MICHIGAN
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MARCH 2022

- Fair Housing Act disparate impact theory of liability: An underutilized tool for combatting policies that perpetuate segregation
- The Revocation of Paternity Act and the Juvenile Code
- Peter Cunningham named SBM Executive Director

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NOTICES

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JULY 22, 2022
SEPTEMBER 16, 2022

REPRESENTATIVE ASSEMBLY

APRIL 9, 2022
SEPTEMBER 17, 2022

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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.

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.

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LETTERS TO THE EDITOR

TO THE EDITOR:

The authors of "50 Years After *Milliken v. Bradley*" (January 2022 Michigan Bar Journal) did a fine job in describing the judicial overview of the impact of the Supreme Court's decision on school desegregation in the United States.

As I said, however, as the judge who signed the district court's order, I'm not a sociologist and not an educator, but I am also not sure the case really hastened white flight from Detroit by much. Detroit, because of the age of its housing stock and layout, simply became a less attractive place to live. Those who could afford to move into the new suburban communities and enjoy the amenities they offered did so. School environment was a part of that, but a small part. The city had aged, and those who could escape its wrinkles did so, while leaving those who couldn't afford it behind, but not because of *Milliken v. Bradley*.

Hon. Avern Cohn, Detroit

TO THE EDITOR:

"50 Years After *Milliken v. Bradley*" by John R. Runyan, Erin Gianopoulos, and John E. Mogk is an excellent piece of journalism that should be a must-read for all Michigan students. Maybe understanding how we got to this place of such totally disparate school districts will spur creative thoughts on how to remedy the situation. Thank you to the authors for such informative yet succinct review of urban education and desegregation in our country.

John Liskey, Okemos

TO THE EDITOR:

Interdistrict school busing for southeastern Michigan was the "defund the police" concept of the early 1970s. It was legally flawed as noted by the United States Supreme Court then and subsequently. It was a "remedy" that almost no one wanted other than the plaintiffs and their attorneys. And it wreaked havoc on politics in Michigan for quite a while since the public, not incorrectly, perceived the concept flowed from the left end of the spectrum and voted massively against even moderate Democrat politicians.

"50 Years After *Milliken v. Bradley*" is an article longing for the activist urge that came up with this bad idea. By the time of the lawsuit, it was clear that the city of Detroit had engaged in segregation of its schools and would need to cease and reverse, if possible, any segregation of its schools. There were findings that the city had discriminated in the past.

But the litigants sought to rope into the Detroit problem students from other areas, even other counties, that had not engaged in any unlawful discrimination. The U.S. Supreme Court noted that there was no satisfactory evidence that the 53 school districts had engaged in any racial segregation of their schools.

The children and families from those other 53 communities were to be used to fashion an unwanted and unlawful remedy.

Robert H. Roether, Saline

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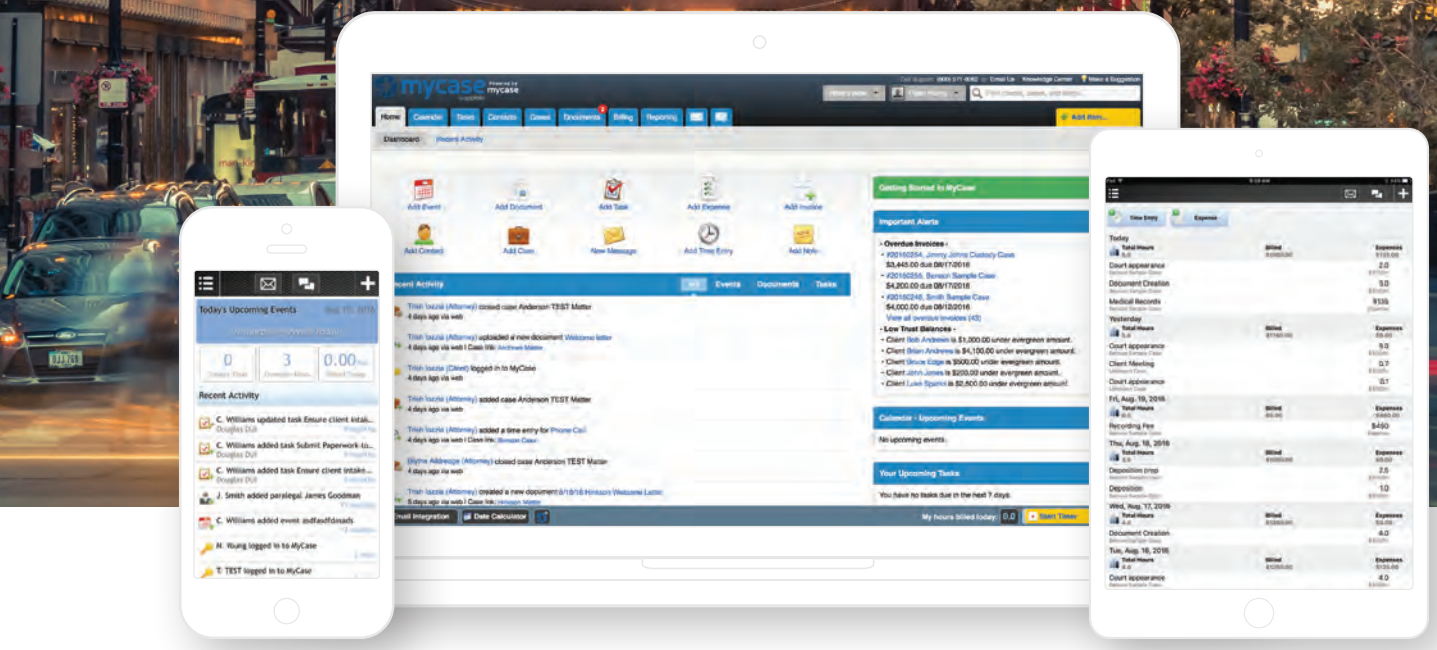

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IN BRIEF

ABA HOUSE OF DELEGATES VACANCY 2022

The State Bar of Michigan Board of Commissioners is seeking names of persons interested in filling the following vacancy:

ABA House of Delegates – State Bar Delegate: Two vacancies for a two-year term beginning at the close of the ABA Annual Meeting in August 2022.

The ABA House of Delegates has the ultimate responsibility for establishing association policy, both as to the administration of the association and its positions on professional and public issues. The House of Delegates elects officers of the association and members of the Board of Governors; it elects members of the Committee on Scope and Correlation of Work; it has the sole authority to amend the association's bylaws; and it may amend the association's constitution. It authorizes committees and sections of the association and discontinues them. It sets association dues upon the recommendation of the Board of Governors.

Deadline for response is April 1, 2022.

Applications received after the deadline will not be considered.

Those applying for an agency appointment should submit a resume and a letter outlining interest in the ABA, current position in the ABA, work on ABA committees and sections, accomplishments, and contributions to the State Bar and to the ABA. Applications should be emailed to mbossenbery@michbar.org.

SECTION BRIEFS

ANTITRUST, FRANCHISING, AND TRADE REGULATION SECTION

The Antitrust, Franchising, and Trade Regulation Section hosted its annual forum on Jan. 20. The speaker was Thomas Ayres of Witmer Karp Warner & Ryan in Boston, who presented a webinar on the development of the independent contractor/franchisee issue in franchising and discussed the several cases pending in the courts focusing on whether franchisees are the franchisor's employees. He also discussed the PRO Act and how its passage could affect the future of franchising. The webinar can be found at perma.cc/42SQ-RNEL.

GOVERNMENT LAW SECTION

The Government Law Section will hold its annual summer conference June 24-25 at the Grand Traverse Resort. The in-person conference will address diversity, equity, and inclusion (DEI) in the municipal sector. Content will include a presentation on implicit bias and using DEI as bias interrupters along with a panel discussion that tackles the legal considerations surrounding implementation of DEI goals and initiatives. Visit the section website at connect.michbar.org/govlaw/home for details in the coming weeks.

HEALTHCARE LAW SECTION

The Healthcare Law Section is hosting a discussion on Michigan legislative changes on Thursday, April 7. Panelists include Rep. Graham Filler, a member of the House of Representatives Health Policy Committee; Rep. Angela Witwer; and Dom Pallone, executive director of Michigan Association

of Health Plans. The expected discussion topics include auto no-fault, surprise billing, and mental health law changes.

IMMIGRATION LAW SECTION

There appears to be more movement on loosening restrictions on employment-based immigration visas in order to address the great need to fill jobs in the United States. The hope is that such visas would be extended to blue-collar workers as well as the white-collar workforce. No movement yet on trying to permanently legalize DREAMERS — people who have lived in the U.S. without official authorization since coming to the country as minors. Stay tuned!

INSURANCE AND INDEMNITY LAW SECTION

Please join us for our next business meeting on Thursday, April 14, at 4 p.m. at the Detroit Athletic Club. The meeting with be followed by a discussion with prior section chairs about renewal of our five-year strategic plan. Space is limited. For details on the business meeting and our 2022 scholarship program, visit us on Facebook or at connect.michbar.org/insurance/home.

LABOR AND EMPLOYMENT LAW SECTION

The LELS mid-winter meeting and annual meeting was held on Jan. 21. Five legal updates have been uploaded to the section website. The section also elected the following as officers: Keith Brodie, chair; Heidi Sharp, vice chair; Tad Roumayah, secretary; and Mami Kato, treasurer. Also, two new members — Benjamin King and Haba Yono — joined the council. The council looks forward to continuing its tradition of presenting timely and informative programming and creating opportunities for collegiality across the section and state.

LITIGATION SECTION

For the first time ever, Michigan is hosting the national championship of the High School Mock Trial competition under the leadership of the Michigan Center for Civic Education (MCCE). The MCCE is also hosting Michigan's state championship. Many volunteers are needed to support the programs. The Litigation Section is one of the competition's many important sponsors. For information on how you can help, visit the MCCE website at miciviced.org/programs/mock-trial/ or email Fatima M. Bolyea at fbolyea@manteselaw.com.

PARALEGAL/LEGAL ASSISTANT SECTION

The Paralegal/Legal Assistant Section held its annual meeting in late September at the Homestead Resort in Glenn Arbor. The section's 2021-2022 leaders are: Michelle Rachmaninow, chair; Felica Watson, chair-elect; Marianne Delany, treasurer; and Natalie Walter, secretary. The section looks forward to upcoming educational and social events for 2022. Check out our website at connect.michbar.org/paralegal/home for more information.

SOCIAL SECURITY SECTION

The Social Security Section will offer two more seminars this year, and we hope you will join us. Our Boyne Mountain seminar takes place from June 12-14. We are lining up an impressive agenda of speakers. We will also meet at Schoolcraft College on Sept. 23 for our fall seminar. Sign up for the section listserv for further updates.

WORKERS' COMPENSATION LAW SECTION

The section's annual meeting will be held on June 30 at Crystal Mountain with a dinner celebrating the 2022 hall of fame class and the Don Ducey Award winner. A seminar and business meeting follows at 9 a.m. on July 1. A future eblast and the section newsletter will have further details in the coming months.

YOUNG LAWYERS SECTION

The Young Lawyers Section held several educational events during the winter. The next action items include collaborating for a webinar, hosting a fitness and wellness event, and outreach with law students. The section is also planning a virtual national mock trial competition.

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FROM THE PRESIDENT

DANA WARNEZ

Strive to thrive

ONE BREATH AT A TIME

> "During a lecture Suzuki Roshi had said that life was impossible.
> 'If it's impossible, how can we do it?' a student asked.
> 'You do it every day,' Suzuki answered."[1]

I discovered Shunryu Suzuki and mindfulness in May 2002, oddly enough at my father's funeral Mass. I sat in the front row and listened, my interest piqued, as the priest told a story that went something like this:

> When a person dies, they prepare by giving everything they have away. When it's time to go, the dying person embarks on a sailboat that sails away until it slips below the horizon. We are on the shore watching them go, until we simply don't see the boat any longer — but the boat is there. The boat doesn't cease to exist. It is just on its way to its new destination.

The priest attributed the story to a Buddhist monk named Shunryu Suzuki. It was such an unusual story for a priest to tell that I had to find out more about this monk. I discovered the biography of Shunryu Suzuki, Crooked Cucumber, authored by David Chadwick, and read it off and on throughout the following summer.

I learned about this man from Japan who grew up poor and followed his father's example to become a priest. Suzuki became close to Westerners living in Japan and won them over, helping them to understand and respect his way of living. This led him to emigrate to the United States, establish a following and ultimately found Tassajara, his Buddhist monastery in San Francisco. The story set me on a path to finding out more about mindfulness and learning about breathing and meditation.

Mindfulness seems to be much more widespread and embraced throughout our culture today than it was when I was first introduced to it. Even in the pages of the Bar Journal, you can read monthly articles on "Practicing Wellness." The guidance in these columns reminds us how important it is to take time for yourself, and how meditation can reduce or prevent the increasingly scary trends prevalent in our legal professional community.

As lawyers, we are disproportionately affected by problem drinking, anxiety, depression, and stress. Compared to other professions, lawyers are also at a higher risk of suicide. I stopped to think of colleagues I have known who have lost their life to substance abuse and/or suicide, and I counted five people without blinking.

It's crucial that we stop thinking we are deficient or defective if we experience problems with substance abuse or our mental health. Alternatively, we must start to think holistically about our experiences, and strive to thrive. It is time for us to really strive to be the

best people we can be by committing to our mental, emotional, and physical health.

As the new year rang in, some good lawyer friends of mine invited me to participate in a wellness challenge. The goal is to do something every day that promotes health and well being in our lives. It could be rest, reading, exercise, prayer, attending a seminar, taking a vacation, whatever it is that will enhance our outlook and overall health. Participation also required that we agree to journal our individual efforts, so that we can look back at the end of the year and assess what strides we made and celebrate our successes.

Of course, I accepted the challenge. I started off this endeavor with great enthusiasm for goals to read more, get some exercise, eat healthy, and prioritize rest. Meri and I enthusiastically went through some of our favorite vegetarian cookbooks at home, planned out some different meals, and set an intention to hike some parks in the area that we haven't visited yet. It has enhanced our time together at home.

Now with March upon us, the pace and dedication to this approach is slipping, just a little. I am reminded, though, to be mindful about that, too. It is not the end of the world that my enthusiasm isn't quite as fevered. My lawyer friends check in with texts of encouragement, and Meri also reminds me to keep it all in perspective. I will get back at it, and I will keep going. It's what mindfulness is all about. It's what life is all about.

Protecting our mental, emotional, and physical health sometimes requires additional support outside of our friends and family. I also know that there are times that people outside of the legal community simply don't understand our pressures and the demands of our work. If you are feeling alone and are dealing with difficulties, I remind you that you can always seek confidential referrals for support through the State Bar of Michigan's Lawyers and Judges Assistance Program. LJAP also offers convenient virtual support group sessions on Wednesday nights. These online sessions are wholly confidential and facilitated by an LJAP clinical case manager. Find more information on LJAP and its programs at michbar.org/ljap.

Whatever path you choose, I hope that you incorporate some steps to find a way to not just plod through your day-to-day routines, but instead choose to really enjoy life and thrive. I encourage you to strive to feel more engaged and more fulfilled in your practice and in life. The Bar is here to help, and the profession is looking for ways to help even more. Stay tuned. Breathe in, breathe out. Be in the here and now. I'm rooting for you.

ENDNOTES

1. Chadwick, "To Shine One Corner of the World: Moments with Shunryu Suzuki" (New York: Broadway Books, 2001), pg 74.

PETER CUNNINGHAM NAMED NEXT EXECUTIVE DIRECTOR OF THE STATE BAR OF MICHIGAN

Peter Cunningham was selected as the sixth executive director of the State Bar of Michigan by the Board of Commissioners on Friday, Jan. 21. Cunningham, who previously served as assistant executive director, will oversee the day-to-day operations of the State Bar, implement policies set by the Board of Commissioners and the Representative Assembly, and direct the efforts of State Bar staff in his role as executive director.

His appointment begins March 1. Cunningham succeeds Janet Welch, who is retiring from the position she has filled since 2007.

Cunningham joined the State Bar in 2012 as director of governmental relations and assumed the responsibilities of assistant executive director in 2015. He has an extensive career in public service in Michigan, including serving as chief of staff to the speaker of the Michigan House of Representatives. Immediately prior to coming to the Bar, Cunningham was executive director of the Michigan Campaign for Justice, a nonprofit created to promote improvements to Michigan's public defense system.

SBM President Dana Warnez, who led the executive director search committee through an eight-month national search process, said, "I am confident that Peter's experience, intelligence, integrity, and familiarity with state government and the legal community will serve the State Bar, our members, and the public well." Warnez praised the search process and the quality of the candidates for the position. "I am very grateful for the extraordinary efforts of the search committee and to the Board of Commissioners, who performed the difficult task of selecting the best candidate from a number of very impressive, highly qualified applicants."

As assistant executive director, Cunningham has served on the executive leadership team at the State Bar for seven years. He directly oversees operations and policy for the State Bar including the organization's finance, governance, communications, government relations, and research teams.

"I can't imagine any work more satisfying than helping improve our system of justice and the provision of legal services," Cunningham said. "The State Bar of Michigan has been a leader in those efforts thanks to outstanding leadership, an engaged legal community, and an exceptional staff. I am humbled and excited to be able to contribute to that work as executive director."

Cunningham earned his bachelor's degree in political science and government from Juniata College and his master's degree in anthropology from the University of Wisconsin-Milwaukee. He moved to Michigan in 1996 to further pursue his studies in anthropology at Michigan State University.

Cunningham lives in Okemos with his wife, Cathy Bacile Cunningham, and their two children, Harper and Owen.

IN MEMORIAM

TERRY R. BANKERT, P49048, of Flint, died Nov. 11, 2021. He was born in 1951, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1993.

ROBERT L. BENHAM JR., P10678, of Mesa, Arizona, died Jan. 11, 2022. He was born in 1924, graduated from Wayne State University Law School, and was admitted to the Bar in 1951.

ALBERT J. BIRKBECK, P62749, of Grand Rapids, died Nov. 1, 2021. He was born in 1960 and was admitted to the Bar in 2001.

RICHARD L. BOLHOUSE, P29357, of Grandville, died Dec. 10, 2021. He was born in 1953 and was admitted to the Bar in 1978.

JORDAN EMERSON CASE, P68627, of Howell, died Sept. 2, 2021. He was born in 1974, graduated from Michigan State University College of Law, and was admitted to the Bar in 2005.

THOMAS J. CAVANAUGH, P11747, of Troy, died Sept. 16, 2021. He was born in 1946, graduated from University of Detroit School of Law, and was admitted to the Bar in 1972.

KENNETH M. DAVIES, P12538, of Detroit, died May 16, 2021. He was born in 1939, graduated from Wayne State University Law School, and was admitted to the Bar in 1964.

JOHN P. DICKEY, P28056, of Jackson, died Dec. 10, 2021. He was born in 1946, graduated from University of Michigan Law School, and was admitted to the Bar in 1977.

KATHLEEN M. DILGER, P35561, of Rochester, died Jan. 25, 2022. She was born in 1958, graduated from Wayne State University Law School, and was admitted to the Bar in 1983.

JOHN H. FILDEW, P13413, of Royal Oak, died Jan. 31, 2022. He was born in 1933, graduated from University of Michigan Law School, and was admitted to the Bar in 1957.

KEVIN J. GLEESON, P30099, of Southfield, died Sept. 16, 2021. He was born in 1951, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1979.

EUGENE A. GORETA, P14207, of Ecorse, died Dec. 12, 2021. He was born in 1930, graduated from University of Detroit School of Law, and was admitted to the Bar in 1968.

FRED ALAN GREENAWALT, P69728, of Goshen, Indiana, died Aug. 10, 2021. He was born in 1950, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 2006.

GEORGE W. GREGORY, P32052, of Troy, died Jan. 4, 2022. He was born in 1948, graduated from Wayne State University Law School, and was admitted to the Bar in 1980.

BRUCE A. HAHN, P34622, of Kalamazoo, died Oct. 2, 2021. He was born in 1954 and was admitted to the Bar in 1982.

ANDREW J. HALIW, P14541, of Naples, Florida, died Sept. 22, 2021. He was born in 1946, graduated from Wayne State University Law School, and was admitted to the Bar in 1973.

COLLEEN M. HEFFRON, P39413, of Largo, Florida, died May 9, 2021. She was born in 1957, graduated from Wayne State University Law School, and was admitted to the Bar in 1986.

THOMAS P. HUSTOLES, P23620, of Portage, died Dec. 7, 2021. He was born in 1949, graduated from University of Detroit School of Law, and was admitted to the Bar in 1974.

JAMES B. JENSEN JR., P31810, of Lansing, died Oct. 31, 2021. He was born in 1953, graduated from University of Michigan Law School, and was admitted to the Bar in 1980.

PATRICIA STEPHENS JOHNSON, P34231, of Northville, died Dec. 1, 2021. She was born in 1958, graduated from Detroit College of Law, and was admitted to the Bar in 1982.

STEPHEN C. KAIL, P27224, of Ludington, died April 6, 2021. He was born in 1946, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1977.

DAVID D. KOHL, P25286, of Novi, died Nov. 18, 2021. He was born in 1947, graduated from Detroit College of Law, and was admitted to the Bar in 1975.

ARTHUR H. LANDAU, P16381, of Bloomfield Hills, died Jan. 1, 2022. He was born in 1940, graduated from University of Detroit School of Law, and was admitted to the Bar in 1970.

MICHAEL THOMAS LEWIS, P76990, of Harper Woods, died Aug. 7, 2021. He was born in 1988, graduated from University of Michigan Law School, and was admitted to the Bar in 2013.

LEONARD J. MALINOWSKI, P24257, of Fredericksburg, Virginia, died March 10, 2021. He was born in 1938, graduated from Detroit College of Law, and was admitted to the Bar in 1974.

CYNTHIA MARIE-MARTINOVICH LARDNER, P37000, of Troy, died April 12, 2021. She was born in 1959, graduated from University of Detroit School of Law, and was admitted to the Bar in 1984.

BOULOS NAIM MASHNI, P80636, of Northville, died Sept. 15, 2021. He was born in 1963, graduated from Western Michigan University-Thomas M. Cooley Law School, and was admitted to the Bar in 2016.

THOMAS R. MCASKIN, P24017, of Bloomfield Hills, died July 13, 2021. He was born in 1947, graduated from University of Detroit School of Law, and was admitted to the Bar in 1974.

RONALD E. MCNULTY, P35313, of Farmington Hills, died Dec. 12, 2021. He was born in 1955, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1983.

LARAE G. MUNK, P41154, of Garden City, Kansas, died May 15, 2021. She was born in 1950, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1988.

ANGELA PALMIERI, P28567, of Dearborn Heights, died Jan. 12, 2022. She was born in 1951, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1978.

MARISA C. PETRELLA, P35643, of Southfield, died Nov. 29, 2021. She was born in 1959, graduated from University of Detroit School of Law, and was admitted to the Bar in 1983.

RANDOLPH P. PIPER, P23226, of Fenton, died Jan. 5, 2022. He was born in 1948, graduated from University of Detroit School of Law, and was admitted to the Bar in 1973.

THOMAS M. REID, P19321, of Saint Clair Shores, died Dec. 12, 2021. He was born in 1936, graduated from University of Detroit School of Law, and was admitted to the Bar in 1962.

JOYCE E. ROSENTHAL, P19648, of Clawson, died Jan. 24, 2022. She was born in 1944, graduated from Wayne State University Law School, and was admitted to the Bar in 1969.

LINDA STEADLEY SCHWARB, P25395, of Macomb, died May 12, 2021. She was born in 1950, graduated from Wayne State University Law School, and was admitted to the Bar in 1975.

IRVING C. SHAW JR., P20302, of Manitou Beach, died Dec. 23, 2021. He was born in 1930 and was admitted to the Bar in 1960.

JOSEPH SHULMAN, P20404, of Franklin, died Dec. 22, 2021. He was born in 1929, graduated from University of Michigan Law School, and was admitted to the Bar in 1953.

JACK D. SHUMATE, P23674, of Detroit, died Dec. 19, 2021. He was born in 1936 and was admitted to the Bar in 1974.

EVERETT F. SIMPSON, P61387, of Audubon, New Jersey, died Aug. 26, 2021. He was born in 1950, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 2000.

DAVID L. SMITH, P20636, of Olivet, died Nov. 22, 2021. He was born in 1939, graduated from Detroit College of Law, and was admitted to the Bar in 1966.

AUDREY C. STROIA, P21098, of Southgate, died Dec. 20, 2021. She was born in 1933, graduated from Wayne State University Law School, and was admitted to the Bar in 1961.

BERNARD E. STUART, P21110, of Rochester Hills, died Jan. 18, 2022. He was born in 1931, graduated from University of Detroit School of Law, and was admitted to the Bar in 1960.

HON. ARTHUR J. TARNOW, P21270, of Detroit, died Jan. 21, 2022. He was born in 1942, graduated from Wayne State University Law School, and was admitted to the Bar in 1966.

MICHAEL E. THOMAS, P25798, of Flint, died Nov. 29, 2021. He was born in 1948, graduated from Detroit College of Law, and was admitted to the Bar in 1975.

THOMAS T. THOMPSON, P26265, of Ludington, died December 15, 2021. He was born in 1924 and was admitted to the Bar in 1951.

ROBERT CHARLES TREAT JR., P63873, of Southgate, died July 6, 2021. He was born in 1957 and was admitted to the Bar in 2002.

HELEN C. TSENG, P53868, of Oakville, Ontario, died June 28, 2021. She was born in 1964 and was admitted to the Bar in 1995.

DAVID RUSSELL WHITFIELD, P73352, of Grand Rapids, died Dec. 15, 2021. He was born in 1981, graduated from Michigan State University College of Law, and was admitted to the Bar in 2009.

THOMAS J. WING, P22437, of Northville, died Dec. 2, 2021. He was born in 1930, graduated from University of Detroit School of Law, and was admitted to the Bar in 1956.

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.

1950s

As part of our celebration of the Michigan Bar Journal's 100th year, each month we highlight important events and legal news in a decade-by-decade special report.

Often remembered as a safe, bland, and colorless era — almost an episode of "The Adventures of Ozzie and Harriet" — the 1950s were anything but. Communism, civil rights, and scientific endeavor shaped the decade. Aided by the People's Republic of China, North Korea waged war against the United States and South Korea. Joseph Stalin died and his successor, Nikita Khrushchev, told the West, "We will bury you." Sen. Joseph McCarthy continued the 1940s witch hunts for communists. The U.S. Supreme Court declared segregated public education unconstitutional. Rosa Parks refused to give up her seat on a bus to a white passenger, leading to a citywide bus boycott. Arkansas's governor blocked nine black children from attending Little Rock schools until federal troops arrived.

Integration did not proceed with the deliberate speed the Supreme Court ordered. Jim Crow laws persisted and hate groups like the Ku Klux Klan grew stronger. Women forced out of their jobs after World War II faced even greater pressure to stay in the home. The U.S. detonated the first hydrogen bomb, accelerating the Cold War nuclear arms race, and launched the first nuclear-powered submarine. An International Geophysical Year promoted scientific exploration and cooperation. And when the Soviet Union launched Sputnik 1, the U.S. found itself running behind in the space race to the moon.

Television supplanted radio as the source of most Americans' home entertainment. Audiences loved Lucy, agreed that "Father Knows Best," were content to "Leave It to Beaver," and chuckled along with the laugh track of "The Many Loves of Dobie Gillis." Perry Como, Dinah Shore, Garry Moore, and radio stars from the 1940s hosted variety shows, and dramas included "Gunsmoke," "Peter Gunn," and "Dragnet." Girls and boys helped "Mr. Wizard" do science experiments and watched "Captain Kangaroo." TV offered late-night movies, while theaters showed "Cinderella" (1950), "High Noon" (1952), "The Caine Mutiny" (1954), "The Seven Year Itch" (1955), "The Bridge on the River Kwai" (1957), and "North by Northwest" (1959). "Guys and Dolls," "The Music Man," and "Oklahoma!" opened on Broadway. "The Lord of the Rings" trilogy was published. Elvis Presley sang "Love Me Tender" and "Hound Dog" on "The Ed Sullivan Show," though contrary to the popular and oft-repeated legend, his hips were visible onscreen. Rock and roll was here to stay, but it shared the airwaves with doo-wop, Tony Bennett, Dave Brubeck, and Loretta Lynn.

JUNE 25-30, 1950

North Korean troops cross the 38th parallel into South Korea, beginning the Korean War. An armistice signed on July 27, 1953, ends active fighting.

OCTOBER 2, 1950

The "Peanuts" comic strip by Charles M. Schultz debuts in seven newspapers.

FEB. 26, 1951

The 22nd Amendment takes effect, prohibiting any person from being elected president more than twice, or more than once after serving longer than two years of an unelected term. Though it does not apply to President Harry S. Truman, he decides not to run again in 1952.

Looking back: 1950s

BY JOHN O. JUROSZEK

JULY 16, 1951
"The Catcher in the Rye" by J. D. Salinger is published. It will become both one of the most banned books and one of those most assigned in schools.

SEPTEMBER 24, 1952
In the Checkers speech on national TV, vice-presidential candidate Richard M. Nixon confirms he accepted $18,235 from supporters but used it only for political expenses. He asks viewers whether he should stay on the ticket, adding that no matter what, his family will keep Checkers, the cocker spaniel an admirer gave them.

NOVEMBER 4, 1952
Dwight D. Eisenhower, former WWII Supreme Allied Commander in Europe, is elected president.

DECEMBER 28, 1952
The Detroit Lions beat the Cleveland Browns to win their second NFL championship. They win championships again in 1953 and 1957.

JUNE 2, 1953
Elizabeth Windsor, the Princess of York, is crowned Queen Elizabeth II. She had acceded to the throne on Feb. 6, 1952, upon the death of her father, George VI. In September 2015, she surpassed Queen Victoria as the longest-reigning British monarch.

Like the decade before, the 1950s begin with a war. North and South Korea have been separate countries since shortly after World War II. In June 1950, North Korean forces cross the 38th parallel, which divides the countries. The United Nations authorizes military force to defend South Korea and the United States becomes the primary U.N. combatant. Red China — the People's Republic of China, formed after Mao Tse-tung's 1949 revolution — begins assisting North Korea in October. World War II hero Gen. Douglas MacArthur leads the American forces with great success initially, but losses multiply and President Harry S. Truman soon relieves MacArthur of his command for not respecting Truman's authority. Almost 37,000 Americans die in Korea; 4,700 become prisoners of war. The war never actually ends but fighting ceases after a July 1953 armistice. The border between the Koreas is back where it started: the 38th parallel.

While World War II figured prominently in the Michigan State Bar Journal's pages, the Korean War does not. We find lists of lawyers in the military and notices about those recalled to service. Recognizing that "lawyers are being taken into active military life again," one article examines the Soldiers and Sailors Civil Relief Act, while another reviews soldiers' reemployment rights.

Erle Stanley Gardner — an attorney and the creator of the character Perry Mason — presents a serious talk at the 1950 SBM Annual Meeting about the use and misuse of circumstantial evidence in homicide cases. Television overtakes radio as the primary source of Americans' home entertainment; nearly 80% of households purchase a TV in the 1950s. Americans watch "I Love Lucy," "Playhouse 90," and "The Twilight Zone." Elvis Presley appears on "The Ed Sullivan Show," giving rock and roll respectability. Because the "meteoric growth" of TV "has brought with it a host of problems," the Bar Journal publishes "Television and the Law." The SBM inaugurates a feature on Detroit TV station WXYZ called "Your Day in Court." Nestled in an issue devoted entirely to public relations is the article "Television and Bar PR." "Listen, Girls!" — a 1952 column by anonymous Stella the Steno — offers tongue-in-cheek advice to "law office secretaries" who "know that the boss's practice would collapse" if they weren't there every day "banging away at the old Remington."

"Honest" voting "errors" are discovered during Gov. G. Mennen Williams's 1950 reelection bid. His lead plummets to a razor-thin 1,154-vote margin. The Bar Journal tells us how "a 'blue ribbon' panel of 120 of the State's ablest attorneys" — working without pay — recounted a "record 1,900,000 votes," discovering that "the human errors, inexcusable though they may be, were negligible" and that Williams won. It describes the estimated $150,000 public expenditure as "a tidy sum, but cheap if the measure of value be restoration of confidence in election honesty." A similar lawyer-led recount occurs in 1952, with Williams again winning. He is reelected three more times and serves for the entire decade.

During the late 1940s, the House Un-American Activities Committee (HUAC) conducted hearings into perceived communist influences over the movie industry. Many actors, writers, and directors were convicted of contempt for lying at the hearings. Studios blacklisted others. HUAC also heard testimony about communists in federal government. Former spy Whittaker Chambers testified against Alger Hiss. Hiss denied the charges but some HUAC members, particularly Richard M. Nixon, had doubts and

Hiss was convicted of perjury. Similar hearings in various committees continue in the 1950s. While speaking to the West Virginia Republican Women's Club in February 1950, Sen. Joseph McCarthy (R-Wis.) claims to have a list of Communist Party members in the State Department. Espionage involving the Soviets and others is a serious threat, but McCarthy's list is spurious. It nonetheless leads to numerous hearings with baseless accusations, becoming a witch hunt. McCarthyism inflames the ongoing Red Scare. In response, the Cincinnati Reds baseball team changes its name to the Cincinnati Redlegs. McCarthy is eventually censured and dies soon after, but the Cold War grinds on.

The Red Scare engulfs lawyers. The ABA forms the Committee to Study Communist Tactics, Strategy, and Objectives; by resolution, it approves of "the manner in which" various congressional bodies are investigating Communist Party activities. In "ABA — Bulwark Against Communism," the Bar Journal details the ABA committee's proceedings. It also reprints the ABA resolution to "expel from its membership any and every individual who is a member of the Communist Party" or "advocates Marxism-Leninism." The SBM forms the Special Committee on Disbarment of Subversive Members of the Bar, which exists until 1955.

Women — including those forced to leave their jobs after World War II ended — are under even greater pressure to remain at home and women's rights stagnate. In May 1954, *Brown v Topeka Board of Education* holds that racial segregation of public education violates equal protection. Chief Justice Earl Warren's unanimous opinion concludes that separate-but-equal facilities, approved by *Plessy v Ferguson* in 1896, are inappropriate in education. A year later, *Brown II* requires school desegregation to proceed "with all deliberate speed." It does not.

While *Brown* has effectively sounded the death knell for "separate but equal," civil rights advances come slowly. On Dec. 1, 1955, Rosa Parks rides a Montgomery, Alabama, bus home from work. The driver orders four passengers to leave their row in the "colored section" to make room for a white passenger. Three comply, but Parks refuses and is arrested, eventually paying a $10 fine and $4 in court costs. Though Parks is not the first to defy the Montgomery ordinance, her arrest prompts a 381-day bus boycott by Black riders despite the hardships it creates for the city's poorer residents. Martin Luther King Jr., a young Montgomery minister, leads the boycott. The city repeals the ordinance.

Three years after *Brown*, Arkansas Gov. Orval Faubus deploys the National Guard to assist protestors blocking nine Black students from entering a Little Rock high school under a desegregation plan. President Eisenhower federalizes the Arkansas Guard, eliminating Faubus's control, and sends in the Army's 101st Airborne Division so the Little Rock Nine can safely go to school.

After Germany's successful use of the supersonic V-2 rocket in World War II and the Manhattan Project's development of the atomic bomb, the United States, the Soviet Union, and other nations devote tremendous resources to nuclear weapons and rocketry. The U.S. in 1952 explodes a hydrogen bomb — a thermonuclear device far more powerful than the atomic bombs that leveled Hiroshima and Nagasaki — but the Soviets detonate their own H-bomb soon after, and other nations follow. The nuclear arms race accelerates at a breakneck pace. Crick and Watson describe DNA's helical structure in 1953 without acknowledging their use of critical data from another researcher, Rosalind Franklin. In late 1957, during the International Geophysical Year, the Soviet Union launches Earth's first artificial satellite. Sputnik is an unimposing 23-inch, 184-pound metal sphere with four radio antennas, but its appearance in the October skies shocks the American public and galvanizes the space race between the two countries. NASA is created in 1959.

Not long after the H-bomb explodes, the Bar Journal publishes "Law in the Atomic Age," which discusses nuclear war capabilities, and another article on peaceful uses of atomic energy. By 1957, SBM forms the Committee on Atomic Energy Law. Shortly after Sputnik, the State Bar turns its thoughts to space, leading to the article "Law for the Space Age" and formation of the Special Committee on Space Law in 1959. The colorful November 1958 cover depicts flying cars to accompany "Aviation Law and Flying Automobiles," an article about military research projects such as Chrysler's flying Jeep.

The Cold War has escalated steadily since the Korean War's end. Joseph Stalin — the Soviet Union's leader since 1924 and Hitler's rival in atrocities — dies in 1953; his successor, Nikita Khrushchev, denounces Stalin's crimes. But Khrushchev himself declares to Western ambassadors at a 1956 Moscow reception, "We will bury you." France's disastrous 1954 defeat at Dien Bien Phu during its war in Indochina leads to the creation of North and South Vietnam, and the United States assists South Vietnam during Eisenhower's presidency. Justifying its actions by the domino theory — that one nation falling to communism leads others to topple — the CIA aids a coup in Guatemala. The Soviet Union invades Hungary, its satellite country, to end a 1956 uprising against Soviet rule. In 1959, Khrushchev and Nixon debate capitalism vs. communism while standing in a model kitchen at an American exhibit in Moscow. Fittingly, it is called the Kitchen Debate and later shown on U.S. and Soviet television. The Eastern Bloc's threats to the safety of West Berlin grow. Fidel Castro overthrows the Batista government in Cuba in late 1959 as another domino falls to communism.

The stage is now set for massive protests and greater civil rights victories in the coming decade. Nuclear proliferation will soon lead to brinksmanship and a nuclear crisis. The 1950s Beat Generation will fade and a new counterculture will emerge. And the legacy of America's aid to South Vietnam during the 1950s will include some of the most divisive events of the tumultuous 1960s.

John O. Juroszek was reporter of decisions for the Michigan Supreme Court and a nonpartisan legislative drafter for the Michigan Legislature. He has been a member of the Michigan Bar Journal Committee and its predecessor since 2006.

APRIL 16, 1954

Led by Gordie Howe and Ted Lindsay, the Detroit Red Wings beat the Montreal Canadiens to win their third Stanley Cup of the decade, having won championships in 1950 and 1952. They win the cup again in 1955.

MAY 17, 1954

In a unanimous opinion in *Brown v Board of Education*, the U.S. Supreme Court holds that racially segregated public education is unconstitutional. Two years later, *Brown II* requires that desegregation proceed "with all deliberate speed."

APRIL 1955

Mass vaccination clinics using Jonas Salk's polio vaccine begin. His vaccine and another developed by Albert Sabin effectively eliminate the devastating illness.

AUGUST 29, 1955

Emmett Till, a Black 14-year-old from Chicago visiting relatives in Mississippi, is brutally murdered following accusations that he behaved improperly toward a white woman. The jury deliberated 67 minutes before acquitting the killers, who later admitted the crime.

JUNE 29, 1956

President Eisenhower signs the Federal Aid Highway Act into law, paving the way for the interstate highway system across the U.S. Eisenhower is reelected in November.

OCTOBER 4, 1957

The Soviet Union launches Sputnik 1, the first artificial Earth satellite, shocking the American public and sparking the space race between the U.S. and the U.S.S.R. Sputnik 2 follows a month later, carrying the space dog Laika, who dies on the fourth orbit. The U.S. finally launches its own successful satellite on Jan. 31, 1958.

NOVEMBER 1, 1957

The Mackinaw Bridge opens to traffic. Gov. G. Mennen Williams walks across it with 67 others at the June 1958 dedication ceremony, beginning what would become the annual Labor Day Bridge Walk.

EARLY 1958

"Anatomy of a Murder" by Robert Traver — the pen name of Michigan Supreme Court Justice John D. Voelker — is published. Inspired by a trial in which Voelker was defense attorney, it is the January Book-of-the-Month Club selection. The 1959 movie starring Jimmy Stewart is filmed in the Marquette County courthouse and nearby locales.

MAY 1, 1959

The new State Bar of Michigan building at 306 Townsend Street in Lansing is dedicated on Law Day.

STATE BAR OF MICHIGAN

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FAIR HOUSING ACT
DISPARATE IMPACT THEORY OF LIABILITY

An underutilized tool for combatting policies that perpetuate segregation

BY STEVE TOMKOWIAK

Congress began debating fair housing legislation in 1966 during a period of widescale urban unrest,[1] but progress stagnated for almost three years. Then, in March 1968, the Kerner Commission Report found that America was "moving toward two societies, one Black, one White — separate and unequal"[2] and one of its major recommendations was enactment of a comprehensive federal fair housing law.[3] Less than a month later, Dr. Martin Luther King Jr. was assassinated, sparking a new round of unrest. By April 11, one week after King's death, Congress passed the Fair Housing Act (FHA).[4]

The disparate impact (DI) theory of liability was recognized as an important tool in remedying residential segregation.[5] Unfortunately, in the 50 years since the FHA passed, the standard for determining DI liability remains unsettled, impeding the act's effectiveness.

Though the U.S. Supreme Court held in *Griggs v. Duke Power Co.* and *Smith v. City of Jackson*[6] that DI claims could be brought via Title VII and the Age Discrimination in Employment Act (ADEA),[7] the Court for more than 40 years did not address whether such claims could be brought under the FHA.[8] In 2012 and 2013, the Court granted certiorari in two cases to determine availability of DI claims under the FHA[9] but both "unexpectedly settled."[10]

During this time, all federal appeals courts considering DI claims under the FHA[11] recognized the theory of liability.[12] So, too, did the U.S. Department of Housing and Urban Development (HUD) in its adjudications.[13] The courts and HUD also recognized an additional category of DI liability in policies shown to have "the unjustified effect of perpetuating segregation."[14] There are no appellate decisions in Michigan state court cases addressing fair housing cases

involving DI claims. DI appears to be a wholly underutilized tool in Michigan to address housing policies that cause a disparate impact or perpetuate segregation.

HUD'S 2013 DI RULE

Establishing a uniform standard for disparate impact liability under the FHA proved elusive. In 2013, HUD clarified the framework by setting forth a uniform standard[15] with a three-part, burden-shifting approach:

1) The plaintiff has the burden of proving a "[d]iscriminatory effect" showing that the challenged practice "actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin."[16]
2) The defendant then has the burden to prove that the challenged practice "[i]s necessary to achieve one or more substantial, legitimate, nondiscriminatory interests" of the defendant.[17]
3) If the defendant satisfies this burden, the "plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect."[18]

THE SUPREME COURT *ICP* DECISION

In 2014, the Supreme Court agreed to review *Texas Dep't of Housing & Community Affairs v. The Inclusive Communities Project, Inc.* (ICP) to determine whether disparate impact claims are cognizable under the FHA.[19] The Court held that DI claims could be brought under FHA sections 804(a) and 805(a),[20] noting that when Congress passed the amendments to the FHA in 1988, all courts of appeals considering DI claims found that such claims could be brought under the act.[21] Congress, aware of this precedent, ratified the DI theory of liability as part of those amendments.[22]

Further, the Court found DI liability was consistent with the FHA statutory purpose, saying that "unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification"[23] and noted that recognizing DI liability "permits plaintiffs to counteract unconscious prejudices ... that escape easy classification as disparate treatment."[24] And like HUD in its 2013 rule, the Court also found that actions leading to perpetuation of segregation can give rise to DI liability[25] and, after summarizing the burden-shifting framework in the HUD rule, agreed that the plaintiff had the burden of proving there were no less-discriminatory alternatives.[26]

The Court articulated cautionary standards to govern the pleading and proofs for DI claims:

- A plaintiff must "allege facts at the pleading stage or produce statistical evidence demonstrating a causal connection" between the policy and discriminatory effects.[27]
- A robust causality requirement that ensures evidence of "racial imbalance ... does not ... establish a prima facie case of disparate impact." The robust causality requirement "protects defendants from being liable for racial disparities they did not create."[28]
- Policies of governmental or private actors will not give rise to DI liability unless they create "artificial, arbitrary, and unnecessary barriers."[29]

As noted above, the Court granted review limited to whether DI claims were cognizable under the FHA, declining to require briefing on applicable standards and burdens of proof. Nonetheless, lower courts have sought to apply these cautionary standards.

HUD's 2020 DI RULE AND RETURN TO THE 2013 RULE

Though the Supreme Court in *ICP* either left intact HUD's 2013 rule or, at best, made it somewhat more demanding,[30] the agency in 2020 took the unusual step of amending its 2013 rule, claiming revisions were needed "to better reflect" the *ICP* ruling.[31]

Prior to implementing the 2020 regulation, three separate actions challenged it.[32] In one, the district court enjoined HUD from implementing the regulation[33] and, as a result, it never went into effect. HUD subsequently reinstated its 2013 rule.[34]

DI CLAIMS UNDER *ICP* AND HUD's 2013 RULE

In post-*ICP* cases, courts have reached different conclusions as to whether the U.S. Supreme Court adopted HUD's framework or modified it.[35] Courts have also struggled with the robust causation requirement,[36] but the Supreme Court analysis in *ICP* may be best understood as accepting HUD's three-step, burden-shifting approach from its 2013 regulation while offering guidance in analyzing each step of the claim.

To show a prima facie case at the first step of a claim, the plaintiff must sufficiently allege (at the pleading stage) or establish (at summary judgment or trial) a robust causality requirement by specifically identifying the policy or policies causing the disparity. A one-time decision ordinarily fails to constitute a policy,[37] evidence showing only preexisting statistical disparities between protected and non-protected groups is not sufficient, and the disparity must not have been caused by factors distinct from the challenged policy.

AT A GLANCE

The disparate impact theory of liability was recognized as an important tool in remedying residential segregation. Unfortunately, in the 50 years since the federal Fair Housing Act passed, the standard for determining DI liability remains unsettled, impeding the act's effectiveness.

Most courts find robust causality if the plaintiff presents statistical evidence showing a protected class "is disproportionately affected by a . . . policy."[38] Other courts apply more stringent standards requiring the plaintiff to show not just that the policy had a disproportionate adverse effect on a protected class, but also caused the statistical disparity.[39]

In the rebuttal step, courts agree that the defendant has the burden of showing the policy is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests. This is not an onerous burden, and the defendant has leeway to identify the policy's valid interests or priorities. Further, federal law or other regulatory requirements that substantially limit the defendant's discretion in fashioning a policy should also be considered, as should policies of governmental or private actors that create "artificial, arbitrary, and unnecessary barriers."[40]

Analysis of the third stage under *ICP* does not vary from HUD's formulation. Both require the plaintiff to show the defendant's interests could be served by an alternative practice that has less discriminatory impact or effect.[41]

POST-*ICP* CLAIMS IN HOUSING-RELATED CONTEXTS

Courts have addressed FHA DI claims in residential housing-related contexts using the framework set forth in *ICP* and HUD's 2013 regulation. Five recent cases illustrate the variety of policies that may give rise to DI claims and show they may be successfully prosecuted.

Zoning (Race)

In *Mhany Mgmt, Inc. v. County of Nassau*,[42] the U.S. Court of Appeals for the Second Circuit considered a challenge to a city zoning ordinance as a perpetuation of segregation. The original multi-family residential group zoning would have allowed the plaintiff to construct residential apartment units in a city that contained no affordable housing and where minorities constituted about 4% of the overall population. Due to public pressure, the city rezoned the property to residential-townhouse, which defined "townhouse" as a "single-family dwelling unit."[43] The district court found that rezoning "significantly decreased the potential pool of minority residents likely to move into the new housing development."[44]

Establishing a uniform standard for disparate impact liability under the FHA proved elusive. In 2013, the U.S. Department of Housing and Urban Development clarified the framework by setting forth a uniform standard with a three-part, burden-shifting approach.

Analyzing the DI claim under *ICP* and HUD's 2013 regulation, the Second Circuit found that the rezoning decision perpetuated segregation within the city. In the second step of the claim, the city contended that rezoning advanced legitimate interests by reducing traffic and the strain on public schools. As to the third step, the court found that HUD regulations abrogated prior circuit precedent regarding burden of proof to establish the absence of a less discriminatory alternative. Since the district court placed the burden on the city to establish the absence of less-discriminatory alternatives, the appeals court reversed and remanded the ruling.[45]

Citizenship Status (National Origin)

In *Reyes v. Waples Mobile Home Park Ltd. Partnership*,[46] a mobile home park began enforcing a policy requiring all occupants to document their legal status in the U.S. by presenting an original Social Security card or an original (foreign) passport, U.S. visa, and original arrival/departure form (I-94 or I-94W). Under the policy, the park would not renew the lease and seek eviction for any tenant with one or more occupants who did not provide the required documentation.[47]

The plaintiffs alleged that Latinos comprised nearly 65% of the undocumented population in Virginia, undocumented immigrants comprised more than 36% of the Latino population in the state, and Latinos were 10 times more likely than non-Latinos to be adversely affected by the policy. The court said the plaintiffs satisfied *ICP's* robust causality requirement by asserting the policy would disproportionately subject Latino tenants to eviction.[48]

Insurance (Race and Sex)[49]

In *National Fair Housing Alliance v. Travelers Indemnity Co.*,[50] plaintiff's testers[51] in the District of Columbia posed as purchasers of an apartment complex and contacted various insurance companies to inform them that they participated in the Housing Choice Voucher (HCV)[52] program. In each instance, insurance brokers told testers the companies would not insure the property if voucher recipients resided in the building.[53]

According to statistics included in the complaint, D.C. households are approximately 45% non-Hispanic Black or African American and 41% non-Hispanic white. More than 47% of D.C. households are headed by women. For households receiving HCVs, 92% are non-Hispanic Black or African American compared to roughly 45% of all households receiving HCVs in D.C. Only 1% of HVC recipients are non-Hispanic whites. The percentage of households receiving HCVs headed by women totaled 81.5%, compared to 47% of all households headed by women in all of D.C. Further, residents participating in the HCV program were largely concentrated in four census tracts that were nearly 85% Black compared to the entire D.C. percentage of 51%.[54]

The court held that the plaintiff's allegations satisfied the ICP robust pleading requirement. According to the court, the insurer's policy "will exacerbate racial and sex-based disparities by having a disproportionate

impact on African-American residents and members of women-headed households."[55]

Occupancy Limits (Familial Status)

In *Rhode Island Commission for Human Rights v. Graul*,[56] the tenants, a married couple renting a one-bedroom unit, had a child. The bedroom measured at least 150 square feet. The apartment complex gave the tenants six months to move to a two-bedroom unit or vacate due to a two-person-per-bedroom unit policy.[57]

Applying the three-step analysis in *ICP*, the court found in step one that a prima facie case was established based on evidence showing disparity ratios for three-person households with children, four-person households, and five-person households well above the 1.25 ratio for statistical significance,[58] even when controlled by income range.

In the second step, the apartment complex claimed its policy complied with the view of a local official regarding the building code and asserted there was a minimum requirement of 170 square feet for bedroom occupancy by three persons. The court rejected this assertion as misreading the building code, which required bedroom units to have at least 70 square feet for the first occupant and at least 50 square feet per person for more than one occupant. A 150 square foot bedroom unit, therefore, could hold three people.[59] The complex failed to carry its burden in the second step, and the court did not need to reach the third step.

Use of Criminal Records (Race and National Origin)

Connecticut Fair Hous. Ctr v Corelogic Rental Prop. Solutions, LLC[60] involved a challenge to the defendant's use of CrimSAFE criminal record screening. The defendant provides a housing provider with a form listing general categories of crimes for which it would like CrimSAFE to screen. Using those categories, the defendant generated a one-page report indicating whether disqualifying records were found, including arrests that that did not lead to conviction. The CrimSAFE report had a maximum "look-back" of 99 years for convictions and seven years for non-convictions and provides no additional information such as the underlying records, the nature of the alleged crime, the date of the offense or the outcome of the case, if any.[61]

One plaintiff, a Latino man, suffered debilitating injuries in a car accident, rendering him unable to speak, walk, or care for himself. The year before his injury, he was arrested for retail fraud but never convicted. Using CrimSAFE, the defendant informed the housing provider that the plaintiff was disqualified based on unspecified criminal records.[62]

In denying cross motions for summary judgment on the DI claims, the court noted statistical evidence showing Blacks were more than four times as likely as whites and Latinos more than 2.5 times as likely as whites to have been jailed at some point in their lives.

With respect to the second step, the defendant claimed that federally subsidized properties required screening for arrests and convictions and the process accurately categorizes risk levels and reduces bias. The court, however, found that the defendant did not provide legal or empirical support for treating a pending arrest record as sufficient to determine that a prospective tenant would threaten the health or safety of a residential community. The court noted that HUD, in informal guidance, treated arrest records as insufficient to warrant denial of admission.[63] In the third step, the court found that the plaintiffs met their burden under *ICP* and the 2013 regulation of showing less discriminatory alternatives.

CONCLUSION

The disparate impact theory of liability is well established as a cognizable theory of liability in fair housing cases. DI claims may challenge practices that result in discrimination. Still, the theory remains underutilized as a tool to combat policies that adversely impact one or more protected classes or perpetuate segregated housing patterns. The DI theory of liability should prompt all entities involved in any aspect of housing to carefully review all policies — without establishing unlawful quotas — to ensure they do not result in adverse discriminatory effects or perpetuate segregation.

Steve Tomkowiak is executive director of the Fair Housing Center of Metropolitan Detroit and has obtained successful federal court jury verdicts in fair housing cases. He also serves as an instructor and course developer with HUD's National Fair Housing Training Academy and trains civil rights investigators, housing providers, and attorneys nationwide.

ENDNOTES

1. T*exas Dep't of Housing & Comm Affairs v The Inclusive Communities Project*, 576 US 519, 529; 135 S Ct 2507; 192 L Ed 2d 514 (2015) ("After extensive factfinding the Commission identified residential segregation and unequal housing and economic conditions in the inner cities as significant, underlying causes of the social unrest," citing Report of the Nat'l Advisory Comm on Civil Disorders (1968) (hereinafter, "Kerner Commission Report").
2. Kerner Commission Report, p 1, available at <https://belonging.berkeley.edu/sites/default/files/kerner_commission_full_report.pdf?file=1&force=1> [https://perma.cc/DWZ6-WUJV] (website accessed February 7, 2022).
3. *Id.* at 263.
4. 42 USC 3601 - 3619. See also Fair Housing and Related Laws, US Dep't of Housing and Urban Development <https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law> [https://perma.cc/TYP5-XBT4] (website accessed February 7, 2022).
5. *Texas Dep't of Housing*, 576 US at 539-40, 566 (Alito, J, dissenting).
6. *Griggs v Duke Power Co*, 401 US 424; 91 S Ct 849; 28 L Ed 2d 158 (1971) and *Smith v City of Jackson*, 544 US 228; 125 S Ct 1536; 161 L Ed 2d 410 (2005).
7. 29 USC 623 – 634.
8. *Huntington v. Huntington Branch, NAACP*, 488 US 15, 18; 109 S Ct 276; 102 L Ed 2d 180 (1988) ("Since appellants conceded the applicability of the disparate-impact test for evaluating the zoning ordinance under Title VIII, we do not reach the question whether that test is the appropriate one.").
9. *Magner v Gallagher*, 566 US 1013; 132 S Ct 548 (Mem); 181 L Ed 2d 395 (2011) and *Magner v Gallagher*, 566 US 1187; 132 S Ct 1306 (Mem); 181 L Ed 2d 1035 (2012) (appeal dismissed); *Twp of Mount Holly v Mount Holly Gardens Citizens in Action*, 570 US 904; 133 S Ct 2824 (Mem); 186 L Ed 2d 883 and *Twp of Mount Holly v Mount Holly Gardens Citizens in Action*, 570 US 1020; 134 S Ct 636 (Mem); 187 L Ed 2d 415 (2013) (appeal dismissed).
10. *Texas Dep't of Housing*, 576 US at 552 n 4 and

576 n 8. The Court questioned the circumstances leading to the dismissals in *Magner* and *Mt. Holly.*

11. E.g., *Langlois v Abington Housing Auth*, 207 F 3d 43, 49-50 (CA 1, 2000); *Huntington Branch, NAACP v Town of Huntington*, 844 F 2d 926, 935-36 (CA 2, 1988); *Resident Advisory Bd v Rizzo*, 564 F 2d 126, 146-47 (CA 3, 1977); *Betsey v Turtle Creek Assoc,* 736 F 2d 983 (CA 4, 1984); *Hanson v Veterans Admin*, 800 F 2d 1381, 1386 (CA 5, 1986); *Arthur v City of Toledo,* 782 F 2d 565, 574-75 (CA 6, 1986); *US v City of Black Jack*, 508 F 2d 1179, 1184-85 (CA 8, 1974); and *Halet v Wend Investment Co,* 672 F 2d 1305, 1311 (CA 9, 1982).

12. Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed Reg 11460 (February 15, 2013) (to be codified at 24 CFR pt 100).

13. E.g., *HUD v Mountain Side Mobile Estates Partnership*, HUDALJ 08-92-0010-1 (1993), aff'd in pertinent part by *Mountain Side Mobile Estates Partnership v HUD*, 56 F 3d 1243 (CA 10, 1995), and 78 Fed Reg 11460, 11461 – 62. As a federal agency, HUD may adopt a policy through adjudication, see generally Informal Administrative Adjudication: An Overview, Congressional Research Service (October 1, 2021), available at <https://crsreports.congress.gov/product/pdf/R/R46930/2> [https://perma.cc/A7WJ-CJVY].

14. *Huntington Branch*, NAACP, 844 F 2d at 937; *Graoch Assoc #33, LP v Louisville/Jefferson Cty Metro Human Relations Comm,* 508 F 3d 366, 378 (CA 6, 2007); *Metropolitan Housing Dev Corp,* 558 F 2d at 1291; and *City of Black Jack*, 508 F 2d at 1184-86. See generally Schwemm, Segregative-Effect Claims Under the Fair Housing Act, 20 NYU J Legis & Pub Pol'y 709, 714 (2017), available at <https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1618&context=law_facpub> [https://perma.cc/LS2S-4KLT].

15. 78 Fed Reg 11460, 11469-70 n 102.

16. 24 CFR 100.500(a) and (c)(1). This first element in a DI case is commonly referred to as the plaintiff's "prima facie case," *Texas Dep't of Housing,* 576 US at 543 and *Wards Cove Packing Co v Antonio*, 490 US 642, 653 (1989). Unfortunately, the "prima facie case" terminology is also used to describe each of the prima facie elements (typically four or five) that a plaintiff must initially establish to satisfy the intent requirement of a disparate treatment case involving indirect, circumstantial evidence, *St. Mary's Honor Ctr v Hicks*, 509 US 502; 113 S Ct 2742; 125 L Ed 2d 407 (1993); *US Postal Servs Bd of Governors v Aikens,* 460 US 711, 714; 103 S Ct 1478; 75 L Ed 2d 403 (1983); and *Texas Dept of Community Affairs v Burdine,* 450 US 248, 252-53; 103 S Ct 1478; 75 L Ed 2d 403 (1981).

17. 24 CFR 100.500(b)(i) and (c)(2). Additionally, the "legally sufficient justification must be supported by evidence and may not be hypothetical or speculative" 24 CFR 100.500(b)(ii)(2). As to the second element, HUD's 2013 DI rule avoids the "justified by business necessity" terminology found in employment discrimination cases and many earlier FHA cases.

18. 24 CFR 100.500(b)(ii) and (c)(3).

19. *Texas Dep't of Housing & Comm Affairs v The Inclusive Communities Project,* 573 US 991; 135 S Ct 46 (Mem); 189 L Ed 2d 896 (2014).

20. *Texas Dep't of Housing,* 576 US at 533-34 (quoting 42 USC 3604(a) and 42 USC 3605(a)). The Court did not address whether DI claims could be brought under other sections of the FHA.

21. *Texas Dep't of Housing*, 576 US at 535-38 (listing court of appeals' decisions).

22. *Id.* at 536.

23. *Id.* at 539.

24. *Id.* at 540.

25. *Id.*

26. *Id.* at 527-28.

27. *Id.* at 523-24 and 543.

28. *Id.* at 542 (quoting Wards Cove Packing Co, 490 US at 653).

29. *Id.* at 543 (quoting Griggs, 401 US at 431).

30. Reinstatement of HUD's Discriminatory Effects Standard, 86 Fed Reg 33590, 33592-93 n 35 (June 25, 2021); *MHANY Mgt, Inc v County of Nassau*, 819 F 3d 581, 618 (CA 2, 2016) (''The Supreme Court implicitly adopted HUD's approach''); *Inclusive Communities Proj v Lincoln Prop Co*, 920 F 3d 890, 902 (CA 5, 2019) (noting that ''debate exists regarding whether in *ICP* the Supreme Court adopted [HUD's 2013] regulation's approach or modified it''); and *Reyes v Waples Mobile Home Park Ltd Partnership*, 903 F 3d 415, 432 n 10 (CA 4, 2018) ("To the extent the two conflict, Inclusive Communities controls, but we also afford the HUD regulation and guidance the deference it deserves.").

31. HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 85 Fed Reg 60288 (September 24, 2020).

32. *Mass Fair Housing Ctr v HUD,* No 20-11765 (2020); *Nat'l Fair Housing Alliance v HUD*, No 20-7388 (2020); and *Open Communities Alliance v HUD*, No 20-1587 (2020).

33. *Mass Fair Housing Ctr v HUD*, 496 F Supp 3d 600, 606-7 (D Mass, 2020). In ruling on the request for preliminary injunctive relief, the court found a likelihood that the 2020 DI regulation constituted a massive overhaul and changed the standard for DI liability under the FHA, rendering the regulation arbitrary and capricious in violation of the Administrative Procedure Act.

34. 86 Fed Reg 33590.

35. Compare *Mhany Mgt,* 819 F 3d at 618 ("Supreme Court implicitly adopted HUD's approach") with *Inclusive Communities Project v Lincoln Prop Co*, 920 F 3d 890, 902, 903 n 6 (CA 5, 2019) ("We read the Supreme Court's opinion in *ICP* to undoubtedly announce a more demanding test than that set forth in the HUD regulation" and "we are convinced the Supreme Court's language in *ICP* is stricter than the regulation itself."). See also *Reyes*, 903 F 3d at 424 n 4 ("Without deciding whether there are meaningful differences between the frameworks," the court noted, "that the standard announced in [*ICP*], rather than the HUD regulation[,] controls our inquiry.").

36. *Lincoln Prop Co*, 920 F3d at 903-05 (noting that the Supreme Court in *ICP* and the Fifth Circuit on remand in *ICP* did not "clearly delineate" the "robust causation" requirement, and that the Fourth, Eighth, and Eleventh circuits have reached various views as to this causation requirement) (citing cases).

37. But see *Mhany Mgt,* 819 F 3d at 619 (noting that in the Title VII and ADEA contexts, courts have permitted "cases dealing with disparate impact challenges to single decisions of employers" and "other circuits have described the distinction between a single isolated decision and a practice as 'analytically unmanageable—almost any repeated course of conduct can be traced back to a single decision.'").

38. *Inclusive Communities Proj v Lincoln Property Co,* 930 F 3d 660, 661-67 (CA 5, 2019); *Reyes*, 903 F 3d at 427-49, 430; *Oviedo Town Center II v City of Oviedo*, unpublished opinion of the United States Court of Appeals for the Eleventh Circuit, issued December 28, 2018 (No 17-14254); *Binns v City of Marietta,* unpublished opinion of the United States Court of Appeals for the Eleventh Circuit, issued August 3, 2017 (No 16-14924); and *Boykin v Fenty*, unpublished opinion of the United States Court of Appeals for the District of Columbia, issued June 14, 2016 (No 13-7159).

39. *Inclusive Communities Proj v Heartland Community Ass'n, Inc,* unpublished opinion of the United States Court of Appeals for the Fifth Circuit, filed August 10, 2020 (No 19-10991), (robust causation requires either "'a change in the defendant's enforcement of [a] policy' caused a disparate impact; or a challenged policy 'caused the relevant minority group to be the dominant group' of those affected by the policy.").

40. *Texas Dep't of Housing & Comm Affairs,* 576 US at 544. It is unclear at what step the examination of "artificial, arbitrary, and unnecessary barriers" should occur, but the Ninth Circuit considers this at the second step. The Ninth Circuit fashioned a two-part analysis for the second step: "At end, it is defendant's burden at this stage to show (1) a legitimate business interest, and (2) that the practice or policy serves in a significant way that legitimate interest." *Southwest Fair Housing Council*, 9 F 4th at 1194.

41. Compare HUD's 2013 DI regulation ("substantial, legitimate, nondiscriminatory interest supporting the challenged practice could be served by another practice that has a less discriminatory effect") with *Texas Dep't of Housing & Comm Affairs,* 576 US at 533 ("a court must determine that a plaintiff has shown that there is an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs").

42. *MHANY Mgt, Inc v County of Nassau*, 819 F 3d 581 (CA 2, 2016).

43. *Id.* at 590-97.

44. *Mhany Mgmt, Inc v County of Nassau*, 843 F Supp 2d 287, 329 (ED NY, 2012).

45. *Id.* at 617-20.

46. *Reyes v Waples Mobile Home Park Ltd Partnership*, 903 F 3d 415 (CA 4, 2018).

47. *Id.* at 419. Previously, the park only enforced the policy against the tenant. In 2015, the park began enforcing the policy against all occupants over 18 years of age. Tenants not in compliance with the policy had 21 days to cure the violation or 30 days to vacate the park. Further, the park converted these leases into month-to-month leases with an additional $100 fee for each month a non-complying tenant did not vacate the lot. In 2016, the additional fee increased to $300 a month. *Id.* at 419-20.

48. *Id.* at 428. Following discovery, plaintiffs presented evidence that Latinos were nearly twice as likely to be undocumented compared to Asians, and 20 times more likely to be undocumented than other groups. Additionally, plaintiffs submitted evidence showing that 11 of the 12 tenants (or 91.7%) in noncompliance with the policy were Latino. *Id.* at 422.

49. The Fourth Circuit in an earlier case held that insurance coverage is not subject to the FHA. *Mackey v Nationwide Ins Co,* 724 F 2d 419, 424 (CA 4, 1984). It is the only circuit court to reach this conclusion. All subsequent circuit court decisions and HUD regulations have found that homeowner's insurance is covered under the FHA. *Ojo v Farmers Group, Inc*, 600 F 3d 1205, 1207-8 (CA 9, 2010); 24 CFR 100.70(d)(4). See also *NAACP v American Family Mutual Ins Co*, 978

F 2d 287, 297 (CA 7, 1992) ("No insurance, no loan; no loan, no house; lack of insurance thus makes housing unavailable.").
50. *Nat'l Fair Housing Alliance v Travelers Indemnity Co*, 261 F Supp 3d 20 (D DC, 2017).
51. "Testing refers to the use of an individual or individuals (testers) who, without a bona fide intent to rent or purchase a house, apartment, or other dwelling, pose as prospective renters or purchasers for the purpose of gathering information that may indicate whether a housing provider is complying with fair housing laws." 24 CFR 115.100(c). Testing has been approved in numerous fair housing cases. E.g., *Havens Realty Corp v Coleman*, 455 US 363, 373; 102 S Ct 1114; 71 L Ed 2d 214 (1982); *Gladstone, Realtors v Village of Bellwood*, 441 US 91, 94; 99 S Ct 1601; 60 L Ed 2d 66 (1979); and *Paschal v Flagstar Bank*, 295 F 3d 565, 576, 579-80 (CA 6, 2002).
52. The HCV program is commonly referred to as Section 8, as the program was established in Section 8 of the US Housing Act of 1937, Pub L.75-412, 50 Stat 888, 891. Section 8(b)(1) authorizes financial assistance for rental housing, 42 USC 1437f(B)(1).
53. *Nat'l Fair Housing Alliance*, 261 F Supp 3d at 22-23.
54. *Id.* at 23.
55. *Id.* at 33-34.
56. *Rhode Island Comm for Human Rights v Graul*, 120 F Supp 3d 110 (D RI, 2015).
57. *Id.* at 114.
58. At the lowest disparity ratio (three-person households paying rent between $900 and $1,400), households with children were more than three times likely to be adversely impacted by the rule in comparison to households with no children. *Id.* at 126.
59. *Id.* at 127-28. The FHA permits housing providers to follow "reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 USC 3607(b)(1).
60. *Connecticut Fair Housing Ctr v Corelogic Rental Property Solutions*, 478 F Supp 3d 259 (D Conn, 2020).
61. *Id.* at 274.
62. *Id.* at 273.
63. *Id.* at 278, 296-99, 287 n 18, 304 (citing HUD's Office of General Counsel, Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (2016); HUD PIH Notice 2015-19, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, at 3-4 (2015).

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN

NOTICE OF AMENDMENTS AND PROPOSED AMENDMENTS TO LOCAL RULES

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

The intersection of the Revocation of Paternity Act

AND THE JUVENILE CODE

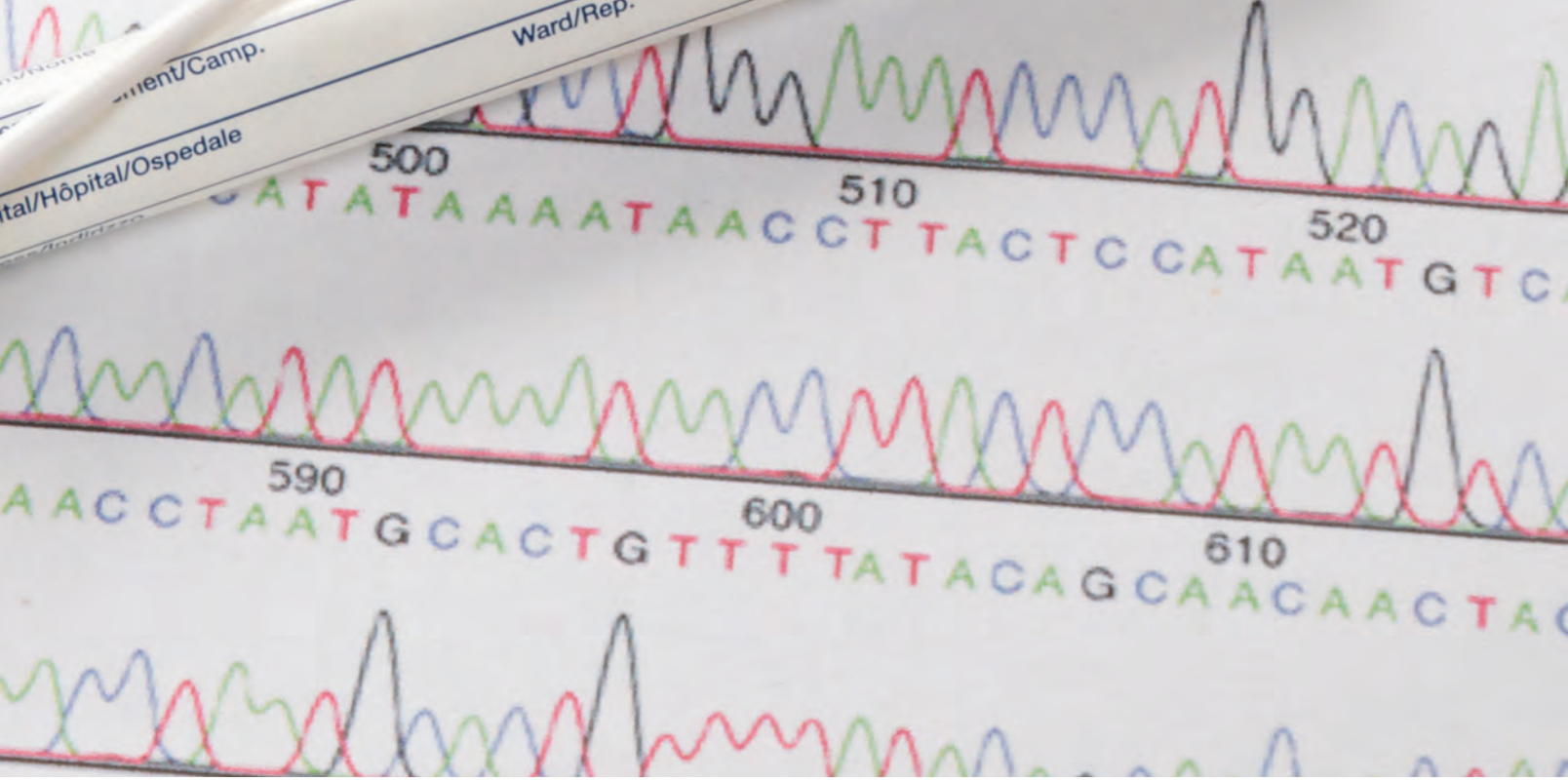
BY TOM ROBERTSON

In a child protective proceeding filed under juvenile provisions of the Michigan Probate Code, it is not unusual that the legal father of the minor child is not the biological father. Conflicting provisions of the Revocation of Paternity Act and the Probate Code govern how a biological father is permitted to establish paternity when a child protection action is pending.

The Revocation of Paternity Act (ROPA), MCL 722.1431, et. seq. permits the court to find that a child was "born out of wedlock"[1] and enter an order that a man biologically related to the child is, in fact, the child's legal father. Chapter XIIA of the Probate Code, MCL 712A.1, et. seq., governs placement options for the court when a child is removed from parental care pursuant to a child protection action.

The Child Protective Proceedings Benchbook[2] summarizing law and procedure under 712A.1 cites *In re KH* for the law pertaining to permissible placement options when a child has a legal father who is not the child's biological father:

> "We hold that our court rules do not permit a biological father to participate in a child protective proceeding



> where a legal father exists. Indeed, where a legal father exists, a biological father cannot properly be considered even a putative father."[3]

The rule referred to by the *KH* court was MCR 5.921(D), now MCR 3.921(D), which states:

> Putative Fathers. If, at any time during the pendency of a proceeding the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in this subrule.

Appropriate action includes taking steps to ascertain the identity of the biological father and include that person in the proceedings. However, taking such action is predicated on first finding that the minor has no father as defined in MCR 3.903(A)(7). That subrule defines "father" as "a man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage." Reading *In re KH* and the related court rules together, the conclusion seems to be that if a minor has a legal father, i.e., a man married to the mother at the time of conception or birth, a biological father is prohibited from participating in a child protective proceeding.

ROPA at MCL 722.1441(3) governs an action by an "alleged father" where a child has a "presumed father." A "presumed father" under ROPA is the same as a "father" under MCR 3.903(A)(7), i.e., a man married to the mother at the time of the child's conception or birth. MCL 722.1441(3) permits an alleged father to take action to establish his paternity. MCL 722.1443(1) further addresses that action:

> An original action under this act shall be filed in the circuit court for the county in which the mother or the child resides or, if neither the mother nor the child reside in this state, in the circuit court for the county in which the child was born. If an action for the support, custody, or parenting time of the child exists at any stage of the proceedings in a circuit court of this state or *if an action under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is pending in a circuit court of this state, an action under this act shall be brought by motion in the existing case under rules adopted by the supreme court.* (Emphasis added).

Under ROPA, it seems clear that a man claiming to be the biological father of a child who has a legal or presumed father must, if he wants to establish his paternity, file an action by motion in the child protective proceeding. The emphasized part of MCL 722.1443(1) above contradicts the holding in *In re KH*, which construes the court rule as prohibiting the alleged biological father from participating in the child protective proceeding.

RULE OF PRACTICE OR MATTER OF SUBSTANTIVE LAW

Resolving the conflict involves determining whether MCL 722.1443(1) is a rule of practice procedure or matter of substantive law. MCR 1.104 provides that "[r]ules of practice set forth in any statute, if not in conflict with any of these rules, are effective until superseded by rules adopted by the Supreme Court."[4]

In *Froede v. Holland Ladder & Manufacturing Company,* the Mich-

igan Court of Appeals observed that "where there is a conflict between a statute and a court rule, the court rule prevails if it governs practice and procedure."[5] In *Froede*, the defendants claimed that a juror failed to disclose her status as a convicted felon not currently under sentence. Pursuant to court rule, convicted felons were prohibited from serving as jurors, but a conflicting statute provided that convicted felons were prohibited from serving only if currently under sentence. The court found that the statute was part of a "legislative intent to 'remove barriers to the reintegration into society of former offenders'" and that the court rule frustrated that legislative intent.[6] The statute, therefore, was not merely procedural regarding how a jury is selected but was substantive with regard to an individual's legislatively established right to serve on a jury.

Under ROPA, it seems clear that a man claiming to be the biological father of a child who has a legal or presumed father must, if he wants to establish his paternity, file an action by motion in the child protective proceeding.

Parental rights are constitutionally protected. As stated in *In re Rood*, "[a] natural parent has a fundamental liberty interest 'in the care, custody, and management'" of his child that is protected by the Fourteenth Amendment of the United States Constitution, *Santosky,* 455 U.S. at 753, 102 S. Ct. 1388, and by article 1, § 17, of the Michigan Constitution, see *Reist v. Bay Co. Circuit Judge,* 396 Mich. 326, 341-342, 241 N.W.2d 55 (1976) (Levin, J.) (stating that parents and children have fundamental rights "in their mutual support and society").[7]

MCL 722.1443(1) establishes rights for an alleged father when a legal father exists. When a juvenile court proceeding is pending, juvenile court custody orders supersede other courts' custody orders.[8] Because juvenile court custody orders supersede other courts' orders, the pursuit of paternity by motion in the juvenile case is part of the legislative scheme to remove barriers to establishing that right. Like the rationale in *Froede*, supra, that action by the legislature is substantive, not simply procedural, and prevails over conflicting court rule.[9]

CONCLUSION

It appears, then, that a biological father can participate in a child protective proceeding where a legal father exists and if a biological father seeks to establish his paternity under these circumstances, the biological father must pursue his remedy by motion in the child protection proceeding. It is certainly possible that the biological father won't ultimately prevail, but he must still pursue his paternity action by motion in the child protective proceeding.

If a biological father establishes paternity in a child protection proceeding, can he also obtain a custody/parenting time order in the same proceeding? In other words, does the juvenile court have jurisdiction to enter custody/parenting time orders as part of the child protection proceeding?

In re AP holds that:

> "a trial court that is part of a circuit court's family division under MCL 600.1011 presiding over a juvenile case has jurisdiction to address related actions under the [Child Custody Act (CCA)] consistent with MCL 600.1021and MCL 600.1023, as well as local court rules. We further hold that when exercising its jurisdiction, a trial court must abide by the relevant procedural and substantive requirements of the CCA."[10]

In *In re AP,* the alleged father filed and prevailed in a paternity action before commencement of the juvenile court action. His motion for custody was filed in the juvenile case. An order granting him legal custody was entered under the juvenile case number. Because the Michigan Court of Appeals found that the circuit court and juvenile court are part of the family court and the juvenile court judge followed the CCA in making the custody findings, there was no error when the custody order was entered in the course of the juvenile case.[11] It is not clear whether the Court of Appeals considered it significant that the paternity case was filed as a separate action prior to commencement of the juvenile case.

In *Demski v. Petlick*, the alleged father filed an action under ROPA and obtained an order establishing his paternity.[12] There was no child protection case pending. The trial judge ordered that the now-legal father would have joint custody and parenting time with the child. The child's mother and her husband appealed, claiming, in part, that ROPA does not allow entry of custody/parenting time orders in the context of a paternity case. The Court of Appeals found that "[o]nce the trial court made a determination of paternity, it had authority under MCL 722.27(1) to enter orders regarding child custody and parenting time."[13]

By combining that part of MCL 722.1443(1) which mandates that a paternity action be filed as a motion in a pending child protection case with the holdings in *In re AP* and *Demski*, the logical conclusion can be summarized as follows:

- If a juvenile action is pending, an alleged father must file an ac-

tion to revoke paternity by motion in the juvenile case. As part of the juvenile case, the trial court may enter a paternity order.

- After entry of the paternity order, the trial court may also in the juvenile case enter orders for custody and parenting time following the procedures of the Child Custody Act.
- If this analysis is correct, it seems that all orders would enter under the juvenile court file number. Following this procedure would consolidate all issues involving the minor and present those issues to the same family court judge.
- The only filing fee assessed to the alleged father would be a motion fee in the juvenile case.
- The orders should be provided to the Friend of the Court, and Friend of the Court services could be utilized for support determination and enforcement and any future custody and/or parenting time disputes.

Tom Robertson recently retired after seven years as St. Joseph County juvenile court director and referee. His prior private practice included a substantial concentration in juvenile law. He graduated with a bachelor's degree from Kalamazoo College and earned his law degree from the Franklin Pierce Law Center (now the University of New Hampshire Law School.)

ENDNOTES

1. "Born out of wedlock" means a child conceived and born to a woman who was not married from the conception to the date of birth of the child, or a child whom the court has determined to be a child born during a marriage but not the issue of that marriage. MCL 710.22(h)
2. Child Protective Proceedings Benchbook (Fourth Edition), Michigan Judicial Institute (2020), Section 6.7, available at <https://mjieducation.mi.gov/benchbooks/cpp> [https://perma.cc/CWG6-83WV] (website accessed February 11, 2022). See also *Aichele v Hodge*, 259 Mich App 146, 167; 673 NW2d 452 (2003), which holds: "Therefore, we disagree that the agreement of parties or pleadings alone can overcome the presumption of legitimacy that the law confers on a child from an intact marriage."
3. *In re KH*, 469 Mich 621, 624; 677 NW2d 800 (2004).
4. See *In re Lafayette Towers*, 200 Mich App 269, 275; 503 NW2d 740 (1993) holding that the Supreme Court's rulemaking power is constitutionally supreme in matters of practice and procedure. Where court rule governing practice or procedure conflicts with statute, court rule controls.
5. *Froede v Holland Ladder & Manufacturing Co*, 207 Mich App 127, 131; 523 NW2d 849 (1994).
6. *Id.* at 132 – 133.
7. *In re Rood*, 483 Mich 73, 91-92; 763 NW2d 587 (2009).
8. *In re AP*, 283 Mich App 574, 594; 770 NW2d 403 (2009).
9. Conversely, it could be argued that MCR 3.921(D) as interpreted by *In re KH* is not a rule of practice. The court rule denies a biological father's constitutionally protected right to participate in a proceeding during which the custody of his child will be determined. Per *Froede v Holland,* if MCR 3.921(D) is not a rule of practice, it does not prevail over a conflicting statute.
10. *In re AP*, 283 Mich App at 578.
11. *Id.* at 597-598.
12. *Demski v Petlick*, 309 Mich App 404; 873 NW2d 596 (2015).
13. *Id.* at 441.

MONEY JUDGEMENT INTEREST RATE

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

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

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

13% per year, compounded annually; or

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

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

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

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 **both**:

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

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

DISCOVER

MUST-HAVE TECH SKILLS FOR TODAY'S WORLD

Serving clients today requires a higher level of technical expertise, and the State Bar of Michigan is here to help. Get training, learn about the latest trends, and assess your needs using one of our checklists at the Technology Competency corner of the Practice Management Resource Center.

Discover information on e-filing, e-discovery, data security, collaboration, and more.

SBM | **TECH** COMPETENCY

The success of SOLACE

NEW MICHIGAN PROGRAM IS BY AND FOR THE LEGAL COMMUNITY

BY KYLIE THOMPSON

In its first six months, more than 15,000 attorneys and other legal professionals have signed on to be a part of a new statewide program designed to help their peers facing critical needs in times of crisis.

The State Bar of Michigan launched the SOLACE program in July 2021 with support from an implementation team made up of nine leaders from the legal community and partner organizations that include local and affinity bar associations from across the state.

SOLACE is a program that is both for and by the legal community. Based on a basic premise of goodwill, the program relies on the generosity of network members to aid others from within the legal community and their immediate families who are facing critical needs because of a sudden catastrophic illness, injury, or event.

"The speed at which SOLACE is growing is a powerful testament to the generosity and selflessness of Michigan's legal community. It is moving to see so many of us eagerly step up to help our peers in times of crisis," said Dana Warnez, president of the State Bar of Michigan and a member of the SOLACE Implementation Team.

IT IS ABOUT GIVING AND RECEIVING

Being a part of the SOLACE network is simple and straightforward.

SOLACE members simply sign up to be notified by email when there is a need among their peers. Then, if members want and have the ability to help, they can. Since the State Bar of Michigan launched SOLACE, network members have been alerted to needs an average of once per month — and 100% of needs have been fulfilled, typically within 24 hours and several in just minutes.

There is no cost to participate in or receive assistance from SOLACE. All Michigan judges, lawyers, court personnel, paralegals, legal assistants, legal administrators, law students, and their immediate families are eligible to request help through SOLACE regardless of their income

or assets. SOLACE membership is not required to receive assistance.

SOLACE does not offer direct financial support, but the gifts are nonetheless incredibly valuable to those who receive them.

Donations may meet physical needs — such as a wheelchair or hotel credits to cover the cost of temporary housing near a hospital. Or the assistance may meet other needs such as navigating life insurance issues, providing mentorship, and offering problem-solving advice.

For example, Michigan's SOLACE network:

- Connected a judge's widow with others who have experienced loss to learn coping mechanisms to help during the holidays
- Provided weights and a walking cane to a solo practitioner who had been unable to work because of an illness and required physical therapy
- Assisted an intake coordinator at a law firm in finding reliable, low-cost childcare.

Not all requests for assistance are sent to all SOLACE network members. Typically, requests are sent to a targeted segment of the network who would be most able to help based on location or area of expertise.

SOLACE network members are notified of requests via email. They are then directed to the SOLACE webpage at www.michbar.org/solace, where they can sign up to fulfill a need posted there.

THE NETWORK IS GROWING

SOLACE started in 2002 in New Orleans and now more than 20 states including Michigan operate independent versions of the program within their own legal communities. The State Bar of Michigan committed last year to launching a version for the Great Lakes State.

What started as an idea was made a reality at the State Bar of Michigan by Robert Mathis, Justice Initiatives counsel, and Molly Ranns, director of the Lawyers and Judges Assistance Program. A core group of advisors came together as part of an implementation team and continues to provide overall guidance to the statewide effort.

Members of the implementation team include:

- Bruce A. Courtade, chair, of Rhoades McKee and a past State Bar of Michigan president;
- Dana M. Warnez, SBM president;
- Robert Buchanan, past SBM president;
- Kristina Bilowus of MSU College of Law and chair of the Young Lawyers Section;
- Erika Lorrain Bryant of Butler Davis and member of the SBM Board of Commissioners;
- Robert J. Buchanan of Buchanan Firm and a past SBM president;
- Lori Buiteweg of Nichols, Sacks, Slank, Sendelbach, Buiteweg & Solomon and a past SBM president;
- Aaron V. Burrell of Dickinson Wright and member of the SBM Board of Commissioners;
- Leo P. Goddeyne of Miller Canfield; and
- Victoria A. Radke, emeritus attorney and past chair of the SBM Representative Assembly.

As part of constructing the SOLACE network, organizers identified key partners that might be willing to join and contribute to its success. The response was immediate and continues to grow.

When organizations agree to be SOLACE partners, their entire membership also joins the network. As of early February, 12 organizations have signed on as partners: Criminal Defense Attorneys of Michigan, the Detroit Bar Association, Eastern District of Michigan Chapter of the Federal Bar Association, Genesee County Bar Association, Grand Rapids Bar Association, Ingham County Bar Association, Macomb Bar Association, Michigan Defense Trial Counsel, Oakland County Bar Association, SBM Criminal Law Section, Washtenaw County Bar Association, and Women Lawyers Association of Michigan.

HOW TO JOIN OR GET HELP

SOLACE organizers are actively recruiting new members and partner organizations. To join the network, simply go online to www.michbar.org/solace. Near the bottom of the page are options on how individuals and groups can get involved.

State Bar staff is available to make presentations to groups to help spread the word about SOLACE and encourage participation from sections, local and affinity bar associations, and other legal organizations.

The slogan for SOLACE is "coming together instead of standing alone," and raising awareness that help is available remains a priority. Members of the legal community are encouraged to contact SOLACE for help — and let those in need know about the program.

To request help, an online form is available at the SOLACE webpage. A member of the SOLACE Implementation Team works one-on-one with individuals who ask for help to prepare an email message requesting practical and appropriate assistance depending on that person's specific needs.

For more information, visit michbar.org/solace or email solace@michbar.org.

Kylie Thompson is the communication specialist for the State Bar of Michigan.

STATE BAR OF MICHIGAN ELECTION NOTICE

GENERAL ANNOUNCEMENT

Members of the State Bar of Michigan are hereby notified that the following elections will be held in June 2022:

- A statewide election for a non-judicial member of the Judicial Tenure Commission
- Elections for 68 members of the Representative Assembly in 40 judicial circuits
- Elections for seven members of the Board of Commissioners in five commissioner districts
- Elections for members of the Young Lawyers Section Executive Council in three districts

Nominating petitions may be filed no earlier than April 1, 2022, nor later than April 30, 2022. Ballots will be distributed no later than June 1, 2022, and must be received postmarked or completed online no later than June 15, 2022.

NOMINATING PETITIONS FOR ALL ELECTIONS ARE ON PAGES 44 THROUGH 48.

JUDICIAL TENURE COMMISSION

Active members will elect one non-judicial member of the Judicial Tenure Commission for a term of three years, beginning on Jan. 1, 2023, and expiring on Dec. 31, 2025. Article 6, Section 30 of the Michigan Constitution provides that three of the Commission's nine members shall be State Bar members elected by the members of the State Bar. One of these shall be a judge and two shall not be judges. The seat to be filled by an election in 2022 is to be held by a member who is not a judge. It is now held by:

Thomas J. Ryan

Any active member of the State Bar who is not a judge may be nominated by petitions bearing the signatures of not fewer than 50 active members of the State Bar. No member may sign a nominating petition for more than one Judicial Tenure Commission candidate. All signatures in violation of this rule will be deemed invalid. It is suggested to persons circulating petitions that at least 75 signatures be obtained to ensure that at least 50 valid signatures remain should any be ruled invalid or be found illegible and therefore unverifiable.

REPRESENTATIVE ASSEMBLY

Active members in certain judicial circuits will elect members of the Representative Assembly for their circuits as follows:

1. The terms of certain elected members of the Assembly from judicial circuits as indicated below will expire at the close of the September 2022 meeting of the Representative Assembly. These seats are to be filled by election in June 2022 for terms of three years.

2. Vacancies in certain judicial circuits as indicated below are to be filled by election for the balance of the respective unexpired terms. The candidates elected will assume their office immediately upon the certification of their election in June 2022.

3. Terms of Assembly members in certain judicial circuits as indicated below, who serve by virtue of interim appointment by the Representative Assembly to fill seats for which there were no candidates for election in 2021, expire immediately upon certification of the election of their successors in June 2022 for the balance of the respective unexpired terms.

NOTE
* Cannot run for reelection having served two consecutive three-year terms.
\+ Assembly interim appointee eligible to run for election

1ST CIRCUIT – HILLSDALE COUNTY

Elect 1 for a two-year term expiring at the close of the September 2024 Representative Assembly meeting.
1 Vacancy

2ND CIRCUIT – BERRIEN COUNTY

Elect 1 for a two-year term expiring at the close of the September 2024 Representative Assembly meeting.
1 Vacancy

3RD CIRCUIT – WAYNE COUNTY

Elect 2 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Elect 1 for a two-year term expiring at the close of the September 2024 Representative Assembly meeting.

Elect 2 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.
+Ponce D. Clay, Detroit
**Daniel J. Ferris, Detroit*
Kristina Robinson Garrett, Detroit
+Lisa Whitney Timmons, Detroit
1 Vacancy

4TH CIRCUIT – JACKSON COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.
Rebecca K. Arnold, Jackson

6TH CIRCUIT – OAKLAND COUNTY

Elect 8 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Elect 2 for a two-year term expiring at the close of the September 2024 Representative Assembly meeting.
**Michael J. Blau, Farmington*
Karen R. Geibel, Troy
Peter M. Grace, Birmingham
Edward L. Haroutunian, Bingham Farms
Emily A. Karr, New Hudson
Joshua A. Lerner, Royal Oak
Michael E. Sawicky, Farmington Hills
Jennifer R. Turchyn, Troy
2 Vacancies

7TH CIRCUIT – GENESEE COUNTY

Elect 1 for a three-year term expiring at the

close of the September 2025 Representative Assembly meeting.

Sean M. Siebigteroth, Grand Blanc

9TH CIRCUIT – KALAMAZOO COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Paul J. Yancho, Kalamazoo

12TH CIRCUIT – BARAGA, HOUGHTON, AND KEWEENAW COUNTIES

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Matthew C. Eliason, Hancock

13TH CIRCUIT – ANTRIM, GRAND TRAVERSE, AND LEELANAU COUNTIES

Elect 3 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

John R. Blakeslee, Traverse City
Agnieszka Jury, Traverse City
James L. Rossiter, Bellaire

16TH CIRCUIT – MACOMB COUNTY

Elect 3 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

**Randall Chioini, Mount Clemens*
Tanya A. Grillo, Mount Clemens
Stephen M. Steinhardt, Mount Clemens

17TH CIRCUIT – KENT COUNTY

Elect 3 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Elect 1 for a two-year term expiring at the close of the September 2024 Representative Assembly meeting.

Michael D. Adams, Grand Rapids
**Michael P. Hanrahan, Grand Rapids*
Philip L. Strom, Grand Rapids
1 Vacancy

18TH CIRCUIT – BAY COUNTY

Elect 2 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Amber L. Davis-Johnson, Bay City
Marcus R. Garske, Bay City

19TH CIRCUIT – BENZIE AND MANISTEE COUNTIES

Elect 1 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.

1 Vacancy

20TH CIRCUIT – OTTAWA COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Christopher M. Wirth, Zeeland

21ST CIRCUIT – ISABELLA COUNTY

Elect 1 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.

1 Vacancy

22ND CIRCUIT – WASHTENAW COUNTY

Elect 2 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Elizabeth C. Jolliffe, Ann Arbor
Marla A. Linderman Richelew, Ann Arbor

24TH CIRCUIT – SANILAC COUNTY

Elect 1 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.

1 Vacancy

25TH CIRCUIT – MARQUETTE COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

**Erica N. Payne, Republic*

26TH CIRCUIT – ALPENA AND MONTMORENCY COUNTIES

Elect 1 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.

1 Vacancy

27TH CIRCUIT – NEWAYGO AND OCEANA COUNTIES

Elect 1 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.

1 Vacancy

28TH CIRCUIT – MISSAUKEE AND WEXFORD COUNTIES

Elect 1 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.

1 Vacancy

29TH CIRCUIT – CLINTON AND GRATIOT COUNTIES

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Sarah E. Huyser, Ithaca

30TH CIRCUIT – INGHAM COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Elect 1 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.

Stephen J. Gobbo, Lansing
1 Vacancy

31ST CIRCUIT – ST. CLAIR COUNTY

Elect 2 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Hilary B. Georgia, Port Huron
1 Vacancy

(Gerrow D. Mason is an incumbent, but as vice chair, he becomes chair for 2022–2023. Under the applicable rules, his tenure is extended without election so he can serve as chair. The authorized number of circuit members is increased by one. The seat allocated to Circuit 31 is filled by election.)

36TH CIRCUIT – VAN BUREN COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

1 Vacancy

37TH CIRCUIT – CALHOUN COUNTY

Elect 2 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Angela Easterday, Battle Creek
James L. Jordan, Battle Creek

38TH CIRCUIT – MONROE COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Elect 1 for a two-year term expiring at the close of the September 2024 Representative Assembly meeting.

Anne M. McCarthy, Monroe

1 Vacancy

39TH CIRCUIT – LENAWEE COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

**Jennifer A. Frost, Adrian*

40TH CIRCUIT – LAPEER COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Bernard A. Jocuns, Lapeer

41ST CIRCUIT – DICKINSON, IRON, AND MENOMINEE COUNTIES

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Christopher S. Ninomiya, Iron Mountain

42ND CIRCUIT – MIDLAND COUNTY

Elect 2 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

**Angela M. Cole, Midland*

Christopher G. Komara, Midland

43RD CIRCUIT – CASS COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Kelley James-Jura, Cassopolis

44TH CIRCUIT – LIVINGSTON COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

David T. Bittner, Howell

46TH CIRCUIT – CRAWFORD, KALKASKA, AND OTSEGO COUNTIES

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Courtney E. Cadotte, Gaylord

48TH CIRCUIT – ALLEGAN COUNTY

Elect 1 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.

1 Vacancy

49TH CIRCUIT – MECOSTA AND OSCEOLA COUNTIES

Elect 1 for a one-year term expiring at the close of the September 2023 Representative Assembly meeting.

1 Vacancy

50TH CIRCUIT – CHIPPEWA COUNTY

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Jason N. Rozencweig, Sault Sainte Marie

51ST CIRCUIT – LAKE AND MASON COUNTIES

Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Tracie L. McCarn-Dinehart, Ludington

56TH CIRCUIT – EATON COUNTY

Elect 2 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

Timothy H. Havis, Charlotte

Adam H. Strong, Charlotte

57TH CIRCUIT – EMMET COUNTY

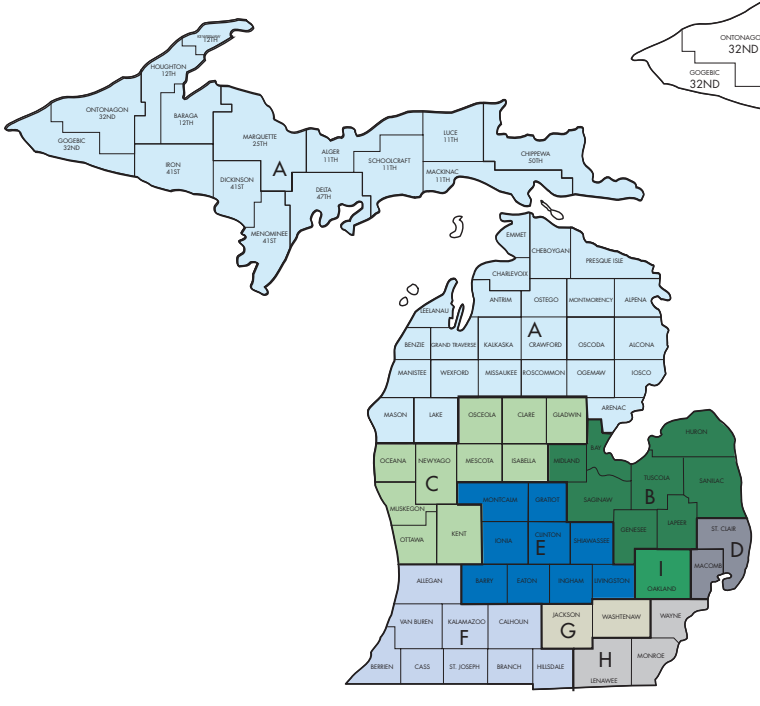
Elect 1 for a three-year term expiring at the close of the September 2025 Representative Assembly meeting.

**Christina L. DeMoore, Petoskey*

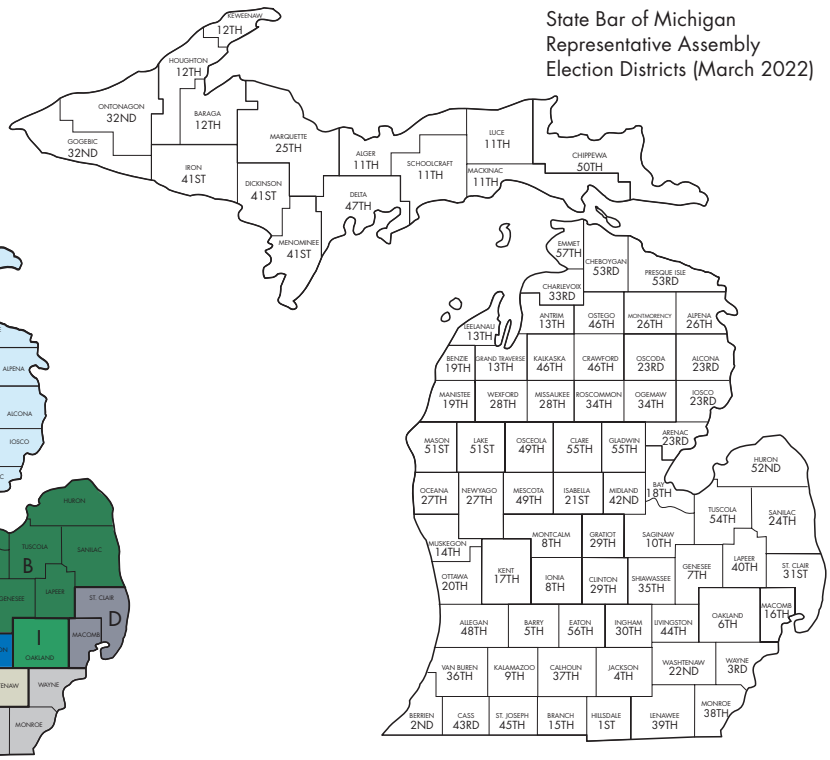
BOARD OF COMMISSIONERS

Active members in certain commissioner election districts will elect members of the Board of Commissioners for their districts as follows: The terms of the following commis-

State Bar of Michigan
Commissioner Election Districts
(March 2022)



State Bar of Michigan
Representative Assembly
Election Districts (March 2022)



sioners of the State Bar will expire at the close of the September 2022 meeting of the Board of Commissioners of the State Bar.

The seats are to be filled by election in 2022 for terms of three years, commencing at the close of the September 2022 meeting of the Board of Commissioners. Following are the districts in which elections are to be held, the number of seats to be filled, and the names of the incumbents.

DISTRICT A – JUDICIAL CIRCUITS 11, 12, 13, 19, 23, 25, 26, 28, 32, 33, 34, 41, 46, 47, 50, 51, 53, AND 57

One seat – one incumbent
Suzanne C. Larsen, Marquette

DISTRICT C – JUDICIAL CIRCUITS 14, 17, 20, 21, 27, 49, AND 55

Two seats – One incumbent and one vacancy
Thomas G. Sinas, Grand Rapids

DISTRICT F – JUDICIAL CIRCUITS 1, 2, 5, 9, 15, 36, 37, 43, 45, AND 48

One seat – one vacancy

DISTRICT H – JUDICIAL CIRCUITS 3, 38, AND 39

One seat – one incumbent
Erika L. Bryant, Detroit

DISTRICT I – JUDICIAL CIRCUIT 6

Two seats – two incumbents
Sarah E. Kuchon, Troy
James W. Low, Southfield

Commissioners are nominated from among the active members of the State Bar having their principal offices within the commissioner election district. Any active member may circulate petitions for a candidate for district commissioner in his or her district. Five valid signatures of members entitled to vote in that district are required to nominate.

No member may sign nominating petitions for more district commissioner candidates than there are seats to be filled in the district. All signatures in violation of this rule will be deemed invalid. It is suggested to persons circulating petitions that at least seven signatures be obtained to ensure that at least five valid signatures remain should any be ruled invalid or found illegible and therefore unverifiable.

YOUNG LAWYERS SECTION

The members of the Young Lawyers Section will elect members of the executive council for their districts as follows: The terms of 10 executive council members expire at the close of the September 2022 Young Lawyers Section meeting. These seats are to be filled by election in June 2022 for terms of two years. Following are the districts in which elections are to be held, the number of seats to be filled, and the names of the incumbents.

DISTRICT 1 – MACOMB AND WAYNE COUNTIES

One seat – one vacancy

DISTRICT 2 – OAKLAND COUNTY

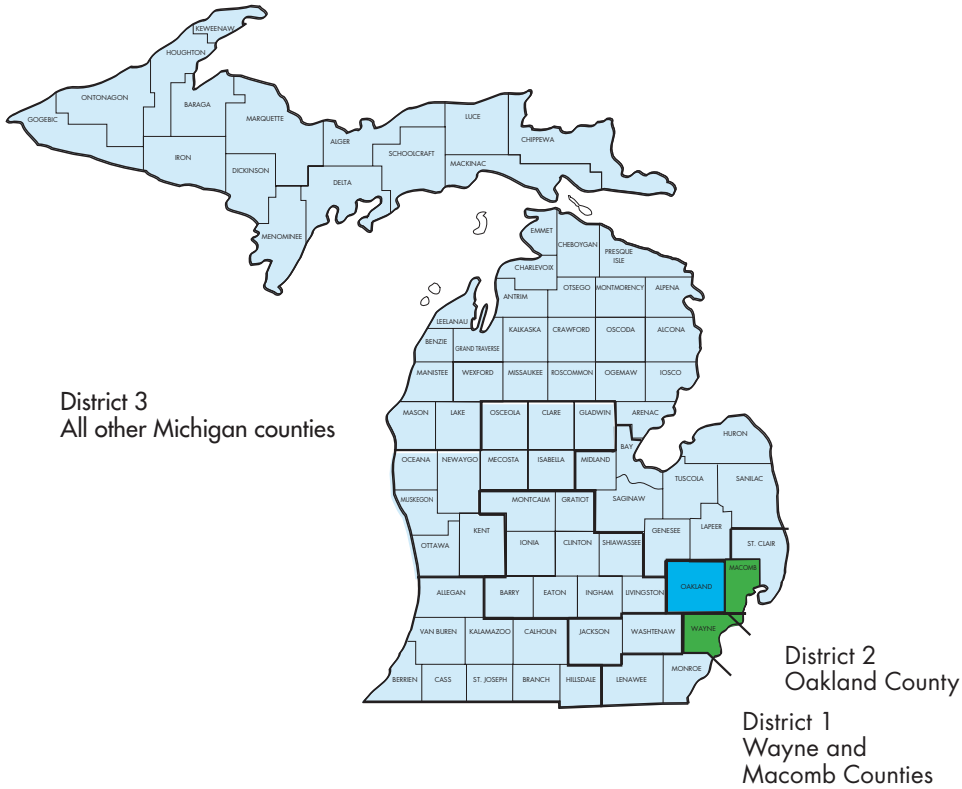
Four seats – three vacancies and one incumbent
Fawzeih H. Daher, Southfield

DISTRICT 3 – ALL MICHIGAN COUNTIES EXCEPT MACOMB, OAKLAND, AND WAYNE

Five seats – four vacancies, one incumbent
Jacquelyn N. Babinski, Ludington
Dustin C. Kamerman, Lansing
Miriam Saffo, Ann Arbor
Alexander J. Thibodeau, Grand Rapids

Executive council members shall be elected from the active membership of the Young Lawyers Section in the three districts by the active members having their address of record on file with the State Bar therein. Any active member may circulate petitions for a candidate for council member in their district. Five valid signatures of members entitled to vote for the nominee are required to nominate.

No member may sign nominating petitions for more executive council candidates than there are seats to be filled in the district. No member may sign nominating petitions for candidates outside of their district. All signatures in violation of these rules will be deemed invalid. It is suggested to persons circulating petitions that at least seven signatures be obtained to ensure that at least five valid signatures remain should any be ruled invalid or found illegible and therefore unverifiable.



STATE BAR OF MICHIGAN NOMINATING PETITION

EXECUTIVE COUNCIL MEMBER, YOUNG LAWYERS SECTION

_____ DISTRICT

We, the undersigned active members of the State Bar of Michigan, having our address of record with the State Bar within the above district, hereby nominate: _____ (PLEASE PRINT NAME) _____ (P#) whose address of record with the State Bar is located at: _____ (ADDRESS) _____ (ZIP) in said district, for the office of Executive Council Member, Young Lawyers Section of the State Bar of Michigan from the said district, to be voted on at the election to be held therein during the year 2022.

NOTE: FIVE VALID SIGNATURES OF ACTIVE MEMBERS WITH OFFICES IN THE DISTRICT NAMED ABOVE ARE REQUIRED TO NOMINATE. THE CANDIDATE CANNOT BE ONE OF THE FIVE MEMBERS SUPPORTING HIS OR HER OWN NOMINATION. SBM WILL ACCEPT ELECTRONIC SIGNATURES AND EMAILS CONFIRMING SUPPORT OF NOMINATION IN LIEU OF PHYSICAL SIGNATURES. PLEASE VISIT THE SBM WEBSITE FOR MORE INFORMATION. PETITIONS MUST BE EMAILED TO THE STATE BAR OF MICHIGAN BETWEEN APRIL 1 AND APRIL 30. PLEASE SUBMIT BY EMAIL THE SIGNED PETITION INCLUDING FIVE SIGNATURES OR EMAIL CONFIRMATIONS TO CSHARLOW@MICHBAR.ORG. DO NOT MAIL.

P#	PRINTED NAME	PRINCIPAL OFFICE ADDRESS	SIGNATURE
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_____ (PRINTED NAME OF CIRCULATOR), an active member of the State Bar of Michigan, says that his/her address of record with the State Bar is _____ (ADDRESS) _____ (ZIP) and he/she circulated the foregoing petition, and is well acquainted with the persons whose names are thereto affixed, and such persons signed the said petition in his/her presence.

Signature of Circulator _____ (PETITIONER MAY SIGN AS CIRCULATOR)

I hereby accept the nomination for which this petition is submitted.

Candidate's Signature _____ (SIGNATURE) _____ (DATE)

STATE BAR OF MICHIGAN NOMINATING PETITION

JUDICIAL MEMBER, JUDICIAL TENURE COMMISSION

We, the undersigned active members of the State Bar of Michigan, having our principal offices for the practice of law as indicated below, hereby nominate: _____ (PLEASE PRINT NAME) _____ (P#), an active member of the State Bar of Michigan, whose principal office is located at: _____ (ADDRESS) _____ (ZIP) for the office of member, Judicial Tenure Commission, to be voted on at the election to be held in 2022.

NOTE: 50 VALID SIGNATURES OF ACTIVE MEMBERS ARE REQUIRED TO NOMINATE. THE CANDIDATE CANNOT BE ONE OF THE 50 MEMBERS SUPPORTING HIS OR HER OWN NOMINATION. SBM WILL ACCEPT ELECTRONIC SIGNATURES AND EMAILS CONFIRMING SUPPORT OF NOMINATION IN LIEU OF PHYSICAL SIGNATURES. PLEASE VISIT THE SBM WEBSITE FOR MORE INFORMATION. PETITIONS MUST BE EMAILED TO THE STATE BAR OF MICHIGAN BETWEEN APRIL 1 AND APRIL 30. PLEASE SUBMIT BY EMAIL THE SIGNED PETITION INCLUDING 50 SIGNATURES OR EMAIL CONFIRMATIONS TO CSHARLOW@MICHBAR.ORG. DO NOT MAIL.

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NOTE: 50 VALID SIGNATURES ARE REQUIRED TO NOMINATE. CIRCULATORS ARE ADVISED TO FILE A TOTAL IN EXCESS OF THAT NUMBER.

_____ , an active member of the State Bar of Michigan,
PRINTED NAME OF CIRCULATOR

says that his/her principal office address is _____ _____
ADDRESS ZIP

and he/she circulated the foregoing petition, and is well acquainted with the persons whose names are thereto affixed, and such persons signed the said petition in his/her presence.

Signature of Circulator _____
PETITIONER MAY SIGN AS CIRCULATOR

I hereby accept the nomination for which this petition is submitted.

Candidate's Signature _____ _____
SIGNATURE DATE

STATE BAR OF MICHIGAN NOMINATING PETITION

MEMBER, REPRESENTATIVE ASSEMBLY

_____ JUDICIAL CIRCUIT

We, the undersigned active members of the State Bar of Michigan, having our principal offices for the practice of law within the above judicial circuit, hereby nominate: _____ _____ whose principal office for the practice of law is located at: _____ _____ in said judicial circuit, for the office of member, Representative Assembly of the State Bar of Michigan from the said judicial circuit, to be voted on at the election to be held therein during the year 2022.

PLEASE PRINT NAME P# ADDRESS ZIP

NOTE: FIVE VALID SIGNATURES OF ACTIVE MEMBERS WITH OFFICES IN THE DISTRICT NAMED ABOVE ARE REQUIRED TO NOMINATE. THE CANDIDATE CANNOT BE ONE OF THE FIVE MEMBERS SUPPORTING HIS OR HER OWN NOMINATION. SBM WILL ACCEPT ELECTRONIC SIGNATURES AND EMAILS CONFIRMING SUPPORT OF NOMINATION IN LIEU OF PHYSICAL SIGNATURES. PLEASE VISIT THE SBM WEBSITE FOR MORE INFORMATION. PETITIONS MUST BE EMAILED TO THE STATE BAR OF MICHIGAN BETWEEN APRIL 1 AND APRIL 30. PLEASE SUBMIT BY EMAIL THE SIGNED PETITION INCLUDING FIVE SIGNATURES OR EMAIL CONFIRMATIONS TO CSHARLOW@MICHBAR.ORG. DO NOT MAIL.

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_____ , an active member of the State Bar of Michigan,
PRINTED NAME OF CIRCULATOR

says that his/her principal office address is _____ _____
ADDRESS ZIP

and he/she circulated the foregoing petition, and is well acquainted with the persons whose names are thereto affixed, and such persons signed the said petition in his/her presence.

Signature of Circulator _____
PETITIONER MAY SIGN AS CIRCULATOR

I hereby accept the nomination for which this petition is submitted.

Candidate's Signature _____ _____
SIGNATURE DATE

STATE BAR OF MICHIGAN NOMINATING PETITION

MEMBER, BOARD OF COMMISSIONERS

COMMISSIONER ELECTION DISTRICT _____

We, the undersigned active members of the State Bar of Michigan, having our principal offices for the practice of law within the above commissioner election district, hereby nominate: _____ (PLEASE PRINT NAME) _____ (P#) whose principal office for the practice of law is located at: _____ (ADDRESS) _____ (ZIP) in said district, for the office of Commissioner of the State Bar of Michigan from the said district, to be voted on at the election to be held therein during the year 2022.

NOTE: FIVE VALID SIGNATURES OF ACTIVE MEMBERS WITH OFFICES IN THE DISTRICT NAMED ABOVE ARE REQUIRED TO NOMINATE. THE CANDIDATE CANNOT BE ONE OF THE FIVE MEMBERS SUPPORTING HIS OR HER OWN NOMINATION. SBM WILL ACCEPT ELECTRONIC SIGNATURES AND EMAILS CONFIRMING SUPPORT OF NOMINATION IN LIEU OF PHYSICAL SIGNATURES. PLEASE VISIT THE SBM WEBSITE FOR MORE INFORMATION. PETITIONS MUST BE EMAILED TO THE STATE BAR OF MICHIGAN BETWEEN APRIL 1 AND APRIL 30. PLEASE SUBMIT BY EMAIL THE SIGNED PETITION INCLUDING FIVE SIGNATURES OR EMAIL CONFIRMATIONS TO CSHARLOW@MICHBAR.ORG. DO NOT MAIL.

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Signature of Circulator _____ (PETITIONER MAY SIGN AS CIRCULATOR)

I hereby accept the nomination for which this petition is submitted.

Candidate's Signature _____ (SIGNATURE) _____ (DATE)

ETHICAL PERSPECTIVE

The helpline helps

BY ROBINJIT K. EAGLESON

Your client tells you that if he is convicted, he will not go quietly. Perhaps your client has difficulty understanding their legal options in the case because of a mental deficiency. Or maybe your client wants to make all the tactical decisions about their case.

There are a limitless number of scenarios that lawyers may find themselves in that may require additional assistance regarding ethical obligations. Thankfully, lawyers needing advice have a place to go for answers. The State Bar of Michigan Ethics Helpline provides guidance for lawyers in difficult and complex situations. Below are examples of guidance received by members like you who faced ethical conundrums.

THE CLIENT WHO THREATENS THEMSELF OR OTHERS

There is no ethical obligation to act "except in limited circumstances where failure to act constitutes assisting the client."[1] However, a lawyer may act if the lawyer's knowledge may enable them to prevent the crime.[2] MRPC 1.6(c) states, in part, that a lawyer may reveal a client's intent to commit a crime and is free to disclose the information necessary to prevent the crime even if that information constitutes a client confidence or secret.

If the lawyer would like to act, the first step is determining whether the client intends to commit a crime. "Knows" is defined in the comments to MRPC 1.0 under Terminology as "actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances." MRPC 1.6 Comment, Disclosure Adverse to Client, provides some guidance:

> It is arguable that the lawyer should have a professional obligation to make a disclosure in order to prevent homicide or serious bodily injury which the lawyer knows is intended by the client. However, it is very difficult for a lawyer to "know" when such a heinous purpose will actually be carried out, for the client may have a change of mind. To require disclosure when the client intends such an act, at the risk of professional discipline if the assessment of the client's purpose turns out to be wrong, would be to impose a penal risk that might interfere with the lawyer's resolution of an inherently difficult moral dilemma.

Accordingly, if the lawyer knows the client intends to commit homicide or great bodily harm, they are free to disclose the information necessary to prevent the act, but to no greater extent than the lawyer reasonably believes necessary and that the timing is imminent. Where practical, the lawyer should seek to persuade the client to take suitable action.

Factors the Michigan lawyer may weigh in determining whether to disclose include the magnitude of the impending threat, proximity and likelihood of the contemplated threat, and the imminence of threat coming to fruition. Other factors include the nature of the lawyer's relationship with the client and those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. The lawyer is given discretion because "whether the lawyer's concern is based on moral or legal considerations, the interest in preventing the harm may be more compelling than the interest in preserving confidentiality of information."[3] It should be noted that this disclosure is permissive, not mandatory.[4]

Moreover, if the client has been diagnosed with a disability that affects their capacity, MRPC 1.14(b) provides that the lawyer may "take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest."

THE MENTALLY DEFICIENT CLIENT

Dealing with diminished-capacity clients is

"Ethical Perspective" is a regular column providing the drafter's opinion regarding the application of the Michigan Rules of Professional Conduct. It is not legal advice. To contribute an article, please contact SBM Ethics at ethics@michbar.org.

one of the most challenging dynamics in the lawyer-client relationship.

MRPC 1.14 states that the lawyer must "as far as reasonably possible, maintain a normal client-lawyer relationship with the client" whose ability to make decisions relating to the representation is impaired, whether by age, mental disability, or some other reason. The lawyer must treat the client with dignity and respect.

How a lawyer charts a course of representation with a client with diminished capacity is always challenging because the duty of confidentiality must be honored; disclosing the client's condition can have a detrimental impact on the client's position in the subject matter of the representation; conflicts of interest may arise; and the client can have varying types of, or temporally intermittent, capacity.[5] Moreover, disputes can arise between a protected individual and their representative, which can lead to a division in loyalty due to a divergence between the lawyer's obligation to the actual client and the fiduciary who has the legal right to make certain decisions on behalf of the protected individual. In this case, the lawyer must make both ethical and legal determinations in how to proceed.

The comments to MRPC 1.14 state that the lawyer may seek guidance from an appropriate diagnostician in assessing the situation. Only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest may they seek appointment of a guardian or take other protective action.[6] The definition of "other protective action" is broad and could include consulting with family members, contacting the client's diagnostician, seeking conservatorship, or requesting appointment of a guardian ad litem.[7]

THE TACTICAL CLIENT

The lawyer has a client who wants to make all the tactical decisions about the case. This issue often arises when the client demands that the lawyer take action that is not ethically permitted or not in the client's best interest. Clients have the right to make bad decisions, but they do not have the right to require the lawyer to do something unethical, illegal, repugnant, or imprudent.[8]

MRPC 1.2 provides for the scope of representation, which states in part:

> (a) ... A lawyer shall abide by a client's decision whether to accept an offer of settlement or mediation evaluation of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, with respect to a plea to be entered, whether to waive jury trial, and whether the client will testify. In representing a client, a lawyer may, where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.
>
> Comment, Scope of Representation: The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also hasv the right to consult with the lawyer about the means to be used in pursuing those objectives. ... In questions of means, the lawyer should assume responsibility for tactical issues but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

The intent of the Rules of Professional Conduct is for the lawyer to see to it that the client's subjective desires and objectives are the goal of the lawyer — as long as they are not illegal, fraudulent, or put the lawyer in violation of the rules.[9] If the client insists on moving forward in a manner that places the lawyer in a position where the resulting action would be unethical, illegal, repugnant, or imprudent, the lawyer should consider withdrawal under MRPC 1.16.

CONCLUSION

The lawyers who staff the State Bar of Michigan Ethics Helpline provide confidential and informal opinions that are non-binding and advisory to Bar members regarding ethical issues pertaining to prospective conduct. The SBM Ethics webpage has information on issues the helpline can and cannot help with.[10] When faced with an ethical question, the helpline is there to assist. Contact the SBM Ethics Helpline at (877) 558-4760 for assistance; calls are returned during business hours.

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.

ENDNOTES

1. MRPC 1.6, "Comment, Disclosure Adverse to Client." The Michigan Rules of Professional Conduct, ethics opinions cited in this article, and other information related to attorney conduct can be found on the SBM website <https://www.michbar.org/opinions/ethicsopinions> [https://perma.cc/DQJ5-9C7S]. All websites cited in this article were accessed Feb. 8, 2022.
2. *Id.*
3. *Id.*
4. Ethics Opinion RI-245 and MRPC 1.13 "[discusses] the disclosure of intended harm to a corporate client." Ethics Opinion RI-160 discusses what a lawyer may/must disclose if their client is a fugitive from justice.
5. MRPC 1.14, "Comment."
6. MRPC 1.14(b)
7. For examples of appropriate and inappropriate appointments of a lawyer seeking appointment of a guardian, see Ethics Opinions RI-76, RI-51, and RI-176.
8. MRPC 1.2 and MRPC 1.16, "Comment."
9. MRPC 1.2(c) and (d), "Comment." See also Ethics Opinions RI-262, RI-348, RI-255, and *McCoy v Louisiana*, 584 US; 138 S Ct 1500; 20 L Ed 2d 821 (2018).
10. <https://www.michbar.org/opinions/ethicsopinions#helpline>[https://perma.cc/7L77-8UR2].

LIBRARIES & LEGAL RESEARCH

Roadside zoo: A term in search of legal definition?

BY VIRGINIA C. THOMAS

"As soon as we have the thing before our eyes, and in our hearts an ear for the word, thinking prospers." — Martin Heidegger[1]

Our legal lexicon is anything but static. It evolves over time and, as it does, it can challenge the researcher trying to find the law. Here is the story of a single term which has been the subject of legislation, regulation, and litigation and the challenges it presents for researchers in finding the applicable law.

WHAT IS A ROADSIDE ZOO?

"The word you've entered isn't in the dictionary."

This is the response given to a recent search for the definition of "roadside zoo" and synonymous term "roadside menagerie" in the Merriam-Webster online dictionary (available at www.merriam-webster.com/). Nor will legal researchers find these terms in Black's Law Dictionary, Words and Phrases, and other secondary sources typically used to clarify the meaning of a word or document and its use in a legal context.

These findings are no surprise when one considers the broader landscape. Legal terminology is fundamentally formal and well-established, whereas "roadside zoo" is a colloquial term often used to refer to a subset of U.S. Department of Agriculture (USDA) class C exhibitors.[2]

Ambiguity does not mean that a term goes unused. News reports and popular press and social media posts aside, there are numerous references to roadside zoos in a variety of sources. Wikipedia, for example, includes this brief description in a featured article about zoos, generally:

> Roadside zoos are found throughout North America, particularly in remote locations. They are often small, for-profit zoos, often intended to attract visitors to some other facility, such as a gas station. The animals may be trained to perform tricks, and visitors are able to get closer to them than in larger zoos. Since they are sometimes less regulated, roadside zoos are often subject to accusations of neglect and cruelty.[3]

The Association of Zoos and Aquariums (AZA), an independent zoological accrediting organization, does not define the term "roadside zoo" but refers to "roadside menageries with inexpert handlers and often inhumane conditions."[4]

Other entities that advocate for animal rights and animal welfare have used the term in messaging and in litigating animal neglect and cruelty cases. One piece on the Animal Legal Defense Fund website succinctly described "roadside zoos" as "small menageries where wild animals like lions, tigers, monkeys, wolves, and others are kept in captivity, and often suffer badly."[5] Further details include confinement in small cages, unsanitary conditions, inadequate food and veterinary care, lack of mental stimulation, and promotion of potentially dangerous interactions with patrons, such as bottle-feeding tiger cubs. Similarly, People for the Ethical Treatment of Animals notes that animals in "roadside zoos" are "forced to spend their lives behind bars just to entertain the public. Living conditions are often dismal, with animals confined to tiny, filthy, barren enclosures."[6] Conditions of specific roadside zoos are often detailed in court filings.[7]

Law journal articles also discuss the term "roadside zoo." As of this writing, 38 articles in the HeinOnline Law Journal Library and five in the Social Science Research Network include the term. These articles appear in flagship law reviews and those that focus on a special topic.[8] The 43 articles span 90 years — 30 were published between 2010-2021, two between 2003-2009, five between

1976-1994, and six between 1931-1939. One of the earliest articles describes a statute governing roadside zoos in Michigan.[9] Clearly, the term "roadside zoo" is not new to our vocabulary.

USE IN PRIMARY LEGAL AUTHORITIES

This is where my hunt for definitions began, and I found the landscape curiously quiet. Except for several cases, mostly in state court, I discovered little in the way of judicial attempts to define "roadside zoo" or "roadside menagerie" — even in dicta. In one recent case from Montana, the court examined whether the appellant's "roadside menagerie" license should be revoked.[10]

Neither compound term appears in a keyword search of the current U.S. Code, although "zoo" and "menagerie" returned numerous results, as one might expect. The same is true for the Michigan Compiled Laws, which does provide a definition of "zoo" in the Michigan Aquatic Development Act:

> "Zoo" means any park, building, cage, enclosure, or other structure or premises in which a live animal is kept for public exhibition or viewing, regardless of whether compensation is received.[11]

This definition is substantially like the one set by the Animal and Plant Health Inspection Service, a USDA agency that regulates animal health and welfare.[12] As with the U.S. Code, a keyword search of the current Code of Federal Regulations did not yield "roadside zoo" or "roadside menagerie" or even "menagerie," for that matter.

A similar search on Regulations.gov for recently proposed and final rules and related documents retrieved one proposed rule[13] that referenced "small zoos and roadside exhibits" and "petting/roadside zoos," and a final rule[14] that referenced "small roadside zoos" in their respective preambles. Thousands of accompanying documents and public comments that included the term "roadside zoo" were retrieved from this source as well, underscoring the widespread popularity of the term.

GOING FORWARD

Use of the term "roadside zoo" has been criticized on two counts. First, there does not appear to be consensus regarding the definition of the term across different venues, a scenario which invites subjective interpretation and ambiguity.[15] Second, the term is not neutral. Rather, it carries strong negative connotations which would transfer to referent entities whether or not they are warranted.[16] Both of these sources suggest the term "menagerie."

Not all words evoke pleasant emotions, yet they are necessary. It seems there is work to be done in defining what is meant by roadside zoo. "After all, language is perhaps the most obvious feature of the legal process, whether we have in mind statutes and regulations, contractual and testamentary instruments, writs, briefs or pleadings, or the response of the court."[17]

Virginia C. Thomas is director of the Arthur Neef Law Library at Wayne State University. She is a member of the SBM Access to Justice Initiative and serves on the ICLE Executive Committee.

ENDNOTES

1. Heidegger, The Thinker as Poet (1947), available at <https://thefloatinglibrary.com/2008/06/30/the-thinker-as-poet-by-heidegger/> [https://perma.cc/5359-LZYN]. All websites cited in this article were accessed February 9, 2022.
2. See 9 CFR 1.1 for definitions of "Class C licensee" and "Exhibitor."
3. Zoo, Wikipedia <https://en.wikipedia.org/wiki/Zoo> [https://perma.cc/LHH2-LSA8]. Wikipedia does not recognize the term "roadside menagerie."
4. The Accreditation Standards & Related Policies, Ass'n of Zoos and Aquariums (2022), p 91, available at <https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf> [https://perma.cc/H4YJ-MY9U].
5. Roadside Zoos: Small, unaccredited zoos where wild and exotic animals suffer in captivity, Animal Legal Defense Fund, available at <https://aldf.org/issue/roadside-zoos/> [https://perma.cc/SM2D-UQGB].
6. Roadside Zoos and Other Captive Animal Displays, People for the Ethical Treatment of Animals, available at <https://www.peta.org/issues/animals-in-entertainment/zoos-pseudo-sanctuaries/> [https://perma.cc/K28T-Z77A].
7. See, e.g., *Animal Legal Defense Fund v Vilsack*, 169 F Supp 3d 6 (D DC 2017), Brief for Appellants, pp 21-22 (referring to Cricket Hollow Zoo as an "unaccredited roadside zoo" with 300-350 exotic or wild animals which it housed in "isolated, barren, unsanitary and hazardous enclosures with insufficient access to drinking water and improper veterinary care.").
8. Law journals retrieved by the search "roadside zoo" include flagship law reviews as well as topical journals, e.g., Animal Law and Journal of Animal Law.
9. Berry, Law Regulating Roadside Zoos, 70 Our Dumb Animals 168 (November 1937). The Massachusetts Society for the Prevention of Cruelty to Animals first published this monthly in 1887. Although it is not, strictly speaking, comparable to a law student edited journal, it does focus specifically on animal welfare issues and highlights law-related topics.
10. *Animals of Montana v Dep't of Fish, Wildlife, and Parks*, 404 Mont 241; 487 P3d 384 (2021).
11. MCL 286.872.
12. 9 CFR 1.1, definition of "Zoo."
13. Shift Cage Requirements, 71 FR 25101 (proposed April 28, 2006) (to be codified at 9 CFR 2).
14. Injurious Wildlife Species: Listing Three Anaconda Species and One Python Species as Injurious Reptiles, 80 FR 12702 (April 9, 2015) (to be codified at 50 CFR 16).
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LAW PRACTICE SOLUTIONS

The Great Resignation and its impact on law firms: Part I

BY JOANN L. HATHAWAY

We've all heard about the "Great Resignation" — workers leaving their jobs in unprecedented numbers. Now, in the early stages of 2022, there are a reported 11 million job openings in the U.S., suggesting a worsening worker shortage. But why?

The COVID-19 pandemic precipitated a spike in unemployment. Workers who lost jobs collected unemployment compensation and the federal government, most notably, stepped in with additional forms of relief. As the world continues to emerge from the grips of the pandemic and the economy attempts to recover, people aren't rushing back to work.

Why are so many people leaving the workforce? And more specifically, what is the effect on the legal sector?

WHAT FUELS THE FIRE

Employees are resigning in droves, but why? Is it generationally driven, a movement, groupthink, all of these, or more? We cannot address the problem — or even determine if it is a problem — without understanding the root of its origins.

Before the pandemic, the workplace routine involved commuting to and from the office and sometimes putting up with less-than-optimal office arrangements. This was the norm, and workers had no choice but to abide by it.

In March 2020, the workplace as we knew it came to a screeching halt, forcing many to work remotely. For those who didn't, the existing framework of workplace culture, rules, and human interaction changed dramatically.

This literal, overnight change first resulted in chaos and left most workplaces cobbling together plans to hopefully keep their law firms afloat. The new norm — one that most of us thought of as temporary — was to make things up as you go along.

It took several months, but most of us have learned how to navigate remote work. Some of us have embraced it wholeheartedly. For new workers, this is the only model they know.

Those embracing the "Great Resignation" contend the old workplace model is flawed and the new normal should consist of an entirely remote or hybrid workplace. At the same time, these devotees seem to desire a collaborative approach to developing the new normal.

One word that sums up the central theme of this new workplace model is flexibility, the lack of which seems to be a major driver of the "Great Resignation." Employees want flexibility; therefore, employers need to learn to incorporate flexibility into their workplace to attract and retain a solid workforce.

IMPLEMENTING FLEXIBILITY INTO YOUR PRACTICE

No two law firms are alike. What may work for one lawyer and their firm may not work for you. The most important thing to remember in creating a flexible workplace is understanding that there's

Law Practice Solutions is a regular column from the State Bar of Michigan Practice Management Resource Center (PMRC) featuring articles on practice, technology, and risk management for lawyers and staff. For more resources, visit the PMRC website at www.michbar.org/pmrc/content or call our Helpline at (800) 341-9715 to speak with a practice management advisor.

no one-size-fits-all solution. Think about creating the best work environment for you, your team, and your clients. Keep in mind the goal of delivering excellent legal services while creating a happy, harmonious, highly efficient workplace. Measuring your success requires you to look at your workplace through your own lens while also getting input from your team and clients.

What might flexibility in the workplace look like? Maybe you allow staff to work from home some of the week or maybe you allow compressed scheduling (think of a traditional 40-hour work week, except employees work four 10-hour days.) Showing your team that you are fluid with your approach is the first step to opening the door to fostering communication.

Communication between you, your team, and clients is vital. With remote work, you can't casually walk across the hall for an impromptu discussion with a fellow employee. Remote communication is much more deliberate and takes time and effort.

Working remotely can lead to email overload. There is a time and place for email, but it shouldn't be the only way you begin discussions and share information with your team. The pandemic has made people feel more isolated due to the inability to interact with others. Your team members react positively if you engage with them verbally and one-on-one.

Workplace surveys are another means of collecting employee and client input. However, the goal is getting reliable feedback. We've all received surveys promising anonymity, but we wonder if they truly are anonymous. Surveys are worthless if those completing them fear they can be identified. Remember, you want to cultivate trust. Guaranteeing anonymity makes survey participants more likely to answer with honesty, boosting the reliability of the information you receive.

Everyone needs to feel valued. When Michigan lawyers were forced to work remotely because they were deemed non-essential, many expressed feelings of being devalued. Being thrust into an unfamiliar work environment made matters worse. Several expressed concerns that their teams, also working remotely, might not be fulfilling their duties, and while this belief seems to have dissipated, leaders harboring distrust against a team or team member without cause is dangerous territory. Expect the best from someone and that is what they will produce. If law firm leaders took the time to express gratitude for a job well done more often, they would be amazed at the resulting quality of work. The irony of the concept of remote workplace laziness is that the reverse is true. Many remote workers say they get more done and have fewer interruptions.

Everyone needs a healthy work-life balance, and everyone needs to feel empowered to step away from work when the day is over. Team members should not be expected to be available for work around the clock.

WHAT'S NEXT?

There are pros and cons to the new normal, whatever that may be for you and your firm. In the April issue of the Michigan Bar Journal, we'll take a deeper dive into the "Great Resignation" and show you how to build a thriving practice while keeping your team intact.

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

PRACTICING WELLNESS

Stop telling me to be mindful

BY DAWN GRIMES KULONGOWSKI

"Be mindful." I hear it everywhere.

As a practicing dentist, I have seen it used in toothpaste ads as though "mindful brushing" will get people interested in their oral hygiene. It's used so much that it can feel like an empty term. The person telling us to do it too often leaves out what it is or how it is accomplished.

I came to practice meditation and mindfulness after a long, hard road of disappointment. Like many of you, I was highly ambitious and exceptionally studious and looked at life as if it were a list of things to accomplish. I truly believed that when I checked all the boxes, I would be fulfilled and content. My list looked something like this: college, professional school, marriage, kids, buying a practice …

It petered out after that last one. After purchasing a dental practice, rather than feeling fulfilled and content, I found myself overwhelmed and burnt out. I must have had the wrong list, I decided. Knowing I couldn't turn back time, I desperately added more boxes, more accomplishments that I hoped would bring it all together. Happiness was never in the present. It was always out there at some unknown future time that deep down I knew may never come. In moments when I couldn't mask it by accumulating symbols of achievement, my outlook could be quite bleak.

Dentists and attorneys have a lot in common. We are highly educated, logical perfectionists. We are also among the most publicly vilified and misunderstood professionals.[1] Early in my career, hearing "I hate the dentist" in all contexts of my professional and personal life certainly took a toll on my well-being. Likewise, I have several attorney friends who would be quite happy to never hear a tacky lawyer joke again.[2] Also, attorneys and dentists, despite the years of education we've had, are never taught how to cope with the stresses of the careers we have chosen. Logically, it would seem like someone would have mentioned that these careers are all about taking on the problems of others and offered methods on staying mentally healthy while carrying that heavy weight. We were ushered out of professional school with amazing skills, none of which had anything to do with growing or preserving our own well-being.[3]

After years of tiptoeing the line between exhaustion and burnout, I went on a retreat that concentrated on stress management through meditation.[4] I left that retreat with skills to inhabit my life differently. For the first time in a decade, I had hope that I really could be content and fulfilled — today, not in some distant future. I decided to bring the skills I learned to the professional community, a place that needs them desperately but is stigmatized when seen as anything other than bulletproof.[5]

Study after study has proven that meditation does wonders for our health by decreasing anxiety, increasing self-awareness and attention span, lowering blood pressure, improving sleep, and decreas-

"Practicing Wellness" is a regular column of the Michigan Bar Journal presented by the State Bar of Michigan Lawyers and Judges Assistance Program. If you'd like to contribute a guest column, please email contactljap@michbar.org.

ing pain, to name just a few.[6] Some of us have given meditation a try. We sit down, have thoughts running through our heads, and jump to the conclusion that we've failed. We are not a group that is good at not being good at something.[7] Instead of persisting, we tell ourselves that meditation is not possible, and our minds are too trained, too educated, and too busy to turn off.

Our minds are special, trained to think logically and analytically, but these skills are not needed in every moment. We have no idea how to put them on the shelf for a few hours here and there, like during a family dinner or before falling asleep.[8]

Meditation is not the absence of thought. Meditation, in practice, is drifting between thought and an object of focus, most commonly the breath.[9] It is training your busy brain to come back from thought to the object of focus. It is not passive, nor is it like flipping a switch. It is a deliberate effort to retreat from the maelstrom of distractions and dial into the task at hand, the present moment. Here's a simple technique for getting started:

1. Set a timer. Start with five minutes.
2. Get comfortable. There is no right position, and you don't have to close your eyes if you don't want.
3. Direct your attention on your breath. Feel it come in, feel it go out.
4. As you breathe in, quietly count to 8 in your mind.
5. As you breathe out, quietly count to 8 in your mind.
6. When you notice yourself drifting off to thoughts, sounds, or other distractions, go back to counting your breath.

Much like our chosen professions, this is a practice. There is no end point, and we must make the effort to become better every day. Mindfulness is taking that skill from practicing meditation and incorporating it into everyday life. It is a deliberate effort to return from thoughts and distractions to an undivided focus on the present moment over and over. Singular focus is a quality of attention that many of us have never experienced. Not unlike training for a marathon, our ability builds gradually. When we make meditation a daily practice, the fog of busyness lifts away and reveals the life we've been missing.[10]

Many people say that life flies by. Time is an accepted standard, but we are so distracted that we miss moments as they happen, giving us the impression that they flew by.[11] They all go at the same pace. It is our lack of attention to them that makes them invisible. Being present and aware in each moment is where fulfillment lies. Taking in every moment as it is, being fully present with our family and friends, enjoying our morning coffee or favorite TV show — this is the basis of fulfillment.[12] It isn't found at the end of a list of accomplishments. It's right here in front of us. Daily meditation practice is how we train, and mindfulness is what brings us back to life.

Dawn Grimes Kulongowski is owner of Creative Smiles Dental Group and The Peaceful Practice, which teaches meditation, mindfulness, emotional intelligence, and communication skills exclusively to professionals across the country. In addition to being a dentist and a certified meditation teacher, she has a bachelor's degree in philosophy, holds certifications in wellness counseling and the psychology of leadership from Cornell University, and has completed author and science journalist Daniel Goleman's Emotional Intelligence Training Program.

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BEST PRACTICES

The uneven playing field in criminal tax cases

BY NEAL NUSHOLTZ

Reuben G. Lenske was an attorney in Portland, Oregon, convicted in a 1963 bench trial for tax evasion for the years 1955, 1957, and 1958. The criminal tax investigation of Lenske started in May 1959. Lenske's conviction was reversed by the U.S Court of Appeals for the Ninth Circuit essentially because the court thought his trial was unfair.[1]

In his indictment, Lenske was alleged to have owed as much as 27 times more than the amounts that he was proven at trial to have owed:

YEAR	AMOUNT ALLEGED PER INDICTMENT	AMOUNT PROVEN AT TRIAL
1955	$11,465.74	$ 414.78
1957	$19,412.88	$1,006.18
1958	$ 7,746.85	$2,682.99

HIDE AND SEEK

During his criminal investigation, Lenske handed over all the documents or files requested by the special agent and allowed those records to be examined at his law office. To prevent Lenske from knowing which evidence might be used against him, the special agent would secrete papers in his briefcase, photocopy them elsewhere, and return the documents after lunch or the next morning. In its majority opinion, the Ninth Circuit thought the government had blindsided and overwhelmed Lenske:

> The evidence related to some 90 properties, numerous business transactions, of which the record does not indicate the number, and "thousands, thousands" of documents. … The indictment gave no information as to which of his 90 properties, his numerous transactions, his thousands of documents, would be involved in the trial of the case. He knew that the Government had copies of all of his records and documents, because he had given them to the Government's agents. He knew that they had been studying them for two and one-half years. But even if he, like them, had had at his disposal all the resources of the United States, its Federal Bureau of Investigation and other investigating agencies, he could not have sought out and interviewed all the potential witnesses to all of his activities, to determine from which direction the attack would come, and then prepare his evidence to meet the attack. It would tax the imagination to conjure up a more frightening and frustrating situation than that in which his government has placed this citizen.[2] (The district court had denied Lenske's motion for a bill of particulars.)

"Best Practices" is a regular column of the Michigan Bar Journal, edited by Gerard V. Mantese and Theresamarie Mantese for the Michigan Bar Journal Committee. To contribute an article, contact Mr. Mantese at gmantese@manteselaw.com.

TESTIMONY OF A FED.R.EVID. 1006 SUMMARY WITNESS

The *Lenske* court thought the proceeding was unfair because it placed a large burden of proof on the defendant to disprove every single allegation of fraud or be found guilty:

> It may be asked what harm is done … putting everything into a chart showing increased net worth and having the Special Agent testify that it was prepared under his supervision and is right. There is still opportunity for cross examination and for witnesses for the defense.
>
> What is wrong … is that such a process is outrageously unfair. The Government uses its resources, here for two and one-half years, to build up its case and its charts. It then gets its indictment. The taxpayer still has no notice of wherein he is charged with criminal conduct. …
>
> [T]he Government has not assumed the burden of proving, beyond a reasonable doubt, that he is guilty. It has assumed only the burden, with its unlimited resources and time, of preparing a mass of documentary evidence and charts incomprehensible to a layman, all prepared by the Government itself, and saying to the taxpayer, "Your task is to prove that all of what is contained in the charts is false, not merely that it is 96% false, but that it is all false. You do not have the time nor the resources that the Government had, but that is your misfortune."[3]

The *Lenske* case was a net worth case where income is deduced by examining the expenditures of the defendant and comparing the total expenditures to the amount reported on the tax return. Net worth proofs can cause a shifting of the burden of proof to a defendant on the factual question of whether expenditures were made from non-taxable funds. To prevent that shifting of the burden of proof, the government under *U.S. v. Holland* is required to investigate leads furnished by a taxpayer that are "reasonably susceptible of being checked, [and] which, if true, would establish the taxpayer's innocence."[4] The Ninth Circuit complained that the government had no obligation to furnish Lenske with evidence discovered by the government that would have been helpful to his case.[5] Lenske's trial had preceded the decision in *Brady v. Maryland*, which required government production of exculpatory evidence. [6]

The special agent's report to his superiors recommending Lenske's prosecution for tax evasion said that the Portland Police Department and the Portland FBI office believed Lenske was a communist and he wanted to form a local chapter of the Lawyer's Guild, a national organization of left-wing attorneys. The report included a copy of Lenske's letter to a newspaper condemning U.S. policy in Cuba, Laos, and China.

The Ninth Circuit reversed Lenske's conviction, explaining why in an unpublished opinion under the heading "Witch-Hunt":

> This court will not place its stamp of approval upon a witch-hunt, a crusade to rid society of unorthodox thinkers and actors by using federal income tax laws and federal courts to put such people in the penitentiary. This court will not be so used.[7]

On motion for reconsideration, the unpublished opinion was withdrawn, revised, and later published.[8] In the published opinion, citing the "witch hunt" as reason for reversal was replaced with a reversal due to the uncertain manipulation of depreciation.[9]

Getting a conviction reversed based on the motives of the investigator is probably limited to situations where the playing field at trial is so uneven that those motives become a controlling factor in who gets convicted. Criminal tax cases can fall into that category.

AGGRESSIVE TAX POSITIONS

The prosecutorial tactics in the *Lenske* case — overloading and surprise at trial — can be found in any criminal trial, but tax cases have a unique feature. The definition of income can be a matter of opinion. Whether facts alleged by a prosecutor constitute a tax crime can be a matter of subjective interpretation. The government need only provide reasonable notice of what conduct is subject to criminal punishment.[10]

An example of an allegation that is a matter-subjective interpretation is *United States v. Harris*.[11] In that case, twin sisters were convicted for not reporting as income $500,000 they had been given by a wealthy widower. Since tax law was not clear about whether such gifts are taxable, the conviction was overturned.

In a criminal tax case, the government can gain a tactical advantage by mixing dubious allegations of a tax crime with legitimate criminal allegations. In a 1981 case,[12] the Illinois attorney general was convicted for not reporting income from personal use of campaign funds, fraudulent travel reimbursements, and bribes. He was also convicted for not reporting the income his girlfriend had earned from her job at the Chicago Stadium Corporation — one that the attorney general had arranged with a patron for her to have, and one for which she had not done any work. Not many, if any, tax preparers would think to include income paid to a girlfriend under such circumstances or even ask about it. By adding an allegation that the Illinois attorney general should report income from a job he had gotten for his girlfriend, the government could tarnish the defendant and turn something into evidence of a crime which by itself would not ordinarily have been criminal conduct.

CONCLUSION

Defense counsel in a criminal tax case is up against a formidable opponent — one the *Lenske* court called "the strongest litigant in the world":

> The Government is the strongest litigant in the world … It thus seemed outrageous to counsel for "the strongest client in the world" that that client's citizen adversary should have even a moment's notice of what a witness would say to his detriment, or should be armed as government counsel was armed, with the prior statements of the witness, with which to confront him if he departed from them.[13]

No panacea can address all the issues that can arise while defending a criminal tax charge, but one precaution that would address some of the above concerns is having a defensible tax return based upon the evidence admitted at trial. As to whether a return should be amended to correct errors, one criminal defense counsel has said he obtained an acquittal after both amending the tax return to correct errors and paying the tax due on the amended return.[14] "An amended return, of course, may constitute an admission of substantial underpayment, but it will not ordinarily constitute an admission of fraud."[15]

All income tax litigation is centered on how the tax return should have been prepared. A tax return prepared for trial would be a check on the government's summary witness.

Neal Nusholtz practices in all areas of tax controversies, including IRS audits and appeals, pre-indictment criminal investigations, tax court and federal district court litigation, and appeals to the U.S. Court of Appeals for the Sixth Circuit. A graduate of Oberlin College and Thomas M. Cooley Law School, he was selected in 1999 by Corp! magazine as one of the top ten business attorneys in southeastern Michigan.

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3. *Id.* at 24.
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5. *Lenske v United States*, 383 F2d at 22–23.
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7. *Lenske v United States*, unpublished opinion of the United States Court of Appeals for the Ninth Circuit, issued October 5, 1966 (Case Nos 19,539 and 20,448), p 2.
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ORDERS OF DISCIPLINE & DISABILITY

REPRIMAND WITH CONDITIONS (BY CONSENT)

Wright W. Blake, P37259, Detroit, by the Attorney Discipline Board Tri-County Hearing Panel #12. Reprimand effective Feb. 3, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admission that he pleaded guilty on Jan. 14, 2020, to Operating While Intoxicated — Second Offense, a misdemeanor, in violation of MCL 257.625, in *People v Wright W. Blake*, Macomb County 16th Judicial Circuit Court, Case No. 2018-004185-FH.

Based on the respondent's plea, admission, 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 $810.06.

REPRIMAND BY CONSENT[1]

D. Michael Cherry, P23882, Mt. Clemens, by the Attorney Discipline Board. Reprimand effective July 19, 2019.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admission that he committed professional misconduct by engaging in conduct involving a violation of the criminal law and the parties agreed that the respondent be reprimanded and subject to conditions as set forth in the stipulation.

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent committed professional misconduct when he engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); engaged in conduct involving violation of a criminal law where such conduct reflects adversely on the respondent's fitness as a

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

lawyer in violation of MRPC 8.4(b); engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3); engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court in violation of MCR 9.104(4) and MRPC 8.4(a); and engaged in conduct that violates a criminal law of a state in violation of MCR 9.104(5).

On Dec. 8, 2020, in response to a motion to modify filed by the respondent, Tri-County Hearing Panel #103 issued an order that modified the conditions and extended the time frames set forth in the panel's original order. The respondent filed a petition for review and after proceedings held in accordance with MCR 9.118, the board issued an order that affirmed the hearing panel's order modifying conditions in its entirety. Thereafter, the respondent filed a motion for reconsideration. On Dec. 14, 2021, the board issued an order granting the respondent's motion for reconsideration to the extent that the conditions set forth in the panel's original order of reprimand with conditions (by consent) and order modifying those conditions were vacated. The panel's order of reprimand, effective July 19, 2019, was ordered to remain in effect. Costs were assessed in the amount of $899.25.

1. This notice supersedes all previous notices.

REPRIMAND AND RESTITUTION (BY CONSENT)

Phillip D. Comorski, P46413, Detroit, by the Attorney Discipline Board Tri-County Hearing Panel #3. Reprimand effective Jan. 29, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline 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 as set forth in the parties' stipulation, the panel found that the respondent committed professional misconduct in connection with his representation of a client in post-conviction proceedings relating to filing a motion for relief from judgment and a potential habeas corpus petition. Further, the panel found that the respondent made misrepresentations to the grievance administrator during the investigation of a request for investigation filed against the respondent by the client.

Specifically, and in accordance with the parties' stipulation, the panel found that the respondent failed to competently represent his client in violation of MRPC 1.1(a); neglected a matter entrusted to him in violation of MRPC 1.1(c); failed to seek the lawful objectives of the client in violation of MRPC 1.2(a); failed to act with diligence and promptness in representing a client in violation of MRPC 1.3; failed to keep his client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information in violation of MRPC 1.4(a); failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of MRPC 1.4(b); in connection with a disciplinary matter, knowingly made a false statement of material fact in violation of MRPC 8.1(a)(1); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b); and made a knowing misrepresentation of fact or circumstances surrounding

a request for investigation in violation of MCR 9.104(6). Respondent was also found to have violated MCR 9.104(1)-(3).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded and pay restitution totaling $8,100. Costs were assessed in the amount of $778.96.

REPRIMAND WITH CONDITIONS (BY CONSENT)

Adam J. Gantz, P58558, Farmington Hills, by the Attorney Discipline Board Tri-County Hearing Panel #61. Reprimand effective Jan. 28, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline 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 as set forth in the parties' stipulation, the panel found that the respondent committed professional misconduct when he neglected his representation of clients in a Chapter 13 bankruptcy matter to the extent that the bankruptcy trustee had to release funds intended for the clients' mortgage to their unsecured creditors.

Specifically, and in accordance with the parties' stipulation, the panel found that the respondent handled a legal matter without preparation adequate in the circumstances in violation of MRPC 1.1(b); failed to provide competent representation to his client by neglecting a legal matter entrusted to him in violation of MRPC 1.1(c); failed to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.3; failed to keep his client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information in violation of MRPC 1.4(a); and failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of MRPC 1.4(b). The respondent was also found to have violated MCR 9.104(2)-(4) and MRPC 8.4(a).

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 $772.

SUSPENSION WITH CONDITIONS (BY CONSENT)

Christa Rosella Minnick, P72689, Novi, by the Attorney Discipline Board Tri-County Hearing Panel #69. Suspension, three years, effective Jan. 11, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of a Three-Year Suspension with Conditions in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based upon the respondent's admissions as set forth in the parties' stipulation, the panel found that the respondent committed professional misconduct while employed as an associate attorney at a law firm that handles immigration matters and when she failed to answer a request for investigation.

Based on the respondent's admissions and the stipulation of the parties, the panel found that with regard to Counts 1-6, the respondent failed to provide competent representation to her clients in violation of MRPC 1.1(c); failed to seek the lawful objectives of her clients in violation of MRPC

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

1.2(a); failed to act with reasonable diligence and promptness in representing her clients in violation of MRPC 1.3; failed to keep her clients reasonably informed about the status of their matters in violation of MRPC 1.4(a); failed to explain a matter to the extent reasonably necessary for a client to make informed decisions regarding the representation in violation of MRPC 1.4(b); knowingly made a false statement of material fact in violation of MRPC 4.1 and 8.4(b) (Count 1 only); engaged in conduct that violated or attempted to violate the standards and/or rules of professional conduct adopted by the Michigan Supreme Court in violation of MRPC 8.4(a) and MCR 9.104(4); engaged in conduct that involved dishonesty, fraud, deceit, or misrepresentation where such conduct reflected adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b); engaged in conduct that was prejudicial to the proper administration of justice in violation of MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); and engaged in conduct that was contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3).

With regard to Count 7, the panel found that the respondent knowingly failed to timely answer a request for investigation in violation of MCR 9.104(7), MCR 9.113(A), and MCR 9.113(B)(2); knowingly failed to respond to a lawful demand for information in violation of MRPC 8.1(a)(2); engaged in conduct that was prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(1); and engaged in conduct that violated or attempted to violate the standards and/or rules of professional conduct adopted by the Michigan Supreme Court in violation of MRPC 8.4(a) and MCR 9.104(4).

In accordance with the parties' stipulation, the panel ordered that the respondent's license to practice law be suspended for a period of three years and that she be subject to a condition relevant to the established misconduct. Total costs were assessed in the amount of $764.40.

AUTOMATIC INTERIM SUSPENSION

John Koby Robertson, P62137, Bloomfield Hills, effective Dec. 3, 2021.

On Dec. 3, 2021, the respondent was convicted by guilty plea of Attempted Failure to Pay Child Support in violation of MCL 750.92 in the matter titled *People v John Robertson*, 44th Circuit Court Case No. 21-026886-FH. 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.

REINSTATEMENT

On Nov. 22, 2021, Emmet County Hearing Panel #3 entered an Order of Suspension (By Consent) that suspended the respondent's license to practice law in Michigan for 30 days effective Dec. 13, 2021. On Jan. 5, 2022, the respondent, Michael H. Schuitema, submitted an affidavit pursuant to MCR 9.123(A) stating that he has fully complied with all requirements of the panel's order. On Jan. 5, 2022, the board was advised that the grievance administrator had no objection to the affidavit; and the board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that respondent, **Michael H. Schuitema**, is **REINSTATED** to the practice of law in Michigan effective Jan. 12, 2022.

DISBARMENT AND RESTITUTION

Lukasz Wietrzynski, P77039, Rochester Hills, by the Attorney Discipline Board, affirming the Tri-County Hearing Panel #61 Order of Disbarment and Restitution. Disbarment effective Oct. 14, 2021.

After proceedings conducted pursuant to MCR 9.115, the panel found by default that the respondent committed professional misconduct as charged in a nine-count formal complaint. The panel found (Counts 1-8) that between June 2013 and November 2017, the respondent, his sister, and his then girlfriend/fiancée engaged in a number of fraudulent actions/transactions with the intent to deprive the respondent's employer and the employer's clients of fees and funds to which they were entitled; (Count 8) that in 2015, the respondent engaged in a conflict of interest with a litigation funding company; and knowingly provided false testimony during his Feb. 11, 2019, sworn statement taken by the administrator's counsel (Count 9).

The panel specifically found that the respondent collected an illegal or clearly excessive fee in violation of MRPC 1.5(a) (Counts 1-5); engaged in a representation of a client that was directly adverse to another client and he could not reasonably believe the representation would not adversely affect the client in violation of MRPC 1.7(a) (Count 8); engaged in a representation of a client when that representation was materially limited by respondent's responsibilities to a third person in violation of MRPC 1.7(b) (Count 8); failed to promptly notify a client when funds or property in which a client has an interest is received in violation of MRPC 1.15(b)(1) (Counts 1-7); failed to promptly pay or deliver funds to which a client was entitled in violation of MRPC 1.15(b)(3) (Counts 1-7); knowingly made a false statement of material fact in connection with a disciplinary matter in violation of MRPC 8.1(a)(1) (Count 9); failed to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter in connection with a disciplinary matter in violation of MRPC 8.1(a)(2) (Count 9); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b) (Counts 1-9); and engaged in conduct that violated a criminal law of a state or of the United States in violation of MCR 9.104(5) (Counts 1-6). The respondent was also found to have violated MCR 9.104(2)-(4) and MRPC 8.4(a) (Counts 1-9).

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

The respondent filed an application for leave to appeal with the Michigan Supreme Court on Nov. 19, 2021. The Court denied the respondent's application for leave on Jan. 4, 2022.

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

FROM THE MICHIGAN SUPREME COURT

ADM File No. 2018-25 Amendment of Rule 7.312 of the Michigan Court Rules

To read ADM File No. 2018-25, dated February 2, 2022, visit http://courts.michigan.gov/courts/michigansupremecourt and click "Administrative Matters & Court Rules" and "Proposed & Recently Adopted Orders on Admin Matters."

ADM File No. 2019-28 ADM File No. 2021-36 Proposed Alternative Amendments of Rule 9.202 and Proposed Addition of Rule 9.245 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 9.202 and a proposed addition of Rule 9.245 of the Michigan Court Rules. Before determining whether either 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.]

ALTERNATIVE A

Rule 9.202 Standards of Judicial Conduct

(A) [Unchanged.]

(B) Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice. ~~In addition to any other sanction imposed, a~~A judge may not be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint ~~only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court~~.

(1)-(3) [Unchanged.]

ALTERNATIVE B

Rule 9.202 Standards of Judicial Conduct

(A) [Unchanged.]

(B) Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice. ~~In addition to any other sanction imposed, a judge may be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court.~~

(1)-(3) [Unchanged.]

[NEW] Rule 9.254 Taxation of Costs

(A) Right to Costs. Except as otherwise provided by the Supreme Court, the prevailing party in the Court's review of a commission decision is entitled to costs. For purposes of this rule, the prevailing party is the commission if the Court imposes any sanction on the respondent, regardless of the recommendation proffered by the commission. If the Court dismisses an action against a respondent, the respondent is the prevailing party.

(B) Rules Applicable. The procedure for taxation of costs under this rule is as provided in MCR 7.219.

(C) Costs Taxable. A prevailing party may tax only the reasonable costs incurred in the action as allowed under MCR 7.319(B) and MCL 600.2405.

Staff Comment: The proposed alternative amendments would address whether and how costs should be imposed in JTC proceedings. Under Alternative A, the provision allowing the Court to impose costs of prosecution for fraud, deceit, or intentional misrepresentation would be eliminated, and the rule would be clarified to reflect that costs may not be imposed. Under Alternative B, the provision allowing the Court to impose costs of prosecution for fraud, deceit, or intentional misrepresentation would be eliminated, and a proposed new rule would allow basic costs to be assessed as in general civil actions.

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 April 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. 2019-28/2021-36. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2021-47 Amendment of Rule 3.950 of the Michigan Court Rules

On order of the Court, this is to advise that the amendment of Rule 3.950 of the Michigan Court Rules is adopted, effective immediately. Concurrently, individuals are invited to comment on the form or the merits of the amendments 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 at the Public Administrative Hearings page.

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

Rule 3.950 Waiver of Jurisdiction

(A)-(D) [Unchanged.]

(E) Grant of Waiver Motion.

(1) [Unchanged.]

(2) Upon the grant of a waiver motion, a juvenile must be transferred to the adult criminal justice system and is subject to the same procedures used for adult criminal defendants. Juveniles waived pursuant to this rule are ~~not~~ required to be kept separate and apart from adult prisoners as required by MCL 764.27a.

(F)-(G) [Unchanged.]

Staff Comment: In response to a request from the ACLU, MCR 3.950 is amended to make the rule consistent with MCL 764.27a by requiring juvenile offenders who are waived into the adult criminal justice system under MCL 712A.4 to be kept separate and apart from adult prisoners.

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 April 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. 2021-47. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2020-08 Administrative Order No. 2022-2 Order Allowing Notice of Filing to Extend Filing Period in Michigan Supreme Court and Michigan Court of Appeals

Once again, many of Michigan's prisons are considered outbreak sites of the COVID-19 virus. As a result, prison facilities have restricted access to or closed the prison libraries, where self-represented inmates primarily work on pursuing their legal claims. These restrictions are impeding the ability of incarcerated individuals to complete the necessary legal pleadings to proceed with a criminal appeal.

Therefore, on order of the Court, pursuant to 1963 Const, Art VI, Sec 4, which provides for the Supreme Court's general superintending control over all state courts, the Court adopts the following alternative procedure for inmates who seek to file appeals with the Michigan Supreme Court and Michigan Court of Appeals in criminal cases only:

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

1. An incarcerated individual who is acting *in propria persona* (i.e., not represented by an attorney) and who intends to file an application for leave to appeal in the Michigan Supreme Court or a claim of appeal or an application for leave in the Michigan Court of Appeals shall file a letter with the Supreme Court or Court of Appeals notifying it of that intent. The letter shall:

(a) identify the trial court case number and, if applicable, the Court of Appeals case number that is the subject of the intended appeal,

(b) state that the incarcerated person is unable to complete and submit the necessary materials because of restrictions in place due to COVID-19, and

(c) be filed within the time for filing the application or claim of appeal under MCR 7.305(C)(2), MCR 7.204, or MCR 7.205.

The letter will have the effect of tolling the filing deadline as of the date the letter was mailed from the correctional facility.

2. When the tolling period ends, an incarcerated person who submitted a timely notice letter to the Supreme Court or Court of Appeals will have the same number of days to file the claim of appeal or application that remained when the tolling period began. An incarcerated person who submitted a timely notice letter during the initial tolling period is not required to file a new notice during the extended period.

3. The tolling period established by this order shall expire on March 1, 2022, unless it is extended by further order of the Court.

ADM File No. 2021-10
Adoption of Administrative Order No. 2021-8

Administrative Order No. 2021-8 – Establishment of the Michigan Rules of Evidence Review Committee

In 1974, the Court appointed a committee to consider a Michigan uniform code of evidence, prompted by the adoption of the Federal Rules of Evidence. In exercising its duty, the committee created and the Court adopted the Michigan Rules of Evidence in 1978. According to the committee comments, "the Committee unanimously agreed that it would draft the Michigan Rules of Evidence generally patterned on the Federal Rules of Evidence," and the adopted rules did just that. Although they do contain some deviations from the federal rules, the Michigan Rules of Evidence continue to remain largely consistent in substance. However, in 2011, the United States Supreme Court adopted a restyled version of the Federal Rules of Evidence. This "restyling" only included stylistic changes such as reformatting, reducing the use of inconsistent terms, minimizing the use of ambiguous words, and removing outdated or redundant words and concepts; no substantive changes were made.

In an effort to remain as consistent as possible with the federal rules, the Michigan Supreme Court is forming a committee to review the Michigan Rules of Evidence for potential amendments similar to those adopted for the Federal Rules of Evidence. The Court appoints the following members to the Michigan Rules of Evidence Review Committee, effective immediately. The committee shall provide a recommendation to the Court within one year.

Timothy Baughman (Chair)
Joseph Kimble (Style consultant)
Hon. Timothy M. Kenny (Member)
Mary Massaron (Member)
Michael Mittlestat (Member)
B. Eric Restuccia (Member)
Angela Mannarino (Member)

ADM File No. 2021-10
Amendment of Administrative Order No. 2021-8

On order of the Court, the following amendment of Administrative Order No. 2021-8 is adopted, effective immediately.

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

Administrative Order No. 2021-8 – Establishment of the Michigan Rules of Evidence Review Committee

[Paragraphs 1 and 2 are unchanged.]

Timothy Baughman (Chair)
Joseph Kimble (Style consultant)
Hon. Timothy M. Kenny (Member)
Mary Massaron (Member)
Michael Mittlestat (Member)
B. Eric Restuccia (Member)
Angela Mannarino (Member)
Judith A. Susskind (Member)

FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS

ADOPTED

The committee has adopted the following new and amended model civil jury instructions effective Jan. 28, 2022.

The complete instructions can be accessed on the Michigan One Court of Justice website at perma.cc/EPC3-YJPK..

The Committee solicits comment on the following proposal by July 15, 2022. Comments may be sent in writing to Julie Clement, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

The Committee is considering adopting new and amended instructions and introductory directions to address the 2019 amendments to the No-Fault statute, MCL 500.3101, et seq., and deleting other instructions that are no longer needed.

To read the full text of this proposal, visit perma.cc/3QQA-SUXD

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted a revision of Chapter 2 (Procedural Instructions) of the Model Criminal Jury Instructions. This version of the procedural instructions will avoid the repetition found in the previous set of procedural instructions by some re-writing and by re-organizing them to reduce linguistic duplication and to flow more logically. Further, the Committee "modernized" the instructions with language added directing jurors not to use the Internet or social media to get information about the case during the trial. There are also two new instructions: M Crim JI 2.2 (Written Copy of Instructions per MCR 2.513(D)) and M Crim JI 2.13 (Notifying Court of Inability to Hear or See Witness).

The complete instructions can be accessed on the Michigan One Court of Justice website at perma.cc/NXD8-K5Z4.

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PROFESSIONAL MISCONDUCT

Robert E. Edick, former deputy administrator of the Michigan Attorney Grievance Commission, is available to consult in matters involving professional misconduct or negligence. Contact ethicsconsultant2021@gmail.com for details.

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LAWYERS & JUDGES ASSISTANCE
MEETING DIRECTORY

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

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

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

ALCOHOLICS ANONYMOUS & OTHER SUPPORT GROUPS

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

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

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

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

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

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

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

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

GAMBLERS ANONYMOUS

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

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

OTHER MEETINGS

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

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

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

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

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

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

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

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