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OCTOBER 2022

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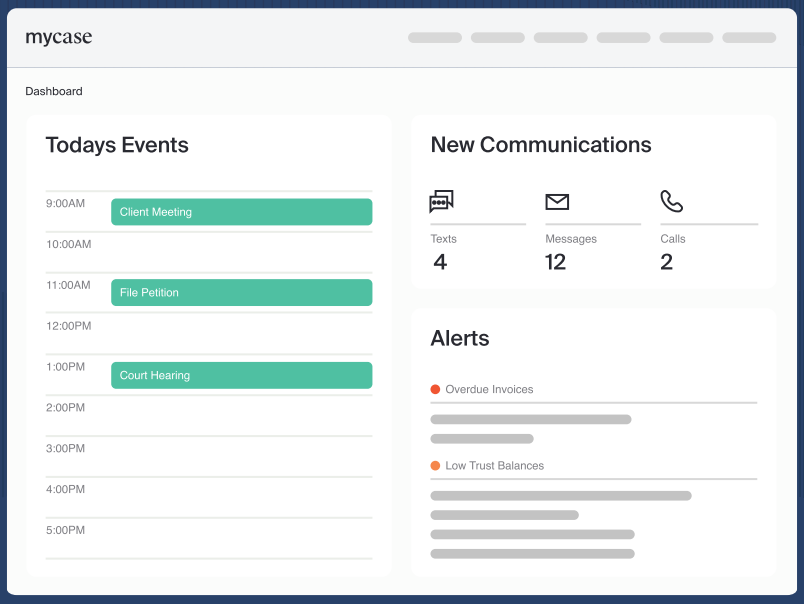

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CELEBRATING 100 YEARS

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JUNE 9, 2023
JULY 21, 2023
SEPTEMBER 22, 2023

REPRESENTATIVE ASSEMBLY

APRIL 29, 2023
SEPTEMBER 23, 2023

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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 Feb. 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

ALTERNATIVE DISPUTE RESOLUTION SECTION

The ADR Section recently hosted its annual conference and annual meeting virtually. The annual awards ceremony was held on Saturday, Oct. 1, at the Inn at St. John's in Plymouth. Award winners, upcoming events, past event materials, and the latest Michigan Dispute Resolution Journal can be found at connect.michbar.org/adr/home.

ANTITRUST, FRANCHISING, AND TRADE REGULATION SECTION

The Antitrust, Franchising, and Trade Regulation Section is hosting a Lunch and Learn on Thursday, Dec. 1, at noon on Zoom. The event titled "Hot Topics in Franchise Accounting" features speakers from Plante Moran's consumer goods practice including Lisa Plonka, Dean Feenstra, Matt Keigher, Dipti Vaishnav, Isaac Saint John, Kevin Corbeil, and Jamie Deibel. Please look for e-blasts to sign up.

APPELLATE PRACTICE SECTION

The Appellate Practice Section annual meeting was held on Thursday, Sept. 22. At the meeting, the section members elected the following officers for 2022-2023: chair Joe Richotte, chair-elect Jonathan Koch, secretary Beth Wittmann, and treasurer Jacquelyn Klima. The section council thanks outgoing chair Stephanie Simon Morita for her years of service as an officer and Ann Sherman for her service as outgoing treasurer.

BUSINESS LAW SECTION

The Business Law Institute will be held on Friday, Oct. 7, at the J.W. Marriott in Grand Rapids. The section's annual meeting will also be conducted as part of the BLI. Mark High will be honored at the meeting as the recipient of the section's 2022 Schulman Award, and a cocktail reception and dinner will provide opportunities for networking. We hope you can join us for these events. Register today at icle.org.

ENVIRONMENTAL LAW SECTION

The Environmental Law Section annual program and annual meeting will be held on Tuesday, Oct. 4, at the Dykema offices in Lansing, and the annual joint conference is Wednesday, Nov. 9, at the Lansing Community College West Campus. The latest issue of the Michigan Environmental Law Journal and more detailed event information are available at connect.michbar.org/envlaw.

FAMILY LAW SECTION

The Family Law Section and the Institute for Continuing Legal Education are cosponsoring the 21st annual Family Law Institute on Thursday-Friday, Nov. 17–18, at the Suburban Collection Showplace in Novi. Discounts are available for section members, ICLE partners, and new lawyers. Judges are free and referees receive a reduced rate. Go to icle.org/family to register.

GOVERNMENT LAW SECTION

The Government Law Section held its 2022 summer conference, addressing how diversity, equity, and inclusion intersects with local government decision making. The section's annual meeting was held virtually on Saturday, Sept. 10. Upcoming events include our winter seminar in February 2023 and our summer conference scheduled for Friday-Saturday, June 23-24, 2023, at Crystal Mountain Resort in Thompsonville. We hope to see you there!

HEALTH CARE LAW SECTION

The Health Care Law Section Pro Bono Committee announced three $5,000 donations to Michigan-based Ronald McDonald House Charities and matching dollar-for-dollar donations (up to $15,000 total) to the Food Bank Council of Michigan before Monday, Oct. 31. To donate, go to FeedMichigan.org and select team: Health Care Law Section of SBM.

INSURANCE AND INDEMNITY LAW SECTION

Join the Insurance and Indemnity Law Section at the Inn at St. John's in Plymouth on Thursday, Oct. 20, for our annual meeting at 3 p.m. and ensuing program at 4 p.m. on how inflation and rising labor and material costs can increase an insured's losses after a major catastrophe. For details, visit the section on Facebook or at connect.michbar.org/insurance/home.

SENIOR LAWYERS SECTION

Assuming all went well with the annual elections, David Kerr is heading up a project to assist lawyers in compliance with the Supreme Court requirements regarding interim/contingency law office administration, and he welcomes contributions and suggestions. Proposed section bylaws have been submitted to the State Bar for approval. The section is also seeking volunteer(s) to restart the Mentor publication.

NEWS & MOVES

ARRIVALS AND PROMOTIONS

MARK BREAUGH has joined Maddin Hauser.

SEAN P. GALLAGHER has joined the Lansing office of Fraser Trebilcock.

SHELLY LEE GRIFFIN has joined Plunkett Cooney's insurance coverage practice group.

HON. LISA M. NEILSON (retired) has joined Lipson Neilson as of counsel.

NEAL NUSHOLTZ and **WILLIAM E. HAINES II** have joined Kemp Klein.

AWARDS AND HONORS

BUTZEL has been recognized in Crain's Detroit Business 2022 Cool Places to Work.

SANDRA DENSHAM, a partner with Plunkett Cooney, was recognized in the 2022 class of Influential Women of Law by Michigan Lawyers Weekly.

KAITLIN M. GANT with Plunkett Cooney earned the Certified Information Privacy Professional/United States credential through the International Association of Privacy Professionals.

SALEHA MOHAMEDULLA, a partner with Howard & Howard, was recognized in the 2022 class of Influential Women of Law by Michigan Lawyers Weekly.

JULIE B. TEICHER of Maddin Hauser was recognized in the 2022 class of Influential Women of Law by Michigan Lawyers Weekly.

WARNER NORCROSS & JUDD selected Wayne State University Law School student Natasha Shlaimon as the first recipient of its $20,000 Embracing Diversity in Our Communities law scholarship.

LEADERSHIP

DEANDRE' HARRIS of Warner Norcross & Judd has been selected for the Leadership Grand Rapids 2023 cohort.

OTHER

The **30TH CIRCUIT COURT** in Lansing has opened an annex as part of its visiting judge project to address its COVID-related criminal case backlog. The annex is located at 426 S. Walnut Street in Lansing.

BUTZEL attorneys and team members distributed nearly 400 backpacks filled with school supplies to students at Oakman Elementary School in Dearborn.

PRESENTATIONS, PUBLICATIONS, AND EVENTS

JAMES A. JOHNSON'S featured article, "The Art of Direct Examination," will be presented at the Practicing Law Institute Seminar — Jury Trials in October in New York City.

BUSHRA MALIK of Butzel is chair and was a featured panelist at the American Immigration Lawyers Association 2022 Fall Conference and Webcast on Sunday, Sept. 11, in Maui, Hawaii.

REGINALD A. PACIS of Butzel was featured during a Michigan Asian Pacific American Affairs Commission (MAPAAC) immigration seminar on Saturday, August 13, in Warren.

MEMBER ANNOUNCEMENTS

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

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

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

THE 2010s AND BEYOND

BY AUSTIN BLESSING-NELSON

We wrap up our celebratory reflection on 100 years of the Michigan Bar Journal by revisiting the 2010s and early 2020s which, not surprisingly, were filled with significant events. Not unlike the happenings of the previously covered decades, some events were sad, some were horrifying, some were exciting, and some will shape the course of history for years to come.

Sticking strictly to the legal arena, the nearly 12-year span included passage of the Patient Protection and Affordable Care Act (and the subsequent challenges and changes to it), the repeal of the U.S. military's "don't ask, don't tell" policy, enactment of the Dodd-Frank Consumer Protection Act, and many new rules and laws regarding sexual assault, including changes to statutes of limitations.

Numerous U.S. Supreme Court opinions altered American jurisprudence. The SCOTUS ruling in *NCAA v. Alston* allowed college athletes to profit from their likenesses. This summer, the Court overturned *Roe v. Wade* and *Planned Parenthood v. Casey* with its decision in *Dobbs v. Jackson Women's Health Organization*. In addition to holding that there is no federal constitutional right to have an abortion, Dobbs also throws other precedents and rights into a state of limbo.

Many important legal changes have occurred in Michigan as well, including a series of reforms designed to improve Michigan's no-fault car insurance system, legalization of recreational marijuana, and creation of the Michigan Independent Citizens Redistricting Commission.

As we all know, the COVID-19 pandemic threw the entire world for a loop. It forced us to reevaluate how our society operates — where and when we work, how we gather, and how we interact with one another. The permanent effects of the pandemic remain to be seen.

In response to COVID-19, courts, which traditionally conducted even the most routine business in person, took proceedings to Zoom. Even as we emerge from the pandemic, courts are reevaluating what should be done in person and what can be done via Zoom. For many young litigators who became attorneys during the pandemic, the once-routine job of going to a courthouse for status conferences or a motion call is a foreign concept; many have only been to a courthouse a few times as an attorney, if at all.

Finally, you may have noticed that the Bar Journal last year was redesigned to modernize its look. Additionally, the online version was updated to make it more user friendly and easier to read on mobile devices.

This decade, much like those that preceded it, was full of ups and downs and historic and defining events. Only time will tell what the next decade has in store.

JAN. 26, 2011

After more than 15 months of work, the State Bar of Michigan Judicial Crossroads Task Force released its findings on how Michigan's justice system could better meet the needs of the public. The group's three primary recommendations: streamlining trial courts and fostering cost-saving collaboration, harnessing technology to meet needs more cost effectively, and fixing fundamental problems before they worsen.

MAY 2, 2011

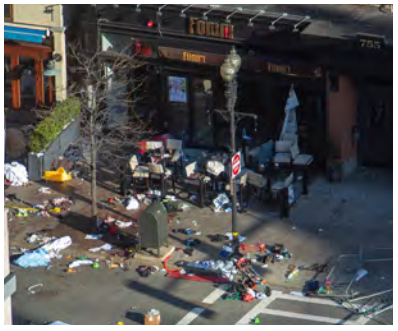
Al-Qaeda leader Osama bin Laden, mastermind of the September 11 attacks, was killed during a Navy SEALs raid on his compound in Pakistan.

SEPT. 17, 2011

The Occupy Wall Street protest movement against economic inequality began in New York.

APRIL 15, 2013

Two terrorists detonated bombs near the finish line of the Boston Marathon, killing three people and injuring nearly 300 runners and spectators.



JUNE 2013

Computer intelligence consultant Edward Snowden revealed to the world that the National Security Agency was running a mass surveillance program that included collecting and storing large amounts of data on American citizens.

DEC. 5, 2013

Nelson Mandela, the anti-apartheid activist and the first president of South Africa, died at the age of 95.

FEBRUARY-MARCH 2014

Russian forces invaded Crimea and annexed the Black Sea peninsula from Ukraine.

JUNE 26, 2015

The U.S. Supreme Court decided in *Obergefell v. Hodges* that the U.S. Constitution protects the right to same-sex marriage. Obergefell was a consolidated case, and included the case of *DeBoer v. Snyder,* which originated in Michigan.

JUNE 23, 2016

The United Kingdom announced its intention to pull out of the European Union. The process took a few years to complete; the U.K. officially left the E.U. on Dec. 31, 2020.

NOV. 2, 2016

After more than a century of futility, the Chicago Cubs beat the Cleveland Indians in extra innings of Game 7 of the World Series for the franchise's first title since 1908.

NOV. 6, 2018

Michigan voters passed a ballot proposal that legalized recreational marijuana. Michigan became the tenth U.S. state — and the first state in the Midwest — to do so.

MAY 30, 2019

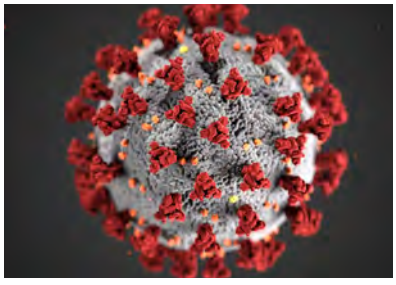
Gov. Gretchen Whitmer signed into law a series of reforms that were designed to improve the state's no-fault car insurance system.

DEC. 18, 2019

The U.S. House of Representatives voted to impeach President Donald Trump for high crimes and misdemeanors. He would later be acquitted by the Senate.

MARCH 11, 2020

The World Health Organization officially declared COVID-19 a global pandemic. Two days later, President Trump declared the pandemic a national emergency.



APRIL 30, 2020

Armed protesters entered the Michigan State Capitol building in Lansing to demand an end to COVID-19 lockdown measures.

The continuing role of lawyers in today's ever-changing world

BY AUSTIN BLESSING-NELSON

As we have seen over the past year's reflections in connection with the 100th anniversary of the Michigan Bar Journal, the world is ever changing, and society is constantly reexamining itself. Quite often, attorneys find themselves at the forefront of many of these changes, particularly on the legal front. This can result from activism, publishing articles, advocating for a client in the courtroom, legislative or administrative processes, and even judges deciding cases.

On a related note, as this series has shown, society is currently in the middle of reexamining and changing many of the rules, laws, and norms of the past. This includes taking a closer look at how we handle allegations of sexual misconduct, race relations and policing, access to justice, and more.

This series has showcased many examples of how lawyers can change the world forever, from civil rights cases to major prosecutions to helping establish — and sometimes disestablish — precedents that have altered American jurisprudence to helping enact and enforce laws and administrative rules. However, one does not have to look too far into the past to see examples of the impact lawyers have on our society. In fact, numerous high-profile occurrences have already taken place in the past 12 years.

For example, the conviction of movie executive Harvey Weinstein is considered a watershed moment for the #MeToo movement. More examples can be seen in the death of George Floyd and the ensuing investigations, trials (including those of the involved police officers, of police officers involved in other incidents, and of Kyle Rittenhouse), debates, protests, and proposed and enacted legal changes — including changes to qualified immunity — that followed as a result. There have also been legal issues and challenges related to the ongoing COVID-19 pandemic, battles over voting rights and election integrity, and questions regarding the power of the federal government, many of which have been fought in courtrooms or have otherwise required the involvement of lawyers.

Another recent example showcasing the many roles of lawyers is the U.S. Supreme Court overturning *Roe v. Wade* and *Planned Parenthood v. Casey* this summer with its opinion in *Dobbs v. Jackson Women's Health Organization*. In addition to holding that there is no federal constitutional right to an abortion, this decision also throws other precedents and rights into a state of limbo which will undoubtedly be a source of much future debate, litigation, and legal advocacy. This ruling was the result of the work of many lawyers and lobbyists over many years, who crafted state laws, advocated for certain judicial nominees, built coalitions and support, slowly chipped away at abortion protections through prior cases, and otherwise laid the foundation that ultimately led to the decision in *Dobbs*.

Undoubtedly, we will soon see many attorneys and lobbyists on the other side of the issue pushing back. In fact, it has already begun. New laws are already being advocated by both sides and existing laws and decisions are being challenged (or sought to be enforced) in courts. Watching this battle closely allows us to witness firsthand the importance of lawyers in our society and how their work can alter the world.

And this decade has barely just begun! As we all know, there are many challenges we face right now as a society which, depending on the chosen paths and outcomes, will change our world — possibly forever. In addition to abortion, these include ongoing debates and challenges around civil rights; data privacy; the wealth gap; war; the environment; corporate accountability; what a post-COVID-19 society should look like and whether or not we should modify our culture as it pertains to where, how, and when we work; how we deal with moral and political disagreements; how America should interact with the rest of the world; the role of government; and countless other issues. Many of these challenges implicate our legal system, and many will undoubtedly be resolved through the involvement of lawyers.

Only time will tell how these many conflicts and issues will be resolved and what those solutions will look like, but one thing seems certain as it pertains to the role of lawyers in our society. As history has shown — and as has been discussed throughout the Bar Journal 100th anniversary series — lawyers have always served as agents of change whether intentionally or as a consequence

of their advocacy on behalf of their clients. As we continue to face the challenges of today and beyond, there is no reason to suspect that this will change. In fact, as society deals with sensitive issues and tough questions that affect its very structure and how it should look, it is entirely possible that lawyers and their work will play an increasing role moving forward.

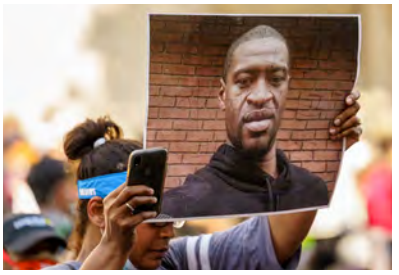
However, one must remember that the legal profession itself is a part of society and not immune to issues and changes. In fact, the profession is currently reexamining itself and how it should function, looking at issues such as how courts should operate in a post-pandemic world, what the bar exam should look like, how law firms should operate, the role of legal technology, and how we should handle attorneys who participate in advocating for unsubstantiated claims, such as the lawsuits and legal challenges related to the alleged issues surrounding the 2020 presidential election.

But even as the legal profession itself changes, it's likely that the role of attorneys as agents of change is not destined to end. In fact, it appears that the legal profession will likely be at the forefront of many of the issues of today and tomorrow, and lawyers will help determine how our society and, indeed, our world will look moving forward.

Austin Blessing-Nelson (Blessing) is a member of the Michigan Bar Journal Committee and an associate at Novara, Tesija, Catenacci, McDonald & Baas in Troy.

MAY 25, 2020

George Floyd, a Black man, was killed by Minneapolis police officer Derek Chauvin, who kneeled on his neck during an arrest. The incident led to protests across the country and a national conversation regarding race relations and policing.



JAN. 6, 2021

As Congress prepared to begin the Electoral College vote count certifying Joe Biden's victory in the 2020 presidential election, a group of rioters stormed the U.S. Capitol, forcing the evacuation of the building and leading to the deaths of five people.

FEB. 13, 2021

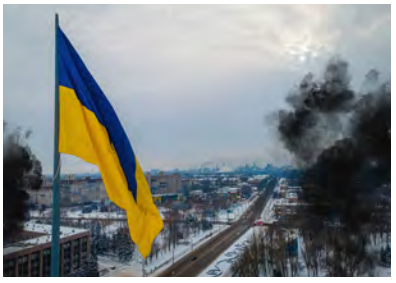
The U.S. House of Representatives voted to impeach President Trump. He is the only president to be impeached twice. He was later acquitted by the Senate.

AUG. 30, 2021

The two-decade war in Afghanistan officially ended as the last remaining U.S. forces withdrew from the country.

FEB. 24, 2022

Russian forces invaded Ukraine, a major escalation of the Russo-Ukrainian War that began in 2014.



JUNE 24, 2022

The U.S. Supreme Court in a 5-4 decision in *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade*, the landmark 1973 ruling that established the constitutional right to abortion.

MARCH 11, 2020

Justice Ketanji Brown Jackson was sworn in to become the first African-American woman to serve on the U.S. Supreme Court.

A time to honor our best

STATE BAR OF MICHIGAN 2022 AWARDS

BY LYNN PATRICK INGRAM, ESQ.

ROBERTS P. HUDSON AWARD
JANET WELCH

Janet Welch served with distinction as the State Bar of Michigan's fifth executive director, providing transformational leadership, vision, and perseverance to the organization for 15 years.

Her work and her commitment won her the respect and admiration of many. Her nomination was signed by 60-plus colleagues — including 29 former State Bar of Michigan presidents, 15 former Hudson Award winners, Michigan Supreme Court Chief Justice Bridget McCormack, and American Bar Association Immediate Past President Reginald M. Turner.

"We recognize that the Hudson Award is considered the highest award conferred by the State Bar, which is given periodically to a member of the State Bar of Michigan who best exemplifies that which brings honor, esteem, and respect to the legal profession," they wrote. "Without question, Janet has far exceeded all of the criteria for this honor."

Welch came to the State Bar of Michigan in 2000, serving as general counsel until she was promoted to executive director in 2007. She evolved during her tenure into a national leader on innovation in the law and an expert on incorporated bars.

"She served with superior professional competence, integrity, creativity, and adherence to the highest principles and traditions of the legal profession," her nominators observed. "In her years of service, the State Bar of Michigan has been a nationally recognized, and envied, example of tremendous leadership, innovation, and accomplishment."

Among the highlights of Welch's tenure and her lasting impact cited by nominators was her work on the 21st Century Practice Task Force, which brought together more than 150 lawyers and judges from across the justice system and legal profession to examine, identify, and study the future's challenges and opportunities.

"This was a complex, substantive, and collaborative effort, and Janet's leadership helped assure its success," the nominators wrote. "The Task Force worked through several subcommittees to identify five central problems and keys to solving them. Its recommendations continue to guide the Bar and others in meeting emerging needs of the public, justice system, and profession."

In addition, Welch played a pivotal role in the Judicial Crossroads Task Force, formed to address the changing landscape of Michigan's justice system, which was designed for the 19th century. The task force's recommendations were groundbreaking — including the creation and expansion of problem-solving courts and specialized courts in Michigan, the shift of indigent defense funding responsibilities from local to state government, the upgrading of court technology statewide, and the improvement in access to free guidance on legal matters.

"We strongly believe that Janet has been an exemplar of extraordinary service to the Bar, the profession, and the public we serve," they concluded. "We cannot think of a more fitting way for the Bar to express its gratitude for all that she has done than honoring her with the 2022 Roberts P. Hudson Award."

FRANK J. KELLEY DISTINGUISHED PUBLIC SERVICE AWARD
HON. CYNTHIA STEPHENS

Recently retired Michigan Court of Appeals Judge Cynthia Stephens devoted her entire legal career to public service.

She began her distinguished career as a government lawyer and went on to be appointed to the district bench in 1981, the circuit bench in 1985, and, finally, the Court of Appeals bench in 2008. In addition, Stephens served on the State Bar of Michigan Board of Commissioners, chairing both the Justice Initiatives Committee and Children's Task Force. Also, the Michigan Supreme Court recently appointed her as a founding chair of the Commission on Diversity, Equity, and Inclusion.

Michigan Court of Appeals Chief Judge Elizabeth Gleicher said Stephens is a public servant and much more.

"She has been a role model, inspiration, and mentor for dozens — if not hundreds — of Michigan lawyers and judges," she said. "She teaches, counsels, and encourages young lawyers and new judges, myself included, both formally and informally, and she leads by developing relationships with people built on respect and compassion."

Gleicher said Stephens "draws upon a deep well of experience and never hesitates to offer ideas, solutions, and approaches" — especially when it comes to lending her expertise to expand access to justice.

"Her work reflects intellectual courage and a deep understanding of the need for justice to recognize and respect the rights of the people who come before the court, including the disfavored and disempowered," Gleicher noted. "She treats every case that comes before her as worthy of close and careful attention and applies to her decisions a notion of equal justice honed by her deep experience at every court level."

Her most substantial contribution, Gleicher said, "is that for other judges, she exemplifies integrity and commitment to the idea that justice means not only deciding the cases that come before the court, but also includes maintaining a focus on enforcing constitutional and civil rights with an eye toward social justice."

CHAMPION OF JUSTICE AWARD
MARGARET "PEGGY" COSTELLO

The Champion of Justice Award this year salutes Detroit Mercy Law School Professor Margaret "Peggy" Costello, who has been both an ally and an advocate for veterans.

Costello established and currently directs the Detroit Mercy Law Veterans Law Clinic, which has provided more than 50,000 hours of free legal services to more than 1,000 low- to no-income veterans. By training more than 400 students to help veterans, the Veterans Law Clinic has helped clients receive back pay, benefits, and monthly income.

Costello created the Veterans Law Clinic because she saw that many lawyers, although they wanted to help, didn't have the knowledge necessary to navigate the often-complicated issues veterans faced. In addition to the students trained through the Veterans Law Clinic, Costello has trained hundreds of attorneys throughout the United States to serve veterans and developed Project Salute, a mobile clinic that travels the country in a bus that has been retrofitted with office space to assist veterans.

Rebecca Simkins Nowak, a law school classmate, friend, and current colleague at the University of Detroit Mercy Law School, said Costello's dedication and impact are unparalleled.

"Peggy's passion for helping veterans and serving the Bar is evident in that she is always willing to help, teach, and train other lawyers who seek to assist veterans," Nowak said. "She identified a need to help veterans, and with the same energy and drive she has demonstrated in every aspect of her legal career, she has made a significant contribution to them."

CHAMPION OF JUSTICE AWARD
ROBYN MCCOY

Robyn McCoy is a visionary attorney who pushes back against injustice with real solutions.

She created the Michigan Children's Law Center program "What to Do When Stopped by the Police" to help young people and all Michigan residents know how to best handle encounters with law enforcement officers. McCoy's many programs and presentations also include "Expungement and Federal Pardon Process," which is designed to help people gain the knowledge they need to clean up their records.

Earlene R. Baggett-Hayes, a Pontiac attorney and alternative dispute resolution specialist, called McCoy an insightful mentor who helps her clients from start to finish and often does so on a pro bono basis.

McCoy not only advises convicted felons of their expungement rights and the specific steps required to erase criminal records — she walks them through the entire process to make sure their criminal records are cleared, Baggett-Hayes said.

Baggett-Hayes said she is particularly impressed with the "expansive nature" of McCoy's work for justice, which also includes offering support to those who are underrepresented in the legal profession.

"McCoy also works to expose people of color and women to positions in which they have not historically been well represented," she added. "She motivates them and provides information to facilitate their movement. She plans and conducts seminars to explain how various elevation and promotional processes work. She also writes recommendation letters to confirm and support their acceptability."

McCoy also regularly meets with legal and political leaders to further enhance her knowledge and experience, Baggett-Hayes noted. "She is an extraordinary professional within our legal profession."

KIMBERLY M. CAHILL BAR LEADERSHIP AWARD
D. AUGUSTUS STRAKER BAR ASSOCIATION

When it comes to supporting diversity in the legal profession and increasing access to justice for all, the D. Augustus Straker Bar Association does it all — from helping to award scholarships to hosting fundraisers to volunteering in the community.

Founded in 1990, the D. Augustus Straker Bar Association's mission is to "increase minority representation in the legal profession, support and encourage legal practice opportunities for minorities, and facilitate equal justice for all citizens."

The D. Augustus Straker Bar Association provides service to the community through a variety of events including multiple expungement clinics such as a recent collaboration with Lakeshore Legal Aid to facilitate its expungement work, anti-human trafficking efforts, and a minority bar passage program.

Since first awarding scholarships in 1999, the D. Augustus Straker Bar Foundation has given away more than $100,000 in scholarships. In addition, the D. Augustus Straker Bar Association partnered with a variety of organizations to host a "Harriet" Movie Screening & Taste of Soul Food Mixer Fundraiser to give attendees information about local social service organizations and raise money for local nonprofits that help survivors of human trafficking.

The D. Augustus Straker Bar Association has been recognized with numerous awards including the Oakland County Bar Association's Michael K. Lee Award Recognizing Diversity, which specifically honors a person or organization that has demonstrated a record of promoting cultural diversity in the legal community through participation in pipeline programs and commitment to the tenets set forth in the mission statement of the Diversity in the Legal Profession Committee.

JOHN W. CUMMISKEY PRO BONO AWARD
JOHN RUNYAN

John Runyan is dedicated and unwavering: For more than 45 years, he has dutifully and honorably served on the Board of Directors of Michigan Indian Legal Services.

Runyan has been with Michigan Indian Legal Services since the very beginning, joining the board when it was organized in 1975 and now serves as its only remaining charter member.

Administrative Law Judge Kandra Robbins, who met Runyan 23 years ago when she was appointed to the board, called him a giving and kind mentor.

"John has provided leadership, guidance, and service to the board," she said. "He has served as secretary, vice president, and president as well as chairperson of many of the board's standing committees."

Robbins said it is difficult to estimate how much time Runyan has "generously provided" over the years, but she knows it's astounding.

"The Board meets a minimum of four times a year," she noted. "Each Board meeting can last for four hours. In the early years of John's service, this required him to travel from his home in the metro-Detroit area to Traverse City. Currently, the Board is able to utilize technology to reduce travel time. However, each meeting still requires hours of preparation to be an effective Board member. And John is certainly an effective Board member."

In addition to serving as a board member for Michigan Indian Legal Services, John chairs the State Bar's Michigan Bar Journal Committee and has written numerous articles for the publication.

"I am proud to call John a friend and to serve with him," Robbins said. "He is the epitome of a dedicated attorney providing service wherever he can to serve the public."

JOHN W. REED LAWYER LEGACY AWARD
PETER HENNING

Peter Henning was so much more than just a law professor.

"He was a giant of the law school — a passionate and beloved teacher, a brilliant legal scholar, and an inspirational mentor, colleague, and friend," said Wayne State Law School Dean Richard A. Bierschbach.

Henning passed away in January after a battle with an aggressive form of frontotemporal dementia. He taught at Wayne State University Law School for 28 years and was a nationally recognized scholar. Prior to his nearly three decades at Wayne State, he had a notable career as a federal prosecutor.

"What made him most well-known to the public was probably his work in the New York Times, where he wrote biweekly columns on white collar crime for many years," Bierschbach said. "But it often felt like Peter was everywhere all at once."

For years, Henning was the go-to expert legal analyst for media throughout the state of Michigan because of his ability to summarize a variety of issues and make them easy to understand.

Henning was revered by his students and his law school colleagues. He was voted Teacher of the Year at Wayne State University Law School four times; received the Donald H. Gordon Excellence in Teaching Award, the highest teaching honor awarded by the law school; and was honored with the President's Award for Excellence in Teaching, the highest teaching honor awarded by Wayne State University.

"Simply put, he loved his students and they loved him," Bierschbach recalled.

His nomination was supported by multiple former students including Grant Newman, now special assistant to the solicitor general in the West Virginia Attorney General's Office. Newman took several of Henning's courses at Wayne Law and considered him a "legend" — but said he would miss the friendship they developed after law school the most.

"He was a warm and generous man and mentor, always funny, and never — and I mean never — too busy to offer a word of advice or encouragement to a young attorney trying desperately to get his sea legs in the turbulent world of the law," Newman said. "I will miss him dearly. Indeed, I already do."

LIBERTY BELL AWARD
GRACE FRENCH

Grace French turned tragedy into triumph.

After coming forward about her abuse as a child at the hands of former Michigan State University Dr. Larry Nassar, French began advocating on behalf of other Nassar survivors and later all survivors of sexual abuse.

Her work helped countless others overcome their fears of coming forward to speak out against both their abusers and the entities that enabled them. She has also been a resource, both personally and through her non-profit, The Army of Survivors, for hundreds of others.

In 2018, French was awarded both the ESPY Arthur Ashe Courage Award and the Glamour Women of the Year Award. In 2019, she spoke about sexual abuse at the United Nations General Assembly. And she is currently a member of U.S. Rep. Elissa Slotkin's Title IX Advisory Board.

Okemos attorney James White, who represented French in litigation against Michigan State University, said she is well deserving of the Liberty Bell Award.

"I have watched her grow into an empowered young woman who, while being heavily involved in the Nassar litigation and criminal prosecutions, graduated from the University of Michigan, founded her non-profit, advocated for survivors of abuse across the nation, and began a successful career in marketing," White said.

Another Larry Nassar survivor, Louise Harder, who is now a board member of The Army of Survivors, said French shared her story publicly in hopes that future generations will live in a safer society.

"She doesn't act for recognition or money," Harder said. "It's personal."

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JAMES W. HEATH

88TH PRESIDENT OF THE STATE BAR OF MICHIGAN

Photo by David Trumpie Photography

A faithful steward

BY LYNN PATRICK INGRAM, ESQ.

According to author C.S. Lewis, "Humility is not thinking less of yourself, it's thinking of yourself less." New State Bar President James W. Heath learned this at an early age and has lived it ever since.

True humility was modeled for Heath by his parents, both career public servants.

"They instilled a deep sense of public service in me," he said. "They were both public employees and were extremely proud of their service to the city of Detroit. My father retired after 39 years with the Detroit Water & Sewage Department and my mother worked over 25 years as a speech pathologist in the Detroit Public Schools."

Heath is now doing the same for his own children, James, 19, and Karon, 17, and his strong character will be on full display as he takes the helm as the State Bar of Michigan's 88th president.

"James' strong intellectual capacity and work ethic, combined with his humility and servant's heart, will serve him well as president of the State Bar," said Hon. Michael J. Riordan, who served with Heath on the SBM Board of Commissioners. "He was born for this."

James Surowiec, a close friend and former colleague at Wayne County, agreed.

"I liked him the moment I met him," recalled Surowiec, now assistant corporation counsel for Macomb County. "He embodies the perfect blend of confidence, humility, and common sense that is crucial to a person placed in a position of leadership. I cannot think of a better person to serve as the next president of the State Bar of Michigan.

"It's going to be a great year!"

MADE IN DETROIT

Heath was born, raised, and educated in Detroit at University of Detroit Jesuit High School, and his loyalty to the city runs deep.

"My parents were part of the Great Migration chronicled by Isabel Wilkerson in her groundbreaking book, 'The Warmth of Other Suns,'" he said. "Like so many Black families, they left their homes in Georgia and other points south in search of safer and more abundant opportunities promised by cities like Detroit."

The city and Heath have always been good to each other.

"I love Detroit and its important institutions," he said. "Whether it's my church in northwest Detroit; the alumni chapter of my fraternity, Alpha Phi Alpha; or its neighborhoods and block clubs, I am keenly aware of the ties which hold this important community together. I have an appreciation for this city's unique role in our state and nation."

There is no question that the delivery of legal services has changed in important ways and the SBM must play a role in how these changes impact the public.

— STATE BAR OF MICHIGAN PRESIDENT JAMES HEATH

Heath left the city briefly to pursue his education, first at Michigan State University's James Madison College, where he says he gained a true appreciation for the underpinnings of American democracy and the concept that we are a nation of laws.

"I have always been interested in how laws were made and the general functioning of government," he said. "We had a seminar class my freshman year in which we read 'The Federalist Papers.' I was fascinated by how the philosophical underpinnings of the law, despite failing to provide the slightest protections to most people

in this country, could one day be used to serve all Americans. My classmates and I went on to study Derrick Bell and other scholars as we tried to make sense of the legal and political issues of the day. I knew that I wanted to be a part of the legal profession from then on."

Attorney Grievance Commission Deputy Administrator Kimberly Uhuru, a friend since college, said she knew from the beginning there was something different — and special — about Heath.

"We were both James Madison College majors, so we had freshman classes together," she recalled. "All the other kids were in typical college gear: jeans, sweats, etc. James would show up to class every day in a button-down shirt, perfectly pressed, tucked in, with a belt.

"I was thinking, 'Who is this guy and why is he dressed like this?' Eventually, I came to understand that James is pretty circumspect in his habits, and this includes his habits of mind. He tends to be very conscientious and prepared. It's now one of the things I value about his friendship."

[James'] ability to generate authentic goodwill with everyone, including those on the other side of the table, is what makes him unique and especially suited to serve as State Bar president.

— ATTORNEY MATTHEW MCNAUGHTON

Heath went to Chicago-Kent College of Law before returning to Detroit as an assistant prosecutor in Wayne County's Public Integrity Unit. He subsequently served in the Michigan Attorney General's Office as assistant attorney general in both the criminal and health care fraud divisions. In 2012, he became the city of Detroit's first inspector general, where he was responsible for ensuring honesty and integrity in city government by investigating waste, abuse, fraud, and corruption. Finally, in 2018, he was appointed Wayne County corporation counsel, where he currently serves as chief legal officer for the state's largest county, providing legal advice and representing the executive office, county departments, agencies, and boards.

Recently, the Michigan Supreme Court appointed Heath to the newly established Michigan Judicial Council. The council's purpose is to strategically plan for the judicial branch, enhance the work of the courts, and make recommendations to the Supreme Court on matters pertinent to the administration of justice.

"I have been blessed to have had wonderful professional opportunities over the course of my career," Heath said.

Serving as president of the State Bar of Michigan is an opportunity for him to give back to all those who helped him along the way.

"The first bar association I joined was the Wolverine Bar Association," he recalled. "I can distinctly remember going to my first meeting days after learning I had passed the bar examination. I made that announcement at the meeting and received applause from the several dozen attorneys in attendance. The welcoming feeling I experienced hooked me."

He also fondly recalls as a young assistant prosecutor his admiration of former Wayne County prosecutor and 70th SBM President Nancy Diehl for the way she gave back to the legal community.

"Witnessing a fellow public servant lead the Bar made me feel confident that I, too, could help shape the future of our profession," he said.

And so he did.

A LASTING LEGACY

Heath was first elected to the State Bar Representative Assembly in 2012 and then to the Board of Commissioners in 2014, where he quickly rose through the ranks.

Heath officially took office on Sept. 17, 2022, after being sworn in by Supreme Court Justice Elizabeth Clement. Heath immediately thanked his friends, family, and colleagues for their unwavering support — especially Wayne County Executive Warren Evans.

"When I told him I was in line to become SBM president during my interview, he didn't even blink as he told me I had his full support because he believes my service will bring honor to the Department of Corporation Counsel," Heath said. "Mr. Evans and my colleagues have been true to their word, and I am honored by their support."

As Heath takes over as State Bar president, he wants to continue the great work of his predecessors and understands the importance of working with his fellow bar leaders and staff.

"I have had the benefit of watching a number of successful presidents over the years, especially recent ones who have guided the bar through completely unforeseen challenges," he said. "The State Bar of Michigan's strategic goals of promoting improvement in the administration of justice, service to the public, professionalism, diversity and inclusion, and innovation form the lens through which all of our positions and activities must be measured. Each SBM president has the responsibility of serving as a sort of caretaker of these goals during their year as president."

Heath said he sees several important tasks this year within the Bar.

"First, the SBM should play a vital role in advancing the discussion of how attorneys and members of the public engage with our courts throughout the state," he observed. "One thing is for certain: We have witnessed change at a pace many of us thought impossible in terms of how our clients and colleagues experience the courts. In some instances, access to the courts and justice have been improved. However, some have argued that the changes have diminished the traditional weight of legal proceedings. There is no question that the delivery of legal services has changed in important ways and the SBM must play a role in how these changes impact the public."

Second, the Bar must continue to be a voice for access to justice, Heath said, emphasizing that the legal needs of the public must be met.

"The Bar has played a central role in advocating for criminal indigent defense reform," he said. "The Michigan Indigent Defense Commission is a wonderful example of this. My home county of Wayne has benefited tremendously from these efforts. But there is still a tremendous opportunity for lawyers to meet the needs of clients with civil law needs. Doing so will require both traditional and non-traditional solutions. Over the course of the next several years, the Bar will make important strides in advancing this discussion."

Third, the State Bar must continue to promote the rule of law, which he said begins with ensuring a proper respect for the judiciary.

"This is the cornerstone of our democracy," he noted. "This work is vital now more than ever as the societal ties and institutions which have bound us together become increasingly frayed. Lawyers across all practice areas, political ideologies, and geographic locations must educate the public about the role of the judiciary, the manner in which judges decide cases, and how adherence to the law must be the backbone of our nation."

And throughout its work, the State Bar also must continue to examine its structure and governance to ensure it is delivering services to its members and the public in the most effective and innovative ways.

"Not only is this a strategic goal of the Bar, but it is required by our Supreme Court," he said.

Heath said State Bar members can expect him to "carry their stories across the entire state, and nation if needed, into every corner where the voice of SBM needs to be heard." He said he will serve with both "humility and strength" and work tirelessly to steer the Bar to fulfill its mission.

A PERFECT FIT

Matthew McNaughton, who has worked with Heath for several years as outside counsel for Wayne County, said Heath is a perfect fit.

"One of the most difficult needles attorneys and leaders thread is advocating for a position or decision while maintaining respectful and productive relationships with those who disagree with you," McNaughton noted. "But James accomplishes this challenge with apparent ease. His ability to generate authentic goodwill with everyone, including those on the other side of the table, is what makes him unique and especially suited to serve as State Bar president."

Sue Hammoud, deputy corporation counsel for Wayne County, couldn't agree more.

"James has this unique ability to empathize with people under the most difficult of circumstances," she said. "Simultaneously, he balances this empathy with achieving whatever the objective is. Despite his empathetic nature, he is still very much capable of making the tough decisions and will do so. He also has a very quick wit and sense of humor, which no one expects from him."

Surowiec said it is this balance that endears James to everyone he meets.

"As corporation counsel, James knows what it takes to motivate his team," Surowiec said. "He empowers staff attorneys to make decisions and he trusts them to use discretion. In the face of a crisis, he never panics. He listens, analyzes, seeks input, and then makes a decision. If it's the right one, James gives credit to others. If not, he takes the blame. This is the mark of a true leader."

Detroit Deputy Inspector General Kamau Marable, who has worked closely with Heath and maintains a strong friendship with him, said members can expect him to put them first.

"Your membership will never have to doubt if President Heath has their interests at heart. He does," Marable said. "He will make the members of the State Bar proud that he is your leader."

In short, Surowiec said, "James is the man. Period. End of story."

Lynn Patrick Ingram is the publications development manager and legal editor for the State Bar of Michigan. He is a member of the e-Journal team, a frequent contributor to the Michigan Bar Journal, and liaison to the SBM Awards and Michigan Legal Milestones committees. He is a licensed attorney in both Michigan and Colorado.


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Photos courtesy of Gerry Mason

On a mission

NEW RA CHAIR GERRY MASON IS PAYING IT FORWARD

BY LYNN PATRICK INGRAM, ESQ.

He was blind, but now he can see.

Gerry Mason was born legally blind and lived in an orphanage for a year during elementary school. Today, he is a highly successful lawyer, venture capitalist, mentor, volunteer, lover of life, and new chair of the State Bar of Michigan Representative Assembly.

"At age 55, I feel blessed," he said.

He credits his success, in large part, to facing and overcoming adversity.

"I can still feel the sting of being handicapped and poor," he said. "The question is, how to respond?

"I got out of the orphanage (St. Francis Home for Boys in Detroit), went to work, had a bunch of eye surgeries, and kept on working."

The results speak for themselves.

TO WHOM MUCH IS GIVEN

"The practice of law, albeit very hard and stressful at times, has been good to me," Mason said, noting that "if you are going to take, you have to give back."

And so he does.

"As vice chairman of the Salvation Army Port Huron Citadel, it is my job to love people and give them hope," he said. "So far, that is perhaps the best job ever."

As chair of the Representative Assembly, Mason also wants to put a focus on giving back.

"My goals are to assist and teach young lawyers from disadvantaged backgrounds how to build a prosperous law practice, to encourage RA members and lawyers in general to do charity work such as Rotary or Salvation Army, to strengthen the RA by educating its members of its importance, and to increase RA participation," he said.

It is my job to love people and give them hope.

— GERRY MASON, SBM REPRESENTATIVE ASSEMBLY CHAIR

One way Mason plans to increase participation in the Representative Assembly is by asking all members to bring a guest who might be a potential RA member to one of the assembly's biannual meetings.

Mason says helping young lawyers from disadvantaged backgrounds has always been a passion and priority because "if you help young lawyers and law students, the rest will flow."

BLUES BROTHER

When Mason is not practicing law or giving back, he is enjoying life in a variety of ways.

"I love blues music, exercise, German beer, cigars, being outside in nature — preferably northern Michigan — and Michigan football," he said. "For intellectual curiosity, I enjoy world affairs and politics. The Wall Street Journal and Journal of Foreign Affairs are brain candy to me."

Mason is also a history buff who was at Red Square on the 45th anniversary of the end of World War II. He also attended President George W. Bush's final State of the Union address and met presidents Gerald Ford, Jimmy Carter, and George H.W. Bush; vice presidents Dan Quayle and Dick Cheney; and Secretary of State James Baker.

Mason, a proud member of the Colonial Woods Missionary Church family, also has a deep passion for music.

"In my blues life, I used to hang around backstage with B.B. King and Lonnie Brooks and do live radio blues broadcasts with legendary DJ Famous Coachman," said Mason, who also plays guitar.

Finally, Mason pointed out that the original "Blues Brothers" movie is "perhaps the greatest movie ever made."

Why?

"We are all in a musical, trying to find someone or something lost, putting the band back together," he said. "And for many of us, [we're] on a mission from God."

Lynn Patrick Ingram is the publications development manager and legal editor for the State Bar of Michigan. He is a member of the e-Journal team, a frequent contributor to the Michigan Bar Journal, and liaison to the SBM Awards and Michigan Legal Milestones committees. He is a licensed attorney in both Michigan and Colorado.

CAPTIONS

1. Gerry Mason leaving the University of Michigan W.K. Kellogg Eye Center after retina surgery.
2. Mason once again leaving the Kellogg Eye Center, this time with a clean bill of health after recovering from surgery.
3. Mason and his family (son, Patrick; wife, Patty; and daughter, Grace) attending the Port Huron Salvation Army Cars and Kettles benefit for Ukraine relief with his 1989 Mercedes Benz 560 SL Roadster.
4. Mason, a Port Huron Salvation Army Advisory Board member, at Cars and Kettles with Majors Wesley and Susan Dalberg and fellow board member Fred Kemp.
5. Mason and his wife, Patty, with American Bar Association Immediate Past President Reginald Turner.
6. Patty and Gerry Mason with friend and 2021-2022 State Bar of Michigan President Dana Warnez.

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THE ECONOMIC LOSS **DOCTRINE IN MICHIGAN**

A construction defense

BY STEPHEN A. HILGER

All too often, contractors, architects, and engineers are sued for alleged negligent acts, errors, occurrences, or omissions that take place on a construction site. The laws of Michigan — and the laws of many other states — may not, however, permit those claims based on what has become known as the economic loss doctrine.

The economic loss doctrine is a rule in more than half of the states such "that a plaintiff who has suffered only economic loss due to another's negligence has not been injured in a manner that is legally cognizable or compensable."[1] Those states do not permit recovery in tort for purely economic losses. In a small number of jurisdictions including Michigan, recovery in tort is permitted for purely economic losses in only limited and narrow circumstances.[2]

Michigan's adoption of the economic loss doctrine dates back at least to 1956, when the Supreme Court decided in *Hart v. Ludwig* that a breach of contract cannot constitute a separate action in tort.[3] At issue in *Hart* was whether tort claims arising from damages caused by the defendant's failure to maintain an orchard were cognizable under Michigan law.[4] The defendant in *Hart* contracted with the plaintiff to maintain the plaintiff's orchard and performed the service for some time, but thereafter refused to continue, causing the orchard to fall into neglect and seriously damaging the trees.[5]

The Court held that the question of whether a tort claim could survive depended upon whether a duty existed independent of the contract. If so, a tort claim would lie. If not, no tort claim could be maintained.[6] Applying this rule, the Court held that the defendant's alleged breach of contractual duties could not serve as the basis for an accompanying tort claim. The Michigan Supreme Court unanimously held that the tort action must be dismissed because the duty alleged to have been breached — a duty to maintain the orchard — was imposed by contract, not by law.[7]

Since *Hart*, Michigan courts have consistently applied the economic loss doctrine to bar negligence claims that fail to allege the violation of a legal duty independent of a defendant's contractual duties.[8]

Further, the economic loss doctrine applies both to contracts for the sale of goods and contracts for services.[9]

According to the Michigan Supreme Court, the threshold question in analyzing a negligence claim based on a contract is "whether the defendant owed a duty to the plaintiff that is *separate and distinct* from defendant's contractual obligations."[10] If no independent legal duty exists separate and distinct from the defendant's contractual duties, no negligence action can be maintained as a matter of law.[11] Michigan courts have consistently reiterated this principle. For example, in *Rinaldo's Construction v. Michigan Bell Telephone Company,* the Michigan Supreme Court stated that a plaintiff may not simply recast its contract claim as a tort, reasoning that "the threshold inquiry is whether the plaintiff alleges violation of a legal duty separate and distinct from the contractual obligation."[12] The *Rinaldo* Court concluded that a plaintiff may not maintain a tort claim when it "does not allege violation of an independent legal duty distinct from the duties arising out of the contractual relationship."[13]

Michigan is not alone in its jurisprudential view of the economic loss doctrine. In other jurisdictions, the doctrine has been applied to claims of negligence in an engineering setting for claims of economic damages. For example, in *Terracon Consultants Western v. Mandalay Resorts Group,* the Supreme Court of Nevada found that:

> [a]fter examining relevant authority and contemplating the policy considerations behind the economic loss doctrine, we have determined that the doctrine's purpose — to shield defendants from unlimited liability for all of the economic consequences of a negligent act, particularly in a commercial or professional setting, and thus to keep the risk of liability reasonably calculable — would be furthered by applying it to preclude the professional negligence claims at issue here. Thus, we conclude that the economic loss doctrine bars professional negligence claims against design professionals who provided services in the process of developing or improving commercial property when the plaintiffs' damages are purely financial. [14]

Just prior to the above quote, the court asked about the applicability of and then described "purely economic loss":

> Does the economic loss doctrine apply to preclude negligence-based claims against design professionals, such as engineers and architects, who provide services in the commercial property development or improvement process, when the plaintiffs seek to recover purely economic losses?
>
> The answer to the question is yes. "Purely economic loss" has been defined as "'the loss of the benefit of the user's bargain ... including ... pecuniary damage for inadequate value, the cost of repair and replacement of [a] defective product, or consequent loss of profits, without any claim of personal injury or damage to other property.'"[15]

The court explained its ruling by stating:

> In the context of engineers and architects, the bar created by the economic loss doctrine applies to commercial activity for which contract law is better suited to resolve professional negligence claims. This legal line between contract and tort liability promotes useful commercial economic activity, while still allowing tort recovery when personal injury or property damage are present. Further, as in this case, contracting parties often address the issue of economic losses in contract provisions.[16]

The court also noted that many other jurisdictions have been governed by the same policy considerations.[17] In conclusion, the court held:

> We conclude that, in a commercial property construction defect action in which the plaintiffs seek to recover purely economic losses through negligence-based claims, the economic loss doctrine applies to bar such claims against design professionals who have provided professional services in the commercial property development or improvement process.[18]

The Supreme Court of Illinois came to a similar result in *Fireman's Fund Insurance Company v. SEC Donohue*,[19] where the court held that:

> We agree with the appellate court that, based on *2314 Lincoln Park West*, the economic loss doctrine applies to engineers. In *2314 Lincoln Park West*, this court held that the economic loss doctrine applied to architects, preventing the recovery of purely economic losses in tort. This court reasoned that "[t]he architect's responsibility originated in its contract with the original owner, and in these circumstances [purely economic loss] its duties should be measured accordingly."[20]
>
> ***
>
> Further, the appellate court could not find any substantive difference between architects and engineers for purposes of the economic loss rule, nor can we. In *2314 Lincoln Park West*, this court likewise did not distinguish architects from engineers. We hold that the economic loss doctrine bars recovery in tort against engineers for purely economic losses.[21]

Accordingly, the Michigan Supreme Court and the supreme courts of other jurisdictions all arrive at the same conclusion. The economic loss doctrine is a viable legal defense to parties bringing negligence claims in the absence of a breach of a duty separate and distinct from those duties owed under a contract.

Stephen A. Hilger of Hilger Hammond in Grand Rapids has been involved with complex commercial litigation and construction law in multiple states for four decades. He has been a mediator and an arbitrator with the American Arbitration Association for more than 25 years, has conducted many private arbitrations, and has also been appointed as a special master.

ENDNOTES

1. Smith, *A Commonsense Dissection for Using this Powerful Tool: Understanding the Economic Loss Doctrine in the World of Construction Law*, 11 In-House Def Quarterly 12 (2016), available at <https://rolfeshenry.com/Uploads/files/Understanding%20the%20Economic%20Loss%20Doctrine%20in%20the%20World%20of%20Construction%202.pdf> [https://perma.cc/V352-L76D] and Rais & Stevens, *Construction Law 101: Economic Loss Doctrine,* Under Construction, ABA (March 22, 2021) <https://www.americanbar.org/groups/construction_industry/publications/under_construction/2021/spring2021/economic_loss_doctrine/#:~:text=Wajiha%20Rais%20and%20Lindy%20Stevens%20Share%3A%20The%20Economic,negligence%20of%20others%20results%20in%20purely%20economic%20loss> [https://perma.cc/9HM5-9RL8]. All websites cited in this article were accessed Sept. 16, 2022.
2. *Loweke v Ann Arbor Ceiling & Partition*, 489 Mich 157; 809 NW2d 553 (2011); Goodman et al, *A Guide to Understanding the Economic Loss Doctrine*, 67 Drake L Rev 1, 17-18 (2019); and *A Commonsense Dissection for Using this Powerful Tool.*
3. *Hart v Ludwig*, 347 Mich 559; 79 NW2d 895 (1956).
4. *Id.* at 560.
5. *Id.*
6. *Id.* at 565.
7. *Id.*
8. *Huron Tool & Engineering Co v Precision Consulting Servs*, 209 Mich App 365, 369; 532 NW2d 541 (1995); *Rinaldo's Constr Corp v Michigan Bell Tel Co*, 454 Mich 65, 84-85; 559 NW2d 647 (1997); *Fultz v Union-Commerce Associates*, 470 Mich 460, 467; 683 NW2d 587 (2004).
9. *Rinaldo's Constr v Mich Bell Tel Co* (applying the economic loss doctrine to a telephone service contract); *TIBCO Software v Gordon Food Service* (holding the economic loss doctrine is not limited to the sale of goods); and *Huron Tool & Eng'g Co v Precision Consulting Servs* (holding that the economic loss doctrine is not limited to the sale of goods).
10. *Fultz v Union-Commerce Associates*.
11. *Id.* at 470. In *Loweke v Ann Arbor Ceiling & Partition Co*, 489 Mich 157, 168; 809 NW2d 553 (2011), the Supreme Court took the opportunity to "clarify" its earlier ruling in *Fultz* about when a contract affects a tort claim brought by a noncontracting third party. Noting that *Fultz* had been misconstrued in subsequent opinions, the court clarified that a negligence or tort claim by a noncontracting party may state a claim when a defendant's legal duty to act arises separately and distinctly from a defendant's contractual obligations. The court noted that decisions that effectively established "a form of tort immunity that bars negligence claims raised by a noncontracting third party" erroneously focused on whether a defendant's conduct was separate and distinct from the obligations required by the contract or whether the hazard was a subject of or contemplated by the contract. Rather, the proper focus is whether a defendant owes "any duty at all" to a particular plaintiff and thus requires an inquiry into whether or not, aside from the contract, "a defendant is under any legal obligation to act for the benefit of the plaintiff," *id.* (citation omitted). See also *Bailey v Schaaf*, 304 Mich App 324, 852; NW2d 180 (2014) (distinguishing between claim arising from failure to perform contract and negligent performance of contractual obligation).
12. *Rinaldo's Constr Corp v Michigan Bell Tel Co*, 454 Mich at 84.
13. *Id.* at 85.
14. *Terracon Consultants Western v Mandalay Resorts Group*, 125 Nev 66, 69; 206 P3d 81 (2009).
15. *Id.*
16. *Id.* at 77-78.
17. Based on the same policy considerations, other jurisdictions have reached the same conclusion. See, e.g., *Holden Farms v Hog Slat*, 347 F3d 1055 (CA 8, 2003); *Maine Rubber Int'l v Environmental Management Group*, 298 F Supp 2d 133 (D Maine, 2004); *BRW v Dufficy & Sons,* 99 P3d 66 (2004); and *City Express. v Express Partners*, 87 Hawaii 466; 959 P2d 836 (1998). See also, e.g., *Fireman's*

Fund Insurance Co v SEC Donohue, 176 Ill 2d 160, 223; 679 NE2d 1197 (1997); *Prendiville v Contemporary Homes*, 32 Kan App 2d 435; 83 P3d 1257 (2004); *Floor Craft Floor Covering v Parma Comm General Hosp Ass'n*, 54 Ohio St 3d 1; 560 NE2d 206 (1990); *American Towers Owners Ass'n v CCI Mechanical*, 930 P2d 1182 (1996); and *Carlson v Sharp*, 99 Wash App 324; 994 P2d 851 (1999).

18. *Terracon Consultants Western v Mandalay Resorts Group*, 125 Nev at 80.

19. *Fireman's Fund Insurance Co v SEC Donohue*, 176 Ill2d 160; 679 NE2d 1197 (1997).

20. *Id.* at 167, citing *2314 Lincoln Park West v Mann, Gin, Ebel & Frazier*, 136 Ill2d 302, 317; 555 NE2d 346 (1990).

21. *Id.* at 168, citing *2314 Lincoln Park West v Mann, Gin, Ebel & Frazier*, 136 Ill2d at 311.

MONEY JUDGMENT INTEREST RATE

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

For a complaint filed after December 31, 1986, the rate as of July 1, 2022, is 3.458%. 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.

THE DAY JOURNEY **STOPPED BELIEVIN'**

Why appellate practitioners are invaluable to contract drafting

BY DANIEL J. MCCARTHY

For me, March 3, 2020, was the day that the music died.[1] My favorite rock group, Journey, broke up and the members went their separate ways.[2] But this time, the breakup came complete with a salacious lawsuit filed in a California state court.[3]

Journey originally disbanded in the late 1980s when lead singer Steve Perry left the group to embark on a solo career. The band floundered for the next decade or so until 2007, when Arnel Pineda joined as lead vocalist. From 2016 until March 3, 2020, Journey and its almost-original lineup — which consisted of Pineda, Neal Schon on guitar, Jonathan Cain on keyboards, Ross Valory on bass, and Steve "Machine Gun" Smith on drums — continued to tour, filling arenas around the world and reminding audiences everywhere to never stop believin'.

How does Journey's breakup and appellate work go hand in hand, you may ask? Well, allow me to explain.

Over the past few decades, appellate practice has grown into a specialized industry. In my experience, more and more trial attorneys are turning to experienced appellate lawyers either to pursue or defend an appeal. Appellate rules are technical and the arguments that need to be crafted on appeal are vastly different from trial court arguments. In a broad sense, the trial court is all about the facts. The appellate court, on the other hand, is all about the law.

Appellate lawyers, generally speaking, are a different breed. To put it bluntly (and with the most endearing respect), we're legal nerds. We enjoy reading cases, court rules, and rules of evidence, and we love to spend hours discussing and debating rules of grammar. For us, this is the fun stuff. In our world, millions of dollars at stake in a case have often hinged on comma placement[4] or, in this instance, the difference between "and" and "or."[5] Accordingly, appellate lawyers are not only invaluable to trial lawyers, but we are equally (if not more) valuable in the transactional context as well.

Back to Journey. I was able to pull the complaint which, conveniently, had attached to it the band's governing documents.[6] In short, Jonathan Cain and Neal Schon accused Ross Valory and Steve Smith of effectuating a coup to take over the corporation that owns Journey's trademark and branding. According to the complaint, Cain, Valory, Schon, Smith, and Steve Perry owned equal shares of stock in Nightmare Productions, Inc., Journey's managing and governing corporation. In 1985, Perry, Cain, and Schon formed a general partnership, Elmo Partners. Nightmare Productions, in turn, signed a trademark agreement in which Elmo Partners was granted an exclusive license to the Journey mark and brand without having to pay any royalties to Nightmare.[7]

The lawsuit claims that on Feb. 13, 2020, Smith and Valory held improper board meetings of Nightmare Productions to ultimately regain control over the Journey mark.[8] If successful, Smith and Valory would be entitled to receive their respective ownership shares of millions of dollars of Journey's revenues and royalties. What caught my eye was the following clause contained in the licensing agreement:

> Under the terms of the agreement, the license shall continue "until the date upon which none of Stephen Perry, Neal Joseph Schon, *or* Jonathan Cain, is actively engaged in a professional music career utilizing the name 'Journey.' Because Cain and Schon continue to engage in their music careers under the name 'Journey,' Elmo Partners holds and retains its exclusive license to the Journey Mark.[9] (emphasis added)

The clause is certainly not the model of clarity. Should the word "or" between Schon and Cain be read as disjunctive or conjunctive? Does the licensing agreement expire when Perry *and* Schon *and* Cain all retire from performing musically under Journey? Or does it expire when either Perry *or* Schon *or* Cain retires? Again, millions of dollars in royalties were at stake; this author suspects the entire matter centered on whether the parties intended the word "or" to be "and."

As in Michigan, California courts attempt to determine the parties' intent at the time of contracting from the plain language used in the agreement.[10] For example, in *Houge v. Ford*, the court was faced with an analytically similar contract clause containing the word "or."[11] In *Houge*, the parties disputed an attorney's right to recovery under a written contingency fee agreement; the contract provided that the attorney's right to payment was contingent upon either "protecting" *or* "collecting" on an estate.[12] The attorney argued that his right to payment vested when he finished services in "protecting" the estate. The client, on the other hand, argued that the attorney had to both "protect" the estate *and* "collect" a recovery. The court, in construing the agreement, sided with the attorney:

> The cases cited by plaintiff to sustain his claim that the word 'or' should be construed here as meaning 'and' do not sustain his position. Resort to such unnatural construction of the word 'or' is sanctioned only when such construction is found necessary to carry out the obvious intent of the legislature in a statute or the obvious intent of the

> parties in a contract, when such intent may be gleaned from the context in which the word is used [internal citations omitted]. In its ordinary sense, the function of the word 'or' is to mark an alternative such as "'either this or that'" [internal citations omitted], and such was the plain meaning of the word 'or' as used by the parties here in the phrase 'protect *or* collect.'[13]

In the Journey case, Cain and Schon asserted that their licensing agreement with Elmo Partners never terminated because both were actively engaged in professional music careers under the Journey name.[14] Perry, on the other hand, has not performed under the Journey name for more than two decades. Schon and Cain, both of whom sued for more than $10 million, were obviously betting that the court would read the word "or" as an "and" and accept their argument with open arms.[15]

Had the case progressed,[16] the court would have been required to faithfully[17] attempt to determine what, exactly, the parties meant when they drafted the agreement with Elmo Partners. Given that the licensing deal was signed in 1985, it probably wouldn't have been too hard to determine who's cryin' now.[18] Back then, Perry, Cain, and Schon represented Journey's core; the three went on to release the "Raised on Radio" album in 1987. At that time, Perry, Cain, and Schon likely intended that Elmo Partners and the licensing agreement would cease to exist if any one of them left the group. Put differently, they all probably intended that Journey would not exist if either Perry or Cain or Schon decided that the party's over.[19] In this context, it would have been relatively easy for Valory and Smith to argue that the lights[20] on the license agreement went down when none of Perry, Schon, or Cain was actively engaged in Journey. Given that Perry stopped performing years ago, Smith and Valory had a strong argument that the licensing agreement expired under its own terms. But given the parties' 2021 settlement, and given Journey's constant touring, Schon and Cain presumably are saying that they'll be alright[21] without Smith and Valory.

As stated previously, appellate lawyers love working with words because we're charged with litigating and arguing such words in great detail. While transactional lawyers are trained to put deals together and draft documents reflecting their client's intent, having an appellate lawyer or trial lawyer review documents to negate potential unintended future litigation could be well worth the expense. Appellate lawyers are keen on focusing on grammar and its litigation consequences. With millions of dollars potentially at stake, commas and other grammar rules, along with critical words like "and" and "or" become all too important to ignore.

Daniel J. McCarthy is a shareholder and appellate lawyer with Butzel Long. When he is not drafting briefs or arguing in appellate courts, he can be seen and heard as the pianist/keyboard player in Captured Detroit, Detroit's premier Journey tribute band.

ENDNOTES

1. *Schon et al v Valory et al*, complaint filed March 3, 2020, with the Superior Court of the State of California (No. C20-00407). Paragraph 8 of the complaint stated "[o]n March 3, 2020, Cain and Schon provided written notice that Smith and Valory were no longer part of Journey and would no longer perform or tour with the band."
2. "Separate Ways" was the first track on Journey's 1983 "Frontiers" album.
3. *Schon et al v Valory et al.*
4. E.g., *O'Connor et al v Oakhurst Dairy*, 851 F3d 69, 70 (CA 1, 2017) ("For want of a comma," the dairy delivery drivers were entitled to millions of dollars in overtime.)
5. *Schon et al v Valory et al.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*, Exhibit B to Complaint.
10. *Orange Cove Irrigation Dist v Los Molinos Mutual Water Co,* 30 Cal App 5th1, 12; 241 Cal Rptr 3d 283 (2018).
11. E.g., *Houge v Ford*, 44 Cal 2d 706; 285 P 2d 257 (1955).
12. *Id.* at 709.
13. *Id.* at 712.
14. *Schon et al v Valory et al.*
15. *Id.*
16. The dispute was amicably settled, Rosenbaum, *Journey Band Members Agree to Settle $10 Million Lawsuit and Go 'Separate Ways,'* Billboard Pro (April 2, 2021).
17. "Faithfully" was released on Journey's 1983 "Frontiers" album.
18. "Who's Cryin' Now" was released on Journey's 1981 "Escape" album.
19. "The Party's Over" was released on Journey's 1981 "Captured" live album.
20. "Lights" was released on Journey's 1978 "Infinity" album.
21. "I'll Be Alright Without You" was released on Journey's 1986 "Raised on Radio" album.

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

PLAIN LANGUAGE

How to draft a bad contract (Part 2)

BY MARK COHEN

Many experts have written on how to draft a good contract.[1] In the second installment of this three-part series, I'll again approach the issue from the opposite end by explaining how to draft a bad one.[2]

DO NOT SPECIFY THE DATE, TIME, AND PLACE OF PERFORMANCE

This is an excellent way to cause confusion so that disputes arise.

> *Wrong*: Jones will deliver the horse to Smith at 574 Ridge Road, Durango, Colorado, by 5:00 p.m. on August 1, 2015, at Jones's expense.
> *Right*: Jones will deliver the horse to Smith.

DO NOT ADDRESS ATTORNEY FEES

In Colorado, where I practice, the general rule is that a court will not award attorney fees unless authorized by statute, rule, or a provision in the relevant document.[3] This is why a good contract includes an attorney-fees provision. A bad contract does not. Remember, even without an attorney-fees provision, you can always seek attorney fees if the opposing party's position lacked substantial justification[4] or violates Colorado's Rule 11. Because opposing counsel's position always lacks substantial justification and violates Rule 11, an attorney-fees provision is unnecessary. You can rely on similar rules in your jurisdiction.

DO NOT ADDRESS VENUE

A bad contract fails to specify the venue for any litigation arising out of the contract. A good contract will contain something like this:

> The exclusive venue for any litigation arising out of this Agreement is Boulder County, Colorado.

I don't understand why some lawyers do this. If you practice in Boulder and the opposing party resides in Durango, isn't it better to let the opposing party file suit in La Plata County? You can bill a lot of hours for driving to Durango and back — 13 billable hours, according to MapQuest, for driving through some of the most scenic country in the United States. And Durango is really beautiful. Maybe you could get in some skiing or swing by the Telluride Jazz Festival. You might get similar opportunities in your home state, though Colorado is hard to match.

NEVER INCLUDE A WAIVER OF JURY TRIAL

Be honest. One reason that many of us chose law school is that we grew up watching Perry Mason trap witnesses on cross-examination. And juries like nothing more than being forced to listen to two profitable businesses fight over money. Jurors especially love hearing expert testimony from accountants and economists. Jurors enjoy math — that's why so many are actuaries and statisticians.

DO NOT INCLUDE A MERGER CLAUSE

A merger clause (or "integration clause") provides that the contract represents the complete and final agreement of the parties and that all prior discussions are merged into the contract. Good contracts include a merger clause to prevent parties from later alleging that there were other promises or representations not included in the written contract. A bad contract includes no merger clause. This leaves the door open for disputes about promises or representations allegedly made that are not in the written contract. You should be able to bill at least one hour for refreshing your memory about the parol-evidence rule and another hour for preparing a brief explaining that the rule does not apply because the contract was not an integrated contract.[5]

"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.

If you include a merger clause, draft one that includes lots of legalese to impress your client, the other party's lawyer, and any judge or jurors who may ultimately read it. Here is a sample merger clause that you may use:

> This Agreement, along with any exhibits, appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent, by affixing their hands and seals hereto, that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Agreement. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party's right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Agreement.

Do *not* use a simple, concise merger clause such as this:

> This is the parties' complete agreement. There are no promises or representations other than those in this Agreement.

The first merger clause contains 174 words. The second contains 18 words. Simple arithmetic proves that the former is 156 words better than the latter.

DO NOT ADDRESS MODIFICATION

Litigation sometimes arises when a party claims that the parties orally modified their agreement after signing the contract. A good contract provides that any modifications must be in a writing signed by all parties. A bad contract contains no such provision, thus leaving the door open to expensive litigation revolving around statements and behaviors of the parties after they signed the contract.

DO NOT ADDRESS DISPUTE RESOLUTION

A good contract specifies the method that the parties will use to resolve disputes, such as mediation, arbitration, or litigation. A bad contract does not. If you must address this issue, draft a clause that is vague and leaves many unanswered questions. Here is a sample that you may use:

> In any dispute arising out of this Agreement, the parties will submit to mediation.

Do *not* use a clause such as this, which addresses all potential issues:

> In any dispute arising out of this Agreement, the parties will participate in mediation before filing suit. The mediator will be Jane Johnson of XYZ Mediation, Inc., and the mediation will be held in Boulder, Colorado. The mediation must not last longer than eight hours unless both parties consent. The parties will each pay half the costs of mediation. Either party may initiate mediation by sending a written demand for mediation to the other party. If the other party does not respond within 14 days or fails to participate in any scheduled mediation, the party sending the demand may seek an order compelling mediation, and in that event the party that did not respond or participate must pay the attorney fees and costs incurred by the party seeking an order to compel mediation.

INCLUDE A COCKAMAMIE SCHEME TO SELECT AN ARBITRATOR OR A MEDIATOR

For example, rather than agreeing on the mediator or arbitrator ahead of time and identifying him or her in the contract, try something like this:

> In any dispute arising out of this Agreement, the parties agree that they will select an arbitrator by the following method: Each party shall designate its choice to serve as the arbitrator by serving written notice of that party's choice on the other party. If the parties do not agree on the arbitrator, the two arbitrators selected by the parties shall then designate a person to serve as the arbitrator.

This is an excellent way to improve the badness of your contract. First, it assumes that the selected arbitrators will be willing to meet and select a third arbitrator without charge. Second, it assumes that the two selected arbitrators will be able to agree on the third arbitrator, but fails to address what will happen if they cannot agree.

INCLUDE INCONSISTENT PROVISIONS

This is one of my favorites. To make your bad contract even worse, include terms that are or may be inconsistent. For instance, include an arbitration clause such as this:

> In any dispute arising out of this Agreement, the parties agree that they will participate in binding arbitration to resolve the dispute. The arbitrator will be Don Davis of Davis Arbitration, and the hearing will be held in Boulder, Colorado. The parties will each initially pay half the costs of arbitration, but the arbitrator shall order the party that does not prevail to reimburse the prevailing party for those costs. The arbitrator shall also award attorney fees and other costs to the prevailing party.

Then, in the next paragraph, include something like this:

> In any dispute arising out of this Agreement, the parties agree that the exclusive venue for any litigation shall be in the District Court of Boulder County, Colorado.

You can see the beauty of this. The parties are now confused about whether they must arbitrate or are free to file suit.

DO NOT SPECIFY WHICH JURISDICTION'S LAWS WILL GOVERN

Many contracts involve parties who live or operate in different jurisdictions. In drafting a bad contract, it is important not to address which jurisdiction's laws will govern. This provides an opportunity to research and brief the doctrine of *lex loci contractus*, which holds that when a contract is silent on what law will govern, the governing law will be that of the jurisdiction where the contract was made. This has two benefits. First, you get to use Latin. Second, if the parties reside in different jurisdictions and signed the contract in their respective jurisdictions, you can research and brief the issue of where the contract was made.

MAKE IT DIFFICULT TO DISTINGUISH THE PARTIES

Suppose one party is ABC, Inc., and it owns ABC Transportation, Inc. and ABC Credit, Inc., both of which the contract mentions. By simply referring to "ABC" throughout the contract, you can create confusion about which entity is a party to the contract or whether all three are. A variation on this is to confuse an entity with its individual owner. For instance, you might sometimes refer to a party as "Acme, LLC," but at other times refer to it as "Johnson (owner of the LLC)."

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Mark Cohen earned a B.A. in economics at Whitman College, his law degree at the University of Colorado, and an LL.M. in agricultural law from the University of Arkansas, where he also taught advanced legal writing. Cohen's practice focuses on business and real-estate litigation, and he speaks often on contracts, easements, the benefits of plain English, and piercing the corporate veil.

ENDNOTES

1. E.g., Adams, *A Manual of Style for Contract Drafting (4th Ed)* (Chicago: ABA, 2018), Burnham, *Drafting and Analyzing Contracts: A Guide to the Practical Application of the Principles of Contract Law (4th Ed)* (Durham: Carolina Academic Press, 2016), and Garner, *Garner's Guidelines for Drafting and Editing Contracts* (St. Paul: West Academic Publishing, 2019).
2. For an article that does something similar, see McDonald, *The Ten Worst Faults in Drafting Contracts*, 11 Scribes J Legal Writing 25 (2007).
3. *Waters v District Court*, 935 P2d 981, 990 (1997).
4. Colo Rev Stat 13-17-102.
5. *Tripp v Cotter Corp*, 701 P2d 124, 126 (1985) ("Absent allegations of fraud, accident, or mistake in the formation of the contract, parol evidence is inadmissible to add to, subtract from, vary, contradict, change, or modify an unambiguous *integrated* contract.") (emphasis added).

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Advising insolvent companies

BY BRENDAN G. BEST

Professionals on the front lines of a developing insolvency matter are often not insolvency experts. They may be a troubled company's inside counsel, outside general counsel, accountant, trusted mergers and acquisitions advisor, or even their outside labor or real estate lawyer, becoming privy to one or more insolvency-related problems the company may be experiencing. Given the impacts of the COVID pandemic, labor shortages, supply-chain disruptions, and other market headwinds, these professionals may have run across a disproportionate share of insolvency-related situations over the last few years.

For the non-expert professional, advising clients in an insolvency environment will feel like working in the proverbial Twilight Zone and there is no ready source for guidance as there may be with other unfamiliar legal problems. This column tries to point practitioners in the direction of that much-needed guidance and, hopefully, identifies some general orienting principles and best practices that all professionals should be aware of when counseling a potentially insolvent company.

CONFLICTS OF INTEREST AND FIDUCIARY DUTIES

Insolvency has a way of bringing to light issues that normally stay below the surface such as conflicts of interest and fiduciary duty. Especially for closely held family companies, the potential problems arising from the blurred lines between individual and business interests often go untested. However, as business (and sometimes personal) relationships unravel in an insolvency, many companies and individuals are not prepared for the test.

Lawyers must determine the scope of their representation and adjust if necessary. For example, a lawyer may need to advise the owner of a company, as well as its members and/or partners, to obtain separate counsel because their respective individual interests create potential — and perhaps unwaivable — conflicts of interest. A helpful reference point in this regard is the extremely strict requirement that an attorney for the debtor in a bankruptcy case be a "disinterested person," which, most importantly, prohibits an attorney from having "an interest materially adverse to the interest of the estate or any class of creditors or equity interest holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason."[1] The bankruptcy standard, which is unwaivable, is far more rigorous than state ethical requirements for an attorney, which generally prohibit attorneys from representing a client if the client is directly adverse to another client (unless each client consents after consultation) or if the representation of the client may be materially limited by the attorney's responsibilities to another client or a third party (again, unless the client consents after consultation.)[2] However, in an ideal scenario, an attorney who has identified a probable need for a bankruptcy filing would be well served to ensure from the outset that the company has insolvency counsel that will be "disinterested" and qualified to represent it in a future bankruptcy proceeding.

On a completely different note, a company's directors and officers also owe fiduciary duties to the shareholders of the company (i.e., the duties of care and loyalty.) Like the need for attorneys to ensure that their representation complies with applicable ethical standards, individual corporate principals, officers, and directors also need to understand and comply with their fiduciary duties at the outset to prevent incurring potential additional liability for mishandling the situation. Among many examples, restructuring transactions that would benefit an individual director at the expense of the company or constitute a fraudulent conveyance (i.e., a transfer for less than fair value) should not be approved. The fiduciary duty analysis also becomes more complex with the introduction of an actual or potential insolvency.[3]

GOAL SETTING

Now that everyone understands the various hats they wear and are wearing them properly, counsel can work with company leadership to understand the client's goals. The goal-setting process can take minutes, months, or years, and is dictated by the urgency of the situation. The insolvency may be a full-blown crisis involving the inability to fund basic operational expenses like payroll

and utilities, requiring immediate action and decision-making. The insolvency may also be a gradual decline in performance that has resulted in an actual or looming loan covenant default and a possible need for refinancing or additional investments, allowing more time for analysis and deliberation before a path is chosen.

For the non-expert professional, advising clients in an insolvency environment will feel like working in the proverbial Twilight Zone and there is no ready source for guidance as there may be with other unfamiliar legal problems.

Clients at any level of insolvency need help identifying options and sorting out realistic goals from the unachievable. For example, the goal of recouping one's entire investment in the company may not be achievable because the company may not have the value to support even its current debts, putting the equity interests "out of the money." A lengthy, boot strap-style reorganization may not be possible because the company may lack the cash or financing absent an additional (and possibility significant) investment from existing ownership or an outside white knight to achieve it. An expedited sale to a strategic competitor may not be possible because strategic competitors, who may be the only interested parties, often prefer to let the company fail and opportunistically pick up the choice pieces. It usually takes many discussions to tease out all the relevant factors necessary for this analysis. As difficult as these conversations can be, however, they can ultimately lead to identifying and preserving one or more viable goals.

Sometimes, the list of possible options is dictated to a company by its senior secured lender in the context of a loan workout.[4] The alternatives given to borrowers by many lenders (appearing in either a forbearance agreement or loan agreement amendment) strike a balance between preserving as much of the ownership's equity as possible while also preserving the value of the collateral.

In my experience, the four typical options given are:

- Recapitalization: bringing in new money as equity, not debt;
- Refinancing: finding a new lender to pay off the existing lender;
- A going concern sale: finding a buyer who will hopefully pay off the existing lender or make the existing lender as close to whole as possible; or
- An orderly winddown and liquidation: selling the hard and other marketable assets of the company piecemeal but in an organized and controlled fashion to maximize the value of the lender's collateral.

The solutions that preserve the most equity possible usually take the longest to arrange and achieve. The time that the borrower has to achieve one of the milestones is dictated by the cash that is available. The more available cash, the more time the borrower has. This explains why one of the first questions to ask a troubled company is, "When do you run out of cash?"

STRATEGY AND IMPLEMENTATION

Once the goal is identified, developing a successful strategy for achieving that goal requires, among other things, an understanding of the respective rights of all parties involved. Insolvency matters typically involve a variety of constituents including a troubled company's equity ownership, the corporate entity itself, and the company's senior secured creditors and institutional investors. Even within the broad categories of constituents, there is variation of significance and sophistication. For example, the senior secured lender could be a local credit union or global financial institution and the unsecured creditor pool could consist of a handful of relatively current trade vendors or a horde of angry past-due creditors owed tens of millions of dollars. Assessing the landscape in this way is critical to understanding which implementation tools may be required (e.g., a Chapter 11 bankruptcy filing or a state law insolvency proceeding or statutory process.)

Assembling the right team is essential to successfully implementing the strategy. At this stage, it is critical to work with an experienced insolvency attorney. In most matters above a certain size, an experienced financial advisor — sometimes called a turnaround advisor or generically a consultant — is also a critical part of the team.[5] Most companies have managers and employees that are very good at doing their jobs but have no competency in managing

a complex insolvency situation. Moreover, distractions from their day-to-day roles can lead to further problems including decreased performance, poor morale, and jeopardizing the success of the mission. Having a dedicated team of experienced, specialized professionals gives the company the best chance for success.

CONCLUSION

Handling a troubled company is usually extremely difficult for all parties involved — not only for the owners and employees, but also for the company's professionals. By using a few basic orienting principles and assembling the right team, company counsel can help their client successfully manage the situation they face.

Brendan G. Best is a partner at Varnum and is based in its Birmingham office. He represents all sides in bankruptcy cases in Michigan and throughout the country and has significant bankruptcy litigation experience. A significant part of Best's practice also involves advising borrowers and lenders in out-of-court workouts and distressed transactions, primarily in the automotive and manufacturing sectors.

ENDNOTES

1. 11 USC 101(14)(C). See also *In re Codesco, Inc,* 18 BR 997, 999; 8 Bankr Ct Dec 1293 (1982) ("a 'disinterested' person should be divested of any scintilla of personal interest which might be reflected in his decision concerning estate matters.").
2. MRPC 1.7.
3. See, e.g., Corporate Acquisitions, Mergers and Divestitures, *Fiduciary duties of directors to creditors of financially troubled corporations—Duties owed when solvent corporation operates near insolvency* (2022), § 11:110, ¶ 8 ("provided that the directors consider the interests of the shareholders and creditors [in a particular transaction] in an informed manner, act in good faith, and take actions they reasonably believe to be in the corporation's best interests, the directors should be protected by the business judgment rule even if their actions ultimately disadvantage the shareholders or the creditors.").
4. A successful restructuring requires an experienced team of professionals. For companies put into "workout" by their lender, the time for assembling that team is upon them. Many companies fail, at their peril, to realize the uncharted waters they are walking into when presented by a lender with a draft forbearance agreement, only to later wish that they had received the proper assistance at the time they needed it.
5. Sometimes a senior secured creditor becomes involved early in a restructuring. In some instances, the creditor will require the company to retain a financial advisor as a condition of continued lending. In that often high-pressure scenario, the company must nevertheless carefully and deliberately select a financial advisor that is acceptable to, but will also maintain independence from, the creditor, and that is focused on the goals of the client, even to the extent that such goals might differ from those of the creditor.

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LIBRARIES & LEGAL RESEARCH

Why can't I get Pliny the Elder?
BEER DISTRIBUTION LAW IN MICHIGAN

BY KINCAID C. BROWN

If you are a craft beer drinker, you have noticed that there are many beers brewed in the United States that you cannot buy in Michigan, like California-based Pliny the Elder.[1] You will have also noticed that there are many craft beers brewed in Michigan that you cannot buy at your local grocery store or bottle shop.

Why is that the case? The short answer is because Michigan law mandates that beer pass through what's known as a three-tier distribution system.[2] This article outlines what a three-tier distribution is, what it means for Michigan brewers and beer drinkers, and how Michigan law treats beer and wine differently.

THE THREE-TIER DISTRIBUTION SYSTEM

The three-tier distribution system divides commercial actors in the beer ecosystem into three groups: manufacturers (i.e., brewers) or suppliers, wholesalers or distributors, and retailers.[3] Three-tier distribution became the primary system for alcohol regulation in states after the repeal of the 21st Amendment.[4] The three-tier distribution system was seen as a way to combat both societal and economic problems related to alcohol sales in the Prohibition era by separating the three tiers of actors and their related financial interests. The societal issues the three-tier distribution system was established to address were those that motivated Prohibition: for example, saloons that were affiliated with a specific alcohol manufacturer and exclusively sold those products were largely left to fester in absentee ownership and became places where vice and violence were not controlled.[5]

In Michigan, the three-tier system was employed because of concerns with vertical integration in the alcoholic beverage industry and concerns that large suppliers (i.e., brewery conglomerates such as Anheuser-Busch InBev) would engage in anti-competitive behavior.[6] Like other states, Michigan has prohibited financial interests in multiple tiers of the three-tier system.[7] The economic impact of the three-tier system is protection of smaller manufacturers so that larger manufacturers and suppliers cannot provide incentives to retailers to prioritize their products over competitors both large and small. On the flip side, the licensing requirements of the three-tier system increase transaction costs for smaller and out-of-state brewers, reducing the ability or interest in entering the Michigan market. These brewers must make agreements with individual distributors to have their products covered — which can translate into lost time and revenue for a small or new Michigan brewer trying to get its craft beer to customers or serve as an extra hoop for out-of-state brewers to jump through that may not make financial sense.

THE THREE-TIER SYSTEM IN MICHIGAN

In Michigan, the three-tier distribution system is legislatively applied to alcohol sales, including beer[8] produced by Michigan brewers or microbrewers. A brewer is defined as a person licensed to manufacture beer and to sell it to wholesalers[9] and, in some limited cases, sell its beer at retail.[10] A microbrewer is defined as a brewer that manufactures fewer than 60,000 barrels of beer in a year; for the 60,000-barrel threshold, all brands and labels, whether brewed in Michigan or out of state, are added together.[11] Brewpubs, defined as a place where beer is manufactured on the premises and sold for consumption,[12] and tasting rooms, defined as a location where a brewer may sell beer at retail,[13] operate outside of the three-tier system. Other than those exceptions noted above, all beer sales in Michigan must be through licensed wholesalers.[14] Brewers and microbrewers must grant each wholesaler exclusive sales territories with no permissible overlap.[15]

Michigan has tried to create access to the beer market "while also preserving the 3-tier system and limiting vertical integration" by making an exception for microbrewers that sell no more than 2,000 barrels of beer a year.[16] These microbrewers may sell their beer directly to retailers (i.e., skipping the wholesaler middle tier) under certain conditions. These conditions include that the microbrewer has not made an agreement with a wholesaler for the territory in which the retailers are located,[17] the beer is sold and delivered to the retailer by the microbrewer's employees,[18] as well as some labor and transportation requirements.[19] In calculating the 2,000-barrel threshold, all labels and brands are combined,

although sales on licensed premises like tasting rooms are not included.[20] Out-of-state entities that meet the conditions of this section also can take advantage of this exception.[21]

THE DIFFERENCE BETWEEN BEER AND WINE IN MICHIGAN

While winemakers generally need to utilize the same three-tier distribution system[22] as beer manufacturers and take advantage of retail exceptions such as tasting rooms,[23] there are a couple of ways that allow for freer commerce for winemakers in Michigan. First, winemakers may self-distribute to retailers.[24] Winemaker employees in these cases are required to hold a salesperson license.[25] Second, winemakers may get a direct shipper license[26] permitting them to ship wine directly to a consumer's home.[27] The ability to ship wine directly to consumers was a big advantage during the pandemic with the steep rise in internet commerce as many consumers spent more time at home and reduced all forms of travel.

Michigan's disparity in the treatment of wine and beer is not uncommon:[28] only 11 states plus the District of Columbia permit direct shipping of beer in at least some instances,[29] while 47 states plus the District of Columbia permit direct shipping of wine.[30] It's important to note that currently, the United States Postal Service does not permit the shipping of alcohol, although there have been recent attempts to amend that law.[31] Breweries and wineries shipping alcohol directly to consumers must use a private company such as FedEx or UPS.

Kincaid C. Brown is director of the University of Michigan Law Library. He is a member of the SBM Michigan Bar Journal Committee and a former member of the Committee on Libraries, Legal Research, and Legal Publications.

ENDNOTES

1. *Pliny the Elder,* Beer Advocate <https://www.beeradvocate.com/beer/profile/863/7971/> [https://perma.cc/SMC8-VXJ8}. Pliny the Elder is a beer brewed in Santa Rosa, California, by Russian River Brewing Company and is annually rated among the best imperial IPAs brewed in the United States. All websites in this article were accessed Sept. 11, 2022.
2. MCL 436.1203(2)(b).
3. *Brewer or Micro Brewer Licensing Requirements & General Information,* Liquor Control Comm, Mich Dep't of Licensing and Regulatory Affairs <https://www.michigan.gov/documents/cis/Brewer-_Micro_Brewer_211769_7.pdf> [https://perma.cc/N758-Y39X].
4. D'Aversa, *Brewing Better Law: Two Proposals to Encourage Innovation in America's Craft Beer Industry,* 165 U PA L Rev 1465, 1476 (2017), available at <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9587&context=penn_law_review> [https://perma.cc/6N45-RQWE].
5. Zolton, *Direct Shipping for Michigan Beer? Wine Not,* 2020 Mich St L Rev 509, 518 (2020), available at <https://core.ac.uk/download/pdf/327102174.pdf>.
6. MCL 436.1203a.
7. MCL 436.1603.
8. MCL 436.1203 and MCL 436.1203a.
9. MCL 436.1105(14).
10. MCL 436.1537.
11. MCL 436.1109(5).
12. MCL 436.1537(1)(j).
13. MCL 436.1113a(1)(a) and MCL 436.1536.
14. *Brewer or Micro Brewer Licensing Requirements.*
15. *Id.*
16. MCL 436.1203a(5).
17. MCL 436.1203a(5)(a).
18. MCL 436.1203a(5)(b).
19. MCL 436.1203a(5)(c).
20. MCL 436.1203a(5)(d).
21. MCL 436.1203a(5).
22. MCL 436.1203 and MCL 436.1203a.
23. MCL 436.1113a(1)(b) and MCL 436.1536.
24. *Wine Maker or Small Wine Maker Licensing Requirements & General Information,* Liquor Control Comm, Mich Dep't of Licensing and Regulatory Affairs <https://www.michigan.gov/lara/-/media/Project/Websites/lara/lcc/MLCC-FAQs/MW-FAQ/Winemaker--Small-Winemaker-FAQ.pdf> [https://perma.cc/QK3N-8ZFS].
25. *Id.*
26. *Id.*
27. MCL 436.1203(10).
28. *2022 Direct-to-Consumer Beer Shipping Report,* SOVOS ShipCompliant (March 2022), available at <https://www.sovos.com/shipcompliant/content-library/dtc-beer-report/> [https://perma.cc/VY2E-9MHE].
29. *Direct Shipping for Michigan Beer? Wine Not.* These states are Alaska, Kentucky, Nebraska, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia.
30. MCL 436.1203(2)(b).
31. See e.g., *United States Postal Service Shipping Equity Act,* HR 3287, 117th Cong (2021).

PRACTICING WELLNESS

Overcoming overwhelm

BY MOLLY RANNS

With each passing year, it seems life becomes more complex. The singular obligation many of us held so long ago has transformed into a multitude of daily tasks — juggling innumerable roles at work, never-ending parenting duties, responsibilities in our personal relationships, accountability regarding extracurricular activities, attempts to expand our intellectual and educational development, myriad social obligations, and the list goes on and on. These commitments come at us at a seemingly relentless pace. It is no wonder, then, that the increasing complexity of the world can lead to feeling constantly overwhelmed.

SYMPTOMS OF OVERWHELM

Harvard professors Robert Kegan and Lisa Lahey have discussed how the complexity of modern life seems to have surpassed the complexity of our minds or our ability to effectively cope with everything coming our way.[1] Attorneys, notoriously high achievers and a highly intelligent group, may believe that knowledge and success make them immune to becoming overwhelmed; however, Kegan and Lahey indicate that in today's multifaceted world, succumbing to overwhelm has nothing to do with one's intelligence, but rather how we make sense of the world and operate in it.[2]

Many of the lawyers I encounter (and, if I'm being honest, myself as well) simply adjust to the overwhelm by putting in longer hours — getting up an hour earlier to cross one more thing off the to-do list or staying up later to sift through emails and get a jump start on the following day. But is this really effective?

A 2020 study by the American Psychological Association indicated that 60% of participants felt overwhelmed by daily life.[3] Overwhelm can be described as "an emotional state in which you are struggling to cope with or deal with your current situation" and is "characterized by feelings of being inundated, swamped, overloaded, overpowered, [and] defeated."[4]

The cognitive impacts of overwhelm are numerous and can include mental slowness, forgetfulness, confusion, difficulty concentrating, and an impaired ability to solve problems.[5] It's no surprise, then, that these difficulties could impact an attorney's work performance. With some studies relating anywhere from 40-70% of malpractice claims to substance use, depression, or both, the need to learn how to best cope with feeling overwhelmed is high.[6] If you're struggling with restlessness, a lost sense of purpose, feelings of exhaustion, or procrastination, you're not alone.[7]

Let's explore ways to overcome overwhelm.

PINPOINT THE SOURCE

Ask yourself: what is one (or possibly two) things that create the greatest amount of stress in your life? Though you may not be able to alleviate it, understanding what contributes to overwhelm may help tremendously. Is it an unfinished project that could be wrapped up by focusing on it more? An uncomfortable conversation that needs to be had? A quickly approaching deadline for which an extension can be requested? Once the root cause is determined, solving the problem becomes more manageable[8] and can help you focus your energy on eliminating your largest source of stress.

BOUNDARIES, BOUNDARIES, BOUNDARIES!

Your time is precious. Work will always be there. Investing more time into work duties does not always result in a corresponding decrease in the number of tasks to perform. Setting work boundaries can look different from person to person, so it's important to find out what best suits you.

Perhaps it's setting aside a certain period of time to work on a task, setting a timer to let you know when that period has expired, and coming to a hard stop when time is up. Maybe it's leaving the office at a certain time every day or, if you're working remotely, logging off at that same time.

Most importantly, say no! Hard work and long hours are common practices within the field of law, but how long is this truly sustainable?

Taking on too many tasks can result in massive overwhelm and negative consequences to mental, emotional, and physical health.[9]

SCHEDULE TIME FOR SELF-CARE

Many attorneys are beginning to realize that setting aside time to focus on one's own well-being actually increases productivity and output.[10] An emotionally healthy attorney is a competent attorney able to provide better client service than a lawyer who feels overwhelmed and burnt out.[11]

What does self-care look like for you? A daily lunchtime walk, a weekly yoga class, setting aside time to read for pleasure, starting each morning with a crossword puzzle, a monthly dinner with friends — investing in one's self-care is creating a life from which you don't need to escape. If taking care of your emotional, mental, and physical self is difficult or a foreign concept to you, schedule time for it in your calendar and begin making it a priority.

CONCLUSION

We all experience overwhelm at times in our personal or professional lives. This article focuses on feeling chronically overloaded and what, specifically, can help to reduce this feeling. When the work itself isn't changing, we can look at how we view our work and how we manage our responsibilities. If pinpointing the source, setting boundaries, and scheduling time for self-care don't seem to help, contact the SBM Lawyers and Judges Assistance Program to learn what can be done to overcome overwhelm.

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

ENDNOTES

1.Zucker, *How to Deal with Constantly Feeling Overwhelmed*, Stress Management, Harvard Business Rev (October 10, 2019) <https://hbr.org/2019/10/how-to-deal-with-constantly-feeling-overwhelmed> [https://perma.cc/MG59-825Q]. All websites cited in this article were accessed Sept. 11, 2022.

2. *Id.*

3. Mandriota, *Overwhelmed? These 9 Strategies May Help*, PsychCentral (November 15, 2021) <psychcentral.com/stress/how-to-deal-with-feeling-overwhelmed> [https://perma.cc/LD6K-M2MH].

4. Hartley, *What is Overwhelm? How Does It Feel?* The Rediscovery of Me (January 1, 2019) <https://rediscoveryofme.com/2019/01/01/> [https://perma.cc/EE7A-F4NG].

5. *How to Deal with Constantly Feeling Overwhelmed.*

6. *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, Nat'l Task Force on Lawyer Well-Being, ABA (2017), available at <https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer_well_being_report_final.pdf> [https://perma.cc/AWF8-SVJF].

7. *What is Overwhelm? How Does It Feel?*

8. *Overwhelmed? These 9 Strategies May Help.*

9. Anker & Krill, *Stress, drink, leave: An examination of gender-specific risk factors for mental health problems and attrition among licensed attorneys*, PLoS ONE 16(5): e0250563 (May 12, 2021) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0250563> [https://perma.cc/4ZQ3-KEX6].

10. Verma, *How to Quell the Overwhelm: Using Organization and Self-Care to Manage Stress*, ABA (March 25, 2020) <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2020/how-to-quell-the-overwhelm-using-organization-and-self-care-to-manage-stress/> [https://perma.cc/8PUA-Y3ZU].

11. *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.*

LAW PRACTICE SOLUTIONS

Lawyers' professional liability insurance: AVOIDING COVERAGE GAPS

BY JOANN L. HATHAWAY

The "Great Resignation" was a term coined to describe the mass exodus of workers from the workforce when COVID-19-related restrictions lightened, and remote workers were summoned to return to their brick-and-mortar offices. This migration also included attorneys (particularly younger attorneys) and caused them to join existing firms or form new firms that better fit their vision of an ideal workplace. However, many of these attorneys are likely unaware that they may have jeopardized their lawyers' professional liability insurance (LPL) and may be left with gaps in coverage.

When attorneys leave a firm, join a different firm, or form a new firm, great care should be taken to understand how these actions could affect their insurance coverage and the coverage of predecessor and successor firms. Too frequently, attorneys do not consider the insurance implications that arise when they change firms until after they've left, at which point it can become much harder for the parties involved to get appropriate coverage.

When attorneys leave firms, their LPL coverage usually remains in effect for the client they represented during the time they were employed by their now predecessor firm — provided the predecessor firm continues to maintain an insurance policy or purchases an extended-report period (ERP) in the event it discontinues coverage.

Departing attorneys also have the option of purchasing their own ERP and should carefully consider doing so, especially if they have reason to believe that a predecessor firm may not continue to renew its LPL insurance policy, may not purchase an ERP, or dissolve. One reason attorneys leaving firms are hesitant to purchase ERPs is because the premiums can be costly. Even so, the decision whether or not to purchase should be given thoughtful consideration.

When joining new firms, attorneys should have a full understanding of the coverage being afforded to them under the firm's current insurance policy and ensure they are added to the policy in a timely manner pursuant to policy conditions which can vary from carrier to carrier. When adding an attorney to a firm, those in charge of the interviewing and hiring processes should ask questions about the applicant's LPL insurance coverage history and claims and grievance history.

It is common for a firm to submit an application to its insurance carrier with information regarding the new attorney — when the attorney will start work, practice areas, prior LPL insurance coverage details, and claims and grievance history. Unless an attorney is seeking prior acts, most carriers will not charge an additional premium midterm. However, some carriers charge a full rate for attorneys joining a firm within a certain number of days of policy issuance (for example, 30 days.)

DISSOLVING A PREDECESSOR FIRM AND BEGINNING ANEW

It's not unusual for members to break away from a firm to form a new firm or completely dissolve a firm and start anew. This is where maintaining prior acts coverage can be problematic. Often, a predecessor firm can be included in the new firm's insurance policy if the new firm has assumed at least 50% of the predecessor firm's assets and liabilities and at least 50% of the attorneys from the predecessor firm become members of the successor firm.

Policies can vary greatly regarding who is insured, so great care should be taken to fully read the policy and consult with a knowledgeable insurance agent to ensure the broadest possible coverage.

Here's a sample policy defining a predecessor firm:

> *"Predecessor Firm" means any sole proprietorship, partnership, professional corporation, professional association, limited liability corporation, or partnership engaged in legal services and to whose financial assets and liabilities the firm listed as the Named Insured in the Declarations is the majority successor in interest.*

ERP/TAIL COVERAGE

An ERP (or "tail") is a purchase option a policyholder has in place to

avoid gaps in coverage. When an attorney leaves a firm, becomes disabled, or retires, an ERP extends the period for reporting claims. It is important to understand that historically, ERPs have not increased or reinstated the policy's limit of liability; however, some carriers have begun to offer attorneys leaving a firm an additional limit of liability for a price.

For coverage to apply under an ERP, the act giving rise to a claim must have occurred after the retroactive date of the policy and on or before the policy termination date. If the insured changes insurance carriers but maintains the same retroactive date, it should not be necessary to get an ERP from the initial carrier. However, as stated many times previously, LPL insurance policies can and do differ greatly in their scope of coverage. Also, carriers do not always interpret similarly worded coverage terms the same. Accordingly, careful consideration should be given to purchasing an ERP regardless of the insured's reason for carrier departure or policy cancellation.

There can be several variations in the provisions associated with ERPs.

Time to elect

LPL insurance carriers will provide a strict time frame during which an insured may elect to purchase an ERP, varying from a few days to a few months.

Availability

Many carriers allow an insured (either the first named insured or the attorney scheduled under the policy of the first named insured) to purchase an ERP if the insured decides to cancel or not renew the policy; this is defined as a two-way ERP. Others allow an insured to purchase an ERP only if the carrier cancels or does not renew the policy; this is defined as a one-way ERP.

Some LPL policies provide for the issuance of a free ERP for a specified period of time if the insured retires, dies, or becomes disabled and has been continuously covered by the carrier for a specified number of years. However, what has been given can be taken away — some carriers offering free ERPs do so conditionally based upon the ongoing, continuous retirement or disability of the insured. An insured attorney resuming their practice must repay the carrier well over 100% of the annual premium that was in effect on the ERP issuance date.

Duration

LPL insurance carriers differ in the length of the ERPs they offer. Some offer multiple options such as one-year, three-year, or unlimited ERP durations. Others only offer one option. An insured should become familiar with the statute of limitations as it pertains to legal malpractice actions to ensure the ERP extends insurance coverage to provide maximum protection.

Cost

Carriers commonly include language in their policies about ERP cost. The cost is often a percentage of the expiring policy's premium with a common variance of 100–200% depending on the length of the ERP. Some policies specify that the premium will be determined in accordance with the carrier's rules and rates in effect when the ERP is purchased. This policy provision, while it may be unavoidable, puts the insured at a disadvantage because the ERP premium won't be known until it's time to purchase.

CONCLUSION

Understanding the many variables that apply to ERPs helps attorneys make informed choices when selecting coverage or deciding whether to switch carriers. Having the option to purchase an ERP or, under some policies, receive a free ERP in the event of retirement, death, or disability can provide attorneys peace of mind. Accordingly, care should be taken to understand the conditions necessary to be eligible for an ERP under an LPL insurance policy. A wise attorney reads their policy, gets information and interpretation explanations in writing, and seeks clarification from an experienced insurance agent when necessary.

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

ETHICAL PERSPECTIVE

The new MRPC 1.19

BY MICHAEL S. LEIB AND KENNETH M. MOGILL

The Michigan Supreme Court adopted MRPC 1.19, effective Sept. 1, 2022.[1] The rule likely resolves a difference of opinion between the State Bar of Michigan Board of Commissioners and the Michigan Court of Appeals and addresses circumstances in which lawyers may include pre-dispute arbitration clauses in agreements with new or existing clients. The comment to the rule also provides practitioners with helpful guidance regarding compliance.

BACKGROUND

Pre-dispute arbitration clauses have been on some lawyers' radar for years. In 2002, the American Bar Association issued Formal Opinion 02-425 addressing arbitration clauses in retainer agreements.[2] The opinion noted that arbitration of fee disputes was more widely accepted than arbitration of malpractice claims. Indeed, Comment 9 to ABA Model Rules of Professional Conduct Rule 1.5 advises that where "a procedure has been established for the resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and even when it is voluntary, the lawyer should conscientiously consider submitting to it."

Formal Opinion 02-425 then addresses the attorney-client relationship, noting that it "involves professional and fiduciary duties on the part of the lawyer that generally are not present in other relationships" and that these duties require "special oversight and review" of a retainer agreement, specifically drawing from other provisions of the model rules limiting a lawyer's ability to enter into contracts with clients. Similarly, ABA Model Rules of Professional Conduct Rule 1.8 addresses conflicts of interests that can arise when entering into agreements with clients.

The opinion also refers to agreements that provide an alternate method of dispute resolution. For example, an agreement to limit prospective liability would violate ABA Model Rules of Professional Conduct Rule 1.8(h) unless the client is independently represented in making such an agreement. Even though arbitration and typical litigation procedures are markedly different, merely entering into an agreement to arbitrate future disputes does not violate Rule 1.8(h) so long as the client is sufficiently informed about the differences. That is, a pre-dispute arbitration clause is ethically permissible if it provides new or existing clients with "sufficient information about these differences and their effect on the client's rights to permit affected clients to make an informed decision about whether to accept an agreement that includes such a provision."[3]

After accounting for the requirements of ABA Model Rules of Professional Conduct Rule 1.4 setting out the duty of communication with a client, Formal Opinion 02-425 concludes that:

> [i]t is ethically permissible to include in a retainer agreement with a client a provision that requires mandatory arbitration of fee disputes and malpractice claims provided that (1) the client has been fully apprised of the advantages and disadvantages of arbitration and has been given sufficient information to permit her to make an informed decision about whether to agree to the inclusion of the arbitration provision in the retainer agreement, and (2) the arbitration provision does not insulate the lawyer from liability or limit the liability to which she would otherwise be exposed under common law and/or statutory law.

The SBM Board of Commissioners in 2016 largely echoed the ABA's position when, in Ethics Opinion R-23, it approved a referral from the SBM Standing Committee on Professional Ethics:[4]

> A Michigan law firm asks whether a provision in a fee agreement is ethically permissible. The provision documents

"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.

> the client's agreement that any dispute over the law firm's services will be resolved through arbitration with the American Arbitration Association.

The opinion notes the standing committee's previous informal opinions concerning arbitration clauses — RI-02 (1989), RI-196 (1994), RI-257 (1996) — and caselaw, including *Watts v. Polaczyk*, which held that a pre-dispute arbitration agreement was enforceable because the client had signed it.[5] Viewing the opinions and caselaw as not being subject to reconciliation, Ethics Opinion R-23 clarified the board's view of a lawyer's ethical obligations when including a pre-dispute arbitration clause in a retainer agreement.

While explaining its conclusion, Ethics Opinion R-23 notes that an attorney agreeing to represent a client is "in the process of taking on a fiduciary duty" to the client and an arbitration provision is generally not included to benefit the client. While there is some dispute as to whether a lawyer has inchoate fiduciary responsibilities to a prospective but often soon-to-be client, there are solid policy reasons for concluding that a prospective client — one who has not yet signed a retainer agreement or otherwise retained an attorney — should be protected when engaging with a lawyer who has superior knowledge and, with the stroke of a pen, will be deemed to be the fiduciary.

Ethics Opinion R-23 is largely consistent with ABA Formal Opinion 02-425, which states that a pre-dispute arbitration clause is permissible if the client is "fully apprised of the advantages and disadvantages of arbitration and has given her informed consent to the inclusion of the arbitration provision in the retainer agreement." R-23 goes further and provides, alternatively, that the clause will be acceptable if:

- "[P]rior to signing the fee agreement, the client … consults with independent counsel;"
- "[I]f the client refuses to agree to arbitration at the onset of the attorney-client relationship, there is no prohibition against the lawyer and the client agreeing to arbitrate the matter at a later date;" and
- "[T]he client maintains the right to file a Request for Investigation with the AGC."

Both ABA Formal Opinion 02-425 and Ethics Opinion R-23 specify the type of information needed in order for consent to be treated as informed consent, including the position stated in Opinion 02-425 that "arbitration typically results in the client's waiver of significant rights, such as the waiver of the right to a jury trial, the possible waiver of broad discovery, and the loss of the right to appeal … [and as to] any obligation that the lawyer or client may have to pay the fees and costs of arbitration." Further, Opinion 02-425 recommends advising clients that the arbitrator may be an attorney rather than a judge.

In 2020, the Michigan Court of Appeals decided in *Tinsley v. Yatooma* that a pre-dispute arbitration provision was enforceable where the client had consulted with independent counsel regarding the engagement agreement.[6] In reaching its decision, the court discussed Ethics Opinion R-23, reiterating that ethics opinions are not binding but suggested "contemplation by the State Bar of Michigan and our Supreme Court of an addition to or amendment to MRPC 1.8 to specifically address arbitration clauses in attorney-client agreements. The issue raises sufficient concerns justifying clarification on the subject."[7]

Another important contextual point is that some courts and legislatures have recently scrutinized pre-dispute arbitration agreements. For example, President Biden in March 2022 signed legislation amending the Federal Arbitration Act, 9 USC 401 *et seq*. prohibiting pre-dispute agreements that purport to submit claims of sexual harassment and sexual assault to arbitration.[8] Also, after the New Jersey Supreme Court decided *Delaney v. Dickey*,[9] in which it found that a lawyer may enter into a pre-dispute arbitration agreement if it adequately explains to the client the benefits and risks of arbitration, the court referred the matter to its Advisory Committee on Professional Ethics for recommendations and proposed guidance. Earlier this year, the committee issued its report and recommendations with widely disparate majority and minority positions; as of the publication of this article, the New Jersey Supreme Court website has yet to reflect any action on the report.

While arbitration clauses can provide a measure of certainty and value for business clients, they can be an illusory option for individual clients of limited economic means. For those clients, it is especially important to have sufficient information about what arbitration truly is in order for the client to make an informed decision. The challenge, then, was whether it was possible to craft a rule that leaves appropriate discretion for those who would benefit from an arbitration provision while protecting those who would not.

In December 2021, the Michigan Supreme Court joined the fray by issuing a proposed amendment to MRPC 1.8.[10] The proposal would have prohibited agreements including lawyer-client arbitration clauses unless the client is independently represented in reviewing the provision.

COMMENTS ON THE PROPOSED RULE

The Court's proposal generated comments ranging from unequivocal support to significant opposition.

The SBM Alternative Dispute Resolution Section, for example, opposed the amendment, raising concerns about possible friction between it and the Federal Arbitration Act.[11] The proposal appeared to equate arbitration clauses with limitations of liability contrary to authority in other jurisdictions. The section also opined that the proposal appeared to be inconsistent with other MRPC provisions and was overbroad by implying arbitration is an inherently unfair and biased means of dispute resolution.[12] The section was also concerned that, as a practical matter, the proposal would effectively ban pre-dispute arbitration provisions in attorney-client agreements, and further noted that the proposal was inconsistent with Ethics Opinion R-23 and contrary to ABA Formal Opinion 02-245. As an alternative, the section proposed the following rule and suggested that it not be inserted in MPRC 1.8(h):

> A lawyer shall not include a provision requiring arbitration of disputes in an agreement with a client or proposed client unless the client or proposed client is reasonably informed of the advantages and disadvantages of the arbitration provision, is advised to seek independent counsel, and affirmatively consents to arbitration in writing.[13]

The SBM Professional Ethics Committee took a position similar to the ADR Section, encouraging adoption of an amendment but with the exceptions set out in Ethics Opinion R-23 rather than a flat ban on arbitration clauses unless the client is independently represented.[14] The Attorney Grievance Commission supported the proposal because "… it serves the purpose of client protection."[15]

Between the end of the comment period and the May 2022 administrative hearing on the proposal, the authors of this article had conversations with ADR Section leaders, members of the Professional Ethics Committee, and other stakeholders to harmonize their approaches to the proposal. These conversations led to a revised proposal to the Court that addressed their concerns.

Implicit in the consensus draft were several assumptions and concerns that informed the ensuing draft, including:

1. The amendment as proposed by the Court painted with too broad a brush to be workable;
2. Some clients entering into an agreement providing for arbitration of future disputes may be at a substantial information disadvantage regarding their understanding of the pros and cons of arbitration in their particular circumstances;
3. Arbitration is a process a client may or may not choose if provided sufficient information;
4. In some circumstances, an agreement to arbitrate disputes can be beneficial and, therefore, attractive to a client; and
5. Lawyers considering an arbitration clause in representation or other agreements would benefit from clear guidance regarding what constitutes informed consent.

On June 8, 2022, the Court adopted MRPC 1.19.[16] The rule, which largely incorporates the consensus proposal, addresses arbitration agreements between a lawyer and client and permits such agreements only where specific safeguards are met to protect against both lawyer overreach and clients making uninformed decisions. Rule 1.19 says:

> A lawyer shall not enter into an agreement for legal services with a client requiring that any dispute between the lawyer and the client be subject to arbitration unless the client provides informed consent in writing to the arbitration provision, which is based on being
>
> > (a) reasonably informed in writing regarding the scope and the advantages and disadvantages of the arbitration provision, or
> > (b) independently represented in making the agreement.

The comment to the rule provides welcome guidance to members of the Bar by clarifying both the rule's purpose and what "informed consent" means under the circumstances. In adopting the revised proposal, the Court recognized that its initial proposal — which would have required independent representation before *any* arbitration clause would be ethically acceptable — would have unnecessarily increased costs for clients who are aware of the benefits and risks of arbitration. By providing an alternative to independent representation, the Court created a mechanism that will hopefully ensure actual informed consent by clients unaware of the process. The comment is uniquely specific:

> To ensure that client consent to an arbitration provision is informed consent, at a minimum the agreement should advise the client of the practical advantages and disadvantages of arbitration. Inclusion of the following information is presumed to be sufficient to enable a client to give informed consent:
>
> 1. By agreeing to arbitration, the client is
>   a. waiving the right to a jury trial,
>   b. potentially waiving the right to take discovery to the same extent as is available in a case litigated in a court,

   c. waiving or limiting the right to appeal the result of the arbitration proceeding to specific circumstances established by law, and
   d. agreeing to be financially responsible for at least a share of the arbitrator's compensation and the administrative fees associated with the arbitration.
2. Whether the agreement to arbitrate includes arbitration of legal malpractice claims against the lawyer;
3. Identification of the organization or person(s) that will administer the arbitration;
4. If the client declines to agree to arbitration at the onset of the attorney-client relationship, there is no prohibition against the lawyer and the client agreeing to arbitrate the matter at a later date;
5. Arbitration may be conducted as a private proceeding, unlike litigation in a court;
6. The parties can select an arbitrator who is experienced in the subject matter of the dispute;
7. Depending on the circumstances, arbitration can be more efficient, expeditious and inexpensive than litigation in a court; and
8. The client's ability to report unethical conduct by the lawyer is not restricted.

The comment also eliminates the need to distinguish between prospective clients and current clients and the need to determine whether a fiduciary duty is owed to an "almost" client by providing that MRPC 1.19 applies at the onset of an attorney-client relationship and agreements entered into during an ongoing attorney-client relationship.

Notably, MPRC 1.19 addresses process only and does not interfere with existing ethics rules addressing matters of substance. For example, the rule does not affect MRPC 1.8(h)(1), which provides that an agreement limiting a lawyer's malpractice liability is permissible only if the client is independently represented.

Finally, it is worth noting that placement of the rule as a stand-alone rule rather than part of an existing rule was deliberate. The Court's proposal would have put the amendment in MRPC 1.8, which would have conveyed a negative message by portraying arbitration between a lawyer and client as implicitly suspect.[17] As a stand-alone rule, MRPC 1.19 carries none of the baggage that would have followed had the provision been included in Rule 1.8.

FINAL COMMENTS

The authors believe the rule, as adopted, reflects a reasonable compromise that carefully balances the competing interests at stake. MRPC 1.19 will protect both lawyers and clients by providing clarity and specificity, including requiring that both the minimum requisite information and the client's consent be in writing. Finally, the authors are grateful to the Michigan Supreme Court for considering the comments of stakeholders.

Michael S. Leib is a mediator and arbitrator with Leib ADR in Bloomfield Hills specializing in complex business disputes including bankruptcy, real estate, professional liability, and employment. He is on the commercial panel of the American Arbitration Association and member of PREMi, an organization of attorney dispute resolution experts. Leib received his bachelor's degree from Kalamazoo College, his master's degree from the University of Montana, and his law degree from Wayne State University Law School.

Kenneth M. Mogill's practice has long been concentrated in the field of professional ethics. He is a past chair of the State Bar of Michigan Standing Committee on Professional Ethics and an adjunct professor at Wayne State University Law School, where he teaches the course on professional responsibility.

ENDNOTES

1.Administrative Order No 2021-07 (June 8, 2022) (adoption of new MRPC 1.19).
2. *Formal Opinion 02-425: Retainer Agreement Requiring the Arbitration of Fee Disputes and Malpractice Claims*, ABA (February 20, 2002).
3. ABA Model Rules of Professional Conduct Rule 1.8.
4. Most ethics opinions issued by the State Bar are informal opinions (RI-***) issued by the Standing Committee on Professional Ethics; from time to time the Board of Commissioners issues a formal opinion (R-**).
5. 242 Mich App 600; 619 NW2d 714 (2000).
6. 333 Mich App 257; 964 NW2d 45 (2020).
7. *Id.* at 265, n 5.
8. Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, Pub L No 117-90, 136 Stat 26.
9. 244 NJ 466; 242 A3d 257 (2020).
10. Administrative Order No 2021-07 (December 15, 2021) (proposed amendment of MRPC 1.8).
11. *Public Policy Position: ADM File No 2021-07 – Proposed Amendment of MRPC 1.8*, Alternative Dispute Resolution Section, SBM (adopted February 9, 2022).
12. *Id.*
13. *Id.*
14. April 1, 2022, letter from SBM Professional Ethics Committee Chair Edward J. Hood to Michigan Supreme Court Clerk of the Court Larry S. Royster.
15. April 5, 2022, letter from SBM Attorney Grievance Commission Deputy Administrator Kimberly L. Uhuru to Office of Administrative Counsel, State of Michigan.
16. Administrative Order No 2021-07 (June 8, 2022).
17. Administrative Order No 2021-07 (December 15, 2021).

PUBLIC POLICY REPORT

2021-2022 LEGISLATURE

HB 6344 (Lightner) **Courts: other; Juveniles: juvenile justice services.** Courts: other; duties of the appellate defender; include definition of youth. Amends title & secs. 2, 4, 6 & 7 of 1978 PA 620 (MCL 780.712 et seq.) & adds sec. 1a.

HB 6345 (Lightner) **Criminal procedure: defenses.** Criminal procedure: defenses; Michigan Indigent Defense Commission Act; expand definitions. Amends title & secs. 3, 5, 7, 9, 11, 13, 15, 17, 21 & 23 of 2013 PA 93 (MCL 780.983 et seq.).

POSITION: Support the bills in concept and recommend that they be amended to: (1) provide a broader definition of the youth defense mandate; and (2) establish appellate attorney fee incentives consistent with the MIDC Act and a requirement for the state to reimburse local systems for these fees.

IN THE HALL OF JUSTICE

Proposed Amendment of Rule 3.703 of the Michigan Court Rules (ADM File No. 2022-09) – Commencing a Personal Protection Action (See *Michigan Bar Journal* September 2022, p 65).

STATUS: Comment period expired Oct. 1, 2022; Public hearing to be scheduled.

POSITION: Oppose.

Proposed Amendment of Rule 6.001 and Proposed Addition of Rule 6.009 of the Michigan Court Rules (ADM File No. 2021-20) – Scope; Applicability of Civil Rules; Superseded Rules and Statutes; Use of Restraints on a Defendant (See *Michigan Bar Journal* July-August 2022, p 75).

STATUS: Comment period expired Oct. 1, 2022; Public hearing to be scheduled.

POSITION: Support.

Proposed Amendment of Rule 6.201 of the Michigan Court Rules (ADM File No. 2021-29) – Discovery (See *Michigan Bar Journal* September 2022, p 65).

STATUS: Comment period expired Oct. 1, 2022; Public hearing to be scheduled.

POSITION: Support with an additional amendment striking "the address, telephone or cell phone number, or" from the proposed language. Further recommend that the proposed amendment should be corrected to read "MCR 1.109(D)(9)(a)."

Proposed Amendment of Rule 6.502 of the Michigan Court Rules (ADM File No. 2021-48) – Motion for Relief from Judgment (See *Michigan Bar Journal* September 2022, p 66).

STATUS: Comment period expired Oct. 1, 2022; Public hearing to be scheduled.

POSITION: Support.

Proposed Amendment of Rule 7.202 of the Michigan Court Rules (ADM File No. 2021-35) – Definitions (See *Michigan Bar Journal* ____, p ___).

STATUS: Comment period expired Oct. 1, 2022; Public hearing to be scheduled.

POSITION: Oppose.

Proposed Amendment of Rule 7.215 of the Michigan Court Rules (ADM File No. 2021-39) – Opinions, Orders, Judgments, and Final Process for Court of Appeals (See *Michigan Bar Journal* ____, p ___).

STATUS: Comment period expired Oct. 1, 2022; Public hearing to be scheduled.

POSITION: Support and recommend that the Court give consideration to the issue of reissuing opinions and orders in trial courts identified by Mr. Bassett in his Sept. 8, 2022, comment on this matter.

IN MEMORIAM

MATTHEW S. ABDO, P74058, of Clinton Township, died July 24, 2022. He was born in 1984, graduated from Michigan State University College of Law, and was admitted to the Bar in 2010.

DANIELLE SUZANNE CADORET, P77162, of Detroit, died Aug. 12, 2022. She was born in 1975, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 2013.

DANIEL G. GALANT, P26644, of Grosse Pointe Farms, died July 10, 2022. He was born in 1951, graduated from University of Detroit School of Law, and was admitted to the Bar in 1976.

EDWARD P. GOOD, P14151, of Farmington Hills, died Dec. 23, 2021. He was born in 1924 and was admitted to the Bar in 1970.

WILLIAM P. HAMPTON, P14591, of Bloomfield Hills, died Aug. 24, 2022. He was born in 1938, graduated from Wayne State University Law School, and was admitted to the Bar in 1964.

PETER A. KATZ, P49077, of St. Joseph, died Aug. 17, 2022. He was born in 1956, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1993.

TERRENCE E. KEATING, P15780, of Cheboygan, died July 29, 2022. He was born in 1938, graduated from University of Detroit School of Law, and was admitted to the Bar in 1964.

JEAN LEDWITH KING, P15973, of Nashville, Tenn., died Oct. 9, 2021. She was born in 1924, graduated from University of Michigan Law School, and was admitted to the Bar in 1970.

JAMES F. LOGAN, P16766, of Palm City, Fla., died May 16, 2022. He was born in 1933, graduated from University of Michigan Law School, and was admitted to the Bar in 1959.

RONALD S. MELAMED, P56036, of Charlotte, N.C., died Aug. 4, 2022. He was born in 1971, graduated from University of Michigan Law School, and was admitted to the Bar in 1996.

FREDERICK E. METRY, P17656, of St. Clair Shores, died June 10, 2022. He was born in 1933 and was admitted to the Bar in 1957.

MICHAEL P. SALHANEY, P43701, of Troy, died July 30, 2022. He was born in 1965, graduated from Detroit College of Law, and was admitted to the Bar in 1990.

FLORENCE SCHOENHERR-WARNEZ, P21991, of Center Line, died Aug. 30, 2022. She was born in 1930, graduated from University of Detroit School of Law, and was admitted to the Bar in 1957.

DAVID F. SCHON, P47512, of Washington, D.C., died June 23, 2022. He was born in 1966, graduated from Wayne State University Law School, and was admitted to the Bar in 1993.

STEVEN L. SCHWARTZ, P43733, of Birmingham, died Feb. 15, 2022. He was born in 1963, graduated from University of Detroit School of Law, and was admitted to the Bar in 1990.

HARRY C. TATIGIAN, P21278, of Livonia, died Aug. 22, 2022. He was born in 1932, graduated from University of Michigan Law School, and was admitted to the Bar in 1955.

JOHN E. TERBEEK, P49659, of Wyoming, died Aug. 25, 2022. He was born in 1952 and was admitted to the Bar in 1994.

PAUL H. TOWNSEND JR., P21526, of Grosse Pointe, died Oct. 31, 2021. He was born in 1932 and was admitted to the Bar in 1958.

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.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NOTICE OF AMENDMENTS TO LOCAL RULES

On Sept. 6, the judges of the United States District Court for the Eastern District of Michigan approved amendments to the following local rules:

LR 83.1, Amendments to Local Rules; Effective Date
LR 83.20, Attorney Admission
LR 83.50, Bankruptcy Cases and Proceedings

The amendments are effective Oct. 1, 2022. The text of the amendments may be found at http://www.mied.uscourts.gov/.

ORDERS OF DISCIPLINE & DISABILITY

DISBARMENT

Phillip G. Bazzo, P25243, Lincoln Park, by the Attorney Discipline Board affirming Tri-County Hearing Panel #16 Order of Disbarment. Disbarment effective Feb. 24, 2021.

Based on the evidence presented by the parties at the hearings held in this matter, the hearing panel found that the respondent committed professional misconduct as charged in a two-count formal complaint involving two separate, unrelated client matters. In the first matter, as referenced in count 1 of the formal complaint, the panel found that the respondent represented a client when the representation of that client was materially limited by the lawyer's own interests in violation of MRPC 1.7(b), which did not satisfy the exceptions to MRPC 1.7(b)(1)-(2); entered into a business transaction with a client in violation of MRPC 1.8(a), which did not satisfy the exceptions of MRPC 1.8(a)(1)-(3); failed to promptly notify a client when funds to which the client had an interest were received in violation of MRPC 1.15(b)(1); failed to promptly pay or deliver any funds to which a client was entitled to receive in violation of MRPC 1.15(b)(3); failed to promptly render a full accounting regarding property to which a client was entitled in violation of MRPC 1.15(b)(3); failed to appropriately safeguard client funds in violation of MRPC 1.15(d); and engaged in conduct that involved dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law where such conduct reflected adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b).

In the second matter, as referenced in count 2 of the formal complaint, the panel found that the respondent represented a client when the representation of that client was materially limited by the lawyer's own interests in violation of MRPC 1.7(b), which did not satisfy the exceptions to MRPC 1.7(b)(1)-(2); knowingly revealed a confidence or secret of a client without permission or other exception in violation of MRPC 1.6(b)(1); knowingly used a confidence or secret of a client to the disadvantage of the client without permission or other exception in violation of MRPC 1.6(b)(2); knowingly used a

confidence or secret of a client to the advantage of the lawyer or a third person without permission or other exception in violation of MRPC 1.6(b)(3); failed to maintain a normal client-lawyer relationship with his client when that client's ability to make adequately considered decisions in connection with the representation may have been impaired in violation of MRPC 1.14(a); and attempted to seek the appointment of a guardian or take other protective action with respect to a client before properly assessing whether the client could adequately act in his own interest in violation of MRPC 1.14(b).

The respondent was also found to have violated MCR 9.104(1)-(3) and MRPC 8.4(a) and(c) as charged in both counts of the formal complaint.

The panel ordered that the respondent be disbarred from the practice of law. The respondent filed a timely petition for review and a petition for a stay of the discipline imposed. The respondent's petition for stay was denied by the board on Feb. 26, 2021. After conducting review proceedings in accordance with MCR 9.118, the board affirmed the hearing panel's order of disbarment on Sept. 28, 2021. On Oct. 19, 2021, the respondent filed a motion for reconsideration of the board's order pursuant to MCR 9.118(E), which was denied on Jan. 12, 2022.

On Feb. 9, 2022, the respondent filed a timely application for leave to appeal with the Michigan Supreme Court pursuant to MCR 9.122(A). On May 31, 2022, the Court issued an order denying the respondent's application for leave to appeal. On July 6, 2022, the respondent filed a motion for reconsideration of the Court's order. On Sept. 6, 2022, the Court denied the respondent's motion. Costs were assessed in the total amount of $3,830.50.

SUSPENSION (BY CONSENT)

Eric Allan Buikema, P58379, Farmington Hills, by the Attorney Discipline Board Tri-County Hearing Panel #53. Suspension, one year, effective Aug. 11, 2022.

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. Pursuant to the parties' stipulation, the panel found that the respondent committed professional misconduct when he was convicted on Dec. 3, 2021, by a nolo contendere plea of criminal sexual conduct, 4th degree, a misdemeanor, in violation of MCL 750.520E(1)(a) in a matter entitled *People of the State of Michigan v Eric Allan Buikema*, 6th Circuit Court Case No. 2019-272066-FH.

Based on the respondent's conviction, admissions, and the stipulation of the parties, the panel found that the respondent 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) and MRPC 8.4(b).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for one year. Costs were assessed in the amount of $909.71.

REPRIMAND

Jay B. Dorsey, P73975, Washington, D.C., by the Attorney Discipline Board. Reprimand effective Sept. 9, 2022.

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

The grievance administrator filed a Notice of Filing of Reciprocal Discipline pursuant to MCR 9.120(C) that attached a certified copy of an opinion and order of a public censure and one-year unsupervised period of probation with conditions entered by the District of Columbia Court of Appeals on May 12, 2022, in the matter titled *In re J.B. Dorsey III, Respondent*, District of Columbia Court of Appeals Case No. 22BA171.

An order regarding imposition of reciprocal discipline was issued by the board on June 27, 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 June 27, 2022, order expired without objection or request for hearing by either party.

On Aug. 18, 2022, the Attorney Discipline Board ordered that the respondent be reprimanded. Costs were assessed in the amount of $1,508.36.

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

James M. Harris, P24939, Chicago, Illinois, by the Attorney Discipline Board Tri-County Hearing Panel #13. Interim suspension effective Aug. 10, 2022.

The respondent failed to appear at the Aug. 2, 2022, hearing and satisfactory proofs were entered into the record that the respondent possessed actual notice of the proceedings. As a result, the hearing panel issued an order of suspension in accordance with MCR 9.115(H)(1), effective Aug. 10, 2022, and until further order of the panel or the board.

DISBARMENT AND RESTITUTION

Stephen LaCommare, P52718, Howell, by the Attorney Discipline Board Washtenaw

County Hearing Panel #1. Disbarment, effective Aug. 11, 2022.[1]

After proceedings conducted pursuant to MCR 9.115, the panel found, by default, that the respondent committed professional misconduct as charged in a five-count formal complaint during his representation of four separate clients in their separate legal matters and by failing to answer six separate requests for investigation.

Based on the respondent's default and the evidence presented at the hearing, the panel found that the respondent, with respect to counts 1-4, failed to undertake preparation necessary under the circumstances in violation of MRPC 1.1(b); neglected legal matters in violation of MRPC 1.1(c); failed to act with reasonable diligence and promptness in representing his clients in violation of MRPC 1.3; failed to keep his clients reasonably informed about the status of their matters and failed to comply promptly with reasonable requests for information in violation of MRPC 1.4(a); failed to take reasonable steps to protect a client's interests upon termination of representation, including a failure to refund any advance payment of fee that has not been earned, in violation of MRPC 1.16(d); engaged in conduct prejudicial to the proper administration of justice in violation of MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); and engaged in conduct that was contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3).

With regard to count 5, the panel found that the respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2); failed to answer a request for investigation in conformity with MCR 9.113(A)-(B)(2) in violation of MCR 9.104(7) and MRPC 8.1(a)(2); engaged in conduct prejudicial to the proper administration of justice in violation of MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); engaged in conduct that was contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3); and engaged in conduct that violated the Michigan Rules of Professional Conduct in violation of MCR 9.104(4).

The panel ordered that the respondent be disbarred from the practice of law and pay restitution in the total amount of $7,750. Costs were assessed in the amount of $1,755.16.

1. The respondent has been continuously suspended from the practice of law in Michigan since Nov. 16, 2021. Please see Notice of Interim Suspension Pursuant to MCR 9.115(H)(1), issued Nov. 17, 2021.

DISBARMENT AND RESTITUTION (WITH CONDITION)

Stephen LaCommare, P52718, Howell, by the Attorney Discipline Board Ingham County Hearing Panel #6. Disbarment, effective Nov. 16, 2021.[1]

After proceedings conducted pursuant to MCR 9.115, the panel found, by default, that the respondent committed professional misconduct, as charged in a six-count formal complaint, in his representation of four separate clients in their various legal matters; misused his IOLTA account; failed to timely answer one request for investigation; and completely failed to answer two additional requests for investigation.

Based on the respondent's default and the evidence presented at the hearing, the panel found that respondent, with respect to counts 1-4, neglected legal matters in violation of MRPC 1.1(c); failed to act with reasonable diligence and promptness in representing clients in violation of MRPC 1.3; failed to keep his clients reasonably informed about

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

the status of their matters and failed to comply promptly with reasonable requests for information in violation of MRPC 1.4(a); failed to take reasonable steps to protect his clients' interests upon termination of representation, including a failure to refund any advance payment of fees that had not been earned, in violation of MRPC 1.16(d) (counts 1, 2, and 4); and engaged in conduct that involved dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law where such conduct reflected adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b) (count 3).

With regard to count 5, the panel found that the respondent commingled and misappropriated client funds in violation of MRPC 1.15(b)(3) and MRPC 1.15(d); failed to safeguard client funds in an IOLTA in violation of MRPC 1.15(d); and misused his IOLTA by paying personal expenses from it in violation of MRPC 1.15(d) and (f).

With regard to count 6, the panel found that the respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2); failed to answer a request for investigation in conformity with MCR 9.113(A)-(B)(2) in violation of MCR 9.104(7) and MRPC 8.1(a)(2); and engaged in conduct that violated the Michigan Rules of Professional Conduct in violation of MCR 9.104(4).

Additionally, as charged in the entire complaint, the panel found that the respondent engaged in conduct that was prejudicial to the proper administration of justice in violation of MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); and engaged in conduct 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 two years effective Nov. 16, 2021, the date respondent's interim suspension under MCR 9.115(H)(1) went into effect; that he pay restitution in the total amount of $4,250; and that he be subject to a condition relevant to the established misconduct.

The grievance administrator filed a timely petition for review. After conducting review proceedings in accordance with MCR 9.118, the board issued an order increasing discipline from a two-year suspension to disbarment and affirmed the order of restitution and the condition imposed by the hearing panel. Costs were assessed in the amount of $2,359.95.

1. The respondent has been continuously suspended from the practice of law in Michigan since Nov. 16, 2021. Please see Notice of Interim Suspension Pursuant to MCR 9.115(H)(1), issued Nov. 17, 2021.

SUSPENSION WITH CONDITIONS (BY CONSENT)

Isaiah Lipsey, P57361, Southfield, by the Attorney Discipline Board Tri-County Hearing Panel #79. Suspension, 30 days, effective Aug. 24, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order Discipline in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admission that he committed professional misconduct while using his IOLTA between July 2018 and 2020.

Based upon the respondent's admissions as set forth in the parties' stipulation, the panel found that the respondent held funds other than client or third-party funds in his IOLTA in violation of MRPC 1.15(a)(3); failed to hold property of a client in connection with a representation separate from the lawyer's own property in violation of MRPC 1.15(d); and deposited his own funds in his IOLTA in an amount more than reasonably necessary to pay financial service charges or fees in violation of MRPC 1.15(f). The panel also found the respondent in violation of MCR 9.104(1)-(3).

In accordance with the stipulation of the parties, the hearing panel ordered that the

respondent's license to practice law in Michigan be suspended for 30 days and that the respondent be subject to conditions relevant to the established misconduct. Costs were assessed in the amount of $1,127.65.

AUTOMATIC INTERIM SUSPENSION

Scott Alan Mund, P56731, Muskegon, effective June 7, 2022.

On June 7, 2022, the respondent pleaded no contest to gross indecency between male and female persons, a felony, in violation of MCL 750.338B in a matter titled *People of the State of Michigan v Scott Alan Mund*, 14th Circuit Court, Muskegon County, Case No. 2021-004920-FH. The respondent's plea was accepted by the court the same day. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on the date of his felony conviction.

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

REPRIMAND (BY CONSENT)

Richard A. Sabo Jr., P59076, Flint, by the Attorney Discipline Board Genesee County Hearing Panel #4. Reprimand effective Aug. 12, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline pursuant to MCR 9.115(F)(5) that was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based upon the respondent's admissions as set forth in the parties' stipulation, the panel found that the respondent committed professional misconduct when he negligently placed personal funds into his IOLTA while the IOLTA also contained client funds.

Specifically, and in accordance with the parties' stipulation, the panel found that the respondent held funds other than client or third-person funds related to a representation in an IOLTA in violation of MRPC 1.15(d) 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. Costs were assessed in the amount of $1,253.71.

NOTICE OF HEARINGS ON PETITIONS FOR REINSTATEMENT

State of Michigan Attorney Discipline Board

In the Matter of the Reinstatement Petition of Lyle Dickson, P55424, ADB Case No. 22-64-RP

Petitioner

Notice is given that Lyle Dickson (P55424) has filed a petition in the Michigan Supreme Court, the Attorney Discipline Board, and the Attorney Grievance Commission seeking reinstatement as a member of the State Bar and restoration of his license to practice law in accordance with MCR 9.124(A). *In the Matter of Reinstatement Petition of Lyle Dickson (P55424)*, ADB Case No. 22-64-RP.

On May 4, 2017, Tri-County Hearing Panel #57 found that the petitioner committed professional misconduct by his conduct in reaction to the dismissal of his JAG officer application in violation of MRPC 8.4(a) and MCR 9.104(4); 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); and engaged in conduct that was contrary to justice in violation of MCR 9.104(3). The hearing panel imposed a reprimand.

The petitioner appealed to the Attorney Discipline Board. The Attorney Discipline Board found that the respondent personally harassed for a period of more than five years any and all individuals involved in the decision to deny his JAG application, and that a reprimand was insufficient discipline to impose in light of the misconduct committed and the aggravating factors that were present. As a result, the Attorney Discipline Board ordered a suspension of the petitioner's license to practice law in Michigan for 180 days, effective Oct. 18, 2017. The petitioner filed an Application for Leave to Appeal to the Michigan Supreme Court on Oct. 17, 2017. On Jan. 3, 2018, the Michigan Supreme Court issued an order denying the Application for Leave to Appeal.

On Feb. 21, 2021, Tri-County Hearing Panel #13 found that the petitioner committed professional misconduct when he engaged in a pattern of abusing the legal process and injured a party in that process by issuing subpoenas while not an attorney of record in a matter and failing to serve a copy of the subpoenas on opposing counsel on the date of issuance; engaged in conduct prejudicial to the administration of justice in violation of MCR 9.104(1) and MRPC 8.4(c); knowingly disobeyed an obligation under the Michigan Court Rules in violation of MRPC 3.4(c); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law where such conduct reflected adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); and engaged in conduct that was contrary to justice in violation of MCR 9.104(3). The hearing panel ordered a suspension of the petitioner's license to practice law in Michigan for 180 days, effective March 18, 2021.

The Attorney Discipline Board has assigned the reinstatement petition to Tri-County Hearing Panel #15. A virtual hearing via Zoom video conferencing is scheduled for Monday, Nov. 21, 2022, commencing at 9:30 a.m.

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

Any interested person may appear at such hearing and be heard in support of or in opposition to said petition for reinstatement. Any person having information bearing on the petitioner's eligibility for reinstatement should contact:

Cora L. Morgan, Senior Associate Counsel
Attorney Grievance Commission
755 W. Big Beaver, Suite 2100
Troy, MI 48084
(313) 961-6585
clmorgan@agcmi.com

Requirements of the Petitioner

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

1. He desires in good faith to be restored to the privilege to practice law in this state;

2. The term of the revocation of his license has elapsed;

3. He has not practiced or attempted to practice law contrary to the requirement of his revocation;

4. He has complied fully with the terms of the order of discipline;

5. His conduct since the order of discipline has been exemplary and above reproach;

6. He has a proper understanding of and attitude toward the standards that are imposed on members of the Bar and will conduct himself in conformity with those standards;

7. He can safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and

to represent them and otherwise act in matters of trust and confidence and, in general, aid in the administration of justice as a member of the Bar and as an officer of the court;

8. That if he has been out of the practice of law for three years or more, he has been recertified by the Board of Law Examiners; and,

9. He has reimbursed or has agreed to reimburse the Client Protection Fund any money paid from the fund as a result of his conduct. Failure to fully reimburse as agreed is grounds for revocation of a reinstatement.

State of Michigan Attorney Discipline Board

In the Matter of the Reinstatement Petition of David Chipman Venie, P68087, ADB Case No. 22-62-RP

Petitioner

Notice is given that David Chapman Venie (P68087), has filed a petition in the Michigan Supreme Court, the Attorney Discipline Board, and the Attorney Grievance Commission seeking reinstatement as a member of the State Bar and restoration of his license to practice law in accordance with MCR 9.124(A). *In the Matter of the Reinstatement Petition of David Chipman Venie (P68087)*, ADB Case No. 22-62-RP.

Effective Aug. 18, 2017, the petitioner was disbarred from the practice of law in Michigan. In a reciprocal discipline proceeding under MCR 9.120(C), the grievance administrator filed a certified copy of an order permanently disbarring the petitioner from the practice of law, effective immediately, entered by the Supreme Court of the State of New Mexico on Jan. 18, 2017, in *In the Matter of D. Chipman Venie*, Case No. S-1-SC-3675.

The petitioner was permanently disbarred from the practice of law in New Mexico for conduct that occurred in connection with representation of three clients. In one matter, the petitioner counseled his client, L.A., to bribe witnesses and offered to deliver the bribery payment to the witnesses. He unnecessarily revealed client confidences in a fee dispute with L.A. and he made material misrepresentations to tribunals and the disciplinary authority. With respect to the second client, R.C., the petitioner converted money that belonged to R.C.'s parents and was provided solely for the purpose of posting R.C.'s bond. The petitioner filed a lien against a third client's mother to secure a fee owed by the client.

An order regarding imposition of reciprocal discipline was served on the petitioner on May 11, 2017. The 21-day period referenced in MCR 9.120(C)(2)(b) expired without objection by either party and the petitioner was deemed to be in default. Based on that default, the Attorney Discipline Board ordered that the petitioner be disbarred from the practice of law in Michigan, effective Aug. 18, 2017.

The Attorney Discipline Board has assigned the reinstatement petition to Tri-County Hearing Panel #6. A virtual hearing via Zoom is scheduled for Nov. 18, 2022, commencing at 9:30 a.m.

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

Any interested person may appear at the virtual hearing and request to be heard in support of or in opposition to the petition for reinstatement.

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

Sarah C. Lindsey, General Counsel
Attorney Grievance Commission
755 W. Big Beaver Road, Suite 2100
Troy, MI 48084
(313) 961-6585

Requirements of the Petitioner

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

1. He desires in good faith to be restored to the privilege to practice law in this state;

2. The term of the revocation of his license has elapsed;

3. He has not practiced or attempted to practice law contrary to the requirement of his revocation;

4. He has complied fully with the terms of the order of discipline;

5. His conduct since the order of discipline has been exemplary and above reproach;

6. He has a proper understanding of and attitude toward the standards that are imposed on members of the Bar and will conduct himself in conformity with those standards;

7. He can safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and, in general, to aid in the administration of justice as a member of the Bar and as an officer of the court;

8. That if he has been out of the practice of law for three years or more, he has been recertified by the Board of Law Examiners; and,

9. He has reimbursed or has agreed to reimburse the Client Protection Fund any money paid from the fund as a result of his conduct. Failure to fully reimburse as agreed is grounds for revocation of a reinstatement.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instruction, M Crim JI 8.2 [Aiding and Abetting Felony Firearm) as a distinct jury instruction from M Crim JI 8.1 [Aiding and Abetting]. This new instruction is effective Oct. 1, 2022.

[NEW] M Crim JI 8.2
Aiding and Abetting Felony Firearm

(1) In this case, the defendant is charged with committing the offense of possessing a firearm during the commission or attempted commission of a felony or intentionally assisting someone else in committing that offense.

(2) Anyone who intentionally assists someone else in committing a crime is as guilty as the person who directly commits it and can be convicted of that crime as an aider and abettor.

(3) To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(a) First, that the crime of possessing a firearm during the commission of a felony or attempted commission of a felony was actually committed, either by the defendant or someone else. It does not matter whether anyone else has been convicted of the crime.

(b) Second, that before or while the crime of possessing a firearm when committing or attempting to commit a felony was being committed, the defendant did something to assist in carrying, using, or possessing the firearm. It is not enough to find that the defendant did something to assist in the commission of the underlying felony. By words, acts, or deeds, the defendant must have procured, counseled, aided, or abetted another person to carry, use, or possess a firearm during the commission or attempted commission of a felony.

(c) Third, at that time the defendant must have intended that a firearm be carried, used, or possessed by another during the commission or attempted commission of a felony.

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, M Crim JI 13.6a, 13.6b, 13.6c and 13.6d [Fleeing and Eluding]. These new instructions are effective Oct. 1, 2022.

[AMENDED] M Crim JI 13.6a
Fleeing and Eluding in the First Degree

(1) The defendant is charged with the crime of fleeing and eluding in the first degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that a [police/conservation] officer was in uniform and was performing [his/her] lawful duties [and that any vehicle driven by the officer was identified as a law enforcement vehicle].

(3) Second, that the defendant was driving a motor vehicle.

(4) Third, that the officer ordered that the defendant stop [his/her] vehicle.

(5) Fourth, that the defendant knew of the order.

(6) Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

(7) Sixth, that the violation resulted in the death of another individual.

[AMENDED] M Crim JI 13.6b
Fleeing and Eluding in the Second Degree

(1) The defendant is charged with the crime of fleeing and eluding in the second degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that a [police/conservation] officer was in uniform and was performing [his/her] lawful duties [and that any vehicle driven by the officer was identified as a law enforcement vehicle].

(3) Second, that the defendant was driving a motor vehicle.

(4) Third, that the officer ordered that the defendant stop [his/her] vehicle.

(5) Fourth, that the defendant knew of the order.

(6) Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

(7) [(7) Sixth, that the violation resulted in serious impairment of a body function* to an individual.][1]

Use Note

*The statute, MCL 750.479a(9), incorporates the statutory definition of "serious impairment of a body function" found at MCL 257.58c: "Serious impairment of a body function" includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

1. Read this element where the aggravating basis for the second-degree charge is serious impairment of a body function and **not** a prior conviction. Where the basis for an aggravated charge elevating a charge of fourth-degree fleeing and eluding to second-degree fleeing and eluding is a prior offense, the Committee on Model Criminal Jury Instructions believes that a determination whether a defendant had been convicted of a prior offense is a matter of law determined by the court. *See Apprendi v New Jersey*, 530 US 466, 490 (2000).

[AMENDED] M Crim JI 13.6c
Fleeing and Eluding in the Third Degree

(1) The defendant is charged with the crime of fleeing and eluding in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that a [police/conservation] officer was in uniform and was performing [his/her] lawful duties [and that any vehicle driven by the officer was identified as a law enforcement vehicle].

(3) Second, that the defendant was driving a motor vehicle.

(4) Third, that the officer ordered that the defendant stop [his/her] vehicle.

(5) Fourth, that the defendant knew of the order.

(6) Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

(7) [*Choose one or both of the following alternatives where applicable:*][1]

(8) Sixth, that the violation resulted in a collision or accident.

(9) [(7)/(8)] [Sixth/Seventh], some portion of the violation took place in an area where the speed limit was 35 miles per hour or less [whether as posted or as a matter of law].

Use Note

1. Read this element where the aggravating basis for the third-degree charge is a collision or accident or took place in a speed limit area and **not** a prior conviction. Where the basis for an aggravated charge elevating a charge of fourth-degree fleeing and eluding to third-degree fleeing and eluding is a prior offense, the Committee on Model Criminal Jury Instructions believes that a determination whether a defendant had been convicted of a prior offense is a matter of law determined by the court. *See Apprendi v New Jersey*, 530 US 466, 490 (2000).

[AMENDED] M Crim JI 13.6d
Fleeing and Eluding in the Fourth Degree

(1) The defendant is charged with the crime of fleeing and eluding in the fourth degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that a [police/conservation] officer was in uniform and was performing [his/her] lawful duties [and that any vehicle driven by the officer was identified as a law enforcement vehicle].

(3) Second, that the defendant was driving a motor vehicle.

(4) Third, that the officer ordered that the defendant stop [his/her] vehicle.

(5) Fourth, that the defendant knew of the order.

(6) Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

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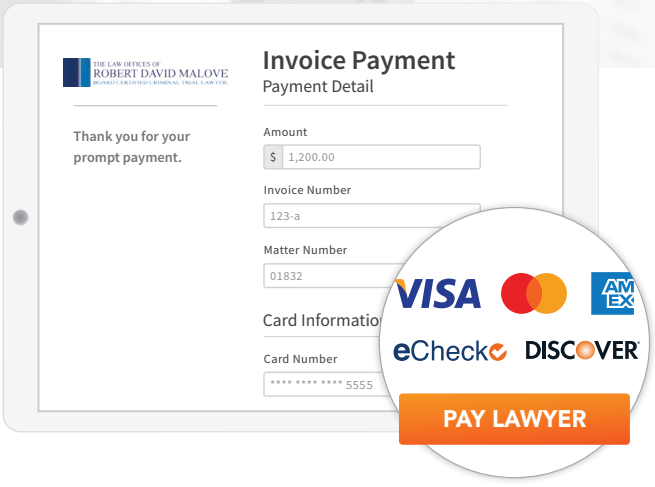

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FROM THE MICHIGAN SUPREME COURT

ADM File No. 2020-08
Retention Amendments of Rules 2.002, 2.305, 2.407, 6.006, 8.110, 9.112, 9.115, and 9.221 of the Michigan Court Rules with Further Amendments as Indicated

Rescission Amendments of Rules 2.506, 2.621, and 6.106 of the Michigan Court Rules

Adoption of Amendments of Rules 2.402, 3.210, 4.101, 5.140, 6.001 and Addition of Rule 2.408 of the Michigan Court Rules

ADM File No. 2020-08
Proposed Amendments of Administrative Order No. 2020-17 and Rule 4.201 of the Michigan Court Rules

To read these files visit www.courts.michigan.gov/rules-administrative-orders-and-jury-instructions/proposed-adopted/.

ADM File No. 2020-08 Amendment of Administrative Order No. 2020-17

On order of the Court, the following amendment of Administrative Order No. 2020-17 is adopted, effective immediately.

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

Administrative Order No. 2020-17 — Continuation of Alternative Procedures for Landlord/Tenant Cases

[Entered June 9, 2020; language as amended by orders entered June 24, 2020, October 22, 2020, December 29, 2020, January 30, 2021, March 22, 2021, April 9, 2021, July 2, 2021, ~~and~~ July 26, 2021, and August 10, 2022.]

~~On order of the Court, Administrative Order No. 2020-17 is hereby amended and replaced with the following new language, effective immediately.~~

[First five paragraphs: unchanged.]

(A)-(D) [Unchanged.]

(E) Except as provided below, all Summary Proceeding Act cases must be adjourned for seven days after the pretrial hearing in subsection (B) is conducted. Nothing in this order limits the statutory authority of a judge to adjourn for a longer period. MCL 600.5732. Any party who does not appear at the hearing scheduled for the adjourned date will be defaulted. Cases need not be adjourned for seven days if: the plaintiff dismisses the complaint, with or without prejudice, and without any conditions; ~~;~~ if defendant was personally served under MCR 2.105(A) and fails to appear; ~~;~~ if plaintiff pleads and proves, with notice, a complaint under MCL 600.5714(1)(b), (d), (e) or (f), sufficient to meet the statutory and court rule requirements and a judge is available to hear the proofs; ~~;~~ or where both plaintiff and defendant are represented by counsel and a consent judgment or conditional dismissal is filed with the court. Where plaintiff and defendant are represented by counsel, the parties may submit a conditional dismissal or consent judgment in lieu of appearing personally at the second hearing. Nothing in this subsection supersedes the right to an attorney pursuant to 4.201(F)(2).

(F)-(I) [Unchanged.]

This order is effective immediately until further order of the Court.

VIVIANO, J. (*concurring*).

Administrative Order No. 2020-17, 505 Mich clii (2020), as amended by 507 Mich ___ (2021), currently requires that most landlord-tenant cases be adjourned seven days after the initial court date. Today's amendment adds exceptions to this adjournment requirement for cases in which a plaintiff landlord is seeking to recover possession of the premises due to (1) manufacturing or sale of narcotics on the property, (2) a health hazard or physical injury to the property, (3) threat of or actual physical injury to an individual, or (4) taking or holding possession of the property by force or trespass under MCL 600.5714(1)(b), (d), (e), or (f), respectively. I continue to believe that we should rescind AO 2020-17 in its entirety and return all landlord-tenant cases to the procedures established by our statutes and court rules for the reasons I have previously stated.[1] However, the Court today is not considering rescission of the entire administrative order. Furthermore, the present revisions to the administrative order will enable landlords to more quickly recover possession of their premises in certain circumstances in which nonpayment of rent is not the basis on which the landlord is seeking to recover possession, which is consistent with MCL 600.5714. For these reasons, although I would prefer to rescind the order in its entirety, I concur in the amendment.

1. See Amendment of Administrative Order No. 2020-17, 507 Mich ___ (July 2, 2021) (VIVIANO, J., dissenting).

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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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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

Lansing
SUNDAY 7 PM*
Virtual Lawyers and Judges AA Meeting
(Contact Arvin P. at (248) 310-6360
for Zoom login information)

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

THURSDAY 7:30 PM
Zoom
(Contact Arvin P. at (248) 310-6360
for Zoom login information)

GAMBLERS ANONYMOUS

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

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

OTHER MEETINGS

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

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

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

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

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

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

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

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