021).

2 Id.

3 In re Mardigian Estate, 502 Mich 154, 164; 917 NW2d 325 (2018).

4 MRPC 1.16.

5 MRPC 3.3.

6 MRPC 3.7.

7 Ethics, SBM, section "Ethics Frequently Asked Questions (FAQs)."

8 MRPC 1.6, Comments: Disclosure Adverse to Client.

## LIBRARIES &amp; LEGAL RESEARCH

# Researching administrative law

BY KEITH LACY

Administrative law is a broad subject area concerning the laws and procedures governing administrative agencies. It also encompasses the substantive law produced by those agencies — most commonly in the form of regulations (rules) or agency decisions. This article highlights a few major resources for researching administrative law in the United States.

## UNDERSTANDING AGENCY AUTHORITY

Administrative agencies have only those powers granted to them through enabling legislation (or implicit to the exercise of said powers.) The U.S. Supreme Court has stated that “an agency literally has no power to act” until authorized by Congress.<sup>1</sup> Michigan law follows the federal system, allowing the legislature to authorize administrative agencies to effectuate legislation.<sup>2</sup> Depending on the authorization, the exercise of these powers by executive agencies may or may not resemble powers held by legislative or judicial branches such as promulgating regulations or issuing administrative decisions, respectively.

Therefore, it is critical to understand the extent to which the legislature has granted an agency authority in a particular matter. This often requires consulting the enabling legislation underlying and establishing the agency.<sup>3</sup> Annotated codes and their electronic equivalents (Westlaw, Lexis+, etc.) can help you identify underlying statutes, but it’s often more efficient to begin research by looking at articles, treatises, and other subject-specific guides discussing the area of regulation. Acquiring a more holistic view of the regulatory landscape early on will make your research more efficient in the long run. Good sources of general reference information on agencies include:

- The U.S. Government Manual ([www.usgovernmentmanual.gov](http://www.usgovernmentmanual.gov)), an annually published handbook of the federal government. It contains entries for every federal agency, with descriptions including enabling statutes, organizational changes, and major publications <<https://www.usgovernmentmanual.gov/>>

- While not as exhaustive, the Michigan Manual ([legislature.mi.gov?page=MichiganManualSearch2](http://legislature.mi.gov?page=MichiganManualSearch2)) is a similar reference resource for the Michigan government
- The index to the Code of Federal Regulations (described below) contains a Parallel Table of Authorities and Rules listing rulemaking authority for codified regulations. The index and finding aids are freely available online at GovInfo <<https://www.govinfo.gov/collection/cfr-index?path=/gpo/CFR%20Index%20and%20Finding%20Aids/>>.

## LOCATING AGENCY INFORMATION

Agency websites may contain important information such as notices, rules, and agency guidance. Sometimes background research is necessary to identify which agency properly has jurisdiction — or if multiple agencies do. It should be noted that the quality, quantity, and ease of access vary tremendously across different sites.

- USA.gov is an all-inclusive directory for all federal, state, and local government websites. It includes an A-Z listing of federal agencies. <[usa.gov](http://usa.gov)>
- State of Michigan – Departments lists websites for the state’s executive agencies and includes links for organizations subject to the Open Meetings Act as well as FOIA processes. <[https://www.michigan.gov/som/0,4669,7-192-29701\\_29702\\_30045-,00.html](https://www.michigan.gov/som/0,4669,7-192-29701_29702_30045-,00.html)>

## LOCATING REGULATIONS

Similar to statutes, regulations are collected into subject-specific codes after an initial promulgation in an official gazette. The federal codification is the Code of Federal Regulations (CFR), available both in print and electronically on GovInfo.<sup>4</sup> The CFR consists of 50 titles and subdivisions published annually on a quarterly update schedule. This quarterly update schedule — which is often subject to publishing delays — inevitably lags behind the frequency with which agencies publish new and updated regulations and creates challenges when attempting to determine the state of the law on a precise date. Fortunately, the National Archives and Records Ad-

ministration and the Government Publishing Office also put out an unofficial version of the code that gives a better idea of the current state of the law. The eCFR is a continuously updated, searchable online version of the CFR incorporating the latest changes from the Federal Register<sup>5</sup> (more on this below.) Additional functionality was recently added to the website including comparison tools, automatic notifications of changes, and a timeline view.

The Michigan Administrative Code, our state's equivalent to the CFR, is also available in print and online on the website of the Administrative Rules Division of the Department of Licensing and Regulatory Affairs.<sup>6</sup> Searching the online version requires knowing the relevant department and bureau to locate the proper rule section.<sup>7</sup> An annual code supplement published online includes helpful finding aids.<sup>8</sup> The online version is updated on the effective date of each new rule.<sup>9</sup>

## HISTORICAL RESEARCH AND CURRENT AWARENESS

During the "Hot Oil" cases litigated during President Franklin D. Roosevelt's New Deal legislation — and the massive proliferation of regulations accompanying it — the U.S. Justice Department found itself before the Supreme Court in the embarrassing position of trying to enforce a rule against oil companies that didn't technically exist.<sup>10</sup> The incident highlighted the need for a uniform system of publicizing issuances by federal agencies. First published in 1936, the Federal Register (FR) contains notices of proposed and final agency rules as well as presidential materials such as executive orders. Notably, the FR publication of a rule includes a preamble that gives insight into the agency's thought process in rulemaking, including summaries of comments received and the agency's response. These materials, which are not included in the CFR, give important insights into the agency's rationale and interpretation of the law. A complete listing of historical FR issues can be found on the GovInfo regulatory information section.<sup>11</sup>

The FR is also an important resource for keeping current on the latest agency guidance and likely areas for future regulation. [Federalregister.gov](https://www.federalregister.gov) is an unofficial version of the FR that groups each issue's filings by type and subject category, making it easy to see at a glance the latest developments in a particular area. The site also offers email alerts. Historical coverage extends back to 1994, and the official text is linked to when available.

Michigan's equivalent, the Michigan Register, is published bi-monthly in print and online.<sup>12</sup> Publication began in 1984; issues prior to 2000 are available at law libraries and online at the Library of Michigan.<sup>13</sup> While usually published in the Michigan Register, recent executive orders may not appear right away — fortu-

## AT A GLANCE

Understanding the extent to which the legislature has granted an agency authority in a matter is critical, and often requires consulting legislation underlying and establishing the agency.

nately, the Michigan Legislature maintains an archive of orders with links to the governor's website containing the most recent orders.<sup>14</sup>

## ADMINISTRATIVE LAW DECISIONS

Compared to locating regulations and executive orders, accessing adjudicative actions by agencies is considerably more difficult. Agency websites may contain decisions; the University of Virginia Library maintains a very helpful research guide for federal administrative decisions accessible through agency websites.<sup>15</sup> If unavailable, the agency may at least describe the reporters or commercial publishers that collect the decisions. A list of frequently cited looseleaves and commercial reporters can be found on table T15 of *The Bluebook: A Uniform System of Citation* (21st Ed) (Cambridge: Harvard Law Ass'n, 2020).

A few Michigan-specific databases of hearings and decisions include:

- DSTARs Decision Database, Michigan Civil Service Commission, ([https://www.michigan.gov/mdcs/0,4614,7-147-6877\\_24245-,00.html](https://www.michigan.gov/mdcs/0,4614,7-147-6877_24245-,00.html)) [<https://perma.cc/2F6V-N9FW>];
- Attorney General Opinions 1963-Present, Michigan Department of the Attorney General (<https://www.ag.state.mi.us/opinion/opinions.aspx>) [<https://perma.cc/8VW4-RJNX>];
- Michigan Tax Tribunal Decisions, Michigan Department of Licensing and Regulatory Affairs (<https://www.michigan.gov/taxtrib/0,4677,7-187-38250-,00.html>) [<https://perma.cc/8KYF-RHZH>];
- Michigan Employment Relations Commission Case Decisions, Michigan Department of Labor and Economic Opportunity ([https://www.michigan.gov/leo/0,5863,7-336-94422\\_17485\\_68147-387366-,00.html](https://www.michigan.gov/leo/0,5863,7-336-94422_17485_68147-387366-,00.html)) [<https://perma.cc/KS78-NB3Y>].

## FURTHER RESEARCH

For a few good general treatments of administrative law, the following resources may be helpful:

- Koch, *Administrative Law and Practice* (Third Ed) (Eagan: Thomson Reuters, 2021).

- Stein, *Administrative Law* (Newark: Matthew Bender & Co, 2021).
- LeDuc, *Michigan Administrative Law* (Eagan: Thomson Reuters, 2020).
- Eisner et al, *Contemporary Regulatory Policy* (Third Ed) (Boulder: Lynne Rienner Pub, 2018).



**Keith Lacy** is a reference librarian at the University of Michigan Law Library. He received his law degree and master's degree in information studies from the University of Texas.

## ENDNOTES

- 1 *Louisiana Pub Serv Comm v FCC*, 476 US 355, 374; 90 L Ed 2d 369; 106 S Ct 1890 (1986)
- 2 *Coffman v State Bd of Examiners in Optometry*, 331 Mich 582, 589; 50 NW 2d 322 (1951)
- 3 LeDuc, *Michigan Administrative Law* (Eagan: Thomson Reuters, 2020), §§ 1:7-1:10, p 18
- 4 Code of Federal Regulations (Annual Edition), govinfo.com <<https://www.govinfo.gov/app/collection/cfr>> [<https://perma.cc/R5XK-LHDZ>]. All websites cited in this article were accessed November 6, 2021.

5 Code of Federal Regulations: A point in time eCFR system, National Archives <<https://www.ecfr.gov/>> [<https://perma.cc/FN34-UW87>].

6 Administrative Rules, Mich Dep't of Licensing and Regulatory Affairs <[https://www.michigan.gov/lara/0,4601,7-154-89334\\_10576\\_92306-,00.html](https://www.michigan.gov/lara/0,4601,7-154-89334_10576_92306-,00.html)> [<https://perma.cc/7B8J-LYU6>].

7 MI Administrative Code, Mich Dep't of Licensing and Regulatory Affairs, ARS <<https://ars.apps.lara.state.mi.us/AdminCode/AdminCode>> [<https://perma.cc/HE56-3MXZ>].

8 Annual Administrative Code Supplement, Mich Dep't of Licensing and Regulatory Affairs, MOAHR <[https://www.michigan.gov/lara/0,4601,7-154-89334\\_10576\\_92306\\_92312-494260-,00.html](https://www.michigan.gov/lara/0,4601,7-154-89334_10576_92306_92312-494260-,00.html)> [<https://perma.cc/AM4R-P9ZV>].

9 Using the Michigan Administrative Code, Mich Dep't of Licensing and Regulatory Affairs, MOAHR <[https://www.michigan.gov/lara/0,4601,7-154-89334\\_10576\\_92306\\_92313-494249-,00.html](https://www.michigan.gov/lara/0,4601,7-154-89334_10576_92306_92313-494249-,00.html)> [<https://perma.cc/ZGM6-9CCR>].

10 Feinberg, Mr. Justice Brandeis and the Creation of the Federal Register, 61 Pub Admin Rev 359, 360 (2001).

11 Federal Register, govinfo.com <<https://www.govinfo.gov/app/collection/fr>> [<https://perma.cc/A98Y-J383>].

12 The Michigan Register, Mich Dep't of Licensing and Regulatory Affairs <[https://www.michigan.gov/lara/0,4601,7-154-89334\\_10576\\_92306\\_92312\\_92359-,00.html](https://www.michigan.gov/lara/0,4601,7-154-89334_10576_92306_92312_92359-,00.html)> [<https://perma.cc/3XHP-SSZU>].

13 Michigan Administrative Law Materials, Library of Mich Digital Repository <<https://cdm16110.contentdm.oclc.org/digital/collection/p16110coll2/search/searchterm/michigan%20register/field/title/mode/exact/conn/and>> [<https://perma.cc/L2TV-QK28>].

14 Executive Orders, Mich Legislature <<http://legislature.mi.gov?page=ExecutiveOrders>> [<https://perma.cc/LF4Z-275N>].

15 Hosticka, *Administrative Decisions*, Library, University of Virginia <[https://guides.lib.virginia.edu/administrative\\_decisions](https://guides.lib.virginia.edu/administrative_decisions)> [<https://perma.cc/Y93D-M84E>].

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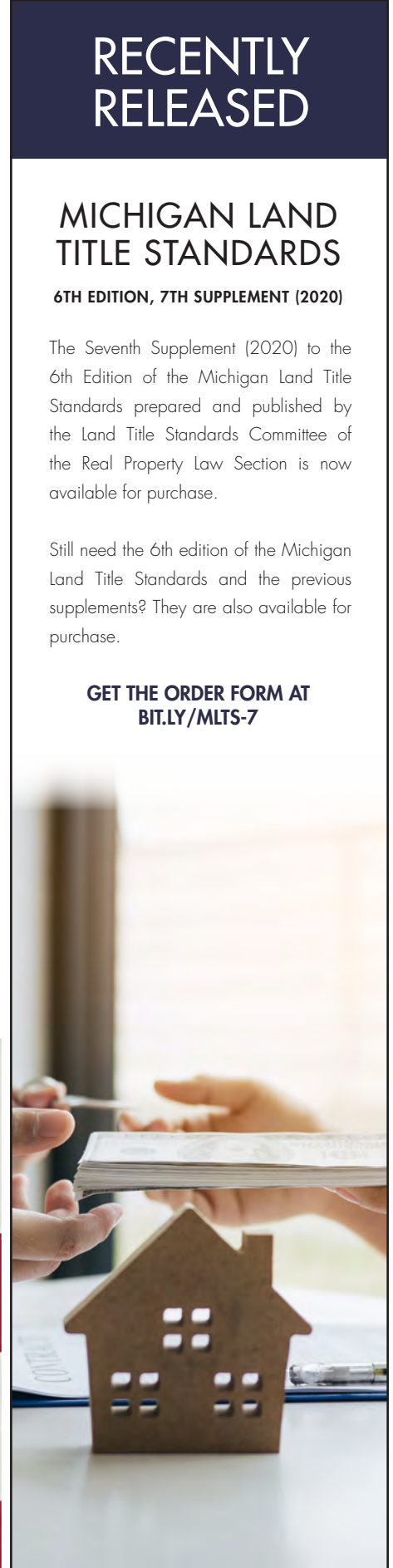
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## LAW PRACTICE SOLUTIONS

# Going digital: A law firm road map

BY JOANN L. HATHAWAY

Law firms are drowning in paper. Members of the legal profession generate a lot of physical documents and accumulate even more. While many might argue, and rightfully so, that a totally digital law firm is wishful thinking, it is certainly possible to be less reliant on paper.

When the sudden onset of COVID-19 forced firms into remote working scenarios, many had to cobble together hardware, software, and communications processes without much planning or training. Because firm members worked from numerous remote locations, many adopted a less-paper strategy. Now that things are somewhat returning to normal, many firms are realizing their digital processes need refining or, for some, a total overhaul.

## BENEFITS OF GOING DIGITAL

Once firms take the leap to go digital, typically the only regret is that they didn't do so sooner. What follows are some of the numerous benefits of going digital.

### Lower expenses

Lowering costs is a huge benefit of going digital. It's also a persuasive talking point when seeking buy-in from partners and support staff. Who doesn't want to save money?

Going digital means buying less paper. It saves on printer and copier costs (less wear and tear, less toner.) It also preserves staff time — no longer do people have to stand in front of the copier tediously duplicating documents.

Many firms keep client documents in manila or red-rope folders. Maintaining files digitally alleviates (or greatly reduces) the need to maintain a stock of costly folders. Another huge benefit of going digital is the reduced expense for file storage.

### Increased revenue

Imagine how much time you could save — and could bill instead — if you didn't have to physically locate, review, and organize client files. Historically, when a client called, you told them you needed to pull their file and call them back, resulting in 15 minutes of administrative time that could have been billed. If you billed 15 minutes each day at \$300 per hour, that's an additional \$19,500 per year in income. Now imagine you saved (and therefore billed) 15 minutes each from two phone calls per day; that's an annual income increase of \$39,000.

### More efficiency

Having your files at your fingertips enables you to be much more efficient than you would be dealing with paper files. Eliminating the need to get up from your workspace and search for files saves precious time throughout the day. A digital office enables you to access your documents from anywhere, and it minimizes the risk of losing documents, which is more likely with physical files.

### Better client service

Digital files mean quick access to client information. That instant access impresses clients, giving them the security and confidence that you are up to speed on their matter.

## GETTING STARTED

Getting a commitment from your team to move toward digital files is the key to starting your journey. To prepare for getting this commitment, you must first understand the steps needed to create your digital environment.

### Define goals

Goals should be specific and measurable. Do you want to eliminate



client files altogether or just minimize paper use? Regardless, you must clearly identify what you hope to accomplish.

### Analyze workflows

Once you have a sense of what you hope to achieve as you pursue your digital practice, determine how to get where you want to go. Review and analyze your current processes and workflows. How could you do things differently? Which areas need improvement? Which processes could be more efficient?

### Involve your staff

You need your entire team to be involved. It's no secret that when people have ownership in a change, they are much more likely to push for a successful outcome compared to when they are merely told what to do.

Your staff has valuable insight into what works and what doesn't. Encourage their input at every step of the planning process. Resistance from even one person can lessen the chances of success. Some people are attached to paper and may not want to give it up because it's tangible and familiar. Change often provokes anxiety.

### Be a role model

Your firm's digital leaders must be positive role models. These leaders should be in positions of authority within the firm and acknowledge that the transition may result in bumps and bruises along the way, but the outcome will be worth it.

### Ensure complete compliance

Even if your digital implementation plan is in place and your firm is humming along like a well-oiled machine, it's not the time to be complacent. It's important to have a mechanism to measure the effectiveness of your new system and ensure everyone complies with your plan. There are many ways to accomplish this; it may be driven by your definition of "effective," or by the goals you sought to achieve through less reliance on paper.

A method of measuring the effectiveness of your processes and staff compliance is establishing a team of individuals from your firm to meet regularly and provide feedback on what is working, what isn't working, and which procedures or workflows may need revision to accomplish your desired results. Input from your team keeps the lines of communication open, ensures your processes and workflows are revised as needed, solidifies staff buy-in, and leads to better client service.

### Prepare for negativity

It's inevitable that at some juncture, change will be met with negativity. Some people thrive on constancy. Resistance to change is sometimes based in fear. There is often at least one person in a firm who adheres to the belief that processes and procedures should not change because "it's always been done that way." Well-thought-out responses to perceived negative remarks equip you to deal with naysayers.

### Eliminate file cabinets and physical files

Once you have implemented your digital process and are confident it's working, get rid of file cabinets and physical files. The plan to go digital was based upon your goals to get rid of paper and lower overhead costs. Keeping paper files and storage units only entices those wedded to paper to deviate from the plan.

### BUILD A CHAIN WITH NO WEAK LINKS

Too many firms approach their digital office as a work in progress, which is dangerous. What follows are the main considerations for those planning to take the digital leap, understanding that the biggest risks associated with going digital typically focus on retrieval issues and/or security issues.

#### File naming

While digitizing documents is a fairly easy process, finding them can be difficult. It is crucial to have a formalized policy on file naming conventions. In many firms, individual practice areas develop their own protocols. Many don't have protocols. While a few people within a team might find saved files, an outsider would most likely be unable to do so — or at least not easily. When paper files and digital files are both maintained, the saved digital file need not be as accessible as it would in a completely digital world. Take away the paper and the need for digital access increases.

#### Search functionality

Another key component of a digital system is incorporating excellent search software to ensure keywords can immediately produce all digital documents consistent with the query. Document management software includes excellent search functionality along with its many other features.

#### Timing is everything

Emphasize the importance of ensuring everything associated with a particular matter is scanned properly and timely and saved digitally. If others associated with that matter believe all documents have been digitally saved but there are documents scattered around the office, it can be a recipe for disaster. Unknowingly relying on an incomplete file can lead to duplicating work and creating confusion and could easily result in a breach of the standard of practice, laying the groundwork for a malpractice action.

## AT A GLANCE

COVID-19 forced firms into remote-work scenarios, many cobbling together hardware, software, and communications processes on the fly. Once firms take the leap to go digital, however, typically the only regret is that they didn't do it sooner.

### Document destruction

A digital policy must include document destruction guidelines with procedures that maintain the confidence of clients. Considerations to drafting this policy include document storage before and after scanning; notification on documents verifying they have been scanned and can be destroyed; and computer system backup procedures — always maintain documents until your system has been backed up, which should occur nightly.

### Calendar management

Another digital risk factor is calendaring important dates and deadlines prior to digitizing and destroying documents. If a document with an important date or deadline has been digitized without being added to the calendaring system, it is unlikely that date will ever make it there. Conversely, when maintaining paper files, an individual might continually run across the document when working on a matter and realize an important date had not been captured. The saying “out of sight, out of mind” applies to a digital practice, making good date-capture processes imperative.

### Encryption

There are many security issues associated with going digital. Specifically, with remote and mobile lawyering, maintaining client confidences is not always easy. The common practice of keeping

digital information on various devices results in instances where confidences might be compromised. Cloud-based storage and lost laptops, tablets, or smartphones — the list of possible breaches goes on. Unencrypted data, even if properly secured, could lead to a nightmare scenario.

### Back it up

Consider system backup procedures. A system crash, fire, water damage, or any other event resulting in lost data sets the stage for not just one possible malpractice action, but several.

### CONCLUSION

A digital practice can be a reality with proper planning and the right policies and procedures. Up next: We will discuss hardware and software considerations for your digital practice in the January Michigan Bar Journal.



**JoAnn L. Hathaway** is a practice management advisor for the State Bar of Michigan.

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# 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, Suite 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](https://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.

## ORDERS OF DISCIPLINE & DISABILITY

### AUTOMATIC INTERIM SUSPENSION

**Andrew Dag Babcock, P69502**, Bridgman, effective September 16, 2021.

On September 16, 2021, the respondent was found guilty by jury verdict of two counts of 1st degree criminal sexual conduct with person under 13 years of age, in violation of MCL 750.520b(2)(b), and one count of 1st degree criminal sexual conduct — relationship to victim, in violation of MCL 750.520b(1)(b)(ii), felonies; in the matter titled *People of the State of Michigan v Andrew Dag Babcock*, 2nd Circuit Court Case No. 2020003325-FC. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was auto-

matically suspended on the date of his felony conviction.

Upon the filing of a certified judgment of conviction, this matter will be assigned to a hearing panel for further proceedings. The interim suspension will remain in effect until the effective date of an order filed by a hearing panel.

### REPRIMAND (BY CONSENT)

**Jack L. Berman, P10737**, Utica, by the Attorney Discipline Board Tri-County Hearing Panel #106. Reprimand, effective October 16, 2021.

The respondent and the grievance administrator filed a Stipulation for Consent Order

of Discipline and Waiver, pursuant to MCR 9.115(F)(5), that was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based upon the respondent's admissions, the panel found that the respondent committed professional misconduct as the result of his improper use of his IOLTA account in April 2020.

Specifically, and in accordance with the parties' stipulation, the panel found that the respondent deposited his own funds into an IOLTA in an amount more than reasonably necessary to pay financial institution service charges or fees in violation of MRPC 1.15(f); and failed to promptly deposit expenses that had been paid in advance into a client trust account, in violation of MRPC 1.15(g).

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#### EXEMPLARY TRIALS OF NOTE

- *United States v. Tocco et al*, 2006—RICO prosecution of 17 members and associates of the Detroit La Cosa Nostra (LCN). Case involved utilization of extensive electronic surveillance.
- *United States v. Zerilli*, 2002—prosecution of the number two ranking member of the Detroit LCN.

#### SIGNIFICANT ACCOMPLISHMENTS

- Letters of Commendation, Director of the Federal Bureau of Investigation: 2004, 2002, 1999, 1986, 1982.
- United States Department of Justice Directors Award 1999.



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In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded. Costs were assessed in the amount of \$772.50.

### NOTICE OF REPRIMAND WITH CONDITIONS (BY CONSENT)

**Paul W. Broschay, P36267**, Detroit, by the Attorney Discipline Board Tri-County Hearing Panel #5. Reprimand, effective October 14, 2021.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline and Waiver, in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admission that he was convicted on November 10, 2020, of one count of indecent exposure, a misdemeanor, in violation of MCL 750.335A, in *People of the State of Michigan v Paul W. Broschay*, 3rd Circuit Court Case No. 20-002953-FH.

Based on the respondent's conviction, admissions, and the parties' stipulation, the panel found that the respondent committed professional misconduct when he 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 be reprimanded and subject to conditions relevant to the established misconduct. Costs were assessed in the amount of \$907.

### REPRIMAND (BY CONSENT)

**Susan E. Fairchild, P41908**, Detroit, by the Attorney Discipline Board Tri-County Hearing Panel #22. Reprimand, effective October 22, 2021.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline and Waiver, pursuant to MCR 9.115(F)(5), that was approved by the Attorney Grievance Commission and accepted



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## ORDERS OF DISCIPLINE &amp; DISABILITY (CONTINUED)

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- Past chairperson, SBM Committee on Professional Ethics
- Past member, ABA Center for Professional Responsibility Committee on Continuing Legal Education
- Over 30 years experience representing lawyers in ethics consultations, attorney discipline investigations, trials and appeals and Bar applicants in character and fitness investigations and proceedings

**ERICA N. LEMANSKI**

- Member, SBM Committee on Professional Ethics
- Experienced in representing lawyers in ethics consultations, attorney discipline investigations, trials and appeals and Bar applicants in character and fitness investigations and proceedings

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by the hearing panel. Based upon respondent's admissions, the panel found that the respondent committed professional misconduct in the course of her employment as an assistant United States attorney.

Specifically, and in accordance with the parties' stipulation, the panel found that the respondent failed to correct a false statement of material fact or law to a tribunal, in violation of MRPC 3.3(a)(1); and during a trial, alluded to a matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, in violation of MRPC 3.4(e). The respondent was also found to have violated MRPC 8.4(c) and MCR 9.104(1)-(2).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded. Costs were assessed in the amount of \$750.

**REPRIMAND**

**Philip B. Navarre, P38819**, Jackson, by the Attorney Discipline Board Washtenaw County Hearing Panel #1. Reprimand, effective October 16, 2021.

After proceedings held in accordance with MCR 9.115 and based on the evidence presented by the parties at the hearings held in this matter, the hearing panel found that the respondent committed professional misconduct during his representation of an employee of a tavern in litigation respondent commenced against a brother of the deceased owner of the tavern.

Specifically, the panel found that the respondent offered evidence that he knew to be false, or if later having learned of its falsity, failed to take reasonable remedial action to correct the record, in violation of MRPC 3.3(a)(3). The respondent was also found to have violated MRPC 8.4(a) and MCR 9.104(4).

The respondent was reprimanded. Total costs were assessed in the amount of \$4,423.22.

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## SUSPENSION PURSUANT TO MCR 9.115(H)(1)

**Steven Edward Phillips, P76651**, Grand Rapids, by the Attorney Discipline Board Kent County Hearing Panel #3. Suspension, effective October 19, 2021.

The respondent failed to appear at the October 11, 2021, hearing and satisfactory proofs were entered into the record that the respondent possessed actual notice of the proceedings. As a result, the hearing panel issued an order of suspension in accordance with MCR 9.115(H)(1) effective October 19, 2021, and until further order of the panel or the board.

## AUTOMATIC INTERIM SUSPENSION

**Anthony J. Semaan, P37589**, Livonia, effective November 2, 2021.

On November 2, 2021, the respondent pleaded guilty to embezzlement of \$50,000

or more, but less than \$100,000, in violation of MCL 750.174(6), a felony, in the matter titled *People of the State of Michigan v Anthony Joseph Semaan*, Wayne County Circuit Court Case No. 21-003498-01-FH. The respondent's plea was accepted by the court the same day. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on the date of his felony conviction.

Upon the filing of a certified judgment of conviction, this matter will be assigned to a hearing panel for further proceedings. The interim suspension will remain in effect until the effective date of an order filed by a hearing panel.

## SUSPENSION PURSUANT TO MCR 9.115(H)(1)

**John H. Underhill, P42326**, Adrian, by the Attorney Discipline Board Livingston County

Hearing Panel #1. Suspension, effective October 28, 2021.

The respondent failed to appear at the October 21, 2021, hearing and satisfactory proofs were entered into the record that the respondent possessed actual notice of the proceedings. As a result, the hearing panel issued an order of suspension in accordance with MCR 9.115(H)(1) effective October 28, 2021, and until further order of the panel or the board.

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## PUBLIC POLICY REPORT

### IN THE HALL OF JUSTICE

**Proposed Amendment of Rule 5.125 of the Michigan Court Rules (ADM File No. 2021-34)** – Interested Persons Defined (See Michigan Bar Journal October 2021, p 67)

**STATUS:** Comment Period Expired 1/1/22; Public Hearing to be Scheduled

**POSITION:** Support

**Proposed Amendment of Rule 6.502 of the Michigan Court Rules (ADM File No. 2018-26)** – Motion for Relief from Judgment (See Michigan Bar Journal October 2021, p 67)

**STATUS:** Comment Period Expired 1/1/22; Public Hearing to be Scheduled.

**POSITION:** Support

**Proposed Amendment of Administrative Order No. 1997-10 (ADM File No. 2021-33)** – Access to Judicial Branch Administrative Information (See Michigan Bar Journal October 2021, p 66)

**STATUS:** Comment Period Expired 1/1/22; Public Hearing to be Scheduled.

**POSITION:** Support

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## NOTICE OF HEARING ON PETITION FOR REINSTATEMENT

### State of Michigan Attorney Discipline Board In the Matter of the Reinstatement Petition of Jeffrey R. Sharp, P53838, ADB Case No. 21-73-RP

#### Petitioner

Notice is given that Jeffrey R. Sharp (P53838), has filed a petition in the Michigan Supreme Court, the Attorney Discipline Board, and the Attorney Grievance Commission seeking reinstatement as a member of the State Bar and restoration of his license to practice law in accordance with MCR 9.124(A). *In the Matter of the Reinstatement Petition of Jeffrey R. Sharp (P53838)*, ADB Case No. 21-73-RP.

Effective March 18, 2020, petitioner appeared at the hearing but was in default for his failure to file an answer to the formal complaint. Based on petitioner's default, the hearing panel found that he committed professional misconduct when he practiced law during a time while he was suspended from the practice for failing to pay his bar dues, failed to respond to phone calls from a client, made false statements in response to a request for investigation, and failed to respond to a request for additional information from the grievance administrator.

The panel found that petitioner accepted and collected a new retainer or attorney fee after the date of a suspension under Rule 4 of the State Bar of Michigan, in violation of MCR 9.119(D); practiced law while suspended, in violation of MCR 9.119(E); knowingly made a false statement of material fact to a disciplinary authority, in violation of MRPC 8.1(a)(1); and knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2). Petitioner was also found to have violated MCR 9.104(3) and MRPC 8.4(b).

The panel ordered that petitioner's license to practice law be suspended for a period of 30 days and that he be subject to a condition relevant to the established misconduct. The grievance administrator filed a petition for review, seeking an increase in discipline. A review hearing has been scheduled before the Attorney Discipline Board.

Effective March 18, 2020, petitioner appeared at the hearing but was in default for his failure to file an answer to the formal complaint. Based on petitioner's default, the hearing panel found that he committed professional misconduct when he practiced law during a time while he was suspended from the practice for failing to pay his bar dues, failed to respond to phone calls from a client, made false statements in response to a request for investigation, and failed to respond to a request for additional information from the grievance administrator.

The panel found that petitioner accepted and collected a new retainer or attorney fee after the date of a suspension under Rule 4 of the State Bar of Michigan, in violation of MCR 9.119(D); practiced law while suspended, in violation of MRPC 9.119(E); knowingly made a false statement of material fact to a disciplinary authority, in violation of MRPC 8.1(a)(1); and knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2). Petitioner was also found to have violated MCR 9.104(3) and MRPC 8.4(b).

The panel ordered that petitioner's license to practice law be suspended for a period of 30 days and that he be subject to a condition relevant to the established misconduct. The grievance administrator filed a timely petition for review, seeking an increase in the discipline imposed by the hearing panel. The Attorney Discipline Board conducted a virtual review proceeding via Zoom video conferencing in accordance with General Order ADB 2020-1 and MCR 9.118 on May 12, 2020, which included a review of the whole record before the panel, consideration of the administrator's brief, and the argument presented by counsel for the administrator. Petitioner did not appear for the review proceedings before the board. On June 30, 2020, an order increasing discipline from a suspension of 30 days to a 180-day suspension and vacating the condition imposed by the panel was issued by the board.

The Attorney Discipline Board has assigned the reinstatement petition to Tri-County Hearing Panel #10. A virtual hearing is scheduled for Tuesday, January 18, 2022, commencing at 11 a.m., via Zoom video conferencing. Any interested person may participate in the hearing and request to be heard in support of or in opposition to the petition for reinstatement.

In the interest of maintaining the high standards imposed upon the legal profession as conditions for the privilege to practice law in this state and of protecting the public, the judiciary, and the legal profession against conduct contrary to such standards, petitioner will be required to establish his eligibility for reinstatement by clear and convincing evidence.

Any person having information bearing on petitioner's eligibility for reinstatement should contact:

John K. Burgess, Senior Associate Counsel  
Attorney Grievance Commission  
PNC Center  
755 W. Big Beaver, Suite 2100  
Troy, MI 48084  
(313) 961-6585  
jkburgess@agcmi.com



### Requirements of the Petitioner

The petitioner is required to establish by clear and convincing evidence the following:

1. He desires in good faith to be restored to the privilege to practice law in this state;
2. The term of the suspension ordered has elapsed or five years have elapsed since the disbarment, whichever is applicable;
3. He has not practiced or attempted to practice law contrary to the requirement of his suspension or disbarment;
4. He has complied fully with the terms of the order of discipline;
5. His conduct since the order of discipline has been exemplary and above reproach;
6. He has a proper understanding of and attitude toward the standards that are imposed on members of the Bar and will conduct himself in conformity with those standards;
7. He can safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and, in general, to aid in the administration of justice as a member of the Bar and as an officer of the court;
8. That if he has been out of the practice of law for three years or more, he has been recertified by the Board of Law Examiners; and,
9. He has reimbursed or has agreed to reimburse the Client Protection Fund any money paid from the fund as a result of his conduct. Failure to fully reimburse as agreed is grounds for vacating an order of reinstatement.

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## FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS

The committee has adopted the following amended model civil jury instruction effective November 1, 2021.

### ADOPTED

#### M Civ JI 2.06

##### Jurors to Keep Open Minds

(1) Because the law requires that cases be decided only on the evidence presented during the trial and only by the deliberating jurors, you must keep an open mind and not make a decision about anything in the case until after you have (a) heard all of the evidence, (b) heard the closing arguments of counsel, (c) received all of my instructions on the law and the verdict form, and (d) any alternate jurors have been excused. At that time, you will be sent to the jury room to decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice or bias regarding disability, gender or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties.

Each of us may have biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party, witness, or lawyer because of his or her disability, gender or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, witness, or lawyer.

Take the time you need to test what might be reflexive unconscious responses and to reflect carefully and consciously about the evidence. I caution you to avoid reaching conclusions that may have been influenced by unintended stereotypes or associations. You must each reach your own conclusions about this case individually,

but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours. Working together will help achieve a fair result.

(2) [Alternative A] (Before you are sent to the jury room to decide the case, you may discuss the case among yourselves during recesses in the trial, but there are strict rules that must be followed.

First, you may only discuss the case when (a) all of you are together, (b) you are all in the jury room, and (c) no one else is present in the jury room. You must not discuss the case under any other circumstances. The reason you may not discuss the case with other jurors while some of you are not present is that all of you are entitled to participate in all of the discussions about the case.

Second, as I stated before, you must keep an open mind until I send you to the jury room to decide the case. Your discussions before then are only tentative.

Third, you do not have to discuss the case during the trial. But if you choose to do so, you must follow the rules I have given you.)

[Alternative B] (Before you are sent to the jury room to decide the case, you are not to discuss the case even with the other members of the jury. This is to ensure that all of you are able to participate in all of the discussions about the case, and so that you do not begin to express opinions about the case until it has been submitted to you for deliberation.)

#### Note on Use

The court will choose between Alternative A or B in paragraph 2 based on the court's decision whether to permit the jurors to discuss the evidence among themselves during trial recesses.

#### Comment

M Civ JI 2.05 and 2.06 were deleted in October 2011 and combined into a new instruction that was designated M Civ JI 2.06. This action reflected the September 2011 amendment to MCR 2.513(K), which granted the court discretion to permit juror discussion of the evidence during trial recesses. In January 2014, a large portion of M Civ JI 2.06 was transferred to M Civ JI 2.04.

The November 2021 amendment added gender identity to the list of things that should not influence the jury's decision.

#### History

Adopted October 2011. Amended January 2014. Amended July 2019. Amended November 2021.

The committee has adopted the following amended model civil jury instruction effective November 1, 2021.

## ADOPTED

### M Civ JI 3.02 Facts to Be Determined from Evidence

It is your duty to determine the facts from evidence received in open court. You are to apply the law to the facts and in this way decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice regarding disability, gender or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties.

Each of us may have biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases. Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Witnesses can have the same implicit biases. As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party, witness, or lawyer because of his or her disability, gender or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties. Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, witness, or lawyer.

#### Comment

The subject matter of this instruction is often covered in greater detail by a number of separate instructions outlining the duties of the jury and admonishing them as to what should not enter into their deliberations. To inform the jury that they are to find the facts from the evidence, and to then apply the law to those facts, is the rule set forth in the Michigan cases. *Souvais v Leavitt*, 50 Mich 108; 15 NW 37 (1883); *Wisner v Davenport*, 5 Mich 501 (1858); *Erickson v Sovars*, 356 Mich 64; 45 NW2d 844 (1959).

The prohibition against sympathy or prejudice is equally applicable to both parties. Moreover, it is sufficient to caution the jury once against allowing sympathy and prejudice to enter into their consideration of the case. *Doyle v Dobson*, 74 Mich 562; 42 NW 137 (1889).

The November 2021 amendment added gender identity to the list of things that should not influence the jury's decision.

#### History

M Civ JI 3.02 was SJI 1.01(3). Amended February 1991. Amended July 2019. Amended November 2021.

The committee has adopted the following amended model civil jury instructions effective November 1, 2021.

## ADOPTED

### M Civ JI 97.13 Judging Credibility and Weight of Evidence

(1) It is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.

(2) In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you have based on the witness's disability, gender or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties.

Each of us may have biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases. Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Witnesses can have the same implicit biases. As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party, witness, or lawyer because of his or her disability, gender or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties. Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, witness, or lawyer.

Take the time you need to test what might be reflexive unconscious responses and to reflect carefully and consciously about the evidence. I caution you to avoid reaching conclusions that may have been influenced by unintended stereotypes or associations. You must each reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds

## FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS (CONTINUED)

and perspectives from yours. Working together will help achieve a fair result.

(3) There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b) Does the witness seem to have a good memory?

(c) How does the witness look and act while testifying? Does the witness seem to be making an honest effort to tell the truth, or does the witness seem to evade the questions or argue with the lawyers?

(d) Does the witness's age or maturity affect how you judge his or her testimony?

(e) Does the witness have any bias or prejudice or any personal interest in how this case is decided?

(f) Have there been any promises, threats, suggestions, or other influences that affect how the witness testifies?

(g) In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

### Comment

The November 2021 amendment added gender identity to the list of things that should not influence the jury's decision.

### History

M Civ JI 97.13 was added March 2005. Amended October 2019. Amended November 2021.

### M Civ JI 97.19

#### Jurors Not to Discuss Case

(1) Because the law requires that cases be decided only on the evidence presented during the trial and only by the deliberating jurors, you must keep an open mind and not make a decision about anything in the case until after you have (a) heard all of the evidence, (b) heard the closing arguments of counsel, (c) received all of my instructions on the law and the verdict form, and (d) any alternate jurors have been excused. At that time, you will be sent to the jury room to decide the case. Sympathy must not influence your decision.

Nor should your decision be influenced by prejudice regarding disability, gender or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status, or any other factor irrelevant to the rights of the parties.

(2) [Alternative A] (Before you are sent to the jury room to decide the case, you may discuss the case among yourselves during recesses in the trial, but there are strict rules that must be followed:

First, you may only discuss the case when (a) all of you are together, (b) you are all in the jury room, and (c) no one else is present in the jury room. You must not discuss the case under any other circumstances. The reason you may not discuss the case with other jurors while some of you are not present is that all of you are entitled to participate in all of the discussions about the case.

Second, as I stated before, you must keep an open mind until I send you to the jury room to decide the case. Your discussions before then are only tentative.

Third, you do not have to discuss the case during the trial. But if you choose to do so, you must follow the rules I have given you.)

[Alternative B] (Before you are sent to the jury room to decide the case, you are not to discuss the case even with the other members of the jury. This is to ensure that all of you are able to participate in all of the discussions about the case, and so that you do not begin to express opinions about the case until it has been submitted to you for deliberation.)

### Comment

The November 2021 amendment added gender identity to the list of things that should not influence the jury's decision.

### Note on Use

The court will choose between Alternative A or B in paragraph 2 based on the court's decision whether to permit the jurors to discuss the evidence among themselves during trial recesses.

### History

M Civ JI 97.19 was added March 2005. Amended November 2015, October 2019. Amended November 2021.

### M Civ JI 97.33

#### Witnesses — Credibility

(1) As I said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or

reject everything a witness said. You are free to believe all, none, or part of any person's testimony.

(2) In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you may have regarding a witness's disability, gender or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties.

Each of us may have biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases. Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Witnesses can have the same implicit biases. As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party, witness, or lawyer because of his or her disability, gender or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties. Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, witness, or lawyer.

(3) There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b) Did the witness seem to have a good memory?

(c) How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers?

(d) Does the witness's age or maturity affect how you judge his or her testimony?

(e) Does the witness have any bias or prejudice or any personal interest in how this case is decided?

(f) Have there been any promises, threats, suggestions, or other influences that affected how the witness testified?

(g) In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

(4) Sometimes the testimony of different witnesses will not agree, and you must decide which testimony you accept. You should think about whether the disagreement involves something important or not, and whether you think someone is lying or is simply mistaken. People see and hear things differently, and witnesses may testify honestly but simply be wrong about what they thought they saw or remembered. It is also a good idea to think about which testimony agrees best with the other evidence in the case.

(5) However, you may conclude that a witness deliberately lied about something that is important to how you decide the case. If so, you may choose not to accept anything that witness said. On the other hand, if you think the witness lied about some things but told the truth about others, you may simply accept the part you think is true and ignore the rest.

#### Comment

The November 2021 amendment added gender identity to the list of things that should not influence the jury's decision.

#### History

M Civ JI 97.33 was added March 2005. Amended October 2019. Amended November 2021.

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The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

**Chair:** Hon. Michael F. Gadola

**Reporter:** Timothy J. Raubinger

**Members:** Benjamin J. Aloia; Matthew Aneese; Robert L. Avers; Hilary A. Ballentine; Hon. Annette Jurkiewicz-Berry; Matthew J. Boettcher; Hon. Stephen L. Borrello; Hon. Kathleen A. Feeney; William B. Forrest, III; Donald J. Gasiorek; Hon. Michael L. Jaconette; Amy M. Johnston; Hon. Amy Ronayne Krause; Hon. Charles T. LaSata; C. Thomas Ludden; Stefanie R. Reagan; Jennifer B. Salvatore; Daniel J. Schulte; Judith A. Susskind; Emily Thomas.

## FROM THE MICHIGAN SUPREME COURT

### Administrative Order No. 2021-7 Adoption of a Mandatory Continuing Judicial Education Program

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. 2021-7 is adopted. The mandatory continuing judicial education requirements for all judicial officers are effective January 1, 2024. The Board created by adoption of this order may begin operating and preparing for implementation of this program upon entry of this order.

### Administrative Order No. 2021-7 — Mandatory Continuing Judicial Education Program

#### 1. Requirement.

(A) General Requirement. Beginning 1/1/2024, every judicial officer must complete a program of continuing judicial education as described in this order.

(B) Exceptions and Exemptions. There shall be no exceptions to or exemptions from this requirement (including waivers) except in limited instances only with approval of the Judicial Education Board.

2. Definitions. The following words and phrases, when used in this order, shall have the following meanings (unless the context clearly indicates otherwise):

(A) “Accredited Provider” is an individual or organization that offers continuing judicial education activities that are consistent with the requirements established under this order.

(B) “Approved Course” is a learning opportunity offered by a non-accredited provider, but which is consistent with the requirements established under this order.

(C) “Board” is the Judicial Education Board established by this order.

(D) “Judicial Officer” is a Justice, appellate court judge, full-time judge, part-time judge, full-time quasi-judicial officer (including a district court magistrate or circuit court family division referee), part-time quasi-judicial officer (including a district court magistrate or a circuit court family division referee), or a retired judge taking assignment as a visiting judge.

(E) “Judicial Practice” includes legal knowledge and ability, communication, and administrative capacity.

(F) “MCJE” is the mandatory continuing judicial education to be provided under this order.

#### 3. Judicial Education Board.

(A) Establishment. The Supreme Court establishes the Judicial Education Board.

(B) Purpose. The primary purpose of the Board is to guide development and delivery of continuing judicial education to all judicial officers.

(C) Composition. The Board shall consist of twelve members appointed by the Supreme Court as follows:

- (i) 2 members selected from judges of the Court of Appeals;
- (ii) 2 members selected from judges of the Circuit Court;
- (iii) 2 members selected from judges of the District Court;
- (iv) 2 members selected from judges of the Probate Court;
- (v) 3 members selected from quasi-judicial officers; and
- (vi) 1 member selected as a retired judge.

(D) Leadership. The Supreme Court shall appoint from the members of the Board a chair and vice-chair who shall serve one-year terms, which may be renewed. The Board may designate other officers and form committees as it deems appropriate.

(E) Term of Board Members. Except as otherwise provided in this subsection, the members serve four-year terms. A member may not serve more than two full terms unless a member is appointed to fill a mid-term vacancy. In such a situation, the member shall serve the remainder of that term and may be reappointed to serve up to two more full terms. Initial board members may be appointed at any time after this order is entered. Terms of the initial board members shall be staggered to ensure reasonable continuity. An initial board member’s initial term shall constitute one full term.

(F) Action by the Board. Seven board members shall constitute a quorum. The Board shall act only with the concurrence of at least seven board members. The Board may adopt rules

providing for participation of teleconference meetings or the use of other technology to enable maximum participation.

(G) Responsibilities of the Board.

(i) Accreditation and Approval Decisions. The Board shall make decisions regarding accreditation of providers and approval of courses consistent with the purpose and standards set forth in this order.

(ii) Noncompliance Appeals. The Board shall hear and decide appeals from judicial officers determined to be out of compliance with this order's requirements.

(iii) Waiver. The Board shall hear and decide requests from judicial officers for waiver from the requirements in this order.

(iv) Reporting and Budget. The Board shall report at least annually to the Supreme Court on its activities, and annually propose a budget for the Board and submit it to the Supreme Court for approval.

(v) Incidental Responsibilities. The Board shall undertake all incidental tasks attendant to the above activities, including providing essential notices and recordkeeping activities.

(vi) Rules for Mandatory Continuing Judicial Education. The Board shall prepare a set of rules governing continuing judicial education for review and approval by the Supreme Court to replace this order. The proposed rules must be submitted to the Court no later than four years after the effective date of this order.

(H) Compensation and Expenses. Board members shall receive no compensation for services provided under these rules, but they shall be reimbursed by the Board for their reasonable and necessary expenses in attendance at meetings and in otherwise fulfilling their responsibilities.

4. Minimum Continuing Judicial Education Requirements.

(A) General Requirements. Beginning 1/1/2024, every judicial officer shall complete a minimum of 24 hours of continuing judicial education every two years. January 1 of each even year shall begin a new reporting period. The hours shall be distributed as follows:

- (i) 6 hours in the subject area of integrity and demeanor (including ethics); and
- (ii) 18 hours in the subject area of judicial practice and related areas as defined by the Board.

(B) Fulfillment.

(i) Course Attendance and Alternatives. The MCJE requirement shall be fulfilled by attending the required number of MCJE courses delivered by the Michigan Judicial Institute or accredited providers, or by completing a MCJE activity approved by the Board as sufficient to meet the MCJE general requirement.

(ii) Courses Offered by MJJ. At least 12 of the MCJE required hours for each reporting period shall be earned through courses offered by the Michigan Judicial Institute.

(iii) Teaching. Up to eight of the MCJE required hours for each reporting period may be earned through Board-approved teaching activities.

(C) Newly-elected or Appointed Judicial Officers. Attendance at the New Judge/New Magistrate/New Referee Orientation Program administered by the Michigan Judicial Institute does not count toward the MCJE requirements described elsewhere in this order.

(D) Newly-appointed Chief Judges. Attendance at the New Chief Judge Orientation Program administered by the Michigan Judicial Institute does not count toward the MCJE requirements described elsewhere in this order.

(E) Retiring Judges. A retiring judge does not need to complete the MCJE requirements for the reporting period in which they are retiring, unless the retiring judge seeks judicial assignment under the SCAO Guidelines for Assignment.

5. Waivers.

(A) Waiver. Except as provided in subsection (B), the Board may waive the MCJE requirements for any part of the remaining portion of the current reporting period upon a finding by the Board of undue hardship or circumstances beyond the control of the judicial officer which prevent him or her from complying in any reasonable manner with the MCJE requirement.

(B) Members of the armed forces.

(i) Waiver. Upon written request to the Board, the MCJE requirements will be waived in their entirety for any reporting period in which a judicial officer is a member of the Armed Forces serving on full-time active duty.

(ii) Termination of Active Duty. Within thirty days after termination of active duty, the judicial officer must notify the Board and will be required to comply with MCJE requirements for the reporting period.

6. Standards for Approval of MCJE Activities. All MCJE activities approved for credit shall meet the following standards:

## FROM THE MICHIGAN SUPREME COURT (CONTINUED)

(A) The activity shall have significant intellectual or practical content, the primary objective of which is to improve a judicial officer's knowledge or professional capacity to fulfill their judicial responsibilities in the subject areas of judicial practice and integrity and demeanor.

(B) The activity shall be an organized program of learning to deal with matters directly related to subjects that satisfy the objectives of these rules.

(C) Each MCJE activity shall be open to all judicial officers interested in the subject matter or with a docket assignment complementary to the subject matter of the MCJE activity and there shall be no attendance restrictions, except as may be permitted by the Board, upon application from a provider, where:

(i) attendance is restricted based on objective criteria for a bona fide educational objective to enhance the MCJE activity; or

(ii) membership in the provider organization is open to all interested judicial officers of a particular type (judges or quasi-judicial officers) on a reasonable nondiscriminatory basis and cost.

(D) The program leaders or lecturers shall be qualified with the practical and/or academic experience necessary to conduct the program effectively.

(E) Each attendee shall be provided with thorough, high quality and carefully prepared written course materials before or at the time of the activity. Although written materials may not be appropriate to all courses, they are expected to be utilized whenever possible.

(F) The course or activity must be presented in a suitable setting to create a positive educational environment.

(G) The Board will take into consideration the special needs of disabled and incapacitated judicial officers in gaining access to and participation in MCJE activities. The Board shall require providers to make reasonable accommodations for disabled and incapacitated judicial officers.

### 7. Credit for MCJE Activities.

(A) Accreditation or Approval. Credit will be given only for completion of MCJE activities that are accredited or approved by the Board.

(B) Course Length. No course of instruction less than 60 minutes shall be considered eligible for MCJE credit.

(C) Credit. One hour of credit will be awarded for each 60 minutes of instruction.

(D) Credit Increments. Credit will be awarded in 30-minute increments beyond the first 60 minutes.

(E) Local Education Activities. Local education activities will be subject to approval by the Board for credit upon submission of appropriate documentation. Accreditation will be determined by the Board according to the standards set forth in 6(A).

(F) Approval of MCJE Activities Conducted by Non-Accredited Providers and Teaching Activities.

(i) General Statement. Courses offered by a provider that is not an accredited MCJE provider and teaching activities that are consistent with the purposes of this order may qualify for MCJE credit, subject to the following terms and conditions.

(ii) Individual Approval Required. All MCJE activities conducted by a non-accredited provider or teaching activity must be individually approved by the Board for credit.

(iii) Requests for Approval. A judicial officer shall request Board approval for MCJE activities conducted by a non-accredited provider or teaching activities within 30 days after completing the activity.

(iv) Form of Application. The application shall be in the form and with such documentation required by the Board.

(v) Additional Information. Upon request by the Board, the applicant shall submit to the Board information concerning the course or activity, including the brochure describing the activity and the qualifications of anticipated speakers, the method or manner of presentation of materials, and, if requested, a set of the materials.

(vi) Courses Pertaining to Nonjudicial Subjects or Deemed to Fall Below Minimum Standards. If a course does not bear entirely on at least one area of judicial practice or integrity and demeanor, or the manner of presenting the course is deemed to fall below minimum standards, the Board may determine that such course is entitled to no credit or may assign such partial credit as it deems appropriate.

(G) Self Study. Self study will not be approved for credit.

### 8. Accreditation of Mandatory Continuing Judicial Education Providers.



(A) Application. Application may be made for accreditation as an Accredited Provider by submitting the appropriate form to the Board.

(B) Evaluations. The provider shall develop and implement methods to evaluate its course offerings to determine their effectiveness and the extent to which they meet the needs of judicial officers and, upon a request from the Board, provide course evaluations by the attendees on such forms as the Board shall approve.

(C) Period of Accreditation.

(i) General Rule. The grant of accreditation shall be effective for a period of two years from the date of the grant.

(ii) Continuation of Accreditation. The accreditation may be continued for an additional two-year period if the provider files an application for continued accreditation with the Board before the end of the provider's accreditation period, subject to further action by the Board.

(D) Conditional Accreditation. In considering whether to continue an approved provider's accreditation, the Board shall determine if there are pending or past breaches of these rules by the approved provider. The Board, at its discretion, may condition continuation upon the provider meeting additional requirements specified by the Board.

(E) Termination. If an application for continuation is not filed within 30 days before the end of the provider's accreditation period, the provider's accredited status will terminate at the end of the period. Any application received thereafter shall be considered by the Board as an initial application for Accredited Provider status.

(F) Revocation. Accredited Provider status may be revoked by the Board if the requirements specified by the Board are not met or if, upon review of the provider's performance, the Board determines that content of the course material or the quality of the MCJE activities or provider's performance does not meet the standards set forth in this order.

9. Standards for Accredited Provider Status. Accredited Provider status may be granted at the discretion of the Board to applicants that satisfy one of the following requirements:

(A) The provider has presented, within the past two years prior to the date of the application, five separate programs of judicial education which meet the standards of quality set forth in these rules;

(B) The provider has demonstrated to the Board that its judicial education activities have consistently met the standards of quality set forth in this order; or

(C) The provider is an American Bar Association-accredited law school.

10. Accreditation of a Single Course or MCJE Activity by a Provider. A provider of MCJE activities that has not qualified as an Accredited Provider may apply for accreditation of a single MCJE activity in a form provided by the Board, subject to the following terms and conditions:

(A) The Board may require submission of a detailed description of the provider, the course, the course materials, and the lectures.

(B) Application by a provider for accreditation of a single MCJE activity should be submitted prior to the date of presentation of the activity. Application for retroactive approval must be made within 30 days after the event or activity.

(C) The MCJE activity must meet the standards set forth in this order.

11. Reporting.

(A) Reporting Responsibility. Reporting shall be the responsibility of the individual judicial officer.

(B) Form of Reporting of MCJE Activities. A judicial officer shall report accredited MCJE activities to the Board in a manner approved by the Board.

(C) Time for Reporting. A judicial officer should report accredited MCJE activities within 30 days after successfully completing the activity.

(D) Compliance Status Review. All judicial officers shall review their MCJE compliance status within seven days of receiving notice of their status under Section 12(C)(i).

12. Compliance.

(A) Records.

(i) Recordkeeping by the Board. The Board shall maintain a record of MCJE attendance for each judicial officer to whom this order applies. These records shall be made available as the Board shall determine, but shall at least establish whether the judge met the required standard for a particular reporting period.

(ii) Recordkeeping by Judicial Officers. Each active judicial officer shall maintain records sufficient to establish compliance with the MCJE requirement in the event of a dispute or inconsistency.

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## FROM THE MICHIGAN SUPREME COURT (CONTINUED)

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(B) Compliance Status Notification. The Board will notify each judicial officer of his or her MCJE status three months prior to the end of the reporting period and will provide a final compliance notice within 60 days after the end of the reporting period. The final compliance notice shall include the hours earned during the reporting period which have been reported and carryover hours, if applicable.

(C) Noncompliance and Compliance Disputes.

(i) Notification. If a judicial officer fails to comply with this order, or is determined by the Board to have failed to fully comply with the MCJE requirements, such judicial officer shall be notified in writing by the Board of the nature of the noncompliance and be given 180 days from the date of the notice to remedy the noncompliance. A “writing” includes digital communications, transmitted through electronic means, which are capable of being stored and printed.

(ii) Evidence of Compliance or Hearing Request. Within 30 days after the date of the notice of noncompliance, the judicial officer shall either submit evidence of compliance or request a hearing. Unless good cause is shown, a hearing request submitted after 30 days from the date of the notice of noncompliance will be denied.

(iii) Hearing. If the judicial officer timely files a request for a hearing under this subsection, the Board shall schedule a hearing. The hearing shall be held at least ten days after written notice to the judicial officer. In addition, the State Court Administrator, or his or her designee, is required to attend a hearing held under this provision, and is entitled to notice in the same manner as the judicial officer.

(iv) Reasonable Cause for Noncompliance. If the Board finds that the judicial officer had reasonable cause for noncompliance, the judicial officer shall have 180 days from the date of notice of the Board’s decision to correct the noncompliance. If compliance is not achieved within the 180-day period, the Board shall proceed as provided.

(v) Report to Judicial Tenure Commission and State Court Administrator. If a judicial officer fails to remedy noncompliance within 180 days after the later of the date of the notice of noncompliance or the date of a decision from the Board finding reasonable cause for noncompliance, the Board shall report that fact to the Judicial Tenure Commission and the State Court Administrator for their consideration.

(D) Crediting Hours During a Period of Noncompliance. Credit hours earned shall be first applied to satisfy the requirements

of the reporting period that was the subject of the notice to the judicial officer before any excess credits earned during the notice period may be applied to subsequent requirements.

13. Confidentiality. The files, records, and proceedings of the Board as they relate to or arise out of any alleged failure of a judicial officer to satisfy the requirements of this order shall be deemed confidential and shall not be disclosed except in furtherance of the duties of the Board or upon the request of the affected judicial officer or as they may be introduced in evidence or otherwise produced in proceedings under this order.

Staff Comment: This administrative order establishes a mandatory continuing judicial education program for the state’s justices, judges, and quasi-judicial officers. The 2024 effective date is intended to provide sufficient time for an electronic reporting system to be put in place, as well as allow the Board, which members will be appointed soon, to begin creating policies, forms, and other necessary requisites to implementation of this program.

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.

MCCORMACK, C.J. (*concurring*). Teachers, architects, pilots, accountants, nurses, pharmacists, doctors, electricians, and numerous other professions require continuing education. They do so because staying competent in any dynamic profession requires ongoing learning—of the latest tools, methods, skills, and not least of all substantive subject-matter expertise. The question is whether Michigan should join the 47 other states that require continuing education of their judiciary.<sup>1</sup> At 12 hours per year, the obligation is not especially burdensome.

The answer is yes, for good reason. The law changes regularly. Legislatures enact new laws and amend old ones, and courts interpret those laws. Legal processes change too—more rapidly in the last 18 months than ever before. Michigan’s judges meanwhile resolve over 3 million cases every year, concerning a wide variety of issues. In many of these cases, judges interact directly with litigants who cannot afford lawyers. Giving all litigants confidence that they will be treated fairly by judicial officers who are well prepared is our obligation. Today’s order is faithful to that duty.

To be sure, most Michigan judges already voluntarily do more continuing education than this rule will require. The rule simply will

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1. A few of these states do not have a traditional mandatory continuing education requirement, but may require some or all of their judicial officers to participate in certain programs.

ensure that judges, no less than electricians, keep up with changes in our dynamic profession, keep up for the public good. And if anything, our duty to keep pace should be higher than that of the many professions for which the market may impose discipline against laggards. Our litigants do not choose us, nor are we judges rated by consumer organizations for our quality. Our duty to keep abreast of the law that we administer in the public's name is a corollary of our oath.

Justice BERNSTEIN misses this important point. He says that “the government” should not tell judges what to do. But that is not our situation. The issue rather is whether we, the judiciary, should require of ourselves modest efforts to keep up with the law we apply. To pose the question is to answer it.

WELCH, J., joins the statement of McCORMACK, C.J.

VIVIANO, J. (*concurring in part and dissenting in part*). I agree that this Court should adopt mandatory continuing education for our state's judges, but I do not believe this is the right time to do so. Many of our trial courts—including some of our largest courts—are confronting a significant backlog of criminal and civil cases resulting from their inability to conduct in-person court proceedings for long stretches of time during the COVID-19 pandemic.<sup>1</sup> Adopting this proposal now will distract trial judges from their primary duty of resolving the many thousands of aging cases that are clogging court dockets in various places across the state. Even though the order does not take effect until 2024, the trial judges who have been appointed to the Judicial Education Board will need to spend many hours away from their benches to design and establish the judicial education program requirements that are at the heart of this order. In my view, we simply do not have the luxury of adopting this program at this time. Instead, I would defer adoption until our trial courts have worked through the backlog caused by the pandemic.

BERNSTEIN, J. (*dissenting*). I stand behind my dissenting statement from last year, when the issue of mandatory continuing judicial education was last before this Court. As I believe my objections are even more relevant today, I reproduce my position below.

I agree that the goal of continuing judicial education is a fine one—however, my problem lies with the idea of mandating educational goals for an already burdened judiciary. We should respect the autonomy of individual judicial officers to choose for themselves; the government should not seek to intervene in these individual decisions. Stated simply, I believe that any of the problems that continuing judicial education seeks to correct could be better addressed in private forums by private actors.

Moreover, should continuing judicial education become a reality in Michigan, I fear that continuing legal education for all attorneys might come next.

1. The impact of the pandemic on court caseloads has not been uniform across the state, but the overall increase in pending cases during 2020 provides some indication of how the pandemic has affected our trial courts. See Michigan Supreme Court, State Court Administrative Office, **Trial Court Backlogs Background**, March 2021 <<https://www.courts.michigan.gov/siteassets/covid/covid-19/trial-court-case-backlog-background.pdf>> (accessed October 14, 2021) [<https://perma.cc/4QPF-SCG5>] (noting that the number of pending felony and misdemeanor cases increased by more than 75% and that the number of pending noncriminal cases increased by approximately 14% in district courts and approximately 18% in circuit and probate courts). It appears that these case backlogs have continued to increase in 2021 and that they continue to be a problem, as chronicled in numerous news reports. See, e.g., Bayron, **Muskegon County Prosecutor Discusses Court Backlog, Proposed State Assistance**, WZZM-TV (October 8, 2021) <<https://www.wzzm13.com/article/news/crime/muskegon-county-prosecutor-discusses-court-backlog-proposed-state-assistance/69-a5b6ae88-de47-4642-a310-0dd321797403>> (accessed October 14, 2021) [<https://perma.cc/D85B-R3M3>]; Anderson, **Wayne County Prosecutor: Office is in “Crisis Mode” and Caseloads are “Inhumane”**, Detroit Free Press (September 20, 2021), <<https://www.freep.com/story/news/local/michigan/wayne/2021/09/20/wayne-county-prosecutors-office-kym-worthy/8419000002/>> (accessed October 14, 2021) [<https://perma.cc/N8N3-54QG>]; Schollett, **Local Courts Prepare to Tackle Backlog of Jury Trials**, UpNorthLive (June 3, 2021) <<https://upnorthlive.com/news/local/local-courts-prepare-to-tackle-backlog-of-trials>> (accessed October 14, 2021) [<https://perma.cc/F584-UZQT>].

## Appointment of Initial Members of the Judicial Education Board

On order of the Court, in accordance with Administrative Order No. 2021-7, the following individuals are appointed as initial members of the Judicial Education Board, effective immediately.

For terms ending December 31, 2023:

Chief Judge Christopher M. Murray  
(Court of Appeals Representative)  
Judge Mariam Bazzi (Circuit Court Representative)  
Judge Lisa Sullivan (Probate Court Representative)  
Referee Sahera G. Housey (Quasi-Judicial Representative)

For terms ending December 31, 2024:

Judge Elizabeth L. Gleicher  
(Court of Appeals Representative)  
Judge Nicholas S. Ayoub (District Court Representative)  
Judge John D. Tomlinson (Probate Court Representative)  
Referee Jolene A. Clearwater (Quasi-Judicial Representative)

For terms ending December 31, 2025:

Judge Kathleen M. Brickley (Circuit Court Representative)  
Judge Kristina Robinson Garrett  
(District Court Representative)  
Judge William G. Kelly (Retired Judicial Representative)  
Magistrate Gerald J. Ladwig (Quasi-Judicial Representative)

Upon further order of the Court, Chief Judge Christopher Murray is named chair of the Board, and Circuit Judge Kathleen Brickley is named vice-chair.

VIVIANO, J. (*dissenting*). I agree in principle with the creation of a Judicial Education Board, and I believe the individuals this order appoints to it will serve the board well. But as I have noted else-

## FROM THE MICHIGAN SUPREME COURT (CONTINUED)

where, I do not agree that we should institute the board now, in the midst of significant case backlogs caused by the COVID-19 pandemic. Administrative Order No. 2021-7, \_\_\_ Mich \_\_\_ (2021) (VIVIANO, J., concurring in part and dissenting in part). For this reason, I respectfully dissent.

### Proposed Amendment of Rule 7.212 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.212 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

#### Rule 7.212 Briefs

##### (A) Time for Filing and Service.

###### (1) Appellant's Brief.

(a) Filing. The appellant ~~must~~shall file ~~5 typewritten, xero-graphic, or printed copies of~~ a brief with the Court of Appeals within

(i)-(iii) [Unchanged.]

(b) Service. ~~The appellant~~Within the time for filing the ap-pellant's brief, 1 copy must ~~serve the brief~~be served on all other parties to the appeal and file proof of that service ~~filed with the Court of Appeals and served~~ with the brief.

###### (2) Appellee's Brief.

(a) Filing. The appellee ~~may~~shall file ~~5 typewritten, xero-graphic, or printed copies of~~ a brief with the Court of Appeals within

(i)-(ii) [Unchanged.]

(b) Service. ~~An appellee's brief~~Within the time for filing the ap-pellee's brief, 1 copy must be served on all other parties to the appeal and proof of that service must be filed with the ~~brief~~Court of Appeals.

(3) Earlier Filing ~~and Service~~. The time for filing ~~and serving~~ the ~~appellant's or the appellee's~~ brief may be shortened by order of the Court of Appeals on motion showing good cause.

(4) Late Filing. Any party failing to timely file ~~and serve~~ a brief ~~underrequired~~by this rule forfeits the right to oral argument.

(5) [Unchanged.]

(B) Length and Form of Briefs. ~~Except as permitted by order of the Court of Appeals, and except as provided in subrule (C),~~ briefs are limited to ~~50 pages double-spaced, exclusive of tables, indexes, and appendixes. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A motion for leave to file a brief in excess of the page limitations of this subrule must be filed by the due date of the brief and shall accompany the proposed brief. Such motions are disfavored and will be granted only for extraordinary and compelling reasons. If the motion is denied, the movant shall file a conforming brief within 21 days after the date of the order deciding the motion.~~

(1) Except as otherwise provided in this rule or by court order, briefs are limited to no more than 16,000 words. A self-represented party who does not have access to a word-processing system may file a typewritten or legibly handwritten brief of not more than 50 pages.

(2) The elements of a brief listed in subrules (C)(1)-(5) and (10) are not included in the word or page limit, but footnotes and text contained in embedded graphics are included.

(3) A brief filed under the word limitation of this subrule must include a statement after the signature block stating the number of countable words. The filer may rely on the word count of the word-processing system used to prepare the brief.

(4) A motion for leave to file a brief in excess of the word or page limitations must be filed by the due date of the brief and must accompany the proposed brief. Such motions are disfavored and will be granted only for extraordinary and compelling reasons. If the motion is denied, the movant must file a conforming brief within 21 days after the date of the order deciding the motion.

(5) Briefs must have at least one-inch page margins, 12-point font, and double-spaced text, except quotations and footnotes may be single-spaced.

(C)-(E) [Unchanged.]

(F) Supplemental Authority. Without leave of court, a party may file ~~an original and four copies of~~ a one-page communication, titled “supplemental authority,” to call the court’s attention to new authority released after the party filed its brief. Such a communication,

(1)-(3) [Unchanged.]

(G) Reply Briefs. ~~An appellant or a cross-appellant may reply to the brief of an appellee or cross-appellee w~~Within 21 days after service of ~~an~~the brief of the appellee’s or cross-appellee’s brief, appellant or cross-appellant may file a reply brief. Reply briefs must be confined to rebuttal of the arguments in the appellee’s or cross-appellee’s brief, and must be limited to 10 pages, exclusive of tables, indexes, and appendices, and must include a table of contents and an index of authorities. No additional or supplemental briefs may be filed except as provided by subrule (F) or by leave of the Court. Reply briefs are limited to no more than 3,200 words, but are otherwise governed by subrule (B). A self-represented party who does not have access to a word-processing system may file a typewritten or legibly handwritten reply brief of not more than 10 pages.

(H)-(J) [Unchanged.]

Staff Comment: The proposed amendment of MCR 7.212 would require appellate briefs to be formatted for optimized reading on electronic displays.

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.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by March 1, 2022 by clicking on the “Comment on this Proposal” link under this proposal on the Court’s Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2019-16. Your comments and the comments of others will be posted under the chapter affected by this proposal.

## Amendment of Rule 7.306 of the Michigan Court Rules

On order of the Court, this is to advise that the amendment of Rules 7.306 of the Michigan Court Rules is adopted, effective immediately. Concurrently, individuals are invited to comment on the form

or the merits of the amendment during the usual comment period. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

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

### Rule 7.306 Original Proceedings

(A) ~~Superintending Control~~When Available. A complaint may be filed to invoke the Supreme Court’s superintending control power:

(1)-(2) [Unchanged.]

When a dispute regarding court operations arises between judges within a court that would give rise to a complaint under this rule, the judges shall participate in mediation as provided through the State Court Administrative Office before filing such a complaint. The mediation shall be conducted in compliance with MCR 2.411(C)(2).

(B) A complaint may be filed to invoke the Supreme Court’s original jurisdiction under Const 1963, art 4, § 6(19).

~~(C)~~ What to File. To initiate an original proceeding, a plaintiff must file with the clerk:

(1) 1 signed copy of a complaint prepared in conformity with MCR 2.111(A) and (B)~~7.212(B)~~ and entitled, for example,

*“[Plaintiff] v [Court of Appeals, Board of Law Examiners, Attorney Discipline Board, or Attorney Grievance Commission, or Independent Citizens Redistricting Commission].”*

The clerk shall retitle a complaint that is named differently.

(2) [Unchanged.]

(3) proof that the complaint and brief were served on the defendant, and, for a complaint filed against the Attorney Discipline Board or Attorney Grievance Commission, on the respondent in the underlying discipline matter; for purposes of a complaint filed under Const 1963, art 4, §6(19), service of a copy of the complaint and brief shall be made on any of the following persons: (1) the chairperson of the Independent Citizens Redistricting Commission; (2) the secretary of the Independent Citizens Redistricting Commission or (3) upon an individual designated by the Independent Citizens Redistricting Commission or Secretary of State as a person to receive service. Service shall be verified by the Clerk of the Court; and

(4) [Unchanged.]

## FROM THE MICHIGAN SUPREME COURT (CONTINUED)

Copies of relevant documents, record evidence, or supporting affidavits may be attached as exhibits to the complaint.

(DE) Answer.

(1) A defendant in an action filed under Const 1963, art 4, § 6(19) must file the following with the clerk within 7 days after service of the complaint, unless the Court directs otherwise:

(a) 1 signed copy of an answer in conformity with MCR 2.111(C);

(b) 1 signed copy of a supporting brief in conformity with MCR 7.212(B) and (D); and

(c) Proof that a copy of the answer and supporting brief was served on the plaintiff.

(2) In all other original actions, the defendant must file the following with the clerk within 28 days after service of the complaint:

(a) 1 signed copy of an answer in conformity with MCR 7.212(B) and (D). The grievance administrator's answer to a complaint against the Attorney Grievance Commission must show the investigatory steps taken and any other pertinent information.

(b) Proof that a copy of the answer was served on the plaintiff.

(ED) [Relettered but otherwise unchanged.]

(EE) Reply Brief. 1 signed copy of a reply brief may be filed as provided in MCR 7.305(E). In an action filed under Const 1963, art 4, § 6(19), a reply brief may be filed within 3 days after service of the answer and supporting brief, unless the Court directs otherwise.

(F)-(I) [Relettered (G)-(J) but otherwise unchanged.]

Staff Comment: The amendment of MCR 7.306 creates procedure specific to original actions relating to cases filed involving the Independent Citizens Redistricting Commission.

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.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by February 1, 2022 by clicking on the "Com-

ment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-45. Your comments and the comments of others will be posted under the chapter affected by this proposal.

## Proposed Amendment of Rule 8.110 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 8.110 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

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

### Rule 8.110 Chief Judge Rule

(A)-(C) [Unchanged.]

(D) Court Hours; Court Holidays; Judicial Absences.

(1) [Unchanged.]

(2) Court Holidays; Local Modification.

(a) The following holidays are to be observed by all state courts, except those courts which have adopted modifying administrative orders pursuant to MCR 8.112(B):

New Year's Day, January 1;  
 Martin Luther King, Jr., Day, the third Monday in January  
     in conjunction with the federal holiday;  
 Presidents' Day, the third Monday in February;  
 Memorial Day, the last Monday in May;  
Juneteenth, June 19;  
 Independence Day, July 4;  
 Labor Day, the first Monday in September;  
 Veterans' Day, November 11;  
 Thanksgiving Day, the fourth Thursday in November;  
~~Friday after Thanksgiving;~~ [Option A]  
~~Christmas Eve, December 24;~~ [Option B]  
 Christmas Day, December 25;  
~~New Year's Eve, December 31;~~ [Option C]

[Note that there is also Option D, which would be to add Juneteenth as a holiday and *not* omit another holiday.]

(b) When New Year's Day, Juneteenth, Independence Day, Veterans' Day, or Christmas Day falls on Saturday, the preceding Friday shall be a holiday. When New Year's Day, Juneteenth, Independence Day, Veterans' Day, or Christmas Day falls on Sunday, the following Monday shall be a holiday. When Christmas Eve or New Year's Eve falls on Friday, the preceding Thursday shall be a holiday. When Christmas Eve or New Year's Eve falls on Saturday or Sunday, the preceding Friday shall be a holiday. [Note that this provision would be updated to reflect if any of the holidays mentioned in subsection (a) are eliminated.]

(c)-(e) [Unchanged.]

(3)-(6) [Unchanged.]

Staff Comment: In light of the federal Act making Juneteenth a federal holiday (PL 117-17), this proposed amendment would similarly require that courts observe Juneteenth as a holiday. This proposed amendment is being considered in conjunction with other proposed amendments that would eliminate an existing holiday so as to retain the same number of holidays that are currently provided under the rule. The options the Court would like commenters to consider eliminating, if the commenters believe the number of holidays should remain the same, include the day after Thanksgiving, Christmas Eve, or New Year's Eve, similar to Federal legal holiday designations. For purposes of comment, commenters are invited to indicate their support or opposition to any of the proposed amendments individually or combined.

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.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by February 1, 2021 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-31. Your comments and the comments of others will be posted under the chapter affected by this proposal.

VIVIANO, J. (*dissenting*). I dissent from the Court's decision to publish for comment a proposed court rule amendment adding Juneteenth to the list of weekday holidays that must be observed by all state courts. Juneteenth commemorates a date of historical significance to all Americans: on June 19, 1865, Major General Gordon Granger

of the Union Army issued a general order proclaiming, in accordance with the Emancipation Proclamation, that all slaves in Texas (the last state of the Confederacy with institutional slavery) were free. Official recognition of the Juneteenth holiday has gained traction in recent years, and it became a federal holiday on June 17, 2021. PL 117-17; 135 Stat 287. But a number of years ago, in 2005, our Legislature adopted a law declaring that "the third Saturday in June of each year shall be known as 'Juneteenth National Freedom Day[.]'" MCL 435.361(1). The statute further provides that

[t]he legislature encourages individuals, educational institutions, and social, community, religious, labor, and business organizations to pause on Juneteenth National Freedom Day and reflect upon the strong survival instinct of the African-American slaves and the excitement and great joy with which African-Americans first celebrated the abolition of slavery. It is a reminder to all Americans of the status and importance of Americans of African descent as American citizens. [*Id.*]

Thus, our state has recognized and celebrated Juneteenth longer than most other jurisdictions, and well before it became fashionable to do so.

As I noted recently in another context, "[m]any of our trial courts—including some of our largest courts—are confronting a significant backlog of criminal and civil cases resulting from their inability to conduct in-person court proceedings for long stretches of time during the COVID-19 pandemic." Administrative Order No. 2021-7, \_\_\_ Mich \_\_\_ (2021) (VIVIANO, J., concurring in part and dissenting in part). Our Court already requires state courts to observe 12 holidays that occur or are celebrated on weekdays. MCR 8.110(D)(2). And these holidays are in addition to the 30 days of annual vacation leave that are available to judges. MCR 8.110(D)(3). Rather than adding to the list of weekday holidays, which would create added stress on our trial courts' ability to process and dispose of cases, or engage in a lengthy and contentious debate over the relative merits of Juneteenth and other holidays, I believe this Court should join with the Legislature by encouraging our judges, court staffs, litigants, attorneys, law enforcement, and others who work or have business in our state courts "to pause on Juneteenth National Freedom Day and reflect upon the strong survival instinct of the African-American slaves and the excitement and great joy with which African-Americans first celebrated the abolition of slavery." MCL 435.361(1). This would be an appropriate way to celebrate a date of historical significance, while also allowing our judges and courts staffs to continue to fulfill their public duties.

### Appointment of Chief Judge of the 23rd District Court

On order of the Court, effective November 2, 2021, Victoria I. Shackelford is appointed chief judge of the 23rd District Court for the remainder of a term ending December 31, 2021 and for an additional two-year term commencing on January 1, 2022 and ending on December 31, 2023.

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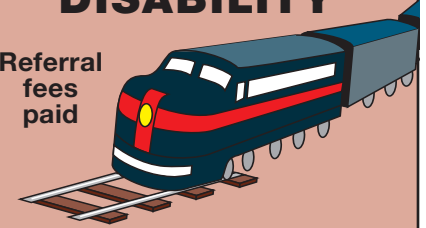
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# LAWYERS & JUDGES ASSISTANCE

## 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](mailto: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

### 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\*

Maple Grove  
6773 W. Maple Rd.  
Willingness Group, Room 21

## GAMBLERS ANONYMOUS

For a list of meetings, visit  
[gamblersanonymous.org/mtgdirMI.html](http://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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