MICHIGAN
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JUNE 2022

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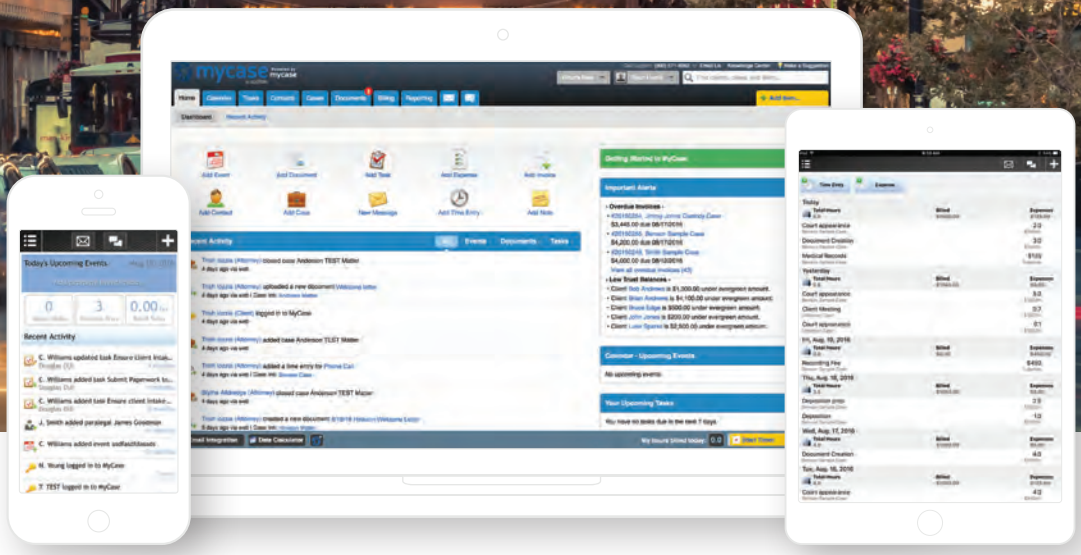

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Visit cooley.edu/LLM to learn more.

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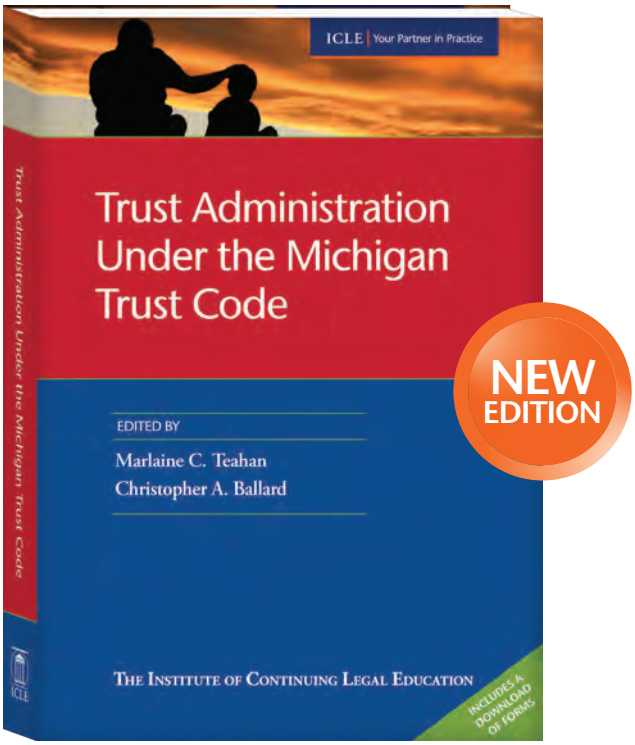

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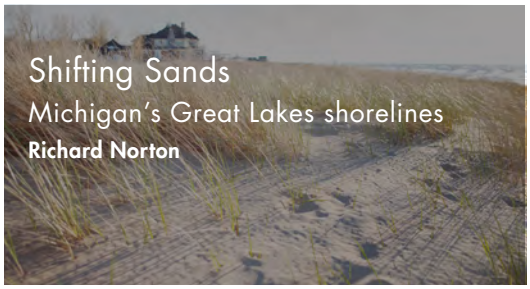

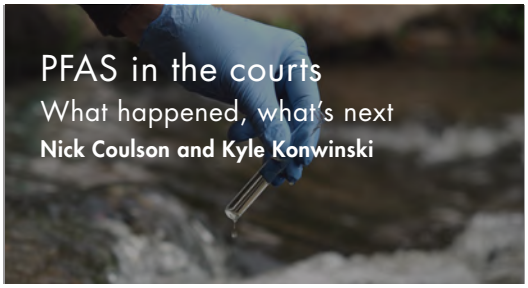

OF INTEREST

CELEBRATING 100 YEARS

MICHIGAN
BAR JOURNAL

JUNE 2022 • VOL. 101 • NO. 06

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COLUMNS

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JUNE 10, 2022
JULY 22, 2022
SEPTEMBER 16, 2022

REPRESENTATIVE ASSEMBLY

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 15, 2022, 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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IN BRIEF

SBM SEEKS CANDIDATES FOR TWO AGENCY VACANCIES

The State Bar Board of Commissioners seeks names of persons interested in filling the following agency vacancies.

Institute of Continuing Legal Education (ICLE) Executive Committee: One vacancy for a four-year term beginning Oct. 1, 2022. The role of committee members is to assist with the development and approval of ICLE education policies; formulate and promulgate necessary rules and regulations for the administration and coordination of ICLE's work; review and approve the ICLE annual budget and activities contemplated to support the budget; and, whenever possible, promote ICLE's activities. The committee meets three times a year, usually in February, June, and October.

Michigan Indian Legal Services (MILS) Board of Trustees: Two vacancies for three-year terms beginning Oct. 1, 2022. MILS bylaws require that a majority of the board be Native American. The board sets policy for a legal staff that provides specialized Native American law services to Native American communities statewide. The board hires an executive director. The board is responsible for operating the corporation in compliance with applicable law and grant requirements. Board members should have an understanding and appreciation for the unique legal problems faced by Native Americans. Board members are responsible for setting priorities for allocation of the program's scarce resources. The board is accountable to its funding sources. The board meets on Saturdays in Traverse City on a minimum quarterly basis.

The deadline to apply for the ICLE Executive Committee or MILS Board of Trustees is July 1.

Interested applicants should submit a resume and letter outlining their background and nature of interest in the position to Marge Bossenbery at mbossenbery@michbar.org. Applications must be submitted via email. Applications received after the deadline will not be considered.

SECTION BRIEFS

ALTERNATIVE DISPUTE RESOLUTION SECTION

On Sept. 30-Oct. 1, the section will host its ADR Conference, which will continue to be virtual. We are pleased to announce that the annual awards ceremony will return in person on Saturday, Oct. 1, at the Inn at St. John's in Plymouth. Upcoming events, past event materials, and the latest Michigan Dispute Resolution Journal can be found at connect.michbar.org/adr/home.

ANTITRUST, FRANCHISING & TRADE REGULATION SECTION

The section will hold a combined business meeting and social event on June 10 at Berkley Common, located at 3087 West Twelve Mile Road in Berkley. The council meeting will commence at 4 p.m. and the social event will begin at 4:30 p.m. All section members are welcome to attend. This is a great opportunity to meet attorneys familiar with our area of law, make some new friends, or renew old friendships.

ARTS, COMMUNICATION, ENTERTAINMENT, AND SPORTS SECTION

The section will be gathering at 6 p.m. June 16 in Ann Arbor for the Hensel/Founders Award, which will be presented this year to Thomas Blaske and Mary Steffek Blaske. Contact Cindy Victor at cvictor@kusryan.com for more information.

BUSINESS LAW SECTION

The Business Law Institute will be held Oct. 7 in Grand Rapids. The section's annual meeting will be conducted as part of the Business Law Institute. We hope you can join us for these events. More information is coming soon.

ENVIRONMENTAL LAW SECTION

The section's summer program returns in person on June 9 at the Michigan Wildlife Conservancy in Bath. Join section members for an informative afternoon program from 1-4 p.m. followed by a complimentary

happy hour. There is no cost to register for this event.

FAMILY LAW SECTION

Since Feb. 25, the section's listserv has experienced technical problems blocking many of our section members from the list. As of the week of April 25, we believe the issue has been fixed. If you are on the FLS listserv and have not started getting posts again, contact Steve Heisler at saheisler@heisler.org.

HEALTH CARE LAW SECTION

The section is hosting a webinar at noon on June 7 on the federal coverage mandate for at-home, over-the-counter COVID-19 tests. The webinar will be presented by Christopher Laney and Natalie Pirkola of Health Alliance Plan, and it will provide guidance on how and to what extent at-home tests are required to be covered and how one health plan implemented the mandate.

INSURANCE AND INDEMNITY LAW SECTION

The section thanks all who came out for our business meeting and five-year strategic plan discussion at the Detroit Athletic Club on April 14. Congratulations to Amanda Delekta, the winner of our 2022 Scholarship Program! Plans are underway for our next meeting on July 14, which will be followed by a presentation by Chirco Title President Michael Luberto. For details on that meeting, visit us on Facebook or at connect.michbar.org/insurance/home.

LAW PRACTICE MANAGEMENT SECTION

The section hosted a roundtable discussion on April 21 — its first event since 2018 — on the use of Zoom in the Michigan courts following the pandemic. The section also held its regular section council meeting, initiated planning for its annual meeting, approved initiation of a new listserv, and formed a long-range planning committee. The section council is encouraging its members to volunteer by reaching out to chair Ian Lyngklip at Ian@ConsumerLawyers.com.

LABOR & EMPLOYMENT LAW SECTION

The section will host a cocktail hour July 21 at Detroit Shipping. It's one of several reconnection initiatives being planned, which also includes an Oktoberfest event. We look forward to seeing you! Watch the section's website and social media for sign-up information. Upcoming educational sessions include the July 14 "Post-COVID Courtroom Practice Debrief with Judges" and the section's midwinter meeting at the Detroit Athletic Club on Jan. 20, 2023.

REAL PROPERTY LAW SECTION

The Real Property Law Section 2022 summer conference — titled "Finding the Balance" — is set for July 20-23 at Crystal Mountain Resort in Thompsonville. In this swift-moving real estate environment, striking a balance between safety and cost is increasingly difficult. Michigan real estate attorneys are invited to meet colleagues and participate in discussions on current issues impacting real property law in the state. The three days of learning will include expert panel discussions, workshops, and interactive roundtables. For more information on the conference, visit na.eventscloud.com/ereg/index.php?eventid=678420&. To reserve rooms, go to tinyurl.com/vp4c6d7u.

SOCIAL SECURITY SECTION

Most local Social Security Administration offices reopened on April 7 for in-person services. Hearing offices are opening slowly for limited in-person hearings, and that number will continue to increase. However, given the number of claimants waiting for in-person hearings, attending hearings by phone or video will help decrease the backlog. Thus, it is anticipated that phone and video hearings will continue until at least later this year.

YOUNG LAWYERS SECTION

The section successfully held an exciting National Trial Advocacy Competition and plans for an in-person event in the fall. Additionally, the section hosted several educational programs, sent a contingent to the ABA Spring Conference, and partnered with the Grand Rapids Bar Association and the Kalamazoo Bar Association for a presentation and social event in Grand Rapids. Planning for summer events is underway.

IN MEMORIAM

HON. THOMAS R. EVANS, P38525, of Gladwin, died May 2, 2022. He was born in 1958, graduated from Wayne State University Law School, and was admitted to the Bar in 1985.

STEPHANIE A. GRIZ, P36252, of Dearborn, died March 18, 2022. She was born in 1958, graduated from University of Detroit School of Law, and was admitted to the Bar in 1984.

JONATHAN S. GROAT, P58547, of Southfield, died Nov. 26, 2021. He was born in 1972 and was admitted to the Bar in 1998.

HARRY W. KEIDAN, P23967, of Phoenix, Ariz., died April 8, 2022. He was born in 1944, graduated from University of Michigan Law School, and was admitted to the Bar in 1969.

THOMAS P. KLIBER, P41520, of Grosse Pointe Woods, died Feb. 14, 2022. He was born in 1951, graduated from University of Detroit School of Law, and was admitted to the Bar in 1988.

JACK D. SAGE, P34185, of Grand Rapids, died April 8, 2022. He was born in 1944 and was admitted to the Bar in 1982.

LAURENCE M. SCOVILLE JR., P20168, of Charleston, S.C., died Feb. 27, 2022. He was born in 1936, graduated from University of Michigan Law School, and was admitted to the Bar in 1962.

ALAN M. VALADE, P28837, of Brighton, died May 8, 2022. He was born in 1952, graduated from Wayne State University Law School, and was admitted to the Bar in 1978.

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.

FROM THE PRESIDENT

DANA WARNEZ

Made in Michigan:

WHAT IT MEANS TO US THAT MICHIGAN IS A MANDATORY BAR STATE

"Have you ever been sued?"

Thanks to my status as an officer of the State Bar of Michigan and the lawsuit filed against the Bar, *Taylor v. Warnez*, I can no longer say no, even though this case has come to an end.

The U.S. Supreme Court recently denied certiorari in the case, but member Lucille Taylor's complaint, the State Bar's responses, and the decisions of the U.S. District Court for the Western District of Michigan and the U.S. Court of Appeals for the Sixth Circuit are all available through whichever legal research tool you use, including the State Bar's free legal research tool — find it at michbar.org/programs under the Research and Opinions heading. You should read them. I'm not the only defendant. Every member of the Bar in Michigan, living or dead, who has believed in their heart-of-lawyer hearts that we are different from a trade union, is an implicit defendant.

The answer the State Bar filed in response to *Taylor v. Robert J. Buchanan* is the State Bar's official word. Here's my personal take: I want to thank Ms. Taylor, a distinguished member of our Bar, for this lawsuit. It's been a wake-up call. Whether you're an SBM fan, foe, or just trying-to-make-a-living member, we've all taken the State Bar of Michigan for granted. Fact is, if the State Bar of Michigan didn't exist, we'd still be regulated and paying licensing fees to the state. But we wouldn't have a role in what that regulation should look like.

The idea of the "bar" as a description of the lawyers within a single jurisdiction is centuries old. As a noun of multitudes, the bar is as familiar a term as a pride of lions, a pack of wolves, a murder of crows, a gaggle of geese, or a litter of puppies. In most countries, the bar functions outside of government, but in the uniquely American version of the bar adopted by a majority of U.S. states, the bar has been integrated into the regulation of legal services for the benefit of the public. Within those 32 states, there are wide variations; each state has put its distinctive mark on what its integrated bar should be. But every integrated bar is grounded in a recognition of the common identity of lawyers as "officers of the court" with the obligations and privileges that come with that designation. In states without an integrated bar, the bar has not been given the elevated independent status afforded lawyers in the rest of the world. Instead, lawyers are treated like any other profession.

I'm grateful that many decades ago, my state chose to integrate our bar. As a result, the State Bar of Michigan is not the plaything of rich old dudes; it belongs to all of us. If I read words that I don't agree with from a section of the State Bar in the Michigan Bar Journal, I can talk back, not because I happen to be president of the State Bar this year, but because I'm a licensed Michigan lawyer. Everybody has a vote, and everybody has a voice. Our State Bar presidents have come from across the political spectrum. The children and grandchildren of bluestocking firm lawyers have equal status with lawyers who were the first in their family to go to college. If you have time and energy to contribute to its work, the State Bar welcomes you with open arms.

The State Bar of Michigan is what it is because the lawyers of Michigan, acting on the status the state has given us, have collectively made it what it is — a living, evolving entity shaped over many decades by the voices of every Michigan lawyer who wants to have a say. I'm reminded of the anthem of Michigan's rightfully cherished University Musical Society: "Everybody In, Nobody Out."

It's hard to write about the virtues of the integrated bar without sounding like I'm running down voluntary bars. I'm not. From day one, I was embraced by my local bar, being sworn in at a ceremony sponsored by the local bar's young lawyers' section. Engaging with my local and voluntary bars has been essential in creating relationships with judges and other colleagues, and networking allowed me to develop and maintain referral sources and mentor others and be mentored as laws and the profession changes. Further, so many law-related education events like Law Day and high school mock trial competitions wouldn't be possible without the support of our local, voluntary bars. In these and so many other ways, our voluntary bar associations are essential and wonderful resources for lawyers and their local communities. But I think they are strengthened, and their good works amplified, by a strong state bar integrated into state government.

To be called to the bar is to belong to an institution with a shared code of ethics. Whatever its form, the organized bar has not only been the engine for the establishment and maintenance of standards of conduct, but it has also been — throughout the world and across the centuries — the source of fellowship, mentoring, innovation, and reform. I think that legacy is advanced by the wonderful American invention of the integrated bar, and I'm honored to have defended it passionately as both an individual and as defendant president of the State Bar of Michigan.

THE 80s

The 1980s continued the evolution of the Michigan Bar Journal as a publication that not only announced and reported on Bar events but also became a useful tool for practicing attorneys with the introduction of theme issues.

Beginning with a theme issue on evidence, the various sections of the Bar began collecting articles for publication so there would be a labor law theme, a business law theme, a negligence law theme, and so on. The idea was that attorneys could retain the theme issues as references when preparing cases in various areas of law.

The theme issues have continued for the last 40 years as part of the service that the Bar Journal provides to its members. These issues continue to serve their original intent: namely, that the Bar Journal has become a permanent part of many attorneys' libraries.

Later in the decade, columns were introduced to aid attorneys. One notable addition was the Plain Language column, which I found helpful in writing briefs. Nearly four decades later, it still appears in the Bar Journal.

For a while in the 1980s, Bar Journal covers featured works of art; the idea was to encourage attorneys to be patrons of the arts. Of particular note was that each annual directory issue cover had a work of art depicting a legal subject. Perhaps the biggest coup in publishing a work of art with a legal theme was the directory issue that published — probably for the first and only time in the United States — a 1905 painting of a jury trial in Oslo, Norway, by that country's greatest painter, Edvard Munch. Munch, of course, is famous for his painting "The Scream." We were pleased to introduce Bar members to the work of this legendary painter. Another directory cover featured an early American painting of a trial from colonial times, adding to the depth of the interplay between art and the legal profession.

At least one other state followed, in part, the format of our journal. But perhaps no better tribute can be made to the success of the Michigan Bar Journal than the fact that on more than one occasion, briefs filed in courts have cited material that appeared in its pages.

Detroit attorney **George T. Roumell** Jr. is one of the nation's preeminent labor arbitrators and author of the Primer on Labor Arbitration. A past recipient of the American Arbitration Association Whitney North Seymour Award for contributions to the field of labor arbitration, the State Bar of Michigan Roberts P. Hudson Award, and the SBM Labor and Employment Law Section Distinguish Service Award, Roumell chaired the Michigan Bar Journal Advisory Board from 1981-1985, when he became 51st president of the State Bar of Michigan.

JULY 14-17, 1980
Joe Louis Arena in Detroit hosted the Republican National Convention. Ronald Reagan, the former actor and California governor, was nominated for president with George H.W. Bush as his running mate. Reagan settled on Bush after former President Gerald Ford declined his offer

DEC. 8, 1980
Beatle John Lennon was assassinated in front of his New York City apartment.

MARCH 30, 1981

John Hinckley Jr. made an unsuccessful attempt to assassinate President Reagan outside the Washington Hilton Hotel. Reagan, press secretary James Brady, and two others were injured in the shooting.

JULY 29, 1981

Britain's Prince Charles married Diana Spencer at St. Paul's Cathedral in London. The royal wedding was seen by an estimated 750 million television viewers worldwide.

AUG. 5, 1981

President Reagan began firing more than 11,000 air traffic controllers striking in violation of his order to return to work. The Professional Air Traffic Controllers Organization (PATCO) was the only labor organization to support Reagan in the 1980 election and, in return, Reagan pledged that he would "bring about a spirit of cooperation between the president and the air traffic controllers." PATCO's president mistakenly took this pledge to mean Reagan would not fire the controllers for striking in violation of federal law.

MAY 1982

The Michigan Bar Journal published its first theme issue, titled "Evidence in Michigan."

JAN. 1, 1983

The internet was born when ARPAnet adopted TCP/IP protocols which allowed data exchange among a network of different models of computers.

DEC. 29, 1983

In a per curiam order, the Michigan Supreme Court dismissed a petition for special relief filed by attorney Allan Falk that raised a First Amendment challenge to various activities of the State Bar of Michigan based on the funding of those activities from his mandatory dues. At the same time, the Court said it would appoint a committee to review the State Bar's practices and activities and make recommendations.

SEPTEMBER 1984

Dennis W. Archer became the first Black president of the State Bar of Michigan.

OCT. 9-14, 1984

The Detroit Tigers won the World Series, defeating the San Diego Padres in five games. The Tigers started the season 35-5 and finished with 104 wins, 15 games ahead of their nearest competitor, becoming the first team since the 1927 New York Yankees and one of only five teams in baseball history to lead their respective leagues/divisions wire to wire.

MARCH 1, 1985

The Michigan Court Rules of 1985 took effect, governing all proceedings in actions brought on or after that date and all further proceedings in pending actions.

MARCH 11, 1985

Mikhail Gorbachev became the new leader of the USSR and implemented a series of new policies including "glasnost" (a more consultative government style) and "perestroika" (economic and political restructuring.)

JULY 1, 1985

Michigan enacted a mandatory seatbelt law, the third state in the union to do so.

JAN. 28, 1986

Just seconds into its ninth mission, the space shuttle Challenger exploded over Florida's Atlantic coast, killing all seven astronauts on board including civilian social studies teacher Christa McAuliffe.

SEPTEMBER 1986

Julia Donovan Darlow became the first woman president of the State Bar of Michigan.

JANUARY 26, 1987

Michigan celebrated the sesquicentennial of its statehood. While many historians point to the 1837 date for its birthday, the record leans in favor of either 1835 or 1836 and the official state seal bears the Roman numeral MDCCCXXXV, or 1835. Michigan celebrated its 50th birthday on June 15, 1886; it was on that date in 1836 that Congress agreed to the boundary compromise with Ohio that paved the way for Michigan to enter the union. Half a century later, Michigan held its centennial celebration Nov. 2, 1935.

MAY 1988

SBM President Eugene Mossner led a delegation of lawyers and judges on a trip to China and the Soviet Union on a friendship mission to learn more about their legal systems.

1989

In April, the University of Michigan won its first NCAA men's basketball championship by beating Seton Hall in overtime. Nine weeks later, the Detroit Pistons swept the Los Angeles Lakers to win the first of two consecutive NBA crowns.

MICHIGAN STATE BAR FOUNDATION IS

CELEBRATING 75 YEARS

1947 - 2022

Visit **www.msbf.org** or follow us on social media **@MSBF_ATJFund** to learn more about the impact made over the course of the past 75 years!

MICHIGAN STATE BAR FOUNDATION MSBF

Celebrating 75 years | 1947 - 2022

MEMBER ANNOUNCEMENTS

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

- Announce an office opening, relocation, or acquisition
- Welcome new hires or recognize a promotion
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WATER LAW

BY ROSS A. HAMMERSLEY AND NICHOLAS SHROECK

Water law is one of the most dynamic, fascinating, and crucially important environmental law practice areas in Michigan. Our pleasant peninsulas are blessed with more than 2,000 square miles of inland water and 38,000 square miles of Great Lakes area.[1]

Despite this natural abundance, our water resources continue to face threats and pose regulatory challenges. From groundwater withdrawal regulations to the Flint water crisis, changes to the Lead and Copper Rule, repeated flooding of metropolitan areas and beyond, the Great Lakes State is awash in water-related issues. Topics related to water law are frequent front-page news stories and shape our lives in dramatic and profound ways.

It is appropriate, then, that this issue of the Michigan Bar Journal is dedicated to water law. We are pleased to present you two articles focusing on among the most significant water law issues in the state. The first article highlights the impacts of fluctuating Great Lakes water levels along our 3,288 miles of coastal shoreline and the myriad ways in which our laws and policies at the federal, state, and local levels affect — and are affected by — these dynamic freshwater seas. The second piece centers on an issue that an unfortunately large number of communities throughout the state have had to address recently — contamination of our waterways from perfluoroalkyl and polyfluoroalkyl substances, or PFAS. This article reviews the state's PFAS clean-up criteria, which were trendsetters for the nation, and provides a helpful summary of recent cases litigating the numerous issues related to PFAS contamination.

We hope you enjoy the issue, and we wish you all a healthy and prosperous summer! Cheers.

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ENDNOTE

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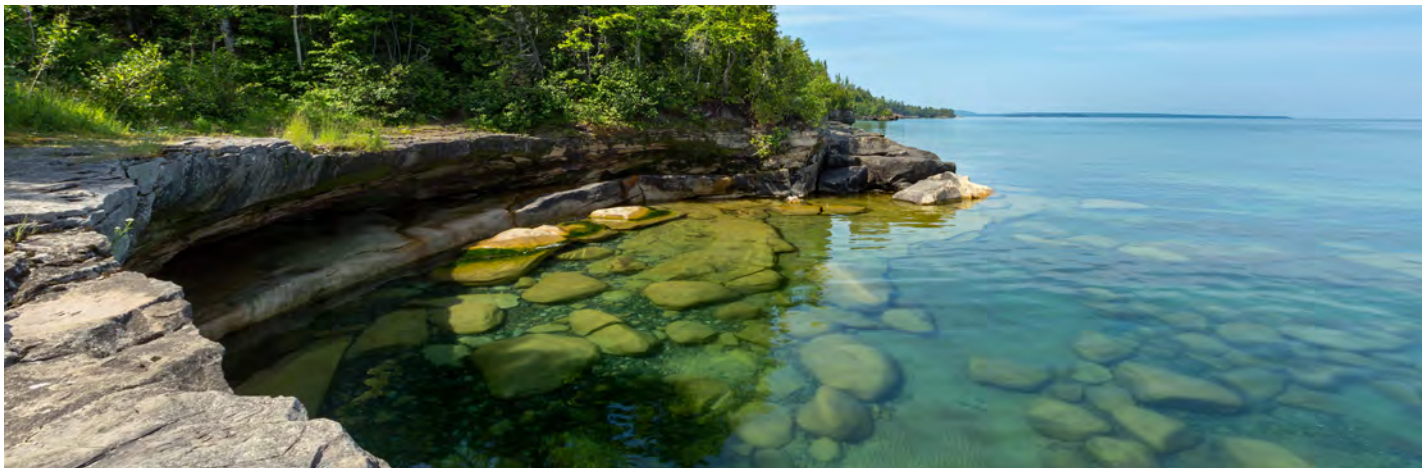

SHIFTING SANDS

Michigan's Great Lakes shorelines

BY RICHARD NORTON

Michigan enjoys one of the longest coastlines in the United States thanks to its inland seas — the Laurentian Great Lakes.[1] While not large enough to be tidal, the power of the Great Lakes and the resulting dynamics of their shorelines are much like ocean coasts with portions of beach alternatively (if infrequently) submerged and exposed as lake levels fluctuate over seasons, years, and decades, and much of that shoreline receding over the long term by about a foot every year due to erosion.[2] Most of Michigan's Great Lakes shorelines are privately owned and many shoreland properties have been developed with structures built on sandy shores at risk from coastal storm surges, decadal periods of rising water levels, shoreline erosion and recession, and, ultimately, permanent submersion.[3] Those risks will almost certainly persist (if not worsen) because the lakes will likely continue to rise and fall over time, as they always have, such that much of Michigan's Great Lakes shorelines will continue to recede landward remorselessly and irrepressibly over time.

Because of record high lake levels for the past several years, shoreland property owners have been installing armoring structures like seawalls and revetments in an effort to arrest those natural processes. Unfortunately, those armoring structures, especially where extensive, will ultimately yield significant degradation to — if not the complete loss of — the state's natural coastal beaches.[4] Conversely, not installing armoring means that structures and shoreland properties situated along receding shorelines will ultimately give way to the lake.

The clash of imperatives to protect shoreland properties versus conserving coastal resources yields a wicked dilemma the state cannot avoid: should we allow armoring of Michigan's Great Lakes shorelines in a way that fixes shoreland properties in place perpetually (at least so long as those structures are maintained) at great private and public expense, and even at the ultimate loss of public trust resources? Alternatively, should we allow — and compel shoreland

property owners to allow — natural processes to proceed, even if it necessarily results in the conversion of privately owned shorelands into submerged, state-owned bottomlands? It is becoming increasingly evident that we cannot hope to protect both the beach and the beach house along naturally receding shorelines; we must choose which one to prioritize, recognizing the unavoidable cost of doing so may mean ultimately losing the other.

In addition to the complex physical dynamics at play, Michigan's Great Lakes shorelines are subject to legal complexities as well. The state has long recognized the applicability of the public trust doctrine to its Great Lakes shores, and Michigan courts have resolved several key attributes of that and related doctrines through litigation. Even so, given improved scientific knowledge, increasing development pressures, and increasingly dynamic coastal processes tied to global climate change, conflicts and questions will likely arise in the foreseeable future.

The authors have been researching this topic to identify legal claims most likely to arise regarding shifting Great Lakes coastal shorelines, analyzing Michigan case law related to those matters, and considering the potential adjudication of those claims. Our goal is to fully contemplate the legal, policy, social, and environmental pros and cons implicated by potential resolutions to those likely claims so adjudication is made with a full understanding of both the short-term and the long-term tradeoffs that will necessarily follow.

The purpose of this article is to present preliminary framing of this topic and offer information useful to State Bar members and solicit feedback on our work. In order to understand the key questions that have yet to be resolved, it is helpful to first step through issues that are well settled. We summarize the key attributes of the state's public trust doctrine and related doctrines and identify several issues likely to arise as we struggle to reconcile public trust and private shoreland rights and expectations along Michigan's Great Lakes.

MICHIGAN'S GREAT LAKES PUBLIC TRUST SHORES

Almost as soon as Michigan became a state in 1837, seminal federal and state cases made clear that its inland seas — the Great Lakes — represented an especially valuable resource for its citizens and imposed on the state a unique duty to safeguard those resources under the public trust doctrine. The U.S. Supreme Court made clear in 1845 that states joining the Union after the original 13 did so on equal footing with the same rights, sovereignty, and jurisdiction over navigable waters and lands submerged by those waters.[5] In two key cases decided in the early 1890s, the Supreme Court further held that under the public trust doctrine, a state may not grant title to lands submerged by navigable waters (including the Great Lakes) to private entities except when doing so serves a public trust interest;[6] that the public trust jurisdiction over those waters and submerged lands extends to the high water mark;[7] and that beyond those precepts, the title and rights of riparian and littoral owners (particularly with regard to public rights) are governed by the laws of the several states.[8] Today, it is well settled that title to and jurisdiction over navigable waters and submerged lands underlying them, as between the federal and state governments, are determined by federal law under the equal footing doctrine.[9] Once the state has title to the bed and banks of a navigable water body, however, the boundary lines of the state's ownership interests and duties between the state and private shoreland owners are a matter of state law determined under the state's public trust doctrine.[10]

Resolving conflicts and questions regarding shifting coastal shorelines along Michigan's Great Lakes, therefore, necessitates looking at Michigan's own unique public trust doctrine both in and of itself and vis-à-vis other relevant doctrines.[11] A Michigan chancery court first acknowledged the applicability of the public trust doctrine to the Great Lakes and lands submerged by them in 1843.[12] That ruling and the key principles flowing from it have been recognized and upheld repeatedly by the Michigan Supreme Court ever since, now constituting well-settled law.[13] In its most recent decision speaking to the public trust doctrine, *Glass v Goeckel*, the Michigan Supreme Court reviewed extensively the origins and history of that doctrine, reaffirmed a number of its prior elements, and provided additional clarification. [14]

The most robust elements of the state's public trust doctrine are that:

- It applies to the waters and submerged lands of the Great Lakes, including some portion of their foreshores, albeit not to the state's inland lakes and rivers;[15]
- The state owns title to the submerged lands underlying the lakes up to the water's edge in trust for the people;[16]
- Private entities (and governments) can own title to shorelands adjacent to a lake, extending from the water's edge landward, enjoying littoral rights by virtue of doing so;[17]
- The boundary separating bottomland and shoreland dominion (jus privatum) title interests is an ambulatory or moveable free-

AT A GLANCE

Michigan enjoys substantial Great Lakes shorelines, most of which are privately owned and all of which are subject to the public trust doctrine. Growing efforts to protect shoreland structures with seawalls and other armoring threaten to ultimately destroy the state's Great Lakes beaches.

hold boundary capable of moving lakeward and landward as the water's edge shifts through erosion, accretion, inundation, and reliction;[18]

- The state also holds a jus publicum interest over the waters of the Great Lakes and lands submerged by them both permanently and periodically up to the "ordinary high water mark" on the shore;[19]
- The jus publicum imposes a duty on the state as trustee to conserve those waters and lands for the public interest in navigation, fishing, fowling, commerce, and the access necessary to do those things (including beach walking);[20]
- The boundaries of jus privatum title ownership (i.e., the coterminous boundary separating state-owned bottomland from privately owned shoreland) and the reach of the jus publicum can and do often overlap; while a shoreland property owner owns to the water's edge, the title interest is impressed with a public trust servitude lakeward of the ordinary high water mark;[21] and
- The state cannot surrender the public rights protected by the jus publicum "any more than it can abdicate the police power or other essential power of government;"[22] however,
- The state can grant jus privatum title ownership of submerged Great Lakes bottomlands, but only with "due finding of one of two exceptional reasons": where the state has determined that doing so provides improvement of the public trust or such disposition can be made "without detriment to the public interest in the lands and waters remaining."[23]

Indeed, despite earlier decisions conflicting on the question of where the boundary separating jus privatum title interests (i.e., between submerged bottom land and adjacent shoreland) falls (i.e., at the water's edge or elsewhere),[24] the case law establishing these elements of Michigan's public trust doctrine has been remarkably consistent. Moreover, the majority and dissenters in the 2005 *Glass v. Goeckel* decision agreed on virtually all aspects of the doctrine (particularly those addressed or summarized) save for the single question of how far landward the state's jus publicum interests and duties extend and, correspondingly, how far landward on a Great Lakes beach the public has the right to walk.

On that specific issue, Justice Stephen Markman would have found the lakeward boundary of the jus privatum title interest of a shoreland property boundary to be coincident with the state's jus privatum and jus publicum dominion interests and placed all of them at the water's edge, encompassing the wet sand beach.[25] Justice Robert Young would have placed those boundaries strictly at the water's edge.[26] Neither justice would have recognized a natural ordinary high water mark (OHWM) or the public trust right to walk along the dry sand portion of a Great Lakes beach — only the right to walk along the wet sand portion of the beach or the walkable portion submerged, respectively. Presumably, neither position would alter the analysis of unresolved questions given shifting coastal shorelines and efforts to arrest shoreline recession because hard shoreline armoring ultimately destroys the entire walkable portion of a beach — dry sand, wet sand, and submerged but still walkable. Nonetheless, some inherent conflicts between principles and less-than-full consideration of their implications leaves some uncertainty.

UNRESOLVED QUESTIONS AND NEXT STEPS

Key dynamics that Michigan courts have not yet fully contemplated and underlie the core of issues likely to arise include:

- Great Lakes shorelands do not just shift lakeward and landward over time as lake levels rise and fall, but are indeed slowly receding landward on average;
- That process will almost surely be exacerbated and accelerated by climate change, a condition not yet considered by the courts;
- The increased bulk and linear extent of shoreline armoring being built and its corresponding potential to degrade and eliminate natural shorelines for long periods of time arguably exceed conditions considered before; and
- The extent of development pressures putting shoreland property investments at risk, particularly in the form of large, permanent residential structures, arguably exceeds conditions considered before.

None of these appear to be abating, and all put a point on the unavoidable dilemma the state confronts looking forward.

Given the doctrinal questions that have been resolved to date combined with these evolving dynamics, the following fundamental questions are likely to arise in the foreseeable future:

- Do Great Lakes coastal shoreland property owners in Michigan have the lawful right to armor their shorelines under state common, constitutional, or statutory law — even if doing so has or might result in the degradation or loss of natural beaches and other public trust resources?
- Does the state (or its Great Lakes coastal localities by delegation) have the lawful authority (if not duty) to constrain (if not fully prohibit) the installation and maintenance of such armoring or possibly compel its removal at some point in the future once installed?
- Which branch of government — especially between the legislature and judiciary — has the primary authority to balance the rights and interests at hand? How should that authority be properly tempered by the other branch(es), deploying which principles of law?

- To what extent would governmental efforts to enact and administer such regulations implicate liability under protections of private property afforded by federal and state due process, equal protection, and regulatory takings doctrines?
- Do Great Lakes coastal shoreland property owners in Michigan have viable claims in nuisance against neighboring shoreland property owners who install shoreline armoring that accelerates the erosion or degradation of their properties?

So far, we have found no Michigan case law that definitively answers any of these questions, especially when contemplating the competing interests at play in light of the evolving physical and legal dynamics we now confront. We welcome any counsel on our framing of these questions or suggestions for additional questions that should be addressed.

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6. *Illinois Central R Co v Illinois*, 146 US 387; 13 S Ct 110; 36 L Ed 1018 (1892).
7. *Shively v Bowlby,* 152 US 1; 14 S Ct 548; 38 L Ed 331 (1894).
8. *Id.* The conveyance of title and public trust jurisdiction over lands to newly admitted states may be constrained where patents were made by the federal government prior to statehood. There is a strong presumption against finding congressional intent to defeat state equal footing and public trust title and jurisdiction, however, and such intent cannot be inferred by the mere patent itself. *Utah Div of State Lands v US,* 482 US 193, 202; 107 S Ct 2318; 96 L Ed 2d 162 (1987) and *Klais v Danowski*, 373 Mich 262; 129 NW 2d 414 (1964).
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12. *La Plaisance Bay Harbor Co v City of Monroe*, Walker Chancery Rep 155 (1843), cited in *Glass v Goeckel,* 473 Mich 667, 719; 703 NW2d 58 (2005).
13. Most notable of those include *Lincoln v Davis*, 53 Mich 375; 19 NW 103 (1884); *People v Silberwood*, 110 Mich 103; 67 NW 1087 (1896); *People v Warner*, 116 Mich 228; 74 NW 705 (1898); *Nedtweg v Wallace*, 237 Mich 14; 208 NW 51 (1926); *Hilt v Weber*, 252 Mich 198; 233 NW 159 (1930); and *Obrecht v National Gypsum Co,* 361 Mich 399; 105 NW2d 143 (1960).
14. *Supra* note 12.
15. *Id.* and *Lincoln, Silberwood, Warner, Nedtweg, Hilt, Obrecht, supra* note 13. The Michigan Supreme Court held in 1860 that while the state retains a public trust interest in access to all navigable surface waters in the state, the full doctrine over waters and submerged bottomlands applies only on the Great Lakes, not including the connecting rivers between them, *Lorman v Benson,* 8 Mich 18 (1860).
16. See, e.g., *Warner, supra* note 13.
17. See, e.g., *Hilt, supra* note 13 and *Glass*, *supra* note 14.
18. *Id.* See also *Glass*, 473 Mich at 727 (Markman, J., dissenting).
19. *Glass*, *supra* note 14. The court distinguished the 'natural' ordinary high water mark (OHWM) (i.e., the point on the shore showing the evidence of water, which serves to mark the reach of the public's right to walk the beach) from the elevation-based OHWM set by the Great Lakes Submerged Lands Act (MCL 324.32052), which marks the reach of the state's regulatory authority pursuant to that act. *Glass*, 473 Mich at 683. See also *Burleson v Dep't of Envtl Quality*, 292 Mich App 544, 808 NW2d 792 (2011) and Norton, et al., *The Deceptively Complicated "Elevation Ordinary High Water Mark" and the Problem with Using it on a Great Lakes Shore*, 39 J Great Lakes Res 527 (2013).
20. See, e.g., *Glass.*
21. *Id.*
22. *Nedtweg*, 237 Mich at 17.
23. *Obrecht*, 361 Mich at 412-413.
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PFAS
IN THE COURTS

What's happened? What's next?

BY NICK COULSON AND KYLE KONWINSKI

Perfluoroalkyl and polyfluoroalkyl substances (PFAS) are chemicals used around the globe that have left a lasting impact on our planet. PFAS are used to make products resistant to heat, stains, water, and grease and enjoy widespread use across various industries. They prevent food from sticking to cookware; make clothes, furniture, and carpets stainproof; coat pizza boxes, microwave popcorn bags, eyeglasses, and tennis rackets; and act as a lubricating component for satellite parts, ski wax, and communications cables.[1]

Beyond their impact on daily life, PFAS chemicals are now impacting our legal system, including here in Michigan. Litigation involving PFAS has ballooned in recent years to such an extent that PFAS-related litigation could rival asbestos litigation in terms of its scope and scale. This article will provide practitioners with a basic understanding of PFAS, how they are regulated, and relevant PFAS litigation with a particular focus on Michigan-related issues.

INTRODUCTION TO PFAS

PFAS refers to a family of chemicals that were invented in the 1940s and entered mainstream production in the 1950s. Some estimates peg the number of chemicals in the PFAS family at more than 4,700, and that figure grows every year.[2] Among the PFAS chemicals are the widely known perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). Though no longer manufactured in the United States, PFOA and PFOS — along with other PFAS — are still manufactured internationally and imported into the U.S. in consumer products.[3] The defining characteristic of PFAS is the uniquely strong bond between its carbon and fluorine atoms. Consequently, PFAS never break down naturally in the environment, which is why they are called "forever chemicals."

Because PFAS can be found essentially everywhere in the environment, people are exposed to them in a multitude of ways. Indeed, the prevalence of PFAS in foods and the environment makes complete elimination of exposure nearly impossible. And while every person is likely to be exposed to PFAS, numerous sites in Michigan have been identified as elevated sources of PFAS contamination. Historic landfills are one obvious source. Indeed, hundreds of Kent County residents sued Wolverine World Wide and 3M due to PFAS emanating from a Wolverine World Wide-owned landfill.

Aqueous film-forming foam (AFFF) — an active ingredient in fire-fighting foam used mainly on flammable liquids — is another primary source of PFAS in the environment.[4] AFFF is used as a commercial solution in a variety of ways including fire suppression, fire training, and flammable vapor suppression at military installations and civilian facilities including airports, petroleum refineries, and chemical manufacturing plants.[5] The PFAS in this foam does not break down after its use. Instead, it remains in the environment. Thus, it is no surprise that many Michigan airports are dealing with the aftereffects of PFAS contamination.[6]

The problem with PFAS being so prevalent in our environment is that exposure may lead to adverse health effects.[7] Further research is required to gain a complete understanding, but studies have linked PFAS exposure to high cholesterol, low infant birth weights, immune system deficiencies, cancer, fertility problems, reduced fetal growth, and thyroid hormone disruption to name a few.[8] PFOA and PFOS have also been linked to a number of diseases in animals.[9]

PFAS REGULATION

Each state regulates PFAS differently. Michigan was one of the first states to set cleanup criteria for certain types of PFAS. The criteria classify PFAS as a hazardous substance under Michigan cleanup laws.[10] Consequently, if PFAS is present at high enough levels in different mediums of the environment (e.g., groundwater or soil), remedial obligations are imposed on the entities responsible for the contamination.

Michigan has created a multiagency task force — the Michigan PFAS Action Response Team (MPART) — intended to provide a comprehensive state government response to PFAS contamination.[11] MPART's goal was to "investigate sources and locations of PFAS and protect drinking water and public health."[12] Now a permanent

AT A GLANCE

Perfluoroalkyl and polyfluoralkyl substances (PFAS) present unique legal issues from regulatory and litigation standpoints. With new issues frequently arising and litigation and regulatory actions ballooning, Michigan practitioners should be aware of the legal ramifications surrounding PFAS.

governmental entity, MPART not only protects drinking water and public health, but protects other environmental resources, facilitates coordination among state agencies, creates clear standards to ensure accountability, and increases transparency.[13]

MPART's impact on state regulation is growing. As a result of the MPART Science Advisory Panel, Michigan — not unlike other states[14] — has adopted maximum contaminant levels, setting forth the maximum amount of certain PFAS in drinking water. The Michigan Department of Environment, Great Lakes, and Energy is also working with wastewater treatment plants and manufacturers to ensure adequate treatment of wastewater containing PFAS prior to discharge into our state's waters.[15] In an effort to increase transparency and communication, MPART also established a Citizens' Advisory Workgroup which includes representatives from PFAS-impacted communities.[16]

Federal oversight of PFAS is also increasing. Just a few months ago, the Biden administration announced a comprehensive plan to address PFAS contamination involving significant actions from many federal agencies.[17] Among the broad goals of the multiagency effort are "help[ing] prevent PFAS from being released into the air, drinking systems, and food supply" and "expand[ing] cleanup efforts to remediate the impacts of these harmful pollutants."[18] As just one example, the Biden administration plan aims to classify certain types of PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which would impose cleanup obligations for contaminated sites throughout the country.

Congress has also attempted to address some of these issues through the introduction of the PFAS Action Act of 2021.[19] In addition to requiring the Environmental Protection Agency to designate PFOA and PFOS as hazardous substances under CERCLA, the act would require the EPA to establish PFAS chemicals as toxic pollutants under the Clean Water Act and set standards to limit discharge from industrial sources into U.S. waters.[20] Finally, the law proposes incentives to address PFAS, such as grants to help community water systems treat contaminated water.[21]

Another proposed measure is the PFAS Filthy Fifty Act, which would require remediation of PFAS contamination at military sites nationwide.[22] Changes are also being made to the laws surrounding AFFFs in firefighting foam. In 2019, Congress attempted to pass the National Defense Authorization Act, which intended to phase out AFFF use at all military sites by October 2024.[23]

Another source of federal regulation of PFAS is the Toxic Substances Control Act (TSCA). Under the TSCA, the EPA has the authority to "require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances"[24] and it is proposing reporting and record-keeping requirements for PFAS under the act.[25] The new rule would allow the EPA to add 1,364 PFAS substances to its list[26] and could impose significant reporting obligations on businesses using PFAS.

The EPA also recently released Preliminary Effluent Guidelines Program Plan 15, which intends to reduce PFAS contamination by regulating wastewater pollution in critical industries.[27] These guidelines will lead to rules revising effluent limitations and create pretreatment standards for organic chemicals, plastics, and synthetic fibers to address discharges from facilities manufacturing PFAS.[28]

Both state and federal regulation of PFAS abounds. So too does litigation directed at the chemicals and the harm they cause.

ORIGINS OF PFAS LITIGATION

That a group of widely used toxic substances that live on almost indefinitely in the environment spawned expansive litigation will come as little surprise to those in the legal profession. What is more remarkable is that despite the existence of high-profile cases (one of which spawned a major motion picture), a sprawling multidistrict litigation, and numerous actions brought by state and local governments, PFAS litigation likely is in its infancy. Due in large part to the veil of secrecy that has surrounded the effects of the chemicals, they were not the subject of significant litigation until the last two decades with most cases filed only within the last several years. What follows is a summary of some of the more significant cases both nationwide and in Michigan.

The C8 litigation, as it is now known, was a series of cases including class and mass actions involving exposure to PFOA dumped

by DuPont in Parkersburg, West Virginia. C8 is another name for PFOA, owing to its eight carbon atoms. As depicted in the movie "Dark Waters" and the documentary "The Devil We Know," the C8 litigation was the product of Ohio attorney Rob Bilott, who represented a Parkersburg farmer whose cattle were dying. Bilott traced the livestock woes to the nearby landfill in which DuPont had dumped thousands of tons of PFOAs and began looking into the chemical, leading him to file a class action suit on behalf of more than 70,000 area residents which ultimately resulted in a unique settlement agreement in 2004.[29] As part of the settlement, a panel of scientific experts was created to study potential connections between various ailments and the community's PFOA exposure.[30] Ultimately finding probable links between PFOA and six categories of disease, not only did the panel provide the foundation for a series of personal injury cases against DuPont that ultimately resolved for more than $670 million, it also sparked other PFAS litigation and increased the scientific community's knowledge and the public's awareness of the chemicals.[31]

In 2010, Minnesota attorney general Lori Swanson brought a sweeping action against 3M for cleanup costs and other damages imposed on the state. While the case is notable in that the state recovered more than $600 million through a 2018 settlement, it also led to the public disclosure of a large tranche of previously confidential documents detailing the various harms of PFAS and 3M's knowledge thereof.[32] These documents, including the remarkable protest resignation letter of a 3M environmental scientist, were damning and became widely disseminated. Their release set the stage for an explosion of PFAS litigation.

PFAS LITIGATION GOES NATIONWIDE

While numerous cases involving PFAS had been working their way through the courts, 2018 marked the beginning of a truly nationwide wave of litigation. 3M filed a motion for transfer before the Judicial Panel on Multidistrict Litigation seeking to have all PFAS litigation condensed into a single multidistrict litigation (MDL).[33] The panel ultimately created an MDL, but only for those cases that involved the use of AFFF due to its ubiquity and the number of cases in which PFAS contamination was alleged to have been caused by the foam's use.[34] The MDL, which includes hundreds of actions by water districts, state and local governments, and private plaintiffs bringing both individual and class claims, remains pending in the U.S. District Court for the District of South Carolina.

ON THE HOME FRONT

The first Michigan PFAS cases involved contamination allegedly released from various locations in the Rockford area where Wolverine World Wide used or disposed of materials containing PFAS, namely 3M's Scotchgard.[35] The private wells of dozens of homes were contaminated with extremely high levels of PFAS and many homeowners filed or joined individual state court actions against Wolverine and eventually 3M.[36] Several class actions were also brought in federal court and eventually consolidated into a single case. While a small number of individual claimants' cases have been settled, most litigation remains ongoing with trials scheduled for the coming year.

In the southwest Michigan community of Parchment, near Kalamazoo, PFAS was detected in the municipal drinking water in 2018.[37] The system served more than 3,000 people in Parchment and portions of Cooper Township; three residents brought a class action on behalf of all affected persons in the U.S. District Court for the Western District of Michigan. The case ultimately resulted in an $11.9 million settlement.[38]

In May 2019, the state of Michigan sought to hire outside counsel on a contingent fee basis to pursue damages for PFAS contamination within the state. After hiring three firms in January 2020, the state filed the first of several actions against numerous defendants for contaminating various state resources.[39] To this point, the state's efforts to keep its litigation outside of multidistrict litigation have been unsuccessful.[40]

It is not unlikely that readers of this article will be approached by potential clients who may be considering or facing the prospect of PFAS litigation in Michigan. In considering whether to refer or undertake such matters, there are several salient concerns of which many lawyers may be unaware.

As a preliminary threshold matter, whether a potential plaintiff possesses a viable claim for personal injury or property damage due to PFAS contamination hinges on an analysis that entails more than the standard statute of limitations considerations. State Bar members will be familiar with the standard three-year limitations period for personal injury or property damage. In 2018, the Michigan Supreme Court issued an opinion that purportedly reiterated a requirement to start the three-year clock at the time "the plaintiffs were harmed" regardless of whether they were aware of such harm or its extent.[41] This approach, which rejects the discovery rule often applied to tolling analyses in other states, could on its own doom many nascent cases.[42]

Relief may be available, however, in the form of CERCLA (also known as the Superfund Act.)[43] On its face, CERCLA establishes a

discovery rule and minimum limitations period that preempt state limitations that expire sooner.[44] It specifies that:

> In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.[45]

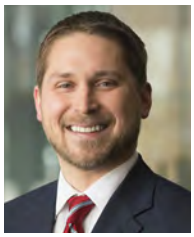
Courts have grappled with which, if any, elements of a CERCLA cleanup action must be present alongside personal injury or property damage claims in order to use the federally required commencement date (FRCD).[46] In many cases involving PFAS contamination, particularly where any response costs have been incurred, the FRCD is sufficiently likely to apply to merit serious consideration by counsel. Because of the persistence of PFAS and the potential latency of related health effects, the FRCD application may be the single most important legal issue in any given case.

An earlier opinion from the same litigation in which the Michigan Supreme Court addressed limitations tolling, Henry v Dow, sets the stage for another key issue — the availability of medical monitoring. Many lawyers believe, and many litigants have argued, that the earlier opinion, Henry I, foreclosed the possibility of plaintiffs' obtaining so-called medical monitoring funds or programs for surveilling the health of plaintiffs exposed to toxic substances. Others, including one of this article's authors, have argued that Henry I does not foreclose medical monitoring as a form of relief but only as an independent cause of action. That view posits that as long as there is a viable cause of action including a presently existing injury to person or property, medical monitoring should be available as a form of relief. While at least one court faced with this argument has declined to strike requests for medical monitoring at the pleading stage,[47] it does not appear that any court has decided the issue on the merits. This issue is of great significance because medical monitoring programs are costly to defendants and immensely important to people worried about their health and the health of their loved ones.

Among other issues to consider in PFAS litigation are limitations imposed by Michigan's statutory product liability scheme and the state Supreme Court prohibition on awarding noneconomic damages for negligent destruction of property. For example, under Michigan law, a manufacturer cannot be held liable for a defective product unless "a practical and technically feasible alternative production practice was available that would have prevented the harm without significantly impairing the usefulness or desirability of the product to users and without creating equal or greater risk of harm to others."[48] An additional shield available to manufacturers against actions for failure to warn is MCL 600.2947(4), which provides that "a manufacturer or seller is not liable in a product liability action for failure to provide an adequate warning if the product is provided for use by a sophisticated user." Separately, a plaintiff whose home and drinking water have been contaminated with a dangerous chemical would likely be offended to know that unless they possess a viable personal injury claim, "replacement or repair of the negligently destroyed property" is their sole measure of damages, as the Michigan Supreme Court has ruled out the possibility of noneconomic damages in such cases.[49]

CONCLUSION

Legal issues stemming from PFAS will continue to keep lawyers in the litigation and regulatory spheres busy for years to come. Like the chemicals themselves, their presence in the legal field may prove to be almost interminable. Lawyers whose practices may bring them in contact with such matters would be well served to stay abreast of recent developments, as such developments are nearly certain to be frequent and significant.



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41. *Henry v Dow Chem Co*, 501 Mich 965; 905 NW2d 601 (2018) (citing *Henry v Dow Chem Co*, 319 Mich App 704, 734; 905 NW2d 422, 438 (2017)).
42. This analysis has at least arguably been altered by the Supreme Court's opinion in *Mays v Governor of Michigan,* 506 Mich 157, 182; 954 NW2d 139 (2020), wherein it cited to *Henry v Dow Chem Co*, 319 Mich App 704, while noting that "[a] claim does not accrue until each element of the cause of action, including some form of damages, exists[,]" ostensibly a limitation on the holding of *Henry v Dow Chem Co.*
43. 42 USC 9601 *et seq.*
44. State legislators have also introduced a bill that would create a "discovery rule" for PFAS and certain other hazardous substances, but it appears not to have found significant traction. See SB 1123 (2020).
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PLAIN LANGUAGE

Graphics in briefs: Why not? (Part 2)

BY WAYNE SCHIESS

HOW TO INCREASE THE USE OF GRAPHICS IN BRIEFS

Part 1 of this article discussed using graphics in briefs only as an abstract concept. For guidance on how one might decide whether to use a graphic in a brief for a particular point, there is an excellent law-review article by Steve Johansen and Ruth Anne Robbins, "Art-iculating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning."[1]

The authors helpfully divide graphics into three categories: organizational visuals such as bullet lists, timelines, and tables (even the Table of Contents); interpretive visuals such as flowcharts, pie charts, and Venn diagrams; and representative visuals such as images and maps. They then ask writers to imagine the legal argument visually and identify what type of graphic would aid the reasoning.[2]

Once the writer has decided to use a graphic in the brief, Johansen and Robbins suggest, it's still beneficial to assess where the graphic would fall along a "usefulness" continuum: on one end are decorative graphics that are visually interesting but that have a limited connection to the analysis; on the other are transformative graphics — they have a purpose as part of the legal reasoning and serve as a form of visual analysis.[3]

Purely decorative graphics would be nixed; transformative graphics would go in.

Consider some types and examples of graphics.

Here are two simple ways to use one type of graphic — images — in briefs, as recommended by survey respondents:

- I mostly use screenshots of the contractual or other language I'm interpreting.
- Many of mine are labeled photos — essentially, evidentiary documents but placed in the body text rather than in an appendix.

But there are other ways. Shown here are some simple examples writers can consider that would not be difficult to create. These graphics come from examples sent to the author, from other sources, and from another excellent article on graphics by Adam L. Rosman: "Visualizing the Law: Using Charts, Diagrams, and Other Images to Improve Legal Briefs."[4]

Graphics in briefs can be as simple as the following table showing who held what position in a corporation.[5] The information here is more quickly and easily grasped than if it were conveyed in textual format.

Ralph Gilbert	Chief Executive Officer
Lester Start	Chief Financial Officer
Graydon Treat	Chief Investment Officer
Justin Bister	Board Director
Mary Sholes	Board Director
Harvey Flexer	Board Director

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 37 years. To contribute an article, contact Prof. Kimble at WMU–Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, visit www.michbar.org/plainlanguage.

The following portion of a larger table was used to address a 12-factor legal test as applied to a set of facts. This is a good example of a graphic that makes digesting the analysis easier when compared to a traditional-text format. (Note: because of the single-column format, the first two examples below are more spread out horizontally than would normally appear.)

Factor	***Analysis***
Evidence of actual or potential harm to patients, clients, or the public	There was actual or potential harm in this case, as Respondent's patient in the February 2011 incident went into code-blue cardiac distress when Respondent failed to fulfill her responsibilities under the standards of care for nurses. This is an aggravating factor in determining a penalty.
Evidence of a lack of truthfulness or trustworthiness	Although Respondent failed to comply with the standards of care, the ALJ does not find evidence in the record that establishes any lack of truthfulness on Respondent's part here. Respondent admitted her actions, and except in regard to whether she informed Ms. Phills that she was leaving the unit, there was little dispute over Respondent's conduct—none of which involved dishonesty or untruthfulness.
Evidence of misrepresenting knowledge, education, experience, credentials, or skills that would lead the public, an employer, a healthcare provider, or a patient to rely on the misrepresentation	There is no evidence of this type of conduct by Respondent.

This next chart appeared in a response to a plaintiff's motion to consolidate. It was the writer's attempt to emphasize that although the same party owned the two apartment-complex phases at issue, the buildings, subcontractors, and materials differed substantially, and the two cases would not require the same evidence. After attempting to describe the content in textual paragraphs, the writer decided to use this chart:

	Phase 1	***Phase 2***
Owner	Ten Pines Partners	Ten Pines Partners
General Contractor	Letco	Trescore
Architect	AATC	AATC
Completed	July 2007	July 2008
Buildings	A, B, C, D, E, F, G, N, P	K, Q, R, S, T
Subcontractors	Mega Insulation Gonzalez Roofers Jeremy Construction A&J Plumbing Double T HVAC	Mega Insulation Roscoe Roofing Rickett's Protective Coatings D-Tech Commercial Tempfan Products
Siding	Traditional	Redstrong Synthetic
Defendants	Ten Pines Partners Mega Insulation Letco Gonzalez Roofers Jeremy Construction A&J Plumbing Double T HVAC	Ten Pines Partners Mega Insulation Trescore AATC Roscoe Roofing D-Tech Commercial Tempfan Products

This timeline conveys key events in the evolution of social-host liability for serving alcohol under Texas law.

1987

Texas enacts Dram Shop statute, creating licensed-provider liability and stating the exclusive cause of action for providers and providing. Social-host liability in a Senate bill was deleted before enactment.

1993

In *Graff v. Beard*, Texas Supreme Court rejects social-host liability for serving alcohol to an adult guest, citing the deleted social-host liability in the Senate bill and the difficulties in knowing of and controlling a guest's drinking.

1997

In *Smith v. Merritt*, Texas Supreme Court rejects social-host liability for serving alcohol to a 19-year-old, even though he was an underage drinker.

2001

In *Reeder v. Daniel*, Texas Supreme Court rejects social-host liability for serving alcohol to a person under age 18, stating that "we are not permitted to recognize a cause of action against social hosts under Texas law."

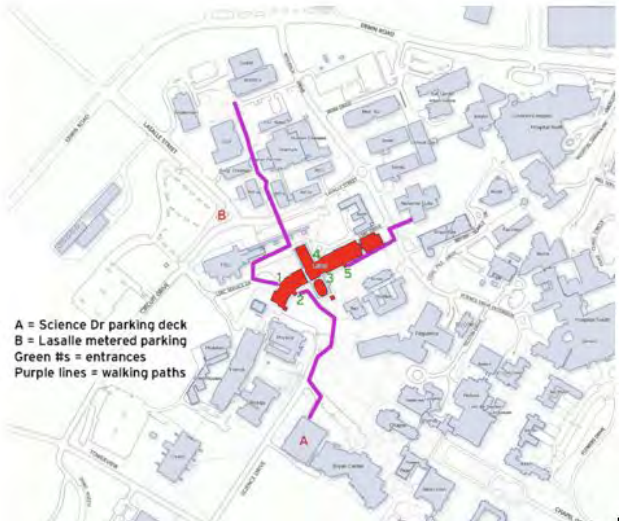
2005

Texas legislature adds section 2.02(c) to the Dram Shop statute, effectively overruling *Reeder v. Daniel* and creating liability for serving, providing, or—on your property—allowing those under 18 to be served.

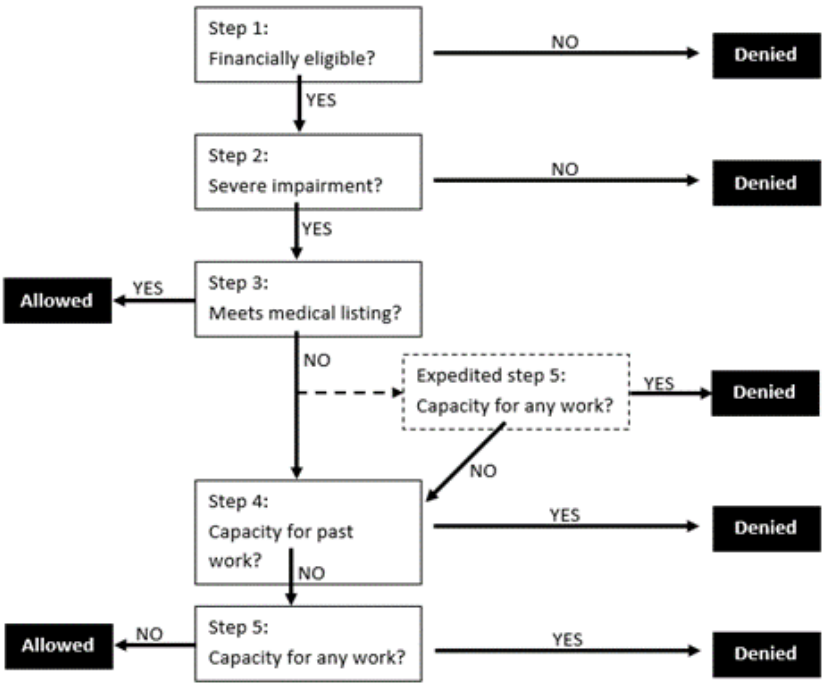
Here's another timeline, showing membership on a board of directors over time.[6]

	2006	2007	2008	2009	2010	2011	2012
1	Jones	Jones	Jones	Jones			Ludlow
2	Stephens	Stephens	Stephens	Stephens	Stephens	Stephens	Stephens
3	Edwards	Edwards	Edwards				
4	Kahn	Kahn	Kahn	Kahn	Kahn	Spellman	Spellman
5	Veasy	Veasy	Veasy	Veasy	Veasy	Veasy	Veasy
6				Foster	Foster	Foster	Foster
7					Shapiro	Shapiro	Shapiro
8					Galenter	Galenter	Galenter

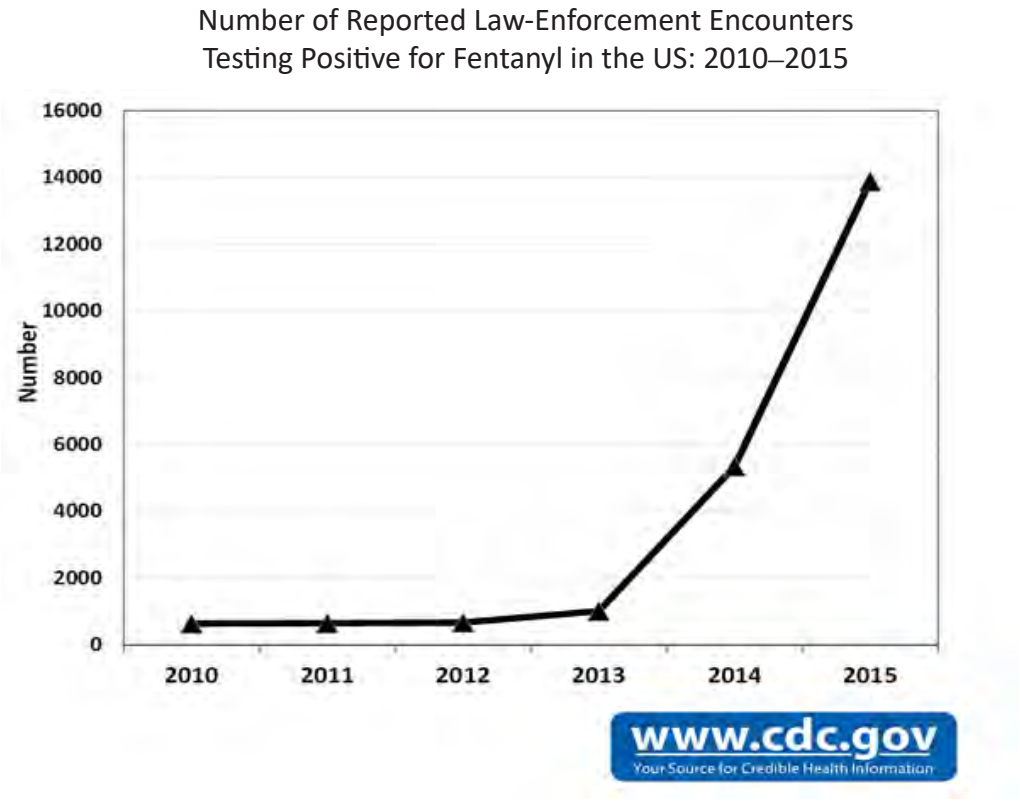
Maps can be particularly helpful as graphics in disputes relating to locations, in boundary disputes, and for other geographically related information.[7]



A flowchart can simplify what in the abstract seems like a complex decision.[8]



Traditional charts (such as the pie chart in Part 1 of this article) and graphs can work, too. Here's one depicting the number of reported law-enforcement encounters testing positive for fentanyl in the United States.[9]



Consider, or reconsider, using graphics in a brief.
These examples may give you some ideas, but it's up to you to consider the information or analysis and decide whether a graphic is right for your brief. Think creatively, get some help, improve your skills, and recognize that judges are generally favorably disposed to graphics in briefs. Then try it.

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ENDNOTES

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BEST PRACTICES

Daubert challenges to expert testimony: LEGAL OVERVIEW AND BEST PRACTICES

BY CHAD ENGELHARDT AND JENNIFER ENGELHARDT

Daubert challenges can be rife with pitfalls for the unwary practitioner or unprepared expert.[1] However, by utilizing best practices, challenges can be avoided or successfully refuted.[2] Moreover, by adhering to best practices, expert testimony will be stronger and more persuasive, increasing the chances of success at trial.

MAINTAIN A STRONG WORKING KNOWLEDGE OF THE *DAUBERT* FRAMEWORK AND RECENT DEVELOPMENTS

When litigation involves issues of disputed scientific testimony, the trial court serves as a gatekeeper to ensure that the trier of fact is informed by trustworthy evidence. Expert testimony based on scientific evidence is admissible if it is both reliable and relevant to the issues being litigated. Relevance is determined by whether the evidence "will assist the trier of fact to understand the evidence to determine a fact in issue."[3] Reliability requires that the factual basis be in evidence or subject to admission and based on "the methods and procedures of science."[4]

Daubert v Merrell Down Pharmaceuticals, Inc.[5] set forth several factors for judicial consideration in evaluating admissibility of scientific evidence.[6] Under *Daubert* factors, expert opinion is admissible when supported by particular grounds for the expert's scientific conclusion. This is true even if there are flaws in the expert's methods or arguable grounds for alternative conclusions.[7] The United States Supreme Court further clarified that an expert must "employ in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field."[8]

The Michigan Legislature codified many *Daubert* factors when it enacted MCL 600.2955, which accounts for multiple factors in assessing the scientific reliability of an expert opinion. However, the Michigan Supreme Court in *Ehler v. Misra* clarified that every factor articulated in MCL 600.2955(1) need not be met in every case; rather, the relevant factors must be met.[9] MRE 702 also incorporates *Daubert* standards of reliability as a threshold matter of admissibility.

Statutory and evidentiary *Daubert* factors encompassed in MCL 600.2955 and MRE 702 are frequent fodder for motion practice in tort and business litigation. The stakes are high in such disputes and failure to meet the standards can result in dismissal or severe limitations on evidence submitted to the jury.

A *Daubert* ruling may be dispositive but is reviewed for abuse of discretion.[10] Even when not dispositive, *Daubert* rulings in cases

"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.

centered around differing opinions from conflicting experts can substantively skew the battleground and tip the scales of justice on credibility issues. Further, *Daubert* hearings typically involve exhaustive evidentiary explorations and necessitate a substantial allocation of judicial time and party resources.

Daubert instructs that "[t]he focus, of course, must be solely on principles and methodology, not on the conclusions that they generate."[11] The inquiry to be undertaken by the trial court is flexible, focusing on the principles of methodology employed and not on the conclusions reached.[12] An opinion grounded in facts, known scientific principles, professional experience, and application of logic is one that rests upon reliable methodology and should be admitted into evidence. All other criticisms merely go to the weight and not to the admissibility of the evidence.[13] Practitioners should keep these principles in mind and avoid inviting error so the constitutional role of the jury as trier of facts and credibility is not invaded.

While *Daubert* challenges can occur in all varieties of tort cases, they are most prevalent in medical malpractice cases. In such cases, expert testimony is required to prove a defendant's compliance with or deviation from the standard of care.[14] Often, standard-of-care opinions are based primarily on the expert's experience and informed by the totality of the expert's education and training. Some of the most influential *Daubert* opinions have emerged from medical malpractice appellate decisions.[15]

THE INTERNET HAS CHANGED THE FACE OF SCIENTIFIC AND MEDICAL RESEARCH

An area of recent appellate focus involves the interplay of expert opinion and supportive scientific literature. The internet has changed the face of medical and scientific research. Google Scholar, databases, and subscriptions services like Pubmed, MD Consult, and UpToDate place a virtual world of scientific knowledge at our fingertips. What used to require hours or even days in a university research library searching for reference materials can be accomplished in a fraction of the time. Such searches performed early in the case — and with the assistance of analysis by your experts — can substantially strengthen the practitioner's understanding of the issues in dispute and lead to more focused discovery and better framing of the issues at all stages of the case.

Some argue that a lack of such literature automatically renders an expert opinion scientifically unreliable and therefore ineligible for submission to the jury. Such a narrow view runs contrary to law. Lack of literature does not necessarily suggest that the expert opinion is unreliable.[16] Supportive literature is a factor to be considered in evaluating the foundation of an expert opinion, but it is not the exclusive criteria.[17] That is because "not every particular factual circumstance can be the subject of peer-reviewed writing. There are necessarily novel cases that raise unique facts that have not been previously discussed in the body of medical texts and journals."[18]

In some circumstances, supporting scientific literature can be an important factor in determining the reliability of expert testimony.[19] Industry or professional standards and learned treatises can highlight how an expert's opinions and methodologies compare with those employed outside of litigation.

PREPARATION IS ESSENTIAL FOR THE ATTORNEY AND EXPERT

Detailed preparation for mounting or defending a *Daubert* challenge is paramount. Unlike trial, the rules of evidence (specifically hearsay) do not apply at *Daubert* hearings.[20] At trial, literature may qualify as a learned treatise for purposes of impeachment when established as a reliable authority by admission, by another expert's testimony, or by judicial notice.[21]

An expert must be able to explain how the facts and data have been reliably applied. An opinion is not admissible simply because an expert says so. "Nothing in either *Daubert* or the Federal Rules of Evidence requires a ... court to admit opinion evidence which is connected to existing data only by the ipse dixit of the expert."[22] Showing that the expert relied on principles used outside of litigation — part of the training and practice of their profession — should be emphasized, even in the absence of literature support.

Michigan courts have adopted the federal model that each (or even most) of the statutory factors which codify *Daubert* need not favor the proposed expert's opinion for it to be admissible. The *Elher* Court acknowledged that "all the factors in MCL 600.2955 may not be relevant in every case."[23] Rather, it suffices that "the opinion is rationally derived from a sound foundation."[24] A trial court need not search for the absolute truth; that an opinion is not universally accepted or that conflicting evidence exists does not render it unreliable.[25] Instead, "the proper role of the trial court is to filter out expert evidence that is unreliable, not to admit only evidence that is unassailable."[26] "[T]he fact that two scientists value the available research differently and ascribe different significance to that research does not necessarily make either of their conclusions unreliable."[27]

A source of frequent confusion in medical malpractice cases is the mistaken belief that supportive literature is always required. The Michigan Supreme Court expressly held that supportive literature

is not always required and "peer-reviewed, published literature is not always necessary or sufficient to meet the requirements of MRE 702."[28, 29] When assessing reliability, a lack of supporting literature combined with the lack of any other form of support can render opinion testimony unreliable.[30] The Michigan Supreme Court appears poised to further clarify the role of scientific literature where a *Daubert* challenge has been made regarding the experiential issue of standard-of-care testimony.[31]

ANTICIPATE AND ADDRESS POTENTIAL *DAUBERT* ISSUES EARLY

Where a *Daubert* challenge is foreseeable, early and detailed attorney and expert preparation can increase the likelihood of a successful outcome and potentially avoid the challenge altogether. Practitioners must understand the expert's qualifications, methodology of review, and how an expert opinion fits into the applicable evidentiary and statutory factors within the context of the case.

An expert should be prepared to support opinion(s) using available records, images, and literature (if applicable). Detailed discussions with the expert outlining their specific education, training, and experience (including publications and teaching) are critical. Practitioners can request the expert to perform a literature search, analysis, or review when appropriate. Finding out how an expert will address *Daubert* factors before testifying can increase the strength and persuasion of the testimony.

Practitioners on the receiving end of a *Daubert* challenge should be prepared for a de facto bench trial. Consider requesting an evidentiary hearing (which is within the court's discretion[32]) and have the following read where applicable:[33]

- Expert CV;
- Highlighted scientific literature (with table of contents) and, as a best practice, an abstract with excerpts of the most relevant quotes or findings and definition of key medical or scientific terms;
- Bench brief setting forth the expert opinion, pertinent law, and pertinent facts; and
- Any other evidence supporting the expert testimony.

Where appropriate, practitioners may wish to reference the Federal Judicial Center's *Reference Manual on Scientific Evidence*[34] or the Michigan Judicial Institute's *Evidence Benchbook*.[35]

EFFECTIVE DISCOVERY AND DEPOSITION PRACTICE

Consider inquiring about the methodology used in the field, expert qualifications, and confirmation of the scientific principles in discovery requests and depositions. Use *Daubert* factors as an outline for both deposition preparation and cross-examination of experts. Often, the dispute is not about the methodology used by the experts, but the conclusions they reached. That is an issue of fact to be resolved by the jury, not a matter for gatekeeping.

CONCLUSION

Daubert challenges are rightfully seen as "Death Star" issues. They are risky and resource intensive. Best practice for practitioners is identifying, analyzing, and building the foundation to support expert testimony early and soundly. Doing so will avoid many challenges and help overcome those that are made. Thorough preparation will also pay dividends in a stronger case at mediation or trial.

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ENDNOTES

1. The scope and depth of this article is necessarily truncated. For a more detailed discussion complete with video, white paper, and sample pleadings, see ICLE's On-Demand Seminar *Demonstration: Daubert Hearing* (March 19, 2019), available at <https://www.icle.org/modules/seminars/video.aspx?ID=1_mljmrf44&seqn=470> [https://perma.cc/A7GY-SV7S]. All websites cited in this article were accessed May 3, 2022.
2. Engelhardt, et al, eds, *Torts: Michigan Law and Practice* (Ann Arbor: ICLE, 2021), which features several chapters discussing *Daubert* issues applied to specific fields and causes of action.
3. MRE 702.
4. MRE 703, *Daubert v Merrell Dow Pharm, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993), and *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 781; 685 NW2d 391 (2004) (adopting *Daubert* standard).
5. 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993) and *Gilbert v Daimler-Chrysler Corp*.
6. The *Daubert* standard was established to provide a more liberal basis compared to the standard set forth in *Frye v United States*, 293 F 1013 (1923), which required the proponent of scientific evidence to show that the underlying theory and techniques were generally accepted in the relevant scientific community.

7. *Daubert,* 509 US at 593.
8. *Kumho Tire Co v Carmichael,* 526 US 137, 152; 119 S Ct 1167; 143 L Ed 2d 238 (1999).
9. *Ehler v Misra,* 499 Mich 11, 27; 878 NW2d 790 (2016).
10. When the impact of a *Daubert* ruling is dispositive, appellate panels may use a hybrid standard of review. Michigan courts review orders for summary disposition *de novo*, *Wright v Genessee Cp Bd of Drain Comm'rs,* 504 Mich 410, 417; 934 NW2d 805 (2005). Where a question of expert witness qualification is involved, such decision is reviewed for abuse of discretion. "An abuse of discretion occurs when the trial court chooses an outcome outside the realm of reasonable and principled outcomes," *Kalaj v Khan,* 295 Mich App 420, 425; 820 NW2d 223 (2012). Appellate courts "review de novo questions of law underlying evidentiary rulings, including the interpretation of statutes and court rules," *Ehler v Misra,* 499 Mich at 21. [A]ny error in the admission of exclusive of evidence will not warrant appellate relief unless refusal to take this action appears . . . inconsistent with substantial justice, or affects a substantial right of the [opposing] party," *Craig v Oakwood Hosp,* 471 Mich 67, 76; 684 NW2d 296 (2004). See also *Barnett v Hidalgo*, 478 Mich 151, 159; 732 NW2d 472 (2007) ("[w]hen the trial court's decision to admit evidence involves a preliminary question of law, the issue is reviewable de novo, and admitting evidence that is inadmissible as a matter of law constitutes an abuse of discretion.")
11. *Daubert,* 509 US at 595.
12. *Daubert,* 509 US at 594.
13. E.g., *Lopez v General Motors Corp*, 224 Mich App 618, 632; 569 NW2d 861 (1997) and *People v Stiller*, 242 Mich App 38, 55; 617 NW2d 697 (2000).
14. *Lince v Monson*, 363 Mich 135, 108 NW2d 845 (1961).
15. E.g., *Edry v Adelman*, 486 Mich 634; 786 NW2d 567 (2010). See also *Ehler v Misra.*
16. *People v Unger*, 278 Mich App 210, 220; 749 NW2d 272 (2008).
17. *Ehler v Misra,* 499 Mich at 27. See also *Robins v Garg*, 276 Mich App 351; 741 NW2d 49 (2007) and *Clerc v Chippewa Co War Mem Hosp*, 267 Mich App 597; 705 NW2d 703 (2005).
18. *Unger,* 278 Mich App at 220.
19. *Edry v Adelman*, 486 Mich at 639-640. *See* also *Daubert,* 509 US at 593, holding that whether there is peer-reviewed and published literature on a theory is a pertinent consideration because "submission to the scrutiny ofthe scientific community is a component of 'good science,' in part because it increases the likelihood that substantive flaws in methodology will be detected."
20. MRE 104.
21. MRE 707 and mirroring FRE 803(18).
22. *General Electric Co v Joiner,* 522 US 136, 146; 118 S Ct 512; 139 L Ed 2d 508 (1997).
23. *Ehler v Misra,* 499 Mich at 16.
24. *Chapin v A & L Parts, Inc,* 274 Mich App 122, 137-139; 732 NW2d 578 (2007).
25. *Id.* at 139.
26. *People v Unger*, 278 Mich App 210; 749 NW2d 272 (2008).
27. *Chapin,* 274 Mich App at 139.
28. *Ehler v Misra,* 499 Mich at 27.
29. *Id.* at 27-28.
30. *Edry v Adelman*, 486 Mich at 640 and *Ehler v Misra,* 499 Mich at 14.
31. *Danhoff v Fahim,* ____ Mich ____; 969 NW2d 71 (2022).
32. *People v Unger,* 278 Mich App at 216-217.
33. For a far more detailed discussion, see ICLE's On-Demand Seminar *Demonstration: Daubert Hearing*.
34. Available at <https://www.propertyinsurancecoveragelaw.com/files/files/Reference%20Manual%20on%20Scientific%20Evidence.pdf> [https://perma.cc/2LXH-N5NW].
35. Available at <https://mjieducation.mi.gov/training/EvidenceResponsiveHTML5/index.html#t=Evidence%2FCover_and_Acknowledgments%2FCover_and_Acknowledgments-.htm> [https://perma.cc/Y7VH-GZQW].

ETHICAL PERSPECTIVE

Stop sending subpoenas to attorneys for protected information

BY ALECIA M. CHANDLER

At least one of you reading this headline thought something along the lines of "What lawyer would subpoena protected information from another attorney?" The answer, it seems from the uptick in calls to the State Bar of Michigan Ethics Helpline, is a lot of lawyers.

To be clear, this article focuses solely on subpoenas improperly executed by attorneys for information in another attorney's file directly related to representation, which is covered by attorney-client privilege and MRPC 1.6. It does not cover proper uses of attorney subpoena power.[1]

As attorneys, we know that subpoenas are a commonly used legal tool to receive the necessary information to effectively advocate for clients. However, an attorney's subpoena power has ethical and legal limitations. In the last year, the Ethics Helpline has received numerous calls from lawyers asking what to do when subpoenaed to "produce a full and complete copy of a client file" or testify as to protected information. Examples include:

- A prosecutor sending a subpoena to prior defense counsel in a criminal case for their "entire client file."[2]
- An attorney in a divorce matter sending a subpoena for former opposing counsel's "entire client file" when the client decided to proceed pro se.[3]
- A prosecutor investigating a deceased attorney's client and sending a subpoena to the personal representative for all attorney "client files" related to specific former clients.[4]
- An attorney representing an injured person in civil action and sending a subpoena for the "entire client file" from the criminal defense attorney in the related criminal matter.

Another instance involved a subpoena for "all of the attorney's IOLTA records" in an attempt to evidence how much one former client paid the attorney for services rendered in the past.[5] There was a similar request for phone records; the lawyer wanted to know if the opposing party in the case actually called the law firm for a consultation.[6] There are numerous additional scenarios — including deposition notices and subpoenas to testify at trial — that are directly related to the representation.

Why are lawyers subpoenaing other lawyers for files that are protected by the legal concept of attorney-client privilege and MRPC 1.6 Secrets and Confidences? My guess is that it's just easier. All that incriminating information about the "client" is likely located in that glorious file. A simple subpoena may provide access to the holy grail of information.

STOP! Just because it's easy doesn't mean it's ethical.

The lawyer considering sending a subpoena should first consider how they would react if they received a subpoena for the same information. It is likely that lawyer would be livid. Lawyers have a duty, not an option, to protect confidential client information[7] — even after death of the client.[8] If the sending lawyer determines that the information may be protected by MRPC 1.6 or attorney-client privilege, the lawyer should determine if the act of sending the subpoena is a violation of MRPC 8.4(a), which states that "it is professional misconduct for a lawyer to induce another to 'violate the Rule of Professional Conduct[.]'" Following that analysis, consider alternative sources from which the information may be received.[9] Finally, if there is no other option, ask the judicial officer[10] to order that the subpoenaed lawyer remit only the information about the current or former client that is necessary

"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.

and cannot be obtained elsewhere without undue hardship on the client.[11]

A LAWYER'S RECEIPT OF A SUBPOENA

Ethics Opinion RI-106 advises lawyers:

> "Upon receipt of a subpoena for information about a client, a lawyer should appear and assert the lawyer-client privilege and await a ruling from the judge as to whether to disclose. . . .The lawyer-client privilege is held by the client and cannot be waived by the lawyer."

This opinion was published in 1991 and while the ethical analysis is still applicable, the world has changed. Now, we send subpoenas electronically and the subpoenas are usually only for production of the client file and appearance is generally not necessary.

What should the receiving lawyer do? In today's world, professionalism and civility are incredibly important. I suggest making a call or sending an email (not a nasty one) advising the sending lawyer that compliance with the subpoena would violate the MRPC and refer them to Ethics Opinion RI-106. However, that may not be possible depending on the relationship between the lawyers.

If that doesn't work or isn't appropriate, other options are available. For example, if the receiving lawyer reasonably believes information could or should be provided and does not fall within the estate planning exception,[12] try to work with the requesting attorney to draft an order for the court to enter declaring that only relevant documents pertaining directly to the representation (and not the entire file) may be provided in the most protective manner possible.[13]

If the request is for a former client's file and the client has new counsel, ask current counsel to take steps to quash the subpoena and, where appropriate, work with opposing counsel to determine what, if anything, in the file may be subject to disclosure.

If the client is deceased, the lawyer's obligation to maintain confidentiality does not cease.[14] In some scenarios, the personal representative of the estate may waive privilege, but only when the waiver would benefit the estate.[15] If the information would not benefit the estate, a court must order release of any protected client information.[16] Therefore, the same recommendations provided above apply.

The recipient lawyer may file their own motion to quash and await a ruling from the judicial officer consistent with waiting for a judicial order as provided in RI-106.

WHAT IS PROTECTED?

This is a question that law students mull in professional responsibility and even plagues well-seasoned attorneys at times. Two concepts must be considered: The legal concept of attorney-client privilege and the ethical concept of confidences and secrets.[17] While attorney-client privilege protects confidential communication between the client and lawyer to obtain legal advice[18] and attorney work product prepared in anticipation of litigation,[19] secrets include all "other information" from third parties about the client or from the client about unrelated matters. So, pretty much anything that might be embarrassing or detrimental to the client or anything the client has asked the lawyer to keep confidential is protected. For most of my former clients, that meant almost everything in my files.

Exceptions to this protection are set forth in MCR 2.302(B)(3)(a), which requires:

> "showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation."

Therefore, the argument should be made to a judicial officer who makes the final decision regarding what is protected and what is subject to discovery.[20]

CONCLUSION

Do not use or provide a response to a subpoena signed by an attorney for protected information. Instead, utilize the proper legal avenues to obtain an appropriate discovery order. If you are on the receiving end of a subpoena for protected information, see RI-106 and relevant case law. If you need additional guidance or have ethical questions, call the Ethics Helpline at (877) 558-4760.

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

ENDNOTES

1. This article does not address the exception involving testimony related to drafting estate planning documents, as there may be no ethics concerns. See *In re Loree's Estate*, 158 Mich 372; 122 NW2d 623 (1909).
2. The subpoenaed lawyer later advised that the former client was claiming the lawyer gave certain advice to the client and the prosecutor wanted to verify what advice was given.
3. In this matter, the receiving attorney called the subpoenaing lawyer who replied that because the receiving lawyer was no longer representing the opposing party, that their file was "fair game."
4. This scenario could involve a crime-fraud exception; however, the subpoena was not issued by a judicial officer.
5. Providing the records would have exposed all transactions into and out of the IOLTA for all of the recipient lawyer's clients.
6. Providing the records would have exposed all phone calls to and from the lawyer's office during a lengthy period as well as the length of all calls.
7. MRPC 1.6.
8. *Lorimer v Lorimer*, 124 Mich 631; 83 NW 609 (1900).
9. MCR 2.302(B)(3).
10. Comment to MRPC 1.6, *Disclosures Otherwise Required or Authorized:* "The scope of the client-lawyer privilege is a question of law. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (b)(1) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client."
11. MCR 2.302(B)(3).
12. *In re Loree's Estate, Grand Rapids Trust Co v Bellows*, 224 Mich 504; 195 NW 66, and *Eicholtz v Grunewald*, 313 Mich 666; 21 NW2d 914 (1946).
13. Comment to MRPC 1.6.
14. *Lorimer*, 124 Mich at 638.
15. *McKinney v Kalamazoo-City Sav Bank*, 244 Mich 246; 221 NW 156 (1928) and *Eicholtz*, 313 Mich at 671.
16. *Lorimer*, 124 Mich at 637.
17. *General Attorney — Frequently Asked Questions: What is the difference between attorney-client privilege and confidences and secrets under MRPC 1.6?* SBM <https://www.michbar.org/opinions/ethics/generalattorneyFAQs#3> [https://perma.cc/H2K8-BGEM] (website accessed May 3, 2022).
18. MCL 767.5a(2) and *Fruehauf Trailer Corp v Hagelthorn*, 208 Mich App 447; 528 NW2d 778 (1995).
19. MCR 2.302(B)(3)(a) and Lang et al, eds, *Michigan Civil Procedure* (Ann Arbor: ICLE, 2022), ch 11.
20. MCR 2.302 and *Court Rules of Michigan Annotated* (Ann Arbor: ICLE, 2022), ch 2.

LIBRARIES & LEGAL RESEARCH

Michigan's groundwater and the public trust doctrine

BY SHAY ELBAUM

In March, legislators introduced a package of bills in the Michigan House of Representatives that would apply the public trust doctrine to the state's groundwater. But what is the public trust doctrine and why does it matter if it applies to Michigan groundwater? This column provides an overview of the public trust doctrine and its application to groundwater, a summary of the bills now being considered, and resources for tracking their progress.

THE PUBLIC TRUST DOCTRINE

The public trust doctrine provides that the state holds natural resources in trust for the public and has an affirmative duty to manage those resources for the benefit of the public. Scholars generally trace its origin to Roman law and the Institutes of Justinian.[1] Skipping forward a millennium or so, the United States Supreme Court held in 1892 that the Great Lakes and the land underneath them were held in the public trust, invalidating a grant of most of the Chicago harbor to a private railroad company.[2] Following Joseph Sax's seminal 1970 article "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention,"[3] advocates increasingly turned to the doctrine to combat environmental problems and state courts and legislatures expanded its scope.

Today, all states apply some form of the public trust doctrine—with variations. Some states' constitutions include a version of the doctrine.[4] Courts have applied the doctrine as both a matter of common law and statutory law. And some states have codified, added to, or even subtracted from its scope by statute. Idaho, for example, enacted a law excluding water resources from its public trust doctrine in response to dicta in an Idaho Supreme Court decision suggesting that the doctrine could apply to water.[5]

Idaho's approach is not the norm. Most states consider navigable waters to be within the public trust. Groundwater, however, is a different story. Courts in some states have held that the public trust doctrine does not apply to groundwater; other states have avoided the question.[6] Another approach, taken by the California Court of Appeals, is to apply the public trust doctrine to groundwater resources when groundwater extraction could affect a navigable waterway — for example, by lowering the water level in a hydrologically connected stream.[7] The Hawai'i Supreme Court has gone even further, applying the doctrine to groundwater independent of its use or the impact on a surface water resource.[8]

THE PUBLIC TRUST IN MICHIGAN

In Michigan, the public trust doctrine applies to navigable waters,[9] but no state court has applied it to groundwater. In a 2005 case, the Michigan Court of Appeals considered, then rejected an argument that groundwater was subject to the public trust doctrine.[10] The case involved Nestlé's extraction and sale of groundwater in Mecosta County. Although both the trial and appellate courts rejected the public trust argument, they did enjoin Nestlé's groundwater extraction on other grounds. A groundwater pumping operation in another county, however, was permitted to move forward.

Nestlé's extraction and sale of Michigan groundwater have been consistently challenged by water conservation advocates.[11] The Great Lakes Compact, a legally binding interstate compact between the Great Lakes states, bans the removal of water from the Great Lakes basin.[12] But there is an exception: water may be transported elsewhere if it is in containers of 5.7 gallons or less, although states may pass more restrictive laws.[13] Some have called this provision a loophole; others have argued that the water extracted is not nearly enough to affect Great Lakes water levels. Whatever one's assessment of this exception, it means that the compact does not prevent Nestlé (or anyone else) from bottling groundwater from the Great Lakes basin and selling it elsewhere.

CURRENT BILLS

Michigan lawmakers in March introduced a package of three bills intended to protect the state's groundwater resources. Similar bills have been introduced in past sessions without success. Rep. Yousef Rabhi (D-Ann Arbor) introduced 2022 HB 5953, which declares that "[t]he waters of this state, including groundwater, are held in the public trust by this state. The public trust in the water of this state applies to the quantity and quality of the water." Rep. Rachel Hood (D-Grand Rapids) introduced 2022 HB 5954, which would remove the exception permitting withdrawal of water from the Great Lakes basin in containers smaller than 5.7 gallons. And Rep. Laurie Pohutsky (D-Livonia) introduced 2022 HB 5955, which would add the "protection [and] conservation of…water" to the Michigan Natural Resource Commission's mandate.

All three bills were referred to the House Committee on Natural Resources and Outdoor Recreation, where they remain as of this writing. No hearings have been scheduled.

Researchers looking to track the progress of these bills can refer to the Michigan Legislature's website at legislature.mi.gov. Searching for the bill numbers brings up each bill's page, which includes basic information about the bill, the bill's text as introduced and in subsequent versions, analyses from the House and the Senate when available, and a list of actions on the bill as recorded in the House and Senate journals. The bill's page also includes a link to an RSS feed, which you can use to receive live updates on its progress.

More details on the bills' consideration by the Committee on Natural Resources and Outdoor Recreation or any House committee can be found on the Michigan House website at house.mi.gov. Check the committee schedule under the page's Information heading for meeting dates and agendas, including which bills will be considered and, possibly, a link to a live stream of proceedings. Minutes and testimony from past hearings are also available on the committee page under Committees > All Committees. If a committee meeting was recorded, it can be located under House TV > Video Archive. The Michigan Senate website at senate.michigan.gov is structured slightly differently but provides access to the same kinds of committee material.

CONCLUSION

While we don't know whether these bills will pass, their introductions indicate that the responsibilities of the state as steward of its natural resources, including groundwater, are still contested and alterable. The public trust doctrine remains a powerful tool for environmental conservation, and we may yet see Michigan join the growing number of states applying it to their groundwater.

Shay Elbaum is the faculty research librarian at the University of Michigan Law Library. He received his law degree from the University of Michigan Law School and his master's degree in library and information science from Simmons College. He is a member of the Alaska Bar Association.

ENDNOTES

1. Frank, *The Public Trust Doctrine: Assessing Its Recent Past & Charting Its Future*, 45 UCD L R 665 (2012), available at <https://lawreview.law.ucdavis.edu/issues/45/3/Topic/45-3_Frank.pdf> [https://perma.cc/42GW-KE4N] and Ruhl & McGinn, *The Roman Public Trust Doctrine: What Was It, and Does It Support an Atmospheric Trust?* 47 Ecol L Q 117 (2020), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3440244> [https://perma.cc/N47Y-Z9Z7]. All websites cited in this article were accessed May 10, 2022.
2. *Illinois Central R Co v Illinois*, 146 US 387, 475; 13 S Ct 110; 36 L Ed 1018 (1892).
3. 68 Mich L Rev 471 (1970), available at <https://www.law.berkeley.edu/files/CLEE/Sax68MichLRev471.pdf> [https://perma.cc/5S3G-RTAC]
4. E.g., Alaska Const, art VIII; Haw Const, art XI, § 1; Neb Const, art XV, § 5; and Pa Const, art I, § 27.
5. Idaho Code § 58-1203.
6. E.g., *Rhode Island v Atlantic Richfield Co*, 357 F Supp 3d 129 (D RI, 2018) and *White Bear Lake Restoration Assn v Minnesota Dept of Nat Res*, 946 NW2d 373 (2020).
7. *Environmental Law Fdn v State Water Resources Control Bd*, 26 Cal App 5th 844; 237 Cal Rptr 3d 393 (2018).
8. *In re Water Use Permit Applications*, 94 Hawai'i 97; 9 P3d 409 (2000).
9. *Bott v Comm of Natural Resources*, 415 Mich 45; 327 NW2d 838 (1982).
10. *Michigan Citizens for Water Conservation v Nestlé Waters North America Inc*, 269 Mich App 25; 709 NW2d 174 (2005).
11. Ellison, *Nestle water owners return Michigan permit, plan new withdrawal*, MLive (October 20, 2021) <https://www.mlive.com/public-interest/2021/10/nestle-water-owners-return-michigan-permit-plan-new-withdrawal.html> [https://perma.cc/JMF2-NG8T] (reporting on recent conflict and summarizing history) and *Nestlé Water Taking*, Michigan Citizens for Water Conservation <https://savemiwater.org/nestle-water-bottle/> [https://perma.cc/NJU2-ZJPT].
12. Great Lakes-St. Lawrence River Basin Water Resources Compact (December 13, 2005), § 4.8, available at <https://www.glslcompactcouncil.org/media/ud2dmov/great-lakes-st-lawrence-river-basin-water-resources-compact.pdf> [https://perma.cc/3ERL-2JS9].
13. *Id.* § 4.12(10).

LAW PRACTICE SOLUTIONS

Cultivate innovation mindsets to build your future

BY JUDA STRAWCZYNSKI

When the COVID-19 pandemic shined a spotlight on the antiquated parts of our justice system and exposed gaps in our legal practice models, courts and law firms quickly shifted. Now, there's no turning back.

To help you plan for the future of your practice, you can embrace innovation mindsets — different ways of thinking to help us create processes and ideas that improve our lives.

In this space in this issue and next, you'll be introduced to 20 tips to get you in an innovation frame of mind; help you find your innovation inspiration; give you practical ways to succeed in any innovation project; and equip you for long-term success.

GETTING INTO THE INNOVATION FRAME OF MIND

Choose your own adventure

You get to choose your adventures in law. You decide how you want to practice and whom you wish to serve.

When you're busy, it's hard to remember that you have agency over your tasks and priorities and your personal life, too. It's hard to be honest about what you want to do and what it may take to get there, but you get to choose. By taking ownership of your practice, you empower yourself to change for the better. By embracing agency over passivity, we become open to change.

Where do you want to go?

You're busy, but you need to set time each month for self-reflection and self-assessment of your goals. Reflect on your practice, including where you are and where you want to go. Self-reflection involves considering goals for:

- Client development
- Client pipelines and business development
- Client management
- Progress of your cases
- Your legal skills, practice management, and innovation
- Your personal management

Self-assessment requires taking stock in your performance. For example, think about a recent challenging situation and how you applied your legal skills.

- What was the situation? What pressures made this a challenge?
- How did you react?
- How did you proceed?
- What other options were available?
- How might you proceed differently in future situations?

Now think about your legal innovation journey.

- What's working?
- Is there an area you wish to further refine?
- Are there areas you wish to work on next?

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.

Use your diverse skills to drive change

A good lawyer doesn't just know the law — they use their skills to serve clients. The lawyer mindset is more than understanding and applying the law; it involves business development, people and project management, leadership, emotional intelligence, and empathy.[1] Recognize the diverse skills you use and harness your skills to innovate. If you're worried that some areas are not where they should be, it could be a sign of room for growth and improvement.

INNOVATION INSPIRATION

Take inspiration from other sectors

It's often said that imitation is the highest form of flattery. Lawyers should take inspiration from other sectors. For example, if client no-shows are an issue, consider how doctors and dentists reduce the risk of no-shows for appointments through simple changes like calling patients to confirm or smartphone apps that simplify and automate confirmation.

Focus on client experiences

Law practices exist to serve clients, who have more choices than ever. Considering the client perspective is important for finding, retaining, and growing your relationships with them. Clients are a great source of ideas for change. When thinking about current and prospective clients, consider:

- How potential clients learn about your services (or why they might not learn about you at all.)
- A prospective client's first contact with and initial impression of your firm.
- The intake experience. What kind of client onboarding do you provide? How do you prepare clients before the first meeting? How do you build trust from the start?
- How the client feels about when and how you communicate with them.
- Whether fees are clear and clients understand their bills.
- The offboarding experience. Do your clients leave satisfied?
- Keeping in touch with former clients. Do clients feel connected to you and your practice?

Daring to dream: Moonshots and minimum viable products

You might be at a point where you're dreaming big or have an idea whose time may have come. Everyone fears failure, but we should at times allow for moonshots.

If you're unsure whether your idea could become a reality, try using the concept of minimum viable product (MVP).[2] Think about the service you hope to provide and the need it would meet or problem it would address. Then ask yourself:

- Who is the target market?
- What is the minimum reasonable expense to launch?
- What is the minimum number of clients/average fee per client needed to make the practice viable?

Perhaps now more than ever, lawyers can explore new ways of delivering legal services. Remote capabilities have eroded traditional geographical limitations on providing services, enabling lawyers to attract clients from afar. Remote practice also reduces costs associated with traditional brick-and-mortar offices.

These changes allow for hyper-specialization. Until recently, a small-town lawyer might have served clients only within a reasonable drive of their office. Now, that same lawyer can serve clients worldwide.

Finding inspiration from the "1,000 fans" concept

There are lots of ways to develop your MVP or test your moonshot. Kevin Kelly's 2008 essay on the concept of 1,000 true fans is a helpful starting point.[3] A lawyer with 1,000 dedicated clients paying $100 for services generates $100,000 in revenue. A base of 10 clients spending $10,000 on legal services also generates $100,000. Depending on your practice, the number of clients and spending per client will vary. Consider how many clients you would ideally serve and the average price point per client to get a sense of your firm's niche, its "true fan" client base, and your ideal revenue model.

Solo and small firms are well positioned to serve niche markets and have direct, meaningful relationships with clients. For example, there are lawyers focused on assisting with student debt, issues related to horse ownership, and cryptocurrency.

Responding to unmet legal needs

Whether it's reviewing an employment contract, helping a small business struggling to comply with regulatory duties, or assisting a DIY litigant looking for general guidance, there are underserved markets where affordable legal services could flourish with the proper business modeling, technology, and innovation. It just takes

opening up one untapped market for a firm to find success while serving unmet legal needs.

Finding your dream clients

Do you have dream clients? Get closer to a practice filled with these people by reflecting on what a dream client is to you. Consider developing client personas as an ideal client archetype. Push yourself to identify what that ideal client looks like. Think about past clients: Whom have you enjoyed working with? What made this client a dream client? What sector is the client in?

Looking ahead, who is this dream client? Describe them in one sentence. How would they keep in contact with you? What frustrates them? What inspires them? What keeps them up at night? What are their pain points, and how can you help them alleviate them?

In the next issue, the focus turns to realizing your innovations and tips for transforming your practice over the long haul.

Juda Strawczynski is a Toronto-based lawyer and director of practicePRO, LAWPRO's claims and risk management initiative.

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PRACTICING WELLNESS

Workplace culture:
WHAT'S LOVE GOT TO DO WITH IT?

BY DAWN GRIMES KULONGOWSKI

It was a clear day in December 1978 when a United Airlines flight carrying 181 passengers began its descent into the airport in Portland, Oregon. But when Capt. Melburn McBroom attempted to lower the landing gear, he encountered a mechanical problem. He circled the airport while angrily fiddling with the mechanism. McBroom was known by his crew as a hot-tempered boss,[1] and one investigator later described him as "an arrogant S.O.B."[2] The crew noticed that the plane was running out of fuel but, frozen in fear of McBroom's impending rage, they said nothing. The plane crashed in a Portland suburb, killing 10 people.[3]

While this is an extreme example, it illustrates the high cost of teams that can't work together effectively. There is a popular phrase in management training: "Stress makes people stupid."[4] When team members are emotional or upset, they don't learn well and, like McBroom's crew, they don't make good decisions.

Imagine a work environment where the leader (or any team member, for that matter) lacks self-control, has a short temper, can't critique without insult or blame, and has no sensitivity to other people's feelings. In that environment, no one can operate to their full capabilities. They might be educated, intelligent, and skilled, but if you put them in a situation where they communicate poorly with each other, little will be accomplished. Even the brightest and best shut down in the face of anger, competition, and insensitive criticism.[5]

According to a Harvard Business School study of toxic work environments, 25% of employees surveyed reported taking their frustrations out on clients, 48% intentionally decreased work efforts, 78% said their commitment to the organization declined, 66% said their performance declined, and 57% said they quit because of a toxic workplace culture.[6]

Over the last several decades, we have seen a shift in workplace leadership and culture. In the past, chain of command and domineering leadership were emphasized. We have since learned that the most successful leaders are masters of interpersonal skills. Leadership is no longer about dominating underlings but persuading the team toward a common goal. The most successful organizations have teams that care about one another and work together harmoniously.[7]

Robert Sternberg, a psychologist at Yale University, is an expert in the concept of group IQ. Group IQ is the sum of all the talents and skills of a team of people. While we absolutely want intelligent team members, social harmony is far more important.

> "While a group can be no smarter than the sum total of all of their specific strengths, it can be much dumber if its internal workings don't allow people to share their talents."[8]

All things being equal, a group's ability to work together is the most important determinant of success. In an environment of effective communication, kindness, and empathy, the group's individual talents are fully realized.[9]

It is commonly thought that compassion and emotional intelligence — so-called "people skills" — are traits you either have or you don't. While that belief may be a convenient excuse for avoid-

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ing self-improvement, it's not true. The truth is that these skills can be learned and honed. We can become better leaders and team players by building these skills. Meditation practice is a proven way to do this.[10]

We are fortunate to be the beneficiaries of several decades of scientific research on meditation. From this research, we know that meditation improves many skills that are useful in a workplace environment: increased self-awareness, increased empathy and emotional intelligence, decreased reactivity, enhanced creativity and conscious decision making, improved ability to see situations with clarity and objectivity, heightened resilience, and concentration.[11]

Imagine a room with people who have mastered these skills. The results that team gets will be in stark contrast to McBroom's cockpit. This environment cultivates success for everyone in it. They work together in harmony, recognize the talents and abilities of one another, meet deadlines, hit goals, and strive toward a common purpose.[12]

About 2,600 years ago, the Buddha introduced a practice called metta meditation. Metta is a Pali word meaning "love" that can also be translated to mean "friendly," "amicable," "benevolent," "affectionate," and "kind."[13] Today, it's commonly called loving-kindness meditation. It's a practice meant to cultivate kindness, compassion, and positive emotions and just like other meditation techniques, it is proven to decrease stress, physical pain, and negative emotions.[14]

A simple way to start building this practice is "gift giving." As you make your way through your day, give every person you encounter the gift of silently wishing them happiness and peace — the barista, the cashier, the receptionist, your coworkers. No one is excluded. Look at the person (or think of them) and silently say, "I wish you peace and happiness." This small habit reduces negative emotions and anxiety and strengthens the area of the brain related to positive emotions and heart health.[15]

The purest form of loving kindness meditation is more focused and structured:

1. Set a timer. Start with five minutes.
2. Get comfortable. There is no correct position. If you're comfortable, you're doing it right.
3. Focus your attention on your breath. Feel the breath come in and go out.
4. Take a moment to give compassion to yourself. Silently say these phrases or choose phrases you feel comfortable with. (The following are just examples.)

   May I be happy.
   May I be healthy.
   May I live with ease.

5. Take a few deep breaths and envision a good friend; a person who is always on your side and when you think of them, you can't help but smile. Offer them the phrases:

   May you be happy.
   May you be healthy.
   May you live with ease.

6. After a few more breaths, envision a neutral person. This is a person you see every day, but you don't really know them. You don't like them or dislike them; you're just aware of them. Offer them the phrases:

   May you be happy.
   May you be healthy.
   May you live with ease.

7. Now for the hard one: the difficult person. Bring to mind someone with whom you have a grievance. See this person as another being who just wants to be happy. Offer them the phrases:

   May you be happy.
   May you be healthy.
   May you live with ease.

8. Expand the offering to all living beings — every person, every creature.

   May you be happy.
   May you be healthy.
   May you live with ease.

Your phrases are your home base. When your mind wanders or gets distracted, come back to your phrases.[16]

We no longer live in an era of "no pain, no gain." Leaders and innovators at the top of their professions know that building relationships and decreasing stress is the surest road to success. Five minutes of daily meditation can be the first step on the path to happier employees, less turnover, and a more positive and effective workplace culture.

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ORDERS OF DISCIPLINE & DISABILITY

REINSTATEMENT

On Feb. 15, 2022, the hearing panel issued an Order of Suspension with Conditions (By Consent) suspending respondent from the practice of law in Michigan for 120 days effective Nov. 17, 2021. On April 13, 2022, the respondent, Amanda Ann-Carmen Andrews, submitted an affidavit pursuant to MCR 9.123(A) showing that she has fully complied with all requirements of the Order of Suspension with Conditions. No objection was filed by the grievance administrator within the time prescribed in MCR 9.123(A) and the board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that the respondent, Amanda Ann-Carmen Andrews, is **REINSTATED** to the practice of law in Michigan effective May 2, 2022.

REPRIMAND (BY CONSENT)

Alexander H. Benson, P43210, Southfield, by the Attorney Discipline Board Tri-County Hearing Panel #53. Reprimand effective April 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 while representing a client in an arbitration proceeding by engaging in ex parte communications with the selected sole arbitrator in violation of MRPC 3.5(b).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded. Costs were assessed in the amount of $1,347.84.

REPRIMAND (BY CONSENT)

David A. Chasnick, P57097, Novi, by the Attorney Discipline Board Tri-County Hearing Panel #68. Reprimand effective April 28, 2022.

The respondent and the grievance administrator filed an Amended Stipulation for Consent Order of Discipline and Waiver pursuant to MCR 9.115(F)(5) that was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based upon the respondent's admissions as set forth in the parties' amended stipulation, the panel found that the respondent committed professional misconduct during his representation of a client for whom he was retained to domesticate a 2012 Nevada parenting agreement in Michigan and to file a motion to enforce custody.

Specifically, and in accordance with the parties' stipulation, the panel found that the

respondent failed to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.3; failed to keep a client reasonably informed about the status of a matter and comply promptly 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 the client to make informed decisions regarding the representation in violation of MRPC 1.4(b).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded. Costs were assessed in the amount of $757.96.

REPRIMAND WITH CONDITION (BY CONSENT)

Mark D. Cobb, P74787, Southfield, by the Attorney Discipline Board Tri-County Hearing Panel #56. Reprimand effective April 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 and plea of no contest as set forth in the parties' stipulation, the panel found that the respondent committed professional misconduct through his improper use of his two IOLTA accounts held at Chase Bank.

Specifically, and in accordance with the parties' stipulation, the panel found that the respondent held funds other than client or third-person funds in an IOLTA in violation of MRPC 1.15(a)(3); failed to hold property of his clients or third persons separate from his own in violation of MRPC 1.15(d); deposited his own funds into an IOLTA in an amount more than reasonably necessary to pay financial institution service charges or fees in violation of MRPC 1.15(f); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); engaged in conduct that was contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3); and engaged in conduct in violation of the Rules of Professional Conduct in violation of MRPC 8.4(a).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded and subject to a condition relevant to the established misconduct. Costs were assessed in the amount of $758.36.

REINSTATEMENT

On Feb. 8, 2022, the hearing panel issued an Order of Suspension (By Consent), suspending the respondent from the practice of law in Michigan for 30 days effective March 2, 2022. On April 6, 2022, the respondent, Casper P. Connolly, filed an affidavit purporting to show compliance with the order of discipline and the court rules. The board notified the respondent that his affidavit was not in compliance with MCR 9.123(A) as amended in 2020 and requested that he file a conforming affidavit at his earliest convenience.

On April 12, 2022, the respondent submitted another affidavit. The grievance administrator's counsel objected to the respondent's second affidavit. The respondent on April 14, 2022, filed a third affidavit in compliance with MCR 9.123(A) showing that he has fully complied with all requirements of the Order of Suspension (By Consent) and the grievance administrator's counsel withdrew his objection. The board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that the respondent, Casper P. Connolly, is **REINSTATED** to the practice of law in Michigan effective April 15, 2022

REPRIMAND (BY CONSENT)

Todd A. Courser, P69829, Lapeer, by the Attorney Discipline Board Genesee County

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

Hearing Panel #2. Reprimand effective May 4, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline and Waiver which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admission that he was convicted by no contest plea on Aug. 28, 2019, of willful neglect of duty public office, a misdemeanor, in violation of MCL 750.478, in *People of the State of Michigan v Todd Anthony Courser*, 40th Circuit Court Case No. 19-013022-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. Costs were assessed in the amount of $758.36.

REPRIMAND (BY CONSENT)

David R. Heyboer, P27975, Fort Gratiot, by the Attorney Discipline Board Genesee County Hearing Panel #4. Reprimand effective April 14, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline and Waiver pursuant to MCR 9.115(F)(5) that was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based upon the stipulation and the respondent's admissions, the panel found that the respondent committed professional misconduct during his handling of a client's post-divorce judgment matter. After his client's divorce was finalized in July 2016, the respondent agreed to prepare two qualified domestic relations orders (QDRO), as required by the judgment of divorce, to ensure his client received her share of her ex-husband's pension and annuity funds. Thereafter, the respondent issued subpoenas to obtain the values of the pension and annuity funds to the wrong entity and failed to respond to several inquiries his client made in 2017 as to the status of her matter. In July 2018, in response to a request for investigation filed by his client, the respondent stated that he still intended to prepare the QDROs. Beginning in October 2018 and continuing to May 2021, the respondent made several promises to the grievance administrator that he planned to complete and file the QDROs, but as of the filing of the formal complaint he still had not done so.

In accordance with the parties' stipulation and the respondent's admissions, the panel found that the respondent neglected a legal matter entrusted to the lawyer in violation of MRPC 1.1(c); failed to act with reasonable diligence and promptness in violation of MRPC 1.3; failed to keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information in violation of MRPC 1.4(a); violated or attempted to violate the Rules of Professional Conduct in violation in MRPC 8.4(a); engaged in conduct prejudicial to the administration of justice in violation of MCR 9.104(1) and MRPC 8.4(c); and engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2).

The panel ordered that the respondent be reprimanded, as set forth in the parties'

stipulation. Costs were assessed in the amount of $765.03.

SUSPENSION AND RESTITUTION

Seymour Hundley Jr., P39081, Troy, by the Attorney Discipline Board Tri-County Hearing Panel #52. Suspension, 90 days effective May 4, 2022.

Based upon the respondent's default and evidence presented to the hearing panel at hearings held in this matter in accordance with MCR 9.115, the hearing panel found that the respondent committed professional misconduct during his representation of a client in a probate matter to open an estate for her deceased father and when he failed to answer a request for investigation.

Specifically, the panel found that the respondent neglected a legal matter 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 reasonable diligence and promptness in representing a client in violation of MRPC 1.3; failed to keep the client reasonably informed about the status of the matter and to 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 the client to make informed decisions regarding representation in violation of MRPC 1.4(b); failed to refund an unearned fee in violation of MRPC 1.16(d); knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2); engaged in conduct that violated the Rules of Professional Conduct in violation of MRPC 8.4(a) and MCR 9.104(4); engaged in conduct that involved dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law in violation of MRPC 8.4(b); engaged in conduct that was prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); engaged in conduct that was contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3); and failed to answer a Request for Investigation in violation of MCR 9.104(7) and MCR 9.113(A) and (B)(2).

The panel ordered that the respondent's license to practice law be suspended for a period of 90 days and that the respondent pay restitution totaling $1,000. Total costs were assessed in the amount of $1,852.41.

REPRIMAND

Gil Whitney McRipley, P41150, Oak Park, by the Attorney Discipline Board Tri-County Hearing Panel #71. Reprimand effective April 19, 2022.

After proceedings conducted pursuant to MCR 9.115, the hearing panel found that the respondent committed professional misconduct while operating K-Law, Inc. and d/b/a "Bookies Ham and Soul" (Bookies). Specifically, the panel found that while president of K-Law, Inc. and a manager and operator of Bookies, the respondent issued paychecks to an employee when he knew there were insufficient funds to cover the checks written and failed to pay employment taxes despite issuing a W-2 representing taxes had been withheld from wages. The respondent was found to have engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2)

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

and that was contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3).

The panel ordered that the respondent's license to practice law be suspended for a period of 30 days. The respondent filed a timely petition for review and a petition for a stay, which resulted in an automatic stay of the hearing panel's order of suspension pursuant to MCR 9.115(K).

After review proceedings conducted in accordance with MCR 9.118, the Attorney Discipline Board affirmed the hearing panel's findings of misconduct but reduced the discipline imposed from a 30-day suspension to a reprimand. Total costs were assessed in the amount of $3,103.55.

SUSPENSION (WITH CONDITION)

Sten T. Sliger, P63200, Quincy, Florida, by the Attorney Discipline Board. Suspension, three years effective April 28, 2022.

The grievance administrator filed a notice of filing of reciprocal discipline pursuant to MCR 9.120(C) that attached a certified copy of an order suspending the respondent's license to practice law in Florida for three years and ordering restitution effective on Nov. 18, 2021, in a matter titled *The Florida Bar v Sten Thield Sliger*, SC20-553.

An order regarding imposition of reciprocal discipline was issued by the board on Feb. 16, 2022, ordering the parties to, within 21 days from service of the order, inform the board in writing (i) of any objection to the imposition of comparable discipline in Michigan based on the grounds set forth in MCR 9.120(C)(1) and (ii) whether a hearing was requested. The 21-day period set forth in the board's Feb. 16, 2022, order expired without objection or request for hearing by either party.

On March 30, 2022, the Attorney Discipline Board ordered that the respondent be suspended from the practice of law in Michigan for three years effective April 28, 2022, with the added condition that the respondent is not eligible for reinstatement pursuant to MCR 9.123(B) and (C) and MCR 9.124 until he has filed satisfactory written proof with the grievance administrator and the Attorney Discipline Board that he has paid restitution as ordered by the Florida Supreme Court. Costs were assessed in the amount of $1,509.56.

SUSPENSION AND RESTITUTION WITH CONDITIONS (BY CONSENT)

Carl M. Woodard, P37502, Dansville, by the Attorney Discipline Board Ingham County Hearing Panel #2. Suspension, one year effective Nov. 1, 2021.[1]

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline and Waiver in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission

and accepted by the hearing panel. Based upon the respondent's admissions, the panel found that respondent committed professional misconduct as alleged in the 12-count formal complaint. Specifically, during his representation of seven separate, unrelated clients; by failing to answer requests for investigation filed by five of the clients; by making a false statement in his answer to a request for investigation filed by one of the clients; by soliciting representation from a person with whom he had no prior professional relationship; by failing to notify his current clients that his license to practice law was suspended on May 4, 2021, in a separate, unrelated matter, *Grievance Administrator v Carl M. Woodard*, 20-74-GA; and by failing to file the required affidavit showing he notified his clients within 14 days of the effective date of his order of suspension in *Grievance Administrator v Carl M. Woodard*, 20-74-GA.

Based upon the respondent's admissions as set forth in the parties' stipulation, the panel finds that the respondent neglected a legal matter entrusted to him in violation of MRPC 1.1(c) (counts 1, 3, 5, 8, and 10); failed to seek the lawful objectives of a client in violation of MRPC 1.2(a) (counts 1-3, 5, 8, and 10); failed to act with reasonable diligence and promptness in violation of MRPC 1.3 (counts 1-3, 5-6, 8, and 10); failed to promptly comply with a client's reasonable requests for information in violation of MRPC 1.4(a) (counts 1-3, 6, 8, and 10); failed to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions about the representation in violation of MRPC 1.4(b) (counts 1-2); failed to take reasonable steps to protect a client's interests upon termination of representation, such as failing to surrender papers and property to which the client is entitled and/or failing to refund any advance payment of fee that has not been earned, in violation of MRPC 1.16(d) (counts 1-3, 5-6, 8, and 10); failed to respond to a lawful demand for information in violation of MRPC 8.1(a)(2) (counts 4, 7, 9, and 11); 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 3, 5, 8, and 10); engaged in conduct that is prejudicial to the administration of justice in violation of MCR 9.104(1) and MRPC 8.4(c) (counts 5, 6, 8, and 10); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2) (counts 1-12); engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3) (counts 1-12); engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court in violation of MRPC 8.4(a) and MCR 9.104(4) (counts 1-12); failed to answer a request for investigation in violation of MCR 9.104(7), MCR 9.112(A), and MCR 9.113(B)(2) (counts 4, 7, 9, and 11); and failed to notify his client pursuant to the provisions of MCR 9.119(A)(1) through (6) within seven days of the effective date of his order of suspension in violation of MCR 9.104(9) and MCR 9.119(A) (counts 8 and 10).

In accordance with the parties' stipulation, the panel ordered that the respondent's license to practice law be suspended for a period of one year to run consecutively to the 180-day suspension ordered by the hearing panel in *Grievance Administrator v Carl M. Woodard*, 20-74-GA, that he pay restitution totaling $14,995, and that he be subject to conditions relevant to the established misconduct. Total costs were assessed in the amount of $1,131.13.

1. Respondent has been continuously suspended from the practice of law in Michigan since May 4, 2021. See Notice of Suspension & Restitution With Condition (By Consent), issued May 4, 2021, Grievance Administrator v Carl M. Woodard, 20-74-GA.

FROM THE MICHIGAN SUPREME COURT

ADM File No. 2002-37
Amendment of Rule 1.109 of the Michigan Court Rules

On order of the Court, this is to advise that the amendment of Rule 1.109 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 each 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 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access.

(A)-(F) [Unchanged.]

(G) Electronic Filing and Service.

(1)-(2) [Unchanged.]

(3) Scope and Applicability.

(a)-(d) [Unchanged.]

(e) A court may electronically~~If a party or attorney in a case is registered as an authorized user in the electronic-filing system, a court must electronically~~ send ~~to that authorized user~~ any notice, order, opinion, or other document issued by the court in that case by means of the electronic-filing system. This rule shall not be construed to eliminate any responsibility of a party, under these rules, to serve documents that have been issued by the court.

(f)-(l) [Unchanged.]

(4)-(7) [Unchanged.]

(H) [Unchanged.]

Staff Comment: The amendment of MCR 1.109 provides an e-filing court with the authority to determine the most appropriate means of sending notices and other court-issued documents that are generated from its case management or local document management system.

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 Aug. 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. 2002-37. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2022-01
Appointment to the Michigan Judicial Council

On order of the Court, pursuant to MCR 8.128, Judge Michael L. Jaconette is appointed to the Michigan Judicial Council for a partial term, effective immediately and ending December 31, 2023.

ADM File No. 2021-17
Proposed Rescission of Administrative Order No. 1998-1 and Proposed Amendment of Rule 2.227 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering a rescission of Administrative Order No. 1998-1 and amendment of Rule 2.227 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each 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.]

~~Administrative Order No. 1998-1 Reassignment of Circuit Court Actions to District Judges~~

~~In 1996 PA 374 the Legislature repealed former MCL 600.641; MSA 27A.641, which authorized the removal of actions from circuit court to district court on the ground that the amount of damages sustained may be less than the jurisdictional limitation as to the amount in controversy applicable to the district court. In accordance with that legislation, we repealed former MCR 4.003, the court rule implementing that procedure. It appearing that some courts have been improperly using transfers of actions under MCR 2.227 as a substitute for the former removal procedure, and that some procedure for utilizing district judges to try actions filed in circuit court would promote the efficient administration of justice, we adopt this administrative order, effective immediately, to apply to actions filed after January 1, 1997.~~

~~A circuit court may not transfer an action to district court under MCR 2.227 based on the amount in controversy unless: (1) The parties stipulate to the transfer and to an appropriate amendment of the complaint, see MCR 2.111(B)(2); or (2) From the allegations of the complaint, it appears to a legal certainty that the amount in controversy is not greater than the applicable jurisdictional limit of the district court.~~

~~Circuit courts and the district courts within their geographic jurisdictions are strongly urged to enter into agreements, to be implemented by joint local administrative orders, to provide that certain actions pending in circuit court will be reassigned to district judges for further proceedings. An action designated for such reassignment shall remain pending as a circuit court action, and the circuit court shall request the State Court Administrator assign the district judge to the circuit court for the purpose of conducting proceedings. Such administrative orders may specify the categories of cases that are appropriate or inappropriate for such reassignment, and shall include a procedure for resolution of disputes between circuit and district courts as to whether a case was properly reassigned to a district judge.~~

~~Because this order was entered without having been considered at a public hearing under Administrative Order No. 1997-11, the question whether to retain or amend the order will be placed on the agenda for the next administrative public hearing, currently scheduled for September 24, 1998.~~

Rule 2.227 Transfer of Actions on Finding of Lack of Jurisdiction

(A) Transfer to Court Which Has Jurisdiction. Except as otherwise provided in this rule, w~~W~~hen the court in which a civil action is pending determines that it lacks jurisdiction of the subject matter of the action, but that some other Michigan court would have jurisdiction of the action, the court may order the action transferred to the other court in a place where venue would be proper. If the question of jurisdiction is raised by the court on its own initiative, the action may not be transferred until the parties are given notice and an opportunity to be heard on the jurisdictional issue.

(B) Transfers From Circuit Court to District Court.

(1) A circuit court may not transfer an action to district court under this rule based on the amount in controversy unless:

(a) the parties stipulate in good faith to the transfer and to an amount in controversy not greater than the applicable jurisdictional limit of the district court; or

(b) from the allegations of the complaint, it appears to a legal certainty that the amount in controversy is not greater than the applicable jurisdictional limit of the district court.

(B)-(C) [Relettered (C)-(D) but otherwise unchanged.]

(E~~D~~) Procedure After Transfer.

(1) The action proceeds in the receiving court as if it had been originally filed there. If further pleadings are required or allowed, the time for filing them runs from the date the filing fee is paid under subrule (D~~C~~)(1). The receiving court may order the filing of new or amended pleadings. If part of the action remains pending in the transferring court, certified copies of the papers filed may be forwarded, with the cost to be paid by the plaintiff.

(2) [Unchanged.]

(3) A waiver of jury trial in the court in which the action was originally filed is ineffective after transfer. A party who had waived trial by jury may demand a jury trial after transfer by filing a demand and paying the applicable jury fee within 28 days after the filing fee is paid under subrule (D~~C~~)(1). A demand for a jury trial in the court in which the action was originally filed is preserved after transfer.

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

Staff Comment: The proposed rescission of Administrative Order No. 1998-1 and proposed amendment of MCR 2.227 would move the relevant portion of the administrative order into court rule format and make the rule consistent with the holding in *Krolczyk v Hyundai Motor America*, 507 Mich 966 (2021).

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

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 Aug. 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. 2021-17. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2021-21
Proposed Amendment of Rule 3.613 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.613 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

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

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

Rule 3.613 Change of Name

(A) A petition to change a name must be made on a form approved by the State Court Administrative Office.

(A) [Relettered (B) but otherwise unchanged.]

(C) No Publication of Notice; Confidential Record. Upon receiving a request establishing good cause, the court may order that no publication of notice of the proceeding take place and that the record of the proceeding be confidential. Good cause may include but is not limited to evidence that publication or availability of a record of the proceeding could place the petitioner or another individual in physical danger.

(1) Evidence of the possibility of physical danger must include the petitioner's or the endangered individual's sworn statement stating the reason for the fear of physical danger if the record is published or otherwise available.

(2) The court must issue an ex parte order granting or denying a request under this subrule.

(3) If a request under this subrule is granted, the court must:

(a) issue a written order;

(b) notify the petitioner of its decision and the time, date, and place of the hearing on the requested name change; and

(c) if a minor is the subject of the petition, notify the noncustodial parent as provided in subrule (E), except that if the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, the published notice of hearing must not include the current or proposed name of the minor.

(4) If a request under this subrule is denied, the court must issue a written order that states the reasons for denying relief and advises the petitioner of the right to request a hearing regarding the denial, file a notice of dismissal, or proceed with the petition and publication of notice.

(5) If the petitioner does not request a hearing under subrule (4) within 14 days of entry of the order, the order is final.

(6) If the petitioner does not request a hearing under subrule (4) or file a notice of dismissal within 14 days of entry of the order denying the request, the court may set a time, date, and place of a hearing on the petition and proceed with ordering publication of notice as provided in subrule (B), and if applicable, subrule (E).

(7) A hearing under subrule (4) must be held on the record.

(8) The petitioner must attend the hearing under subrule (4). If the petitioner fails to attend the hearing, the court may adjourn and reschedule or dismiss the petition for a name change.

(9) At the conclusion of the hearing under subrule (4), the court must state the reasons for granting or denying a request under this subrule and enter an appropriate order.

(B) [Relettered (D) but otherwise unchanged.]

(EC) Notice to Noncustodial Parent. Service on a noncustodial parent of a minor who is the subject of a petition for change of name shall be made in the following manner.

(1) [Unchanged.]

(2) Address Unknown. If the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, that parent shall be served with a notice of hearing by publishing in a newspaper and filing a proof of service as provided by MCR 2.106(F) and (G). Unless otherwise provided in this rule, tThe notice must be published one time at least 14 days before the date of the hearing, must include the name of the noncustodial parent and a statement that the result of the hearing may be to bar or affect the noncustodial parent's interest in the matter, and that publication must be in the county where the court is located unless a different county is specified by statute, court rule, or order of the court. A notice published under this subrule need not set out the contents of the petition if it contains the information required under subrule (AB). A single publication may be used to notify the general public and the noncustodial parent whose address cannot be ascertained if the notice contains the noncustodial parent's name.

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

Staff Comment: The proposed amendment of MCR 3.613 would clarify the process courts must use after receiving a request not to publish notice of a name change proceeding and to make the record confidential.

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 Aug. 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. 2021-21. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2020-33
Proposed Amendment of Rule 3.903 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.903 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

Rule 3.903 Definitions

(A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

(1)-(18) [Unchanged.]

(19) "Party" includes ~~the~~

(a) ~~petitioner and juvenile~~ in a delinquency proceeding,~~:~~

(i) the petitioner and juvenile.

(b) ~~petitioner, child, respondent, and parent, guardian, or legal custodian~~ in a protective proceeding,~~:~~

(i) the petitioner, child, and respondent

(ii) the parent, guardian, or legal custodian.

(20)-(27) [Unchanged.]

(B)-(F) [Unchanged.]

Staff Comment: The proposed amendment of MCR 3.903 would clarify the definition of a party in child protective proceedings.

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.

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

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 August 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. 2020-33. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2021-18
Proposed Amendment of Rule 3.943 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.943 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

Rule 3.943 Dispositional Hearing

(A)-(D) [Unchanged.]

(E) Dispositions.

(1)-(6) [Unchanged.]

(7) Mandatory Detention for Use of a Firearm.

(a)-(b) [Unchanged.]

(c) "Firearm" includes any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive~~means any weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion, except any smoothbore rifle or hand gun designed and manufactured exclusively for propelling BB's not exceeding.177 caliber by means of spring, gas, or air~~.

Staff Comment: The proposed amendment of MCR 3.943 would update the definition of "firearm" in juvenile proceedings to be consistent with MCL 8.3t, which contains the definition referenced in the court rule's companion statute, MCL 712A.18g.

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 August 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. 2021-18. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2021-16
Proposed Amendment of Rule 7.305 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.305 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

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

Rule 7.305 Application for Leave to Appeal

(A)-(B) [Unchanged.]

(C) When to File.

(1) [Unchanged.]

(2) Application After Court of Appeals Decision. Except as provided in subrule (C)(4), the application must be filed within 28 days ~~in termination of parental rights~~ in cases where the respondent's parental rights have been terminated, within 42 days in other civil cases, or within 56 days in criminal cases, after:

(a)-(d) [Unchanged.]

(3)-(7) [Unchanged.]

(D)-(I) [Unchanged.]

Staff Comment: The proposed amendment of MCR 7.305 would clarify that the 28-day timeframe for filing an application for leave to appeal applies to cases where the respondent's parental rights have been terminated.

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 Aug. 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. 2021-16. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2021-13
Proposed Amendment of Rule 8.119 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 8.119 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

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

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(B) [Unchanged.]

(C) Filing of Documents and Other Materials. The clerk of the court shall process and maintain documents filed with the court as prescribed by Michigan Court Rules and the Michigan Trial Court Records Management Standards and all filed documents must be file stamped in accordance with these standards. The clerk of the court may only reject documents submitted for filing that do not comply with MCR 1.109(D)(1) and (2), are not signed in accordance with MCR 1.109(E), or are not accompanied by a required filing fee or a request for fee waiver under MCR 2.002(B), unless already waived or suspended by court order. Documents prepared or issued by the court for placement in the case file are not subject to rejection by the clerk of the court and shall not be stamped filed but shall be recorded in the case history as required in subrule (D)(1)(a) and placed in the case file.

(D)-(L) [Unchanged.]

Staff Comment: The proposed amendment of MCR 8.119 would clarify that a request for a fee waiver must be filed in accordance with MCR 2.002(B), which requires the request to be made on a form approved by the State Court Administrative Office.

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 August 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. 2021-13. Your comments and the comments of others will be posted under the chapter affected by this proposal.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 3.13 (Penalty), in the procedural instructions. The instruction is effective June 1, 2022.

[AMENDED] M Crim JI 3.13
Penalty

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

History

M Crim JI 3.13 (formerly CJI2d 3.13) was CJI 3:1:19. Amended June 1, 2022.

Reference Guide

Case Law

People v Goad, 421 Mich 20, 364 NW2d 584 (1984); *People v Szczytko*, 390 Mich 278, 285, 212 NW2d 211 (1973).

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 20.11 (Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person), eliminating a "knowledge" element not found in the pertinent statutes, MCL 750.520b(1)(h) and MCL 750.520c(1)(h). The amended instruction is effective June 1, 2022.

[AMENDED] M Crim JI 20.11
Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority

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

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

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

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

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

(5) Physically helpless means that [*name complainant*] was unconscious, asleep, or physically incapable to communicate that [he/she] did not want to take part in the alleged act.

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

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

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

Use Note

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree, M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree, or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

1. The court may provide the jury with a definition of adaptive skills where appropriate. The phrase is defined in MCL 330.1100a(3), and means skills in one or more of the following areas:

(a) Communication.

(b) Self-care.

(c) Home living.

(d) Social skills.

(e) Community use.

(f) Self-direction.

(g) Health and safety.

(h) Functional academics.

(i) Leisure.

(j) Work.

History
M Crim JI 20.11 (formerly CJI2d 20.11) was CJI 20:2:13; amended September 2005, June 2015, January 2016, June 2022.

Reference Guide

Statutes
MCL 750.520b(1)(g), 767.39.

Case Law
People v Baker, 157 Mich App 613, 403 NW2d 479 (1986); *People v Pollard* (*People v Clark*), 140 Mich App 216, 363 NW2d 453 (1985).

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 24.1 (Unlawfully Driving Away an Automobile), to correct the "intent" element in compliance with the statute and case law. The amended instruction is effective June 1, 2022.

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

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

(2) First, that the vehicle belonged to someone else.

(3) Second, that the defendant took possession of the vehicle and [drove/took] it away.

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

(5) Fourth, that the defendant intended to take the vehicle without authority, knowing that [he/she] did not have authority to take the vehicle and drive it away. It does not matter whether the defendant intended to keep the vehicle.

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

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

**This is a specific intent crime.*

History
M Crim JI 24.1 (formerly CJI2d 24.1) was CJI 24:1:01, 24:1:02. Amended June 2022.

Reference Guide

Statutes
MCL 750.412, .413.

Case Law
People v Hendricks, 446 Mich 435, 521 NW2d 546 (1994); *People v Dutra*, 155 Mich App 681, 400 NW2d 619 (1986); *People v Harris*, 82 Mich App 135, 266 NW2d 477 (1978); *People v Shipp*, 68 Mich App 452, 243 NW2d 18 (1976); *People v Lerma*, 66 Mich App 566, 239 NW2d 424 (1976); *People v Andrews*, 45 Mich App 354, 357, 206 NW2d 517 (1973); *People v Davis*, 36 Mich App 164, 193 NW2d 393 (1971); *People v Snake*, 22 Mich App 79, 82, 176 NW2d 726 (1970).

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instruction, M Crim JI 34.6 (Food Stamp Fraud), for violations of MCL 750.300a. This new instruction is effective June 1, 2022.

[NEW] M Crim JI 34.6
Food Stamp Fraud

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

(2) First, that the defendant [used/transferred/acquired/altered/purchased/possessed/presented for redemption/transported][1] food stamps, coupons, or access devices. *Food stamps* or *coupons* means the coupons issued pursuant to the food stamp program established under the Food Stamp Act. An *access device* means any

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

card, plate, code, account number, or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value or that can be used to initiate a transfer of funds pursuant to the food stamp program.

(3) Second, that the defendant [used/transferred/acquired/altered/purchased/possessed/presented for redemption/transported] food stamps, coupons, or access devices by [*specify alleged wrongful conduct*[2]].

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

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

(5) Fourth, that the aggregate value of the food stamps, coupons, or access devices was [more than $250 but less than $1,000/$1,000 or more]. The aggregate value is the total face value of any food stamps or coupons resulting from the alleged [*specify alleged wrongful conduct*] plus the total value of any access devices. The value of an access device is the total value of the payments, allotments, benefits, money, goods, or other things of value that could be obtained, or the total value of funds that could be transferred by use of the access device at the time of the violation. You may add together the various values of the food stamps, coupons, or access devices [used/transferred/acquired/altered/purchased/possessed/presented for redemption/transported] by the defendant over a period of 12 months when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.

Use Note

1. The court may read all alternatives or select from the alternatives according to the charges and the evidence.

2. The "alleged wrongful conduct" must specify a violation of the of the Food Stamp Act, 7 USC 2011-2030, or its regulations, or supplemental food programs administered under the Child Nutrition Act, 42 USC 1786, or those regulations. See MCL 750.300a(1).

History

M Crim JI 34.6 was adopted June 1, 2022.

Reference Guide

Statutes
MCL 750.300a.

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instruction, M Crim JI 35.12 (Cyberbullying/Aggravated Cyberbullying), for violations of MCL 750.411x. This new instruction is effective June 1, 2022.

[NEW] M Crim JI 35.12
Cyberbullying/Aggravated Cyberbullying

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

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

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

(4) Third, that the defendant intended to communicate a threat with the message or [he/she] knew that the message would be viewed as a threat. A threat does not have to be stated in any particular terms but must express a warning of danger or harm. Further, it must have been a true threat, and not have been something like idle talk, or a statement made in jest, or a political comment. It must have been made under circumstances where a reasonable person would think that others may take the threat seriously as expressing an intent to inflict harm or damage.

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

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

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

History

M Crim JI 35.12 was adopted June 1, 2022.

Reference Guide

Statutes
MCL 750.411x.

MONEY JUDGMENT INTEREST RATE

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

For a complaint filed after December 31, 1986, the rate as of January 1, 2022, is 2.045%. This rate includes the statutory 1%.

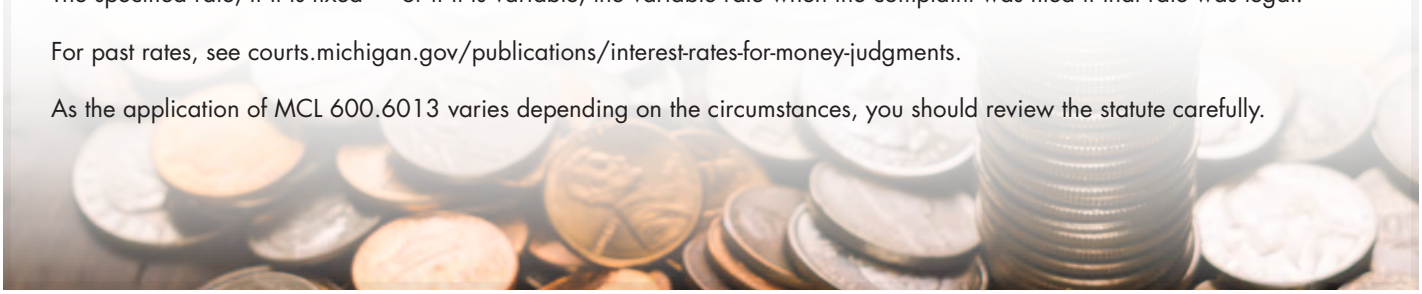
A different rule applies for a complaint filed after June 30, 2002, that is based on a written instrument with its own specific interest rate. The rate is the lesser of:

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

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

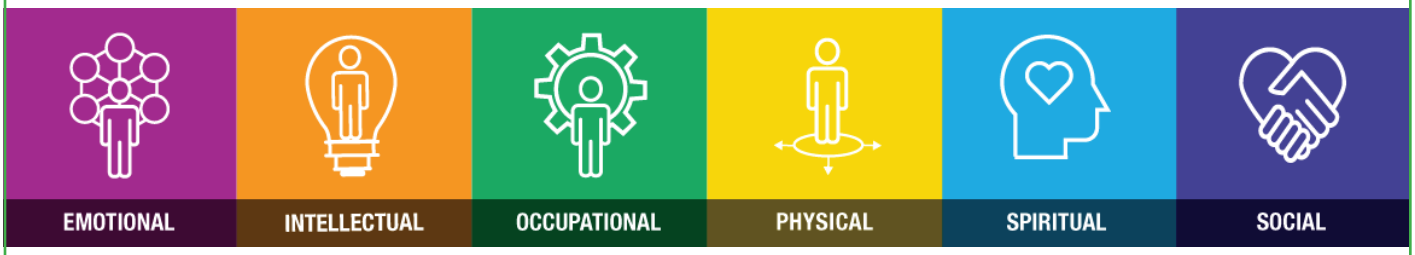
Farmington Hills
TUESDAY 7 AM
Antioch Lutheran Church
33360 W. 13 Mile
Corner of 13 Mile and Farmington Rd., use back entrance, basement

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.)

ACHIEVE WELLNESS AND MANAGE LIFE'S TRIALS



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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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July/August Michigan Bar Journal

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Tip of the Mitt: The Newest Women Lawyers Association of Michigan Chapter

BOOK REVIEW

Business and Commercial Litigation in Federal Courts, Fifth Edition

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