

MICHIGAN

BAR JOURNAL

JANUARY 2023

Family Law

- Seeking uniformity: Premarital and marital agreements
- Is there a formula for parenting time?
- Ethical considerations: Representing accused batterers in domestic relations proceedings
- The cryptocurrency divorce



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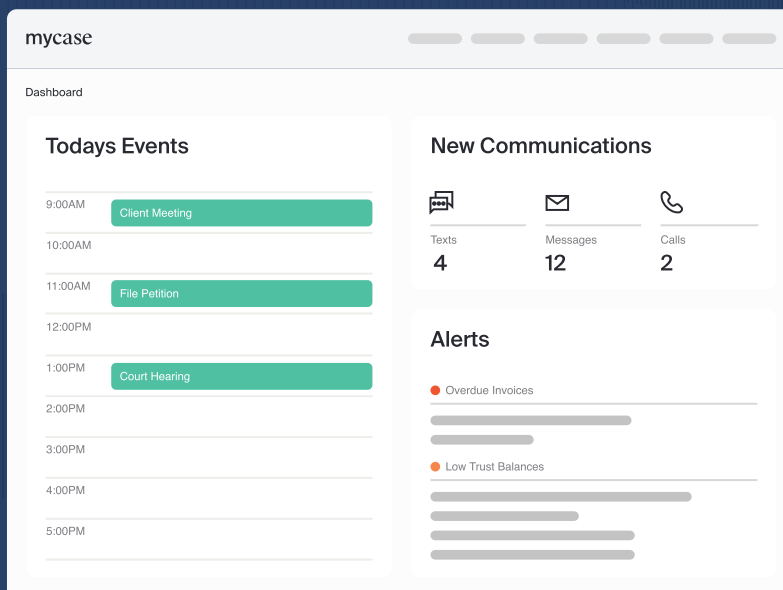
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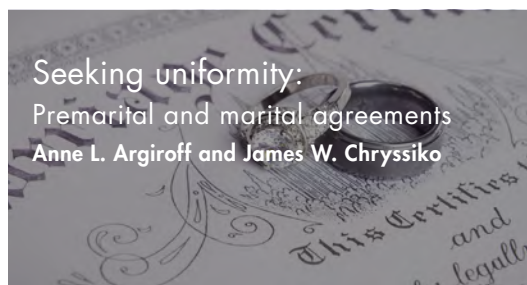
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JANUARY 2023 | VOL. 102 | NO. 01

14



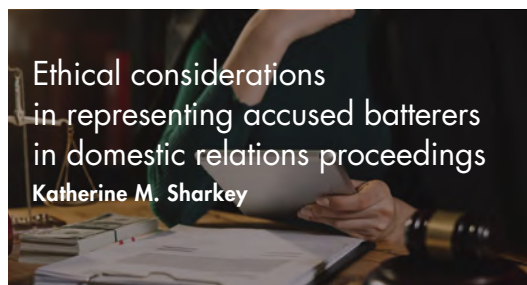
Seeking uniformity:
Premarital and marital agreements
Anne L. Argiroff and James W. Chrissyko

20



Is there a formula
for parenting time?
Keela Johnson

24



Ethical considerations
in representing accused batterers
in domestic relations proceedings
Katherine M. Sharkey

30



The cryptocurrency divorce
Ryan M. Kelly

OF INTEREST

- 08 2023 ECONOMICS OF LAW SURVEY
- 09 IN BRIEF
- 10 NEWS & MOVES
- 11 IN MEMORIAM
- 13 IN FOCUS: FAMILY LAW
- 34 2023 50-YEAR HONOREES
- 37 SBM AUDITED FINANCIAL REPORT

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JOURNAL

JANUARY 2023 • VOL. 102 • NO. 01

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The Michigan Bar Journal (ISSN 0164-3576) is published monthly except August for \$60 per year in the United States and possessions and \$70 per year for foreign subscriptions by the State Bar of Michigan, Michael Franck Building, 306 Townsend St., Lansing, MI 48933-2012. Periodicals postage paid at Lansing, MI and additional mailing offices. POSTMASTER: Send address changes to the Michigan Bar Journal, State Bar of Michigan, Michael Franck Building, 306 Townsend St., Lansing, MI 48933-2012.

COLUMNS

42 PLAIN LANGUAGE

Editing, vehicles in the park, and the virtue of clarity

Patrick Barry

44 BEST PRACTICES

Lessons learned from the trenches

Lori J. Frank

46 LIBRARIES & LEGAL RESEARCH

Locating free and low-cost secondary sources in Michigan

Cody James

48 PRACTICING WELLNESS

Lawyer well-being: a recipe for positive change

Katie Stanley

52 LAW PRACTICE SOLUTIONS

ABA TECHSHOW 2023: Your gateway to tech competency

JoAnn L. Hathaway

NOTICES

54 ORDERS OF DISCIPLINE & DISABILITY

60 FROM THE MICHIGAN SUPREME COURT

68 CLASSIFIEDS

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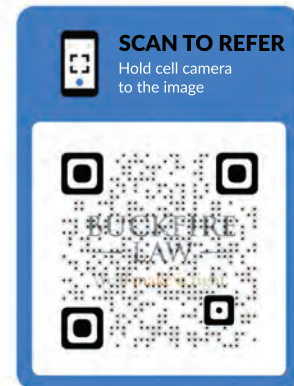
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REPRESENTATIVE ASSEMBLY

APRIL 29, 2023
 SEPTEMBER 23, 2023



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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AUTHOR: PATRICK T. BARONE

Patrick T. Barone has an "AV" (highest) rating from Martindale-Hubbell, and since 2009 has been included in the highly selective *U.S. News & World Report's America's Best Lawyers*, while the Barone Defense Firm appears in their companion *America's Best Law Firms*. He has been rated "Seriously Outstanding" by Super Lawyers, rated "Outstanding/10.0" by AVVO, and has recently been rated as among the top 5% of Michigan's lawyers by *Leading Lawyers* magazine.



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SBM survey will assess current economic state of the legal profession

BY EBONY STITH

Every three years, the State Bar of Michigan conducts a survey to determine benchmarks for Michigan attorneys and calculate economic disparities within the legal profession. The State Bar in February will begin surveying all Michigan attorneys for its 2023 Economics of Law Report.

The survey compiles average income levels for more than 50 specific fields of practice and collects a variety of other data including race, gender, and geographic location. The State Bar last issued its Economics of Law Report in 2020, just before the onset of the COVID-19 pandemic — making this year's survey even more significant because it will help determine the impact of the pandemic. The survey also will offer Michigan attorneys an opportunity to anonymously share their firsthand experiences related to the pandemic.

The survey helps determine county-by-county and statewide average billing rates and income for both private and non-private practice attorneys in all occupation areas. This data is used by courts to determine attorney fees, and it can help all Michigan lawyers determine how their salaries measure up relative to their peers from across the state.

The last Economics of Law Report, which collected financial information from 2019, stated the median income for full- and part-time private practice attorneys was \$150,000 and the average income was \$223,496. The median income for non-private practitioners was \$100,000 and the average income was \$116,786.

For the survey, attorneys will be asked to identify their fields of practice and up to three geographical circuits where they practiced at least 30% of the time.

The 2023 Economics of Law Report will provide data about salaries, benefits, hours worked, and job satisfaction for attorneys categorized by occupation such as private practice, in-house counsel, government service, non-profit organizations, academia, legal services, and more.

The primary objectives of the Economics of Law Survey are:

- Providing timely, relevant, and accurate information to

inform and guide practical management and planning decisions by Michigan attorneys, including private and non-private practitioners, judiciary, and government workers.

- Monitoring critical trends within the legal profession based on previous survey research and analysis.
- Tracking and illustrating changes and trends within the legal profession, including:
 - attorney demographics;
 - attorney income by practice category, gender, the field of law, office location, work status (full- versus part-time), years in practice, and firm size;
 - prevailing average hourly billing rates by practice class, firm size, field of practice, judicial circuit, county, and office location;
 - time allocated to billable and non-billable professional activities;
 - law office management practices and perceptions regarding current and future economic circumstances related to law practice, including law school debt.

Michigan attorneys will receive emails inviting them to participate. Information also will be shared on the State Bar of Michigan social media channels. Those who complete the survey will be entered into a drawing for a chance to win one of two \$500 Amazon gift cards and one of five \$100 Amazon gift cards.

For past Economics of Law Survey results, visit our website at michbar.org.



Ebony Stith is communications specialist at the State Bar of Michigan

IN BRIEF

ALTERNATIVE DISPUTE RESOLUTION SECTION

Upcoming section events include a webinar discussion of *Michigan AFSCME Council 25 v. County of Wayne* (leave of appeal pending) on Feb. 7 and the ADR Annual Conference on Sept. 29-30. Future 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 hosted a successful fall forum on Oct. 6, at the Inn at St. John's in Plymouth. Speakers Cody Rockey from Dykema and Michael Cole from Fahey Schultz Burzych Rhodes discussed antitrust issues in mergers and acquisitions and in franchising, respectively. On Dec. 1, the section hosted a well-attended lunch-and-learn webinar on hot topics in franchise auditing with members of the franchise practice at Plante Moran. Please look for more events hosted by the section in 2023!

CANNABIS LAW SECTION

Through ballot proposals voted on in the 2022 election, 15 Michigan municipalities opted to allow adult-use commercial cannabis businesses, and Maryland and Missouri voted to allow adult-use commercial cannabis. President Biden pardoned all those convicted of simple possession of cannabis, and urged governors do the same while directing the U.S. attorney general and secretary of the Department of Health and Human Services to initiate an administrative review to potentially remove cannabis from the list of scheduled substances. President Biden also signed into law a cannabis research bill.

ENVIRONMENTAL LAW SECTION

The annual joint conference with the Air and Waste Management Association was held on Nov. 9 at the Lansing Community College West Campus. Look for the save-the-

date for the spring air conference with the Michigan Manufacturing Association sometime in April. Detailed event information and past event materials are available at connect.michbar.org/envlaw.

FAMILY LAW SECTION

The Family Law Section sponsored the 21st Annual ICLE Family Law Institute on Nov. 17-18 in Novi, where a number of current and former council members presented on timely topics. The next section council meeting is Jan. 7 at the Sheraton Detroit Novi Hotel. Breakfast and networking start at 9 a.m. with the meeting beginning at 9:30 a.m. All section members are welcome to attend.

GOVERNMENT LAW SECTION

The Government Law Section is planning its upcoming winter seminar, which will be held on Feb. 17 at Summit on the Park at 46000 Summit Parkway in Canton. The seminar will address election-related issues affecting local governments. Registration information should be available on the section website in mid-January. Please save the date; we hope to see you there!

HEALTH CARE LAW SECTION

The section's publications committee recently completed a certificate of need white paper entitled "CON Basics in Michigan." The paper is posted on the section website at connect.michbar.org/healthcare/publications/sectionpublications. The section's Substantive Law Committee is planning a Jan. 18 webinar covering the 340B Discount Drug Program and another on Feb. 1 titled "Navigating Payor Audits."

IMMIGRATION LAW SECTION

The Immigration Law Section invites all SBM members to participate in its monthly meetings at noon on the last Wednesday of every month.

INTERNATIONAL LAW SECTION

On Jan. 12, the International Law Section will present a program entitled "Managing

a Responsible Supply Chain" which will discuss Uyghur forced labor and sanctions.

LAW PRACTICE MANAGEMENT SECTION

The Law Practice Management Section will host free webinars to help lawyers reach greater levels of personal and professional satisfaction by providing services which are ethical, fiscally sound, and economically rewarding. The noontime sessions include "Successful Practice Management Tips" on Feb. 16, "Ground-Up Social Media Marketing" on March 16, and "SBM Succession Planning Guidelines" on April 20. The section's annual meeting and workshop is scheduled for Oct. 20 from 8:30 a.m.-4:30 p.m. See the section listserv and newsletter for details.

LITIGATION SECTION

The Litigation Section is sponsoring a March 16 Masters in Litigation seminar presented by Sybil Dunlop titled "Persuading People on Page and Screen" and an "Litigate Workshop" by Brett Burney on Jan. 18.

REAL PROPERTY LAW SECTION

Join the Real Property Law Section for its 2023 winter conference at The Don CeSar in St. Pete Beach, Florida. The program, "Surfing the Legal Landscape," will take place from March 9-11. Register at na.eventscloud.com/ereg/index.php?eventid=720645&. Limited rooms are available at book.passkey.com/event/50399048/owner/50154506/home or by calling 1.800.282.1116. Use code RPL307 for a special rate.

SOCIAL SECURITY SECTION

The annual Dudley Award, named for former section chair Mike Dudley, is given to a section member who has provided outstanding representation to their clients and service to the section. This year's recipient is J. Gregory Frye, who served on the council for many years and was a former section chair. Register for our Feb. 24 seminar at statebarmichigansocsecsection@gmail.com. The seminar, which is free for section members, runs from 9 a.m.-noon on the section's YouTube channel.

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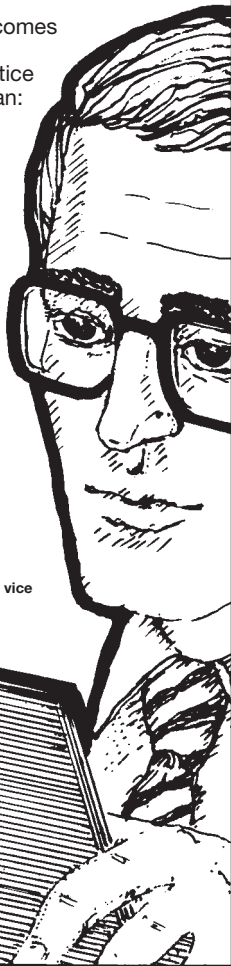
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NEWS & MOVES

ARRIVALS AND PROMOTIONS

SHERRIE L. FARRELL with Dykema has been named chief diversity officer.

NICHOLAS A. HUGUELET with Nemeth Bonnette Brouwer has been promoted to partner.

PAUL M. MERSINO, a shareholder with Butzel, has been appointed to serve as the firm's next president and CEO effective in March.

ANDREW J. MOORE has joined the Lansing office of Fraser Trebilcock.

BROOKE NOSANCHUK has joined Plunkett Cooney as an associate.

MOSTAFA SHANTA has joined the Detroit office of Butzel.

ALEANNA SIACON has joined Plunkett Cooney as an associate.

BLAINE VELDHIJS has joined the Troy office of Butzel.

AWARDS AND HONORS

DEBORAH BROUWER, TERRY BONNETTE, and **PATRICIA NEMETH** with Nemeth Bonnette Brouwer have been recognized by DBusiness magazine on its 2023 list of Top Lawyers.

Sixty-six **BUTZEL** attorneys have been recognized by DBusiness magazine on its 2023 list of Top Lawyers.

Three **FISHMAN STEWART** attorneys have been recognized by DBusiness magazine on its 2023 list of Top Lawyers.

RODNEY D. MARTIN with Warner Norcross & Judd has been recognized by the Comprehensive Therapy Center as one of three 2022 Legacy Award winners.

PLUNKETT COONEY was recognized by U.S. News and World Report — Best Lawyers as one of its Best Law Firms for 2023.

Eight **PLUNKETT COONEY** attorneys have been recognized by DBusiness magazine on its 2023 list of Top Lawyers.

Forty-nine **WARNER NORCROSS & JUDD** attorneys have been recognized by Grand Rapids Magazine as Top Lawyers.

LEADERSHIP

DOUGLAS C. BERNSTEIN, a partner with Plunkett Cooney, has been named a fellow of the Michigan State Bar Foundation.

CONOR B. DUGAN with Warner Norcross & Judd has been appointed to the Aquinas College Board of Trustees.

NEW OFFICE

BUTZEL is adding a Grand Rapids office on Jan. 1 that includes **LEE T. SILVER** and **MICHAEL L. GUTIERREZ**.

PRESENTATIONS, PUBLICATIONS AND EVENTS

Butzel's **JENNIFER DUKARSKI** and **CLAUDIA RAST** were featured during a Dec. 9 webinar focused on "Cyber in the Real World" hosted by the Original Equipment Suppliers Association.

The **INGHAM COUNTY BAR ASSOCIATION** host its Meet the Judges event on Thursday, Jan. 12.

The **MICHIGAN DEFENSE TRIAL COUNSEL** hosts its 2023 Legal Excellence Awards on March 16 at the Gem Theatre in Detroit.

ELAINE POHL, a partner with Plunkett Cooney, was selected to serve as vice chair of the annual Insurance Coverage and Practice Symposium from Dec. 7-9 at the Sheraton Times Square Hotel in New York City.

IN MEMORIAM

MICHELE J. ABBRUZZESE, P10011, of Jupiter, Florida, died Sept. 17, 2022. He was born in 1943, graduated from University of Detroit School of Law, and was admitted to the Bar in 1968.

MOISES J BERMUDEZ, P33906, of Grosse Pointe Farms, died Nov. 20, 2022. He was born in 1956, graduated from University of Detroit School of Law, and was admitted to the Bar in 1982.

JERROLD M. BIGELMAN, P26626, of Bingham Farms, died Oct. 3, 2022. He was born in 1948 and was admitted to the Bar in 1976.

GERALD W. BLANCHARD, P35769, of Williamston, died Sept. 17, 2022. He was born in 1947, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1983.

JOHN M. CHASE JR., P11810, of Grosse Pointe Farms, died Nov. 9, 2022. He was born in 1933, graduated from University of Michigan Law School, and was admitted to the Bar in 1957.

ROBERT M. CHIMOVITZ, P11841, of Fenton, died Oct. 25, 2022. He was born in 1943, graduated from Wayne State University Law School, and was admitted to the Bar in 1971.

JAMES M. LEIBENGUTH, P32463, of Traverse City, died Oct. 27, 2022. He was born in 1950 and was admitted to the Bar in 1981.

DENNIS WILLIAM MACK, P64621, of Lansing, died Aug. 29, 2022. He was born in 1959, graduated from Michigan State University College of Law, and was admitted to the Bar in 2002.

THOMAS J. SHEEN, P20324, of Clinton Township, died Oct. 22, 2022. He was born in 1937, graduated from Detroit College of Law, and was admitted to the Bar in 1972.

JOHN W. STANOWSKI, P24548, of Saline, died Oct. 9, 2022. He was born in 1942, graduated from Detroit College of Law, and was admitted to the Bar in 1969.

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.

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ASK A FAMILY LAWYER

BY SHELLEY KESTER, ANTHEA PAPISTA, AND AMY SPILMAN

Ask a family lawyer for any good stories to share and you'll likely be regaled with a tabloid-style tale of people behaving badly. Yet, behind every juicy anecdote lie complex problems across a variety of disciplines.

In compiling articles for this edition from the State Bar of Michigan Family Law Section, we strove to provide a sampling of the disparate issues family law attorneys confront on a daily basis, many of which require familiarity with and competency in areas far removed from the traditional practice of law.

For example, unique issues are presented when domestic violence is involved. Katherine M. Sharkey's article addresses ethical considerations when representing an accused or admitted batterer. Ryan M. Kelly's feature on cryptocurrency issues that arise in family law cases underscores the imperative for family law attorneys to stay abreast of emerging trends; the advent and popularity of cryptocurrency exposes the inadequacy of traditional discovery tools vis-à-vis technological advances which defy easy understanding, forcing attorneys to use their creativity to address these challenges.

It is perhaps inevitable that in an area of law where uncertainty abounds regarding the most fundamental aspects of a client's life, the quest to develop universal standards persists, a laudable but often elusive goal. Keela Johnson addresses the variety of approaches across Michigan's 57 circuits to develop a standard parenting time schedule while balancing the need to consider the diversity inherent in family situations. Finally, Anne L. Argiroff and James W. Chryssikos provide an in-depth historical and contextual perspective on recent efforts to adopt the Uniform Premarital and Marital Agreements Act in Michigan.

The SBM Family Law Section's mission is to provide support, education, information, and analysis for its members on issues related to family law and improve and advance both family law and the family court system. To accomplish this mission, the section engages



in legislative and court-rule review and comment, files amicus briefs on important family law cases, works to improve the relations between its members and the public, increases public awareness of family law issues, promotes professionalism among members, and encourages continuing family law legal education. In service to its nearly 2,700 members, the section hosts meetings, seminars, public service programs, and webinars. It helps Michigan lawyers maintain their skills by sponsoring the Family Law Institute each fall and publishing the Family Law Journal.

The section is open to all State Bar of Michigan members. We invite you to become involved by joining one of the 16 committees which work to analyze and advance improvements to the law on a multitude of topics.

We hope you enjoy this glimpse into the dynamic and engaging practice of family law.

Shelley Kester is chair of the SBM Family Law Section. **Anthea Papista** and **Amy Spilman** are editors of the section's Family Law Journal.

The background of the top half of the page is a light-colored, textured surface with intricate, dark-colored scrollwork and floral patterns. A large, white rectangular box with a thin black border is centered in the upper portion of this area. Inside the box, the words "SEEKING" and "UNIFORMITY" are written in a large, black, sans-serif font, stacked vertically. The word "SEEKING" is in all caps and a regular weight, while "UNIFORMITY" is in all caps and a bold weight.

SEEKING UNIFORMITY

Premarital and marital agreements

BY ANNE L. ARGIROFF AND JAMES W. CHRYSIKOS

This article provides an overview of the complicated history of premarital and marital agreements and recent efforts made by the State Bar of Michigan Family Law Section to provide clarity through enactment of the Uniform Premarital and Marital Agreements Act, tailored for Michigan.

PREMARITAL AGREEMENTS

Before 1981, Michigan recognized only prenuptial agreements that governed the division of property upon the death of a spouse. In 1981, MCL 557.28 was enacted, providing for prenuptial agreements in contemplation of marriage:

A contract relating to property made between persons in contemplation of marriage shall remain in full force after the marriage takes place.

Special nature of agreements concerning marriage

In 1982, the Michigan Supreme Court in *In re Benker Estate* addressed a prenuptial agreement limiting the surviving spouse's property rights upon the death of the other spouse.¹ *Benker* acknowledged the statutory expansion of prenuptial agreements, and its discussion applies generally to both prenuptial agreements concerning a surviving spouse and agreements in contemplation of marriage:

Such agreements, while recognized as valid instruments, are of a special nature because of the fact that they originate between parties contemplating marriage. This relationship is one of extreme mutual confidence and, thus, presents a unique situation unlike the ordinary commercial contract situation where the parties deal at arm's length.



In order for an antenuptial agreement to be valid, it must be fair, equitable, and reasonable in view of the surrounding facts and circumstances. It must be entered into voluntarily by both parties, with each understanding his or her rights and the extent of the waiver of such rights [citation omitted]. Antenuptial agreements give rise to a special duty of disclosure not required in ordinary contract relationships so that the parties will be fully informed before entering into such agreements.²

The agreement in *Benker* involved a significant waiver of rights. The husband's estate was ample compared to his wife's; the decedent was secretive about his financial affairs; the agreement did not indicate, generally or specifically, whether the parties were fully informed of each other's property interests; the widow was not represented by independent counsel; and the scrivener was unable to testify that full disclosure was made by the parties.³ The Michigan Supreme Court found that while the burden of proving non-disclosure relating to a premarital agreement is generally on the party seeking to invalidate, a rebuttable presumption of non-disclosure may arise depending on the factual situation. In *Benker*, the es-

tate attempting to enforce the agreement did not overcome the rebuttable presumption of non-disclosure and the agreement was not enforceable. *Benker* emphasized the clear duty to disclose to the other party, which had been previously recognized by the Michigan Legislature.⁴

Almost 10 years later, the Michigan Court of Appeals in *Rinvelt v. Rinvelt* addressed a prenuptial agreement in contemplation of marriage and distilled review considerations based on *Benker* and various Michigan and sister-state decisions, including:

1. Was the agreement obtained through fraud, duress or mistake, or misrepresentation or nondisclosure of material fact?
2. Was the agreement unconscionable when executed?
3. Have the facts and circumstances changed since the agreement was executed, making enforcement unfair and unreasonable?⁵

These agreements must be viewed within the unique context of family law. They are distinguishable from commercial contract relationships — with a focus on equity and protections including the special duty of disclosure so the parties are fully informed before entering into such agreements.

Statutory focus on equity in divorce

The trial court's duty in divorce is ensuring the fair and equitable treatment of the parties. This principle of equity is codified within Michigan's statutory scheme concerning divorce including property division (MCL 552.19, MCL 552.23, and MCL 552.401) and spousal support (see, e.g. MCL 552.13).⁶

The Michigan Supreme Court in *Sparks v. Sparks* explained that divorce actions are still a type of equity suit even though Michigan no longer has separate equity courts, trial courts must reach a disposition that is fair and just,⁷ and the statutes dealing with, for example, the disposition of property on divorce provide that "general principles of equity must be considered."⁸

MARITAL AGREEMENTS

Historically, the general rule has been that a married couple may not enter into an enforceable contract that anticipates and encourages a future separation or divorce. In 2020, the Michigan Court of Appeals in *Skaates v. Kayser* discussed appellate courts affirming differing types of postnuptial agreements, including those agreements made by married couples living together (i.e., not separated or otherwise contemplating an imminent divorce).⁹

Skaates affirmed the agreement in that case — which had been agreed to prior to the marriage but signed after the parties married as a type of hybrid premarital/marital agreement. The controlling consideration appears to be whether such agreements promote harmonious marital relations and keep the marriage together. There is no clear approach to determining what constitutes promotion of marital harmony. Equitable considerations such as duress and disclosure apply to marital agreements.¹⁰

ALLARD v. ALLARD

In 2017, the state Court of Appeals published *Allard v. Allard* after remand from the Supreme Court to address the fundamental issue of trial court statutory authority to attach separate property awarded in a premarital agreement.¹¹ In a nutshell, *Allard* affirmed a trial court's authority under MCL 552.23(1) to invade otherwise separate assets of one spouse if the property awarded to either party is "insufficient for the suitable support and maintenance" of the other party and, under MCL 552.401, to award the separate property of one spouse to the other where the other "contributed to the acquisition, improvement, or accumulation of the property" regardless of how that separate property arose — including through a prenuptial agreement. The bottom line is that under *Allard*, the parties cannot contractually waive a trial court's authority and duty to ensure equity consistent with the statutes.¹²

Skaates acknowledges that *Allard* applies to postnuptial agreements. Also, parties cannot attempt, by contract, to bind the equi-

table authority granted to a trial court under MCL 552.23(1) and MCL 552.401; any such agreement is necessarily void and against both statute and public policy codified by the Michigan Legislature.¹³

Michigan is not among the 28 states that have passed legislation to help bring uniformity to premarital or marital agreements by codifying either the Uniform Premarital Agreement Act or the Uniform Premarital and Marital Agreements Act.

THE UNIFORM LAW COMMISSION AND UNIFORM PREMARITAL AND MARITAL AGREEMENT ACT

Now, every state recognizes the validity of these agreements in one form or another, although the standards for regulating such agreements vary from state to state.¹⁴ In an effort to bring about a measure of uniformity, the Uniform Law Commission (ULC), consisting of lawyers, judges, and legislators, was established in 1892 to research, draft, and promote the enactment of uniform state laws where it is desirable and practical.¹⁵ The ULC promulgated the Uniform Premarital Agreement Act (UPAA) in 1983, which was adopted in 26 jurisdictions, most of them in the 1980s or 1990s.¹⁶ However, the validity of marital agreements remained unsettled, resulting in promulgation of the Uniform Premarital and Marital Agreements Act (UPMAA) in 2012, which was adopted in two jurisdictions.¹⁷

Although family law and procedures are generally matters of specific state law, there are several examples of laws where uniformity across jurisdictions is desirable or essential.¹⁸ According to the ULC, a uniform act is one that:

seeks to establish the same law on a subject among the various jurisdictions.¹⁹ An act is designated as a "Uniform" Act if there is substantial reason to anticipate enactment in a large number of jurisdictions, and uniformity of the provisions of the act among the various jurisdictions is a principal objective.²⁰

This is different from a model act which, according to the ULC, is a designation applied when uniformity “may be a desirable objective, though not a principal objective, and the act may promote uniformity and minimize diversity even though a significant number of jurisdictions may not adopt the act in its entirety, or the purposes of the act can be substantially achieved even though it is not adopted in its entirety by every state.”²¹

Currently, 28 states have passed legislation to help bring uniformity to premarital or marital agreements by codifying either the UPAA or the UPMAA; Michigan is not among the states that have done so.²²

Uniformity remains elusive as states have amended the act in various ways over the years. Nevertheless, the purpose of the UPMAA remains to promote clarity and consistency among jurisdictions while acknowledging that jurisdictions differ in many respects including, but not limited to, fairness reviews based on the parties’ circumstances at the time the agreement is to be enforced; determining how to allocate the burden of proof for enforcing the agreement; and optional terms for waiving or modifying rights at divorce or death of the other spouse.²³

KEY COMPONENTS OF THE UPMAA

The UPMAA aims to bring clarity and uniformity among states by codifying certain key elements. Among them:

1. it does not apply to separation agreements, nor does it affect the rights of third parties when a spouse is involved in a transfer of property in which the other spouse’s waiver of rights is required;
2. it affirms that normal principles of choice of law and conflict of laws apply to premarital and marital agreements;
3. it declares that both premarital and marital agreements are enforceable without consideration; and
4. it establishes enforcement standards, specifying that “unconscionability” and “failure of disclosure” are alternative grounds for making a premarital or marital agreement unenforceable.

Moreover, duress and lack of access to independent legal counsel are also bases to render an agreement unenforceable under the UPMAA.²⁴

FAMILY LAW SECTION RECOMMENDATION

In 2021, the SBM Family Law Section formed a subcommittee to make a recommendation to the section council on possible legislation that would make Michigan the 29th jurisdiction to pass a version of the Uniform Act. Among the issues the subcommittee considered:

1. Should the section support enactment of legislation codifying

the validity of premarital agreements and, if so, should the section support a bill enacting the UPMAA?

2. Should legislation address marital agreements and premarital agreements?
3. How would the legislation address key Michigan case law, most notably the *Allard* decision?
4. To what extent is it advisable to adjust the standard provisions of the UPMAA on financial disclosures and unconscionability?

The subcommittee concluded that enacting a version of the UPMAA that codified both premarital and marital agreements was appropriate. The final question — modifying the terms of the Uniform Act — remained.

Section 5 of the UPMAA states that “[u]nless displaced by a provision of this [act], principles of law and equity supplement this [act].”²⁵ But what does that mean for the *Allard* decision? Would enactment of the UPMAA reopen the door and call into question the court’s authority to invade the separate property of one spouse pursuant to MCL 552.23 and MCL 552.401 based on language in the agreement waiving such rights, a question which was settled in *Allard*?

The Family Law Section Council concluded that a provision within Section 5 of the UPMAA codifying the *Allard* decision was vital to achieving certainty. The section was amended to read:

Unless displaced by a provision of this [act], principles of law and equity supplement this [act], including a court’s authority under MCL 552.23(1) and MCL 552.401, but only to the extent necessary to achieve the purposes of the statutes. Imposition of a remedy under either statute does not invalidate the entire marital agreement unless the agreement otherwise fails to meet the requirements of this act.

As stated in the revised comments, the proposed act is not intended to change the established law in *Allard*. Ultimately, the council concluded that enacting the UPMAA without a specific reference to *Allard* could potentially create uncertainty, which conflicts with the intent of the UPMAA.

The Family Law Section Council in March 2022 voted unanimously to approve a draft of the UPMAA with the above revisions.²⁶ The next step is engaging with lawmakers and securing a legislative sponsor with the hope that UPMAA becomes codified in statute in 2023.

The authors acknowledge the extraordinary efforts of Randall Velzen, who chaired the Family Law Section Subcommittee on Premarital and Marital Agreements.



Anne Argiuff is an appellate practitioner concentrating on domestic relations appeals. She is past chair of the SBM Appellate Practice Section and current cochair of the Family Law Section Amicus Committee. Argiuff has published and spoken on a variety of family-law related issues.



James W. Chryssikos is a solo practitioner based in Troy focusing on family law, collaborative divorce, and domestic relations mediation. He is a member of the Collaborative Practice Institute of Michigan and has served on its executive board since 2019. He has served on the SBM Family Law Section Council since 2015, co-chaired its legislative committee since 2017, and has served on the editorial board for the Michigan Family Law Journal since 2014.

ENDNOTES

1. *In re Benker Estate*, 416 Mich 681; 331 NW2d 193 (1982).
2. *Id.* at 688-689.
3. *Id.* at 693.
4. *Id.* at 689 (noting the Legislature requires fair disclosure for waiver of rights in surviving spouse agreements).
5. *Rinvelt v Rinvelt*, 190 Mich App 372, 375-379; 475 NW2d 478 (1991).
6. This article focuses primarily on property division. Spousal support and other marital rights and obligations are also addressed in these agreements. The following statutes codify equitable principles: MCL 552.19, MCL 552.23(1), MCL 552.401, and MCL 552.13(1).

7. *Sparks v Sparks*, 440 Mich 141, 150; 485 NW2d 893 (1992) (citing in a footnote MCL 552.12, which provides that divorce actions shall be conducted in the same manner as other suits in courts of equity).
8. *Id.* at 149 (citing MCL 552.23(1)).
9. *Skaates v Kayser*, 333 Mich App 61; 959 NW2d 33 (2020).
10. *Id.* at 75-78.
11. *Allard v Allard*, 318 Mich App 583; 899 NW2d 420 (2017).
12. *Id.* at 599.
13. *Id.* at 603.
14. *Premarital and Marital Agreements Act*, Uniform Law Commission (ULC) <<https://www.uniformlaws.org/committees/community-home?CommunityKey=2e456584-938e-4008-ba0c-bb6a1a544400>> [<https://perma.cc/S5CN-Z6CV>]. All websites cited in this article were accessed December 2, 2022.
15. The ULC is also known as the National Conference of Commissioners on Uniform State Laws, *About Us*, ULC <<https://www.uniformlaws.org/aboutulc/overview>> [<https://perma.cc/TZT8-JK24>].
16. *Premarital and Marital Agreements Act*.
17. *Id.* North Dakota replaced the UPAA with the UPMAA in 2013.
18. Kisthardt and Handschu, *Commission weighs new family law-related acts*, *The Nat'l Law Journal* (May 7, 2012), available at <<https://www.law.com/nationallawjournal/almlD/1202551919939/>> [<https://perma.cc/U54L-YLVV>].
19. *E.g.*, Uniform Child Custody Jurisdiction and Enforcement Act, MCL 722.1101 *et. seq.*; Uniform Collaborative Law Act, MCL 691.1331 *et. seq.*; and Uniform Child Abduction Prevention Act, MCL 722.1521 *et seq.*, to name a few.
20. *What is a Uniform Act?* ULC <www.uniformlaws.org/acts/overview/uniformacts> [<https://perma.cc/47PZ-ZZS7>].
21. *What is a Model Act?* ULC <www.uniformlaws.org/acts/overview/modelacts> [<https://perma.cc/V337-CY9R>].
22. *Premarital and Marital Agreements Act*.
23. *What is a Model Act?*
24. *Premarital and Marital Agreements Act*.
25. *Premarital and Marital Agreements Act: Final Act*, available at <<https://www.uniformlaws.org/viewdocument/final-act-101?CommunityKey=2e456584-938e-4008-ba0c-bb6a1a544400&tab=librarydocuments>> [<https://perma.cc/K9NN-XM3V>].
26. The State Bar of Michigan has yet to take a public policy position on this proposal.

CREATIVITY MATTERS

Sometimes the solution is simple.

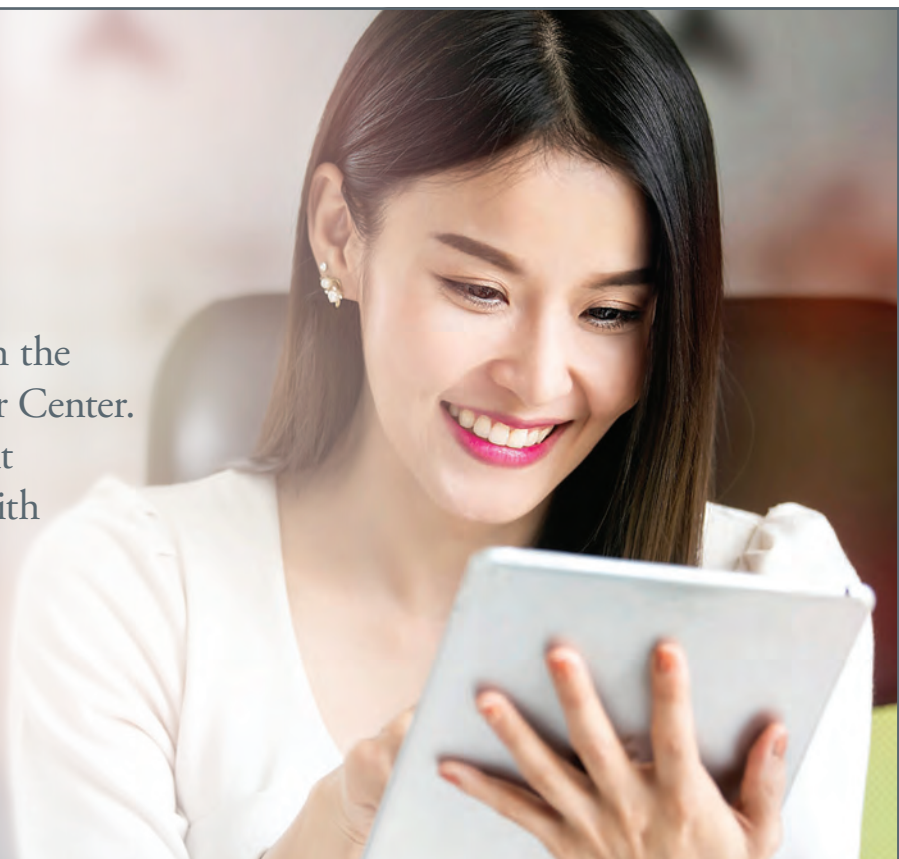
Other times, we need to change our thinking to find a constructive resolution.

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Is there a formula for parenting time?

BY KEELA JOHNSON

Every year brings new and updated technology, yet the best technology cannot calculate or predict the outcomes of individual personalities, emotions, and human interactions.

Hon. Kirsten Frank Kelly described the application of a formulaic approach to spousal support as “limited [and] arbitrary” and without any support in the law because it does not “consider the unique circumstances of the parties’ respective positions and fails to reach an outcome that balances the parties’ needs and incomes.”¹ Kelly opined that by using a formula, the trial court failed to consider the relevant factors in an award of spousal support.² Similarly, a formula, calculation, or standard policy that is to be applied by default or because parents simply do not agree with one another on what is best for their children in the midst of a custody dispute does not adequately account for many of the other relevant and important

factors to be analyzed by the court, whether applied to spousal support or parenting time.

MCL 722.27a(1) states that “parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents.” The statute goes on to say that parenting time shall be granted to a parent “in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time” following a court’s consideration of the factors enumerated at MCL 722.27a(7), specifically:

- (a) the existence of any special circumstances or needs of the child.

- (b) whether the child is a nursing child less than six months of age or less than 1 year of age if the child receives substantial nutrition through nursing.
- (c) the reasonable likelihood of abuse or neglect of the child during parenting time.
- (d) the reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.
- (e) the inconvenience to, and burdensome impact or effect on, the child of traveling for purposes of parenting time.
- (f) whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.
- (g) whether a parent has frequently failed to exercise reasonable parenting time.
- (h) the threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody; a custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.
- (i) any other relevant factors.

Translating these factors into an appropriate parenting time schedule can be a challenge. I have been searching for the perfect universal, multipurpose, functional, standard parenting time order — the “super order” — that contains all the provisions for parenting time. Unfortunately, such an order seemingly does not exist. The circumstances of the individual parties, specific characteristics, and family dynamics are subjective factors that differ in every case. Consider the diversity of Michigan's economy, for example, with industries such as agriculture, automotive manufacturing, and tourism;³ it is simply not feasible that the same super order could be applied in Marquette, Lake, Wayne, and Kent counties because the needs of the residents in each jurisdiction are different.⁴ A farmer during harvest time needs a far different and more flexible schedule than two parents who work weekdays from 9 a.m. to 5 p.m. and live within blocks of one another or an autoworker on the midnight shift co-parenting with a waitress who works afternoons.

While this author could not find a single source for the information that follows, my research uncovered that of the 57 circuit courts in the state, 13 do not have published documents labeled “standard parenting time schedule/policy” or “holiday parenting time schedule,”⁵ and six have publications with guidelines and options to assist with coparenting, but no default policies.⁶ Only three circuit courts acknowledged that they may serve families who do not celebrate Christmas (with a footnote to contact the court to discuss alternate parenting plans)⁷ and just one court acknowledged that it serves families with same-sex parents.⁸ While relevant in every single county, not one county provided a proposed parenting time schedule for parents working afternoon or midnight shifts.

Guidance for parents and practitioners to create parenting time schedules that work for each specific family is available, with con-

AT A GLANCE

One of the most crucial areas of family law is parenting time. While we have a statute to guide courts in making custody decisions, what guidance do courts offer attorneys and litigants in crafting parenting time plans?

sideration given to child development, age, and safety. SCAO publishes the Michigan Parenting Time Guideline.⁹ Originally developed in 2000 as an informational tool about parenting time best practices, the publication was created by an advisory committee of judges, Friend of the Court referees, custody and parenting time specialists, mediators, attorneys, and psychologists. The guideline recognizes that “because each family is unique, there is not one standard schedule that works best for all families” and offers a variety of parenting time plan options that take into consideration a child's age and the family construct when designing proposed schedules.¹⁰ Most recently updated in March 2022, the guideline is an excellent resource for both parents and practitioners.

In many standard parenting time policies published by counties throughout the state, circuit courts award the “non-custodial parent” alternating weekend parenting time from Friday at 6 p.m. to Sunday at 6 p.m. with one dinner per week from 5-8 p.m.; depending on the county, it may be earlier or later.¹¹ Again, my research uncovered that very few counties provided for the non-custodial parent to pick up or drop off children at school, which more easily allows for the non-custodial parent to be involved in the child's school day or to talk to a teacher. For example, the summer parenting time schedule for the non-custodial parent under many of these policies ranged from one week in June, July, and August¹² to 50% or even 70% of the summer.¹³ Some counties structured their parenting time plans to alternate weekly,¹⁴ while others order the custodial parent to exercise weekend parenting time while the non-custodial parent was able to spend the most time with the child during the summer.¹⁵

Moreover, none of the policies defined the term “non-custodial parent” to provide readers with insight into the difference between custodial and non-custodial. The term “non-custodial” appears in pre-1997 opinions relating to a parent being denied the right to “visit” his children in *Hutchins v. Hutchins*,¹⁶ *Henshaw v. Henshaw*,¹⁷ and *Brown v. Turnbloom*.¹⁸ In fact, parents continued to “visit” their children until 1997, when the Michigan Court of Appeals first used “parenting time” in its published opinion in *Van v. Zahorik*.¹⁹

The amount of guidance provided to parents separated by geography also varies by county. Approximately half of the standard parenting time policies considered different arrangements for infants

and toddlers versus school-aged children, typically defined as starting in first grade. This author found that several counties provided alternate policies for long-distance parents who lived 50, 100, or 125 miles apart²⁰ and between two and five hours away.²¹ Several counties provided tips on how to prepare a child for parenting time while others provided lists of acceptable and unacceptable reasons to cancel parenting time.

My research also uncovered the fact that some counties, in an attempt to provide resolutions to frequently disputed topics, allow parents to smoothly transition from Mr. and Mrs. to mom and dad living in two separate homes and provide some very specific policies to address issues such as childcare; transportation to and from parenting time exchanges; use of car seats; licensed driver requirements; medications; the child's attendance at appointments and activities; communication between parents; prohibition of using the child as a messenger or exchanging mail at parenting time; the exchange of clothing; banning significant others around the children; and smoking and the use of alcohol.²² Other counties limited the policies to the schedule for weekend, weekday, holiday, and summer parenting time.

The standard parenting time policies for some counties have been updated as recently as June 2022. Policies in other counties remain outdated. Many counties provide proposed orders on their websites, but have not updated orders available to the public with new language required by MCL 722.27a(10) — specifically, that orders “shall contain a prohibition on exercising parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.” If the intention of posting these policies is to inform and guide, many counties would be advised to at least provide accurate information.

Despite the best efforts of those within the family law community committed to tailoring parenting time plans to each family's specific needs, reasonable parenting time policies — which provide no context of what “reasonable” means — have been in place throughout many counties in the state for the past 20 years. To this day, they often remain the default language used in some counties and are treated as the rule instead of what they are: an arbitrary approach that fails to examine the unique circumstances of the parties' family dynamics and apply the statutory factors to each unique situation.

All parents and children deserve what is in their best interest and not the application of a generic schedule that has been the default for two decades. Parents no longer “visit” their children on weekends; they parent them seven days a week.

As family court attorneys, we must educate judges and other court professionals on the proper application of existing laws and the variety of available parenting time plan options. Understanding and using these resources will help ensure that the child's best interests are at the center of every decision made in family courts throughout the state.

When was the last time you reviewed the Michigan Parenting Time Guideline and parenting time options, read your county's Friend of the Court website, or offered constructive suggestions to your Friend of the Court regarding its website content? Michigan family law practitioners can do better. Future generations depend on it.



Keela Johnson is an equity shareholder at Giarmarco Mullins & Horton in Troy who concentrates her practice in domestic relations and serves as guardian ad litem. Johnson is a member of the State Bar of Michigan Family Law Section Council and the bar associations in Oakland, Macomb and Genesee counties.

ENDNOTES

1. *Myland v Myland*, 290 Mich App 691, 696; 804 NW2d 124 (2010).
2. *Id.*
3. *Economy at a Glance: Michigan*, US Bureau of Labor Statistics (2022), available at <<https://www.bls.gov/eag/eag.mi.htm>> [<https://perma.cc/6L6B-7PVN>]. All websites cited in this article were accessed December 7, 2022.
4. *Industries*, Mich Economic Development Corp <<https://www.michiganbusiness.org/industries/>> [<https://perma.cc/YQT6-7UB6>].
5. The 6th, 17th, 22nd, 34th, 37th, and 43rd circuit courts provide guides or checklists instead of standard parenting time guidelines; the 12th, 15th, 26th, 41st, and 55th circuit courts have no guides, checklists or standard guidelines; and the 39th and 47th circuit courts provided the law only.
6. The 6th, 17th, 22nd, 34th, 37th, 43rd circuit courts.
7. The 3rd, 54th and 19th circuit courts acknowledge families that practice non-Christian faiths.
8. The 16th Circuit Court.
9. Available at <https://www.courts.michigan.gov/49422a/siteassets/court-administration/standardsguidelines/foc/pt_gdlns.pdf> [<https://perma.cc/8AHK-Z2RC>].
10. *Id.* at pp 3, 44.
11. The non-custodial parent is in quotes by the author as this term usually serves to describe the parent that is “less than” in some way or another. It creates an unequal balance in the co-parent relationship.
12. The 30th and 45th circuit courts award one week of parenting time each of the summer months. In the 45th Circuit Court, the parenting time is based on the age of the oldest child.
13. The 11th Circuit Court.
14. The 1st, 5th, 18th, 24th, 49th, 52nd circuit courts all alternate parenting time weeks in the summer.
15. The 2nd, 9th, 19th, 23rd, 33rd, 36th, 42nd, and 53rd circuit courts.
16. *Hutchins v Hutchins*, 84 Mich App 236; 269 NW2d 539 (1978).
17. *Henshaw v Henshaw*, 83 Mich App 68; 268 NW2d 289 (1978).
18. *Brown v Turnbloom*, 89 Mich App 162; 280 NW2d 473 (1979).
19. *Van v Zahorik*, 227 Mich App 90; 575 NW2d 566 (1997).
20. In the 52nd Circuit Court, it is standard for parents that live within 150 miles to alternate weekends for parenting time. Parents living more than 150 miles apart exercised parenting time one weekend per month and six weeks during the summer. In the 40th Circuit Court, when parents live more than 100 miles apart, the long-distance parenting time policy applies.
21. In the 46th Circuit Court, standard parenting time is within a two-hour drive and long-distance parenting time is within 2-5 hours driving distance.
22. The 10th Circuit Court (transportation, pre-school, summer school, specific items to care for child, no significant others during parenting time); the 11th Circuit Court (transportation, communication, clothing, Right of First Refusal); the 14th Circuit Court (activities, transportation); the 25th Circuit Court (transportation, contamination of parenting time, activities, safety issues); the 27th Circuit Court (summer school policy, transportation policy, contamination of parenting time, funeral attendance, right of first refusal (four hours), alcohol and drug use prior to or during parenting time, and secondhand smoke in a vehicle or home.) The 29th and 30th circuit courts address transportation; the 35th Circuit Court addresses social media.

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ETHICAL CONSIDERATIONS

Representing accused batterers in domestic relations proceedings

BY KATHERINE M. SHARKEY

Family law is often stereotyped as rife with unethical, overly zealous practitioners; Jerry Springer-type proceedings; difficult clients; and case files that read like soap opera scripts. Those of us who live in the family law trenches acknowledge we are confronted with clients experiencing what is often the most difficult period of their lives. Clients come to us vulnerable, embarrassed, and deeply concerned about the most precious parts of their lives: their children and families.

Unfortunately, domestic violence (also known as intimate partner violence) is an unwelcome feature of too many families' lives. Competent and ethical representation of survivors and batterers is critical to moving families through our domestic relations courts in a dignified manner. This article focuses specifically on how practitioners can ethically represent alleged, convicted, or admitted

batterers while at the same time promoting the safety and security of the entire family during these difficult proceedings.

DOMESTIC VIOLENCE: THE INCONVENIENT TRUTH

According to the National Coalition Against Domestic Violence (NCADV), on average, nearly 20 people per minute are physically abused by an intimate partner in the United States. One in four women and one in nine men experience severe intimate partner physical violence, intimate partner sexual violence, or intimate partner stalking. One in three women and one in four men have experienced some form of physical violence by an intimate partner. One in ten women have been raped by an intimate partner.¹

The NCADV defines domestic violence as a pattern of behaviors utilized by one partner (the batterer or abuser) to exert and maintain



control over another person (the survivor or victim) where there exists an intimate and/or dependent relationship.² Michigan law defines domestic violence as the occurrence of any of the following acts by a person that is not an act of self-defense:

- causing or attempting to cause physical or mental harm to a family or household member;
- placing a family or household member in fear of physical or mental harm,
- causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress; and
- engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.³

IDENTIFYING A BATTERER

Although there is no “typical” batterer, a well-trained lawyer may observe signs that a client is or may be a batterer. Batterers may appear charming and well-spoken, be successful at work, or involved in their community and children’s school. When asked whether they abused their partner, they may minimize the abuse, deflect blame onto their partner, or admit to a one-time event triggered by another. Often, the denial or deflecting behavior is intended to earn the trust of the professional, who should avoid being manipulated.⁴

COMPETENT REPRESENTATION REQUIRES TRAINING AND SCREENING

MRPC 1.1 states, in part, that “a lawyer shall provide competent representation to a client, and that a lawyer shall not ... handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.”⁵

As the intimate partner violence statistics show,⁶ the practice of family law necessarily involves providing counsel and advice to individuals who have experienced domestic violence either as the survivor or the batterer. Simply put, an attorney cannot practice family law competently without a firm understanding of domestic violence.

Perpetrators of domestic violence are unlikely to be honest about the existence of violence in their relationships. Intimate partner violence is so insidious that many times, survivors do not even recognize it as occurring in their relationship. Batterers may admit to intimate partner violence but minimize the frequency or extent, shift blame to the victim, contend the violence was “mutual,” or blame the violence on alcohol or drug use.⁷

Lawyers should avail themselves of the wealth of training opportunities available regarding domestic violence. The State Bar of Michigan Family Law Section, the American Bar Association Domestic

AT A GLANCE

You've been retained in a family law case and there are accusations that your client is a batterer. How do you proceed? This article discusses ethical representation of those accused of domestic violence.

Violence Commission, the Battered Women's Justice Project, and State Court Administrative Office (SCAO) Friend of the Court Bureau have worthwhile trainings on their websites.⁸

Screening protocols can cut through some of the denial strategies and are useful tools for attorneys to get underneath preconceived notions of what may or may not constitute domestic violence. The SCAO Office of Dispute Resolution publishes its Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts.⁹ Although the screening tool is intended for mediators, practitioners can use it as a template during intake interviews with potential clients to determine if domestic violence is a factor.

Screening a client for the presence of domestic violence rarely leads to an admission of battering behavior; therefore, it becomes necessary to review other sources. You can search for the client's name in criminal court dockets for cases that might show or suggest domestic violence. When doing so, be broad in your search. A charge of interference with an electronic device may look innocent, but a deeper dive into the circumstances may reveal that the client smashed their partner's phone in the midst of a 911 call, an indicator of domestic violence. A similar conclusion could be made if the client was charged with destruction of property or assaulting a police officer. The presence of any criminal record should warrant further investigation, including accessing police reports.

FAILURE TO SCREEN MAY BE DETRIMENTAL

Some lawyers may believe that to effectively represent a batterer, they must ignore the signs of domestic violence and that competent representation actually requires them to stick their heads in the sand and simply believe a client's denial. However, ignoring the existence of domestic violence can lead to unintended consequences for both the client and the attorney in the form of unexpected or prolonged litigation, surprise disclosures, and potential malpractice.

For example, in *Pohlman v. Pohlman*, the plaintiff asked the trial court to set aside an agreement reached at mediation because the mediator failed to conduct the mandatory screening for domestic violence pursuant to MCR 3.216(H)(2).¹⁰ The trial court denied the motion and the Michigan Court of Appeals affirmed. In spite of

the outcome, this case underscores the importance of lawyers and mediators not only knowing their ethical and legal obligations, but also understanding the genesis of the rules favoring or requiring screening. Domestic violence is common. Mediation, in cases involving domestic violence and/or patterns of power and control, is likely to pressure litigants into reaching a compromise they might not otherwise desire. Legal competence requires that all attorneys and mediators understand the potential ethical and legal ramifications for failing to properly screen for domestic violence.

ETHICAL OBLIGATION TO CONSIDER IMPACT ON FAMILY

MRPC 2.1 states as follows:

In representing a client, a lawyer shall exercise independent professional judgment and shall render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.¹¹

This rule requires an attorney to use professional judgment, specifically permitting consideration of moral factors that may be relevant to a client's situation when rendering candid advice. When representing batterers or suspected batterers, the impact of violence on minor children must be considered when determining litigation strategy. Consider trying to discover whether children were present during any incidents of abuse or violence. If the children have been exposed to domestic violence, what impact will a particular parenting time schedule have on their long-term health and well-being? Is the client being honest about harm caused to the children? Is the client willing to own the behavior and participate in ameliorative services? Is the client willing to set aside the need to control the outcome in favor of a holistic approach to move the family forward? The attorney must provide competent representation and effective counseling while discouraging the use of litigation to continue the abuse.

COMPANION CRIMINAL CASES

Representing a litigant involved in a criminal matter with allegations relevant to the domestic relations case can pose significant challenges. A typical fact pattern may involve an incident of violence that resulted in criminal charges and the initiation of divorce proceedings.

Often, a criminal defendant feels pressured to settle the criminal matter so he or she can move forward with the family law matter. This may be the case when there is a no-contact order that prevents a defendant from spending time with the children. Conversely, plea agreements that may work well to resolve the criminal matter may negatively impact the family law matter.

The decision to move forward with a trial on criminal charges will necessarily have consequences for the family law matter. Statements a defendant makes in a criminal matter can be used in the

family law matter and vice versa. Likewise, a hearing on an objection to a personal protection order may yield testimony that will be harmful to the criminal proceeding. For example, although no negative inference can be made from the decision of a defendant not to testify in the criminal matter, the same cannot be said for the domestic matter.

In order to competently represent a client facing criminal charges involving domestic violence, an attorney should understand the implication of testimony, plea agreements, objections to personal protection orders, no-contact orders in both cases, and contempt in the family law cases.¹²

DUTY TO WARN: ETHICAL AND LEGAL OBLIGATIONS

If a client makes a threat to harm their former partner (or anyone else), does an attorney have an obligation to warn that client of the danger? Historically, “a lawyer who knows of a batterer’s intent to commit further domestic violence has traditionally been free from any obligation to warn the intended victim, even when she is readily identifiable and the batterer’s intent and the severity of the injury seem clear.”¹³

Confidentiality is not absolute, however. At times, ethical or legal considerations may take precedence. MRPC 1.6 states, in part, that a lawyer may reveal a client’s intention to commit a crime and the information necessary to prevent the crime. Therefore, the Michigan rule permits revealing secrets to prevent any crime, not just those that may result in death or substantial injury. However, it is permissive and not mandatory.

The California Supreme Court case *Tarasoff v. Regents of University of California* examined whether a therapist had a legal obligation and therefore could be liable in tort for failing to warn a “foreseeable victim” of violence.¹⁴ The California Supreme Court found that a “special relationship” existed between a therapist and a victim and the therapist could be sued for failing to warn.¹⁵ This reasoning has not yet been extended to lawyers and potential victims, but some legal scholars believe the application to attorneys is inevitable.¹⁶

If you have concluded that your client likely is a batterer — whether through an admission, criminal conviction, or other sources — the question becomes how to balance the duty to zealously represent the client with the duty to render candid advice (while doing no harm). Consider the following:

Holding the Batterer Accountable

“Accountability is a process to create pathways to responsibility, healing, hope, transformation, and, in some cases, restoration, in people who cause harm. It requires systems and communities to remedy barriers to change, and support people who cause harm to repair the harms caused by (intimate partner violence.)”¹⁷ Professionals, including attorneys, the courts, and assisting agencies,

must offer ways to promote accountability.

Valuing the Survivor’s Voice

Even when representing a batterer, the attorney should attempt to understand how the survivor defines safety. This may involve considering limited parenting time for your client with a requirement for treatment or other services.

Engaging in Services

Batterers willing to try to change their behavior will require treatment and support similar to individuals with substance abuse or mental health challenges. Batterer intervention programs provide an opportunity for batterers to change their behavior and promote safety for all family members.¹⁸ While programs vary in length, the Batterer Interventions Standards for the State of Michigan recommend 52 sessions or longer, noting that longer programs allow for exposure to more material and an opportunity for greater interaction between batterers and treatment therapists.¹⁹ Some programs also offer additional classes on topics such as non-abusive parenting.

CONCLUSION

Competence in family law requires a firm understanding of the dynamics of intimate partner violence. Attorneys representing batterers have a key role to play in promoting the safety and stability of the family moving forward. Attorneys for batterers have both legal and ethical obligations that will affect the representation of their client and affect the well-being of the client and the entire family. Therefore, it is important for family law attorneys to familiarize themselves with the signs of abuse, the potential for deflection and blame from their client, and the important role they may serve in helping their client receive treatment that will minimize the risk of the behavior repeating or continuing in the future.



Katherine M. Sharkey was a family law staff attorney with Cabrini Green Legal Aid in Chicago from 2006-10 and worked at Family Law Project from 2011-13, representing survivors of domestic violence in personal protection and family law cases. In 2013, she transitioned to private practice and in 2019, she and Elizabeth Kitchen-Troop opened Kitchen Sharkey in Ann Arbor, focusing on family law as a litigator, mediator, guardian ad litem, and parenting coordinator.

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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.

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**:

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PNC Center
755 W. Big Beaver Road, Suite 2100
Troy, MI 48084

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333 W. Fort St., Suite 1700
Detroit, MI 48226



The cryptocurrency divorce

BY RYAN M. KELLY

The past few years have marked a massive shift in the evolution of cryptocurrencies. There is money to be made, money to be lost, and, for some, money to hide. Those at the more novice level have been watching the rise and fall of Ethereum, Bitcoin, and Doge and enjoying the accompanying excitement.

Cryptocurrency clearly falls within the definition of marital property, which generally includes all assets acquired during the marriage. Therefore, as family law attorneys, it is critical that we understand what cryptocurrency is, how to find and value it, and how to address crypto-related issues in a divorce. Crypto is an asset divorce attorneys cannot ignore and must address in discovery, counseling clients, mediation, settlements, or at trial and divide, offset, or equalize in some format.

WHAT IS CRYPTOCURRENCY?

By definition, cryptocurrency is a digital currency in which transactions are verified and records are maintained by a decentralized system.¹ Unlike government-backed currency, there is no central authority (such as the U.S. Department of the Treasury for the U.S. dollar) that manages and maintains its value.² Notable cryptocurrencies include Bitcoin, Ethereum, Doge, and Shiba. There are believed to be approximately 4,000 types of cryptocurrencies available. Bitcoin is by far the most popular and well known with more than 19 million Bitcoins in circulation as of May 2022.³

Cryptocurrency is designed to be exchanged through a computer network, not relying on a government or bank to verify that its value exists.⁴ The main difference between cryptocurrency and traditional

money is that no one controls the cryptocurrency, and no one can govern how and when an individual makes transactions. A bank or a credit card processor has the authority to decide whether your money can be sent, and to whom. Traditional money is also backed by the government, and the value can ebb or flow based on a political or economic situation.⁵

Cryptocurrency can be purchased online at one of the more popular websites such as Coinbase, Robinhood, or Exodus.⁶ It can also be purchased or traded offline. Cryptocurrency can be held online or through an app, it can be held in storage such as on a hard drive or flash drive (typically called a cold wallet), and it can be held even in a paper wallet, though they are generally considered obsolete.⁷

Cryptocurrency can be traded for cash, tangible goods, or other crypto. Some crypto can be used to purchase or acquire tangible goods, cashed in, or used for services. Microsoft, Overstock, and even the National Basketball Association's Dallas Mavericks accept Bitcoin as a form of payment.⁸ However, the best-known cryptocurrencies like Bitcoin and Ethereum are frequently used as an investment option similar to stocks or gold.⁹

FINDING CRYPTOCURRENCIES

First of all, if you are not asking your client about their crypto and online currency, you are missing a potentially significant asset. Second, if you are not asking about crypto in your discovery or verified financials, then you may miss including a potentially incredibly valuable asset of the marital estate.

How do we find this potentially valuable asset? Cryptocurrency is, for some, a new way to hide assets from one's spouse in a divorce. Think of it as the new offshore account. Whether it is inadvertent or intentional failure to disclose, it is critical that divorce attorneys obtain discovery about this asset.

The first place to start is using Michigan's Domestic Relations Verified Financial Information Form,¹⁰ which is required in all divorce cases unless an exclusion applies.¹¹ The "miscellaneous" section of this form includes one line about online or cryptocurrency, specifically stating:

Are there any other items you own that have financial value such as electronic assets, season tickets, or electronic currency such as bitcoin? ... If yes, describe asset, where it is held and its current value as of a specific date[.]"

Arguably, there are ample opportunities to disclose cryptocurrency under the financial accounts section of the disclosure form as well as in response to the catch-all question asking for "any other financial information of any kind" on the form.

Another way to locate cryptocurrency is reviewing your client's bank statements. You should review these statements for transactions that indicate transfers to online trading platforms as well as through cash apps such as PayPal and Venmo. Your client should also search the family's financial records, looking for a string of numbers, letters, or symbols that may make no sense at first glance. Cryptocurrency should be reported on tax returns — although not everyone does — so it is worth reviewing prior returns to determine whether there have been transactions in previous years.

Starting in 2020, the IRS began calling attention to cryptocurrency and added this question to the digital assets section at the top of form 1040: "At any time during the year did you receive, sell, send, exchange or otherwise acquire any financial interest in virtual currency?"¹² The IRS does not recognize cryptocurrency as currency but as property, meaning that the capital gains and losses should be reported on tax returns.

Many online institutions such as Robinhood and Coinbase will typically respond to subpoenas, which may be wise to use in order to determine the extent of the actual holdings. A forensic evaluation of computers or external hard drives or storages may help in locating cryptocurrency. And, of course, as in other complex litigation matters, it may be wise to consult with a financial expert such as a forensic accountant if there is a sincere concern about determining the extent and nature of the cryptocurrency.

Keep in mind, some forms of cryptocurrency require a digital key that only the user has and if it is lost, it can never be reset, replicated, or accessed in any other format.¹³ Imagine this in a divorce: someone discloses the crypto but claims that they lost the key or code and, therefore, it can never be accessed. Take, for example, the story of James Howells, a man from Wales who trashed an old hard drive in a spring-cleaning effort — not realizing that it held 8,000 bitcoins.¹⁴ As of early December, that hard drive was worth approximately \$136 million.¹⁵ Although he's unlikely to find

AT A GLANCE

What is cryptocurrency and how does it relate to divorce litigation? This article serves as an introduction for attorneys working to untangle this new and complex area of family law and a reminder to pay heed to this asset in a divorce.

it, Howells has proposed a plan to search the landfill where the drive is believed to be buried at a cost of \$11 million.¹⁶

Or consider the following scenario: Concerned about the impact of the COVID-19 pandemic, a husband cashed out one of his retirement accounts in 2020 and purchased crypto from a variety of different sources — some through a Robinhood account and more through mining, for which he receives a code, writes on a piece of paper, and puts in his desk drawer. The husband and his wife file for divorce in 2022 and while the husband discloses on his verified financial form a Robinhood account worth \$12,500, he claims that he cannot locate the piece of paper — and even blames his wife for taking it when she obtained tax records from his home office. There is no description of what is held at Robinhood, what the account is composed of in terms of crypto, or the date of valuation.

As a savvy divorce attorney, you will want to ensure that you receive all account statements and information. The good news is that Robinhood not only provides regular statements, but it will usually respond to a subpoena. Do not rely on a snapshot or screenshot of the account. Determine the type of crypto that is held so your financial expert and your client can decide whether they wish to receive their share of the actual account holdings or accept a payment in another format either with a settlement or an offset from other assets. This leaves the written code that is missing in action. This author would suggest that the parties agree that if the missing code is ever located, they will divide the holdings equally with strong language about timing of locating and sharing the information.

HOW DO WE VALUE CRYPTO?

Once the crypto has been located, an issue arises with value. Even more turbulent than our current stock market, crypto can rise 1,000% over the span of a single night and drop just as quickly. Does your client want to take that risk or do they want to cash out or be made whole with other assets? Consulting with a savvy financial advisor is always a good idea, but the risk is uncertain. Consider this: in 2009, Bitcoin opened to the public at \$0 per unit. By 2010, it was 9 cents per unit. It peaked on Nov. 10, 2021, at \$68,789 per unit.¹⁷ When this article was written, Bitcoin was valued at just under \$17,000 per unit. The risks associated with dividing cryptocurrency must be contemplated with your client and a financial expert when addressing this asset type in a divorce.

CONCLUSION

While it may seem daunting at first, cryptocurrency is really not much different from any other investment or asset being divided. The client must consider the risk associated with cryptocurrency and whether they would prefer to be compensated in the form of a division of the crypto itself, a cash payment, or offsets with other assets. If the crypto is cashed in, depending on the platform, it can result in a taxable event which should also be considered in the financial

settlement. Some platforms do not permit the transfer of the crypto to another user, only to a bank or investment account; others can be transferred via email. The other assets and income the client may have post-divorce should also be considered when deciding whether to continue to own the cryptocurrency.



Ryan M. Kelly is a partner at Kelly & Kelly in Northville, where her practice focuses on divorce and family law. She is past president of Women Lawyers Association of Michigan, a member of the Wayne County Family Law Bar and Northville's Main Street League, and a Girl Scout leader. She contributes regularly to ICLE, has been named a DBusiness Top Lawyer, and was named to Michigan Lawyers Weekly's 2021 Michigan Women in the Law class.

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SAVE THE DATE

The 50-Year Golden Celebration luncheon will be held on Thursday, May 25, 2023, at Saint John's Resort in Plymouth.

Formal invitations will be sent by email in March. For questions, contact 888-SBM-ForU (888-726-3678) or sbmforu@michbar.org

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EXCERPTS FROM STATE BAR OF MICHIGAN AUDITED FINANCIAL STATEMENTS

AND OTHER SUPPLEMENTARY INFORMATION, YEAR ENDED SEPTEMBER 30, 2022, WITH REPORT OF INDEPENDENT AUDITORS

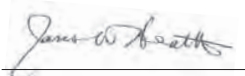
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December 7, 2022

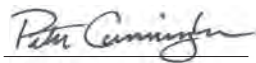
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Pursuant to Rule 7 of the Rules Concerning the State Bar of Michigan, please accept the State Bar of Michigan's FY 2022 Annual Financial Report, which covers the fiscal year that ended on Sept. 30, 2022. The Annual Financial Report contains audited financial statements and other information required by accounting standards as well as information that highlights the operations and effectiveness of the State Bar of Michigan as a public body corporate operating pursuant to statute and rules set forth by the Michigan Supreme Court.

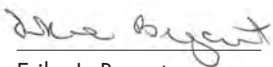
The State Bar of Michigan's management is responsible for the information provided in this FY 2022 Annual Financial Report. The basic financial statements and related notes are audited by the independent accounting firm of Andrews Hooper Pavlik PLC in accordance with auditing standards generally accepted in the United States of America. Their opinion is provided as part of this report. Questions or comments about this report should be directed to the executive director of the State Bar of Michigan.



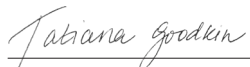
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OVERVIEW OF THE STATE BAR OF MICHIGAN

The State Bar of Michigan was established in 1935 by public act and is regulated by the Michigan Supreme Court. The State Bar of Michigan exists to aid in promoting improvements in the administration of justice and advancements in jurisprudence, improving relations between the legal profession and the public, and promoting the interests of the legal profession in Michigan. By

law, all persons licensed to practice law in Michigan constitute the State Bar of Michigan's membership. The State Bar of Michigan is a public body corporate, funded by licensing fees and revenue generated by bar activities. It receives no appropriations from the state of Michigan.

The State Bar of Michigan works to promote the professionalism of lawyers; advocates for an open, fair, and accessible justice system; and provides services to members that enable them to best serve their clients.

GOVERNANCE

By integrating the bar into the regulatory structure of the legal profession, the state of Michigan adopted a modified form of the self-governance of the legal profession common to England and Commonwealth countries. Pursuant to Rule 5 of the Rules Concerning the State Bar of Michigan (State Bar Rules), the State Bar is governed by a Board of Commissioners. The president, president-elect, vice president, secretary, and treasurer are the officers of the State Bar, elected by the Board of Commissioners.

State Bar Rule 6 provides for a 150-member Representative Assembly as the final policymaking body of the State Bar. Its elected officers are the chair, vice chair, and clerk.

STRUCTURE

The State Bar of Michigan helps lawyers, as officers of the court, fulfill their ethical obligations to improve the quality of legal services and assist in the regulation of the legal profession. The State Bar of Michigan accomplishes a substantial portion of this work through its volunteers, led by the leadership of the Board of Commissioners and Representative Assembly.

There also are 20 standing committees of the State Bar created to advance the work of the State Bar as defined by court rule. More than 480 attorneys served on State Bar of Michigan committees, task forces, and work groups in FY 2022. The State Bar's 44 sections focus largely on excellence in specific practice areas and each operates with its own bylaws approved by the Board of Commissioners. The work of the Young Lawyers Section and the Judicial Section is funded by the State Bar of Michigan and the other 42 sections are funded through membership dues.

To carry out its mission, the State Bar of Michigan employs a paid staff that operates under the supervision of the executive director, who is appointed by the Board of Commissioners. The State Bar of Michigan employed 72.5 full-time equivalent employees (FTEs) at the end of FY 2022, the same number as FY 2021.

KEY ACTIVITIES**ACTIVITIES MANDATED BY STATUTE OR COURT RULE****ADMINISTRATIVE ACTIVITIES**

- Maintenance of an official attorney database
- Collection of license fees and administration of licensing requirements
- Administrative support for the attorney discipline system
- Governance (self-governing features of the integrated bar are defined by court rule)

ACTIVITIES SPECIFICALLY MANDATED BY STATUTE, COURT RULE, OR SUPREME COURT ADMINISTRATIVE ORDER

- Character and fitness operations
- Pro hac vice administration
- Annual Meeting
- Unauthorized practice of law prosecution
- Client Protection Fund administration
- Michigan Bar Journal
- Member directory
- Administration of prepaid legal services regulation
- Administration of nonprofit lawyer referral services regulation
- Regulation of advocacy concerning promotion of improvements in the administration of justice and advancements in jurisprudence
- Administration of IOLTA financial institution registrations
- Nominations for statutory positions

ACTIVITIES AUTHORIZED BY BOARD OF COMMISSIONERS TO CARRY OUT GOVERNMENTAL MANDATE**IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE AND ADVANCEMENTS IN JURISPRUDENCE**

- Administration of AO 2004-1 concerning State Bar of Michigan public policy activities
- Access to justice initiatives
- Policy development and research
- Diversity and inclusion initiatives
- Advocacy (court rule and statute)

IMPROVEMENTS IN RELATIONS BETWEEN THE LEGAL PROFESSION AND THE PUBLIC

- Unauthorized practice of law educational resources
- Online legal resource center
- Civic education and public outreach
- Pro bono program and A Lawyer Helps
- Enhanced profile directories

PROMOTION OF INTERESTS OF LEGAL PROFESSION

- Administrative support for sections
- Practice management support services
- Lawyers and judges assistance
- Ethics helpline
- Legal research tool
- Endorsed products and services
- Ethics seminars and resources
- e-Journal
- Practice management seminars
- Support for local and affinity bars

HIGHLIGHTS OF FY 2022**ANNUAL FISCAL REPORT UPDATE****ADMINISTRATIVE ACTIVITIES****Collection of License Fees and Administration of Licensing Requirements**

The State Bar of Michigan has continued to improve the online license renewal process by updating and upgrading the member portal and e-commerce site at e.michbar.org. Improvements included developing an online consolidated billing portal, creating a helpdesk system to field Michigan attorneys' questions sent by email, introducing a tracking system for bar card shipments, and automatically generating receipts for payments by check processed by lockbox.

ACTIVITIES SPECIFICALLY MANDATED BY STATUTE, COURT RULE, OR SUPREME COURT ADMINISTRATIVE ORDER**Bar Admissions**

The State Bar processed 611 character and fitness (C&F) applications for the February 2022 and July 2022 bar exams and conducted district committee interviews for 31 applicants. Three additional matters were referred, with interviews or recommendations pending. Twenty-four matters are expected to be referred to C&F district committees upon completion of investigations. There were 34 formal standing committee hearings conducted. Ten formal BLE hearings were held.

Annual Meeting

The State Bar satisfied court rule requirements by successfully conducting the 2022 Annual Meeting and associated business functions. These included the Board of Commissioners meetings and the Representative Assembly meeting. The annual Inaugural & Awards ceremony was held as a luncheon event in Detroit in September.

Unauthorized Practice of Law Administration

The State Bar received 62 complaints alleging the unauthorized practice of law (UPL) in FY 2022. Of these complaints, 35 were closed after investigation either due to obtaining voluntary

compliance or because there was no evidence of UPL found. Of the remaining 27 open matters, nine matters remain under investigation, seven matters are pending UPL Standing Committee review after investigation, and 11 matters were approved for litigation by the Board of Commissioners and remain open for litigation review. Four injunctive orders were obtained by the UPL Department, and three cases remain in active litigation.

Client Protection Fund Administration

The Board of Commissioners approved 31 Client Protection Fund claims filed by payees whose attorneys misappropriated client funds. These claims totaled \$236,106. The State Bar made payments of \$422,812 which included \$240,737 approved by the Board of Commissioners in FY 2021. As of September 30, 2022, \$56,531 of claims remained to be paid pending the receipt of signed subrogation agreements.

Response to COVID-19 Pandemic

In response to the profound, extensive emergency changes in the operations of the court system and the practice of law precipitated by the COVID-19 public health crisis, the State Bar refocused its communications and public services to meet the emerging needs of the public and Michigan lawyers. The State Bar and its sections continue to work collaboratively with the State Court Administrative Office, the Board of Law Examiners, the attorney discipline system, the Michigan Institute for Continuing Legal Education, and the executive and legislative branches to best serve Michigan attorneys and the public as Michigan continues to evolve to the unprecedented changes created by the pandemic.

ACTIVITIES AUTHORIZED BY BOARD OF COMMISSIONERS TO CARRY OUT GOVERNMENTAL MANDATE IMPROVEMENTS IN ADMINISTRATION OF JUSTICE AND ADVANCEMENTS IN JURISPRUDENCE

Administration of AO 2004-1 and Policy Development

The State Bar defended its governmentally mandated duties when faced with a federal lawsuit that, as part of a string of lawsuits across the country, raised First Amendment challenges against integrated bars.

On Aug. 22, 2019, a State Bar member filed a complaint in the Western District of Michigan alleging that mandatory membership in and payment of dues to the State Bar infringe on her First Amendment right to free association and free speech. *Taylor v. State Bar of Michigan*, No. 1:19-cv-00670-RJJ-PJG (W.D. Mich). Taylor alleged that, under *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), the Michigan law requiring State Bar membership in order to practice law is unconstitutional. On Sept. 8, 2020, the district court in the Western District of Michigan granted summary judgment in favor of the State Bar, explaining that the issues raised by Ms. Taylor have been “squarely decided” by the United States Supreme Court. On July 15, 2021, the Sixth Circuit affirmed the district court: “Consistent with the numerous courts faced with claims like Taylor’s in the wake of *Janus*, we hold that Lathrop and Keller remain good law.” The Supreme Court denied the plaintiff’s petition for a writ of certiorari on April 4, 2022.

Access to Justice Initiatives

Promotion of access to justice is a thread that winds through many State Bar activities. In addition to policy development, the State Bar supports a centralized fundraising campaign administered by the separate Michigan State Bar Foundation in partnership with the State Bar to raise money for qualifying civil legal aid programs in Michigan. Access to Justice Campaign revenue for FY 2022 was more than \$1,386,000 (unaudited), including approximately \$17,400 in cy pres awards. Approximately \$25.9 million has been received by the Access to Justice Fund in donations and pledges. In the 2021 calendar year, 47 firms gave at the leadership firm level of \$300 or more per attorney, and 64 firms and corporate legal departments gave at tiered levels between \$1,000 and \$100,000.

An issue of the Michigan Bar Journal also was dedicated to Access to Justice. Published in November 2021, it included an introduction by Hon. Bridget Mary McCormack titled “Building Toward a Breakthrough in Access to Justice.”

The State Bar pro bono program and A Lawyer Helps also continued its support of services to assist those with qualified domestic relation orders, federal and state income tax issues, and patents. The State Bar also published the third edition of the Pro Bono Honor Roll, which encourages more pro bono service by recognizing attorneys, law firms, and corporations that provide a significant level of pro bono service. The honor roll tallied more than 39,000 hours of pro bono service by Michigan attorneys in 2021.

Justice for All Commission

The State Bar plays key roles in the Justice for All Commission, which was established in January 2021 by the Michigan Supreme Court. State Bar representatives serve on the commission, executive team, and various committees and workgroups. Prior to the establishment of the commission, the State Bar was heavily involved in the creation of the Justice for All Task Force inventory and strategic plan.

Diversity and Inclusion

In addition to its traditional work partnering with local and affinity bars on diversity and inclusion efforts, the State Bar continued to build a central repository of resources for Michigan lawyers on race and justice and convened another online Race and Justice Forum to discuss the intersection of the legal community and bias training for law enforcement professionals. The State Bar offered virtual training sessions to the Judicial Qualifications Committee on how unconscious processes may affect individual decision-making. In partnership with the National Association of Women Judges, the State Bar Face of Justice program offered a virtual mentoring experience to students from every law school in Michigan as well as 150 high school students in Michigan.

Advocacy

The State Bar public policy program fully reviewed 52 public policy items — including legislation, court rules, and administrative rules — and took approximately 45 formal policy positions. Highlights of legislative activity include successful advocacy for funding at the state level of the Michigan Indigent Defense Commission and the

judiciary budget as well as continued funding at the federal level for the Legal Services Corporation. Pursuant to AO 2004-1, all advocacy is reported on the State Bar of Michigan Public Policy Resource Center webpage.

IMPROVEMENTS IN RELATIONS BETWEEN THE LEGAL PROFESSION AND THE PUBLIC

Online Legal Resource Center and Access to Justice Initiatives

The State Bar of Michigan launched the Online Legal Resource and Referral Center in 2018 and has continued in subsequent years to advance its offerings and capabilities.

The website includes information and access to the Lawyer Referral Service, the online attorney directory, and educational materials to help consumers with their legal needs. In FY 2022, the Lawyer Referral Service updated practice areas to facilitate better, more targeted referral matches; expanded the Modest Means Program; transitioned to a new call center system; increased additional resources available to consumers seeking legal assistance who are unable to afford an attorney; and increased data analysis to better identify gaps in attorney/panelist availability by areas of practice and geographic location.

The Legal Resource and Referral Center portal was developed as a tool to better serve the Lawyer Referral Service panel attorneys by collecting data on referrals and ensuring all referrals are processed in a consistent manner. The portal also allows attorneys to manage their referrals online and facilitates online reporting and payment, which previously required a manual system.

In total, there were 220,790 unique visitors to the site who accessed 552,996 pages of information.

PROMOTION OF INTERESTS OF LEGAL PROFESSION

Administrative Support for Sections

SBM sections serve the profession and the state by maintaining and building expertise in specific areas of law, hosting educational programs, publishing journals and newsletters, and mentoring and training new lawyers, among other services. Most SBM sections are organized by practice area, with five exceptions: Judicial, Young Lawyers, Law Students, Senior Lawyers, and Law Practice Management. SBM provides administrative support for sections — maintaining the sections' financial accounts, membership databases, demographic profiles, and individual section websites — and robust support for section events and programs. SBM staff also provides consultation to sections on issues ranging from internal section governance to public policy advocacy. All public policy advocacy by sections is financed entirely by voluntary section dues and confined to the subject matter jurisdiction of the section.

In FY 2022, memberships in SBM's 44 sections totaled 50,217, including 34,836 paid section memberships purchased by 24,898 unique individuals (more than 1,000 section members in FY 2022 were not SBM licensees). As a rule, free section memberships extend to law students, first-year licensees, and those who qualify for

the Young Lawyers and Judicial sections. In FY 2022, SBM sections provided a total of 15,381 free memberships.

Practice Management Support Services

The Practice Management Resource Center (PMRC) provided low- and no-cost virtual seminars to Michigan attorneys and their staffs on topics including technology, risk management, practice management, and collaboration. The virtual seminars also were recorded and made available for viewing after their live broadcasts. In addition, the PMRC continued to update and provide resources, trainings, and guidance through the State Bar's website, personalized assistance to helpline callers, Michigan Bar Journal articles, newsletters, and social media. The State Bar also continued to produce its national podcast, "On Balance," which focuses on the interplay between practice management and wellness for a thriving law practice.

After a two-year absence due to the pandemic, the Upper Michigan Legal Institute returned in 2022 as an opportunity for all Michigan attorneys to expand their legal education and stay up-to-date on evolving issues in the legal profession. Hosted in partnership with the Institute of Continuing Legal Education, program topics included family law, criminal law, probate and estate planning, and real property law.

Lawyers and Judges Assistance

The Lawyers and Judges Assistance Program (LJAP) helps to protect the public by assisting legal professionals with mental health and substance-use concerns. The State Bar is devoted to the advancement of well-being in the legal profession, including offering services to those looking to optimize their overall wellness. Use of LJAP services and resources continued to increase in FY 2022. LJAP reached nearly 1,600 law students, lawyers, and judges through professional presentations on topics related to well-being in the legal profession through outreach to law schools, legal employers, local and affinity bars, regulators, and other stakeholders in the field of law. The number of presentations provided is a 108% increase from FY 2021, which had also increased from the year prior. Clinical assessments provided to members of the legal community seeking mental health or wellness services increased 21%.

In conjunction with the Practice Management Resource Center, LJAP continues to help produce the "On Balance" podcast on wellness-related topics. LJAP continues to offer weekly virtual support groups to both lawyers and law students.

LJAP has been integral in the establishment and oversight of the SOLACE (Support of Lawyers/Legal Personnel – All Concern Encouraged) program. Since the launch of SOLACE in July 2021, more than 16,000 legal professionals have voluntarily joined the SOLACE Network either individually or as a SOLACE program partner. The SOLACE Network has fulfilled 100% of requests for assistance, often within minutes.

In FY 2022, LJAP staff played an active role in the establishment of the Task Force on Well-Being in the Law, a collaboration between the State Bar of Michigan and the Michigan Supreme Court. The

task force was formally launched in May 2022 and is working with stakeholders to take steps to instill greater well-being in the legal profession.

Ethics Helpline and Seminars

The State Bar of Michigan staff ethics counsel responded to approximately seven to eight inquiries daily from attorneys and judges seeking informal advice through the Ethics Helpline. The inquiries ranged from simple advice to complex scenarios requiring extensive research. Staff counsel conducted numerous presentations including three Lawyer Trust Account seminars and two Tips and Tools seminars.

The Professional Ethics Committee published a General Attorney FAQ and an IOLTA FAQ in conjunction with the Michigan State Bar Foundation; issued three ethics opinions; issued a record retention kit; and published flowcharts on conflicts of interest. The Judicial Ethics Committee published FAQs concerning judicial campaigns and general judicial ethical issues, drafted three judicial ethics opinions, and provided comments on proposed court rules.

Interim Administrator Program

Since 2019, the State Bar has been working on creating a succession planning requirement to help ensure that clients are protected if their attorney dies or otherwise becomes unexpectedly unable to practice law. The need for succession planning in Michigan is great and growing based on data indicating that the number of small and solo practices is growing and attorneys are waiting longer to retire from the practice of law.

In June 2022, the Michigan Supreme Court adopted rule changes to establish an Interim Administrator Program based on recommendations made by the State Bar. Beginning in September 2023, the program will require attorneys in private practice to create a succession plan in the event the attorney becomes unexpectedly unable to practice law due to death, disability, or discipline. Beginning with 2023-2024 license renewals, all active Michigan attorneys in private practice will be required to either 1) designate a successor attorney or law firm or 2) pay a fee to participate in the State Bar of Michigan Interim Administrator Program. The Interim Administrator Program also will provide education and resources for attorneys to navigate the new requirement.

Support for Bar Associations

SBM formally recognizes 123 voluntary bar associations in Michigan divided into three types: geography-based (e.g., Ingham County Bar), demography-based (e.g., Davis-Dunnings Bar), and practice area (e.g., Creditors Bar). SBM provides a variety of support services to bar associations including consultation from staff, event coordination, communications support, and convening discussions and collaborations among bars, with SBM sections, and with other law-related entities.

The State Bar of Michigan also provides support to these entities through the Bar Leadership Forum, which returned in 2022 after a two-year hiatus due to COVID-19. BLF brought together section leaders as well as members of the Board of Commissioners and officers from other bar associations to learn skills that will help them be more

effective leaders. Topics included understanding Robert's Rules of Order; an update on the Commission on Diversity, Equity, and Inclusion; and effective marketing and communications.

FINANCIAL AND MEMBERSHIP SUMMARY

FINANCIAL SUMMARY

As of Sept. 30, 2022, the State Bar of Michigan's net position in the Administrative Fund totaled \$9,813,123— a decrease of \$1,960,097, or 16.6%, in FY 2022. Excluding the net liabilities associated with the retiree health care trust and other financial impacts, the Administrative Fund totaled \$7,439,054 — a decrease of \$983,958, or 11.7%, in FY 2022. The Administrative Fund decrease was anticipated because the State Bar of Michigan was at the end of an extended "fee cycle." The last funding increase for the State Bar of Michigan was 18 years before FY 2022, which means the fee cycle was the longest in at least a half century. The Client Protection Fund's net position totaled \$2,121,791 — an increase of \$287,672, or 15.7%. The sections' net position, calculated separately as it consists of voluntary section dues and other section funds, totaled \$3,076,128 — an increase of \$92,793, or 3.1%, in FY 2022. The State Bar operates with no outstanding debt.

APPROVED FY 2023 BUDGET

The State Bar Board of Commissioners approved a FY 2023 Administrative Fund budget in July 2022 totaling \$11,757,260, resulting in projected surplus of \$1,113,675. The budget considers an \$80 active member license fee increase effective FY 2023 and is aligned with the State Bar's strategic plan. A summary of the FY 2023 approved budget is in the December 2022 Michigan Bar Journal and can also be found on the State Bar's website at michbar.org/generalinfo.

MEMBERSHIP AND AFFILIATE STATISTICS

In FY 2022, the number of State Bar of Michigan attorney members increased by 250, or 0.5%, over FY 2021. The number of active attorneys increased by 151, or 0.3%. Below are the statistics for each type of member as well as affiliate members for the year ended Sept. 30, 2022:

Attorney Members

Active members	42,395
Inactive members	1,072
Emeritus members	3,306
Total Attorney Members	46,773

Affiliates

Legal administrators	2
Legal assistants	214
Total Affiliates	216

In FY 2022, 876 new members joined the State Bar of Michigan.

NOTE: These figures reflect members and affiliates in good standing and do not include those disciplined, disbarred, resigned, deceased, or suspended for nonpayment of license fees.

FULL REPORT AVAILABLE AT MICHBAR.ORG/GENERALINFO

Editing, vehicles in the park, and the virtue of clarity

BY PATRICK BARRY

I like to replace a humdrum word with one that has more precision or color. I like to strengthen the transition between one sentence and another. I like to rephrase a drab sentence to give it a more pleasing rhythm or a more graceful musical line. With every small refinement I feel that I'm coming nearer to where I would like to arrive, and when I finally get there I know it was the rewriting, not the writing, that won the game.

—William Zinsser¹

What is the optimal amount of advocacy?

My law students and I face that question all the time. We face it when we're drafting motions. We face it when we're proposing changes to contracts. We even face it when putting together key emails, text messages, and social-media posts.

In all these situations and many more, we don't want to oversell our arguments and ideas — but we don't want to undersell them either. Instead, we hope to hit that perfect sweet spot known as "persuasion."

We don't always succeed, but one thing that has significantly increased our effectiveness is the amount of time we spend on an important skill: editing.

EDITING VS. PROOFREADING

When I say "editing," I don't mean "proofreading." Many people think editing and proofreading are identical skills. Not me. Proofreading, in my view, involves catching typos and fixing formatting. It cultivates a host of admirable qualities — patience,

thoroughness, attention to detail — but it doesn't require a whole lot of imagination.

Editing, on the other hand, is a fundamentally creative act. Good editors don't just see the sentence that was written. They see the sentence that *might* have been written. They know how to spot words that shouldn't be included and summon up ones that haven't yet appeared. Their value comes not just from preventing mistakes but from discovering new ways to improve a piece's style, structure, and overall impact.

It's important to learn how to add this kind of value. Whatever your cause or client base, poor editing skills can painfully limit the help you're able to provide, not to mention the heights to which you can take your own career. It's tough to produce high-quality work if you don't know your way around a sentence.

And given how collaborative many organizations and movements have become, you certainly want to know your way around other people's sentences too. Lawyers who improve the projects they're asked to review are extremely valuable commodities.

Imagine, for example, that you heard someone described this way: "Whenever I give them a draft, it always comes back better." Wouldn't you want to work with that person? Wouldn't you want to give them your own drafts?

Of all the reasons for someone's getting passed over for a project or promotion, I doubt that any has ever been "We can't work with them. Their edits are too good."

¹"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.

VEHICLES (AND LONG SENTENCES) IN THE PARK

To test your own editing skills, consider the sentence below. It was written by a law student whose assignment may bring back memories (if you're a lawyer) of when you first learned how to interpret statutes, particularly if your professor was a fan of the legal philosopher H.L.A. Hart. The student was asked to decide whether a park's ban on "vehicles" extends to bicycles. (Hart first posed this "Vehicles in the Park" hypothetical in the *Harvard Law Review* back in 1958.²) Here's a sample of what the student wrote:

Given the fact that the statute allows the presence of bicycles so long as they are being more well controlled by pushing them rather than riding them, it seems the intent of the rule is not that no vehicles at all should be allowed but that the environment of the park should be one where there are no fast-moving vehicles in areas where pedestrians may be enjoying a leisurely stroll.

Suppose the student asked you for some feedback on this sentence. What changes would you recommend?

I'll offer my own suggestions in a moment. But first I want to point out that better proofreading won't be enough to fix the sentence's many problems. The sentence doesn't contain any misspelled words. Nor does it have any grammatical gaffes. And the only bits of punctuation (the comma after *them*, the hyphen in *fast-moving*, and the period after *stroll*) aren't problematic. If we really want to improve the sentence — if we want to turn it into something we'd feel comfortable putting in front of a judge or client — we'll need to move beyond proofreading and instead do some serious editing.

THE VIRTUE OF CLARITY

A good place to start would be to urge the student to become better friends with the most underused punctuation mark in formal writing, especially among highly educated people: the period. Inserting a period in the right place would transform the student's 70-word behemoth of a sentence into a much more digestible set of two sentences.

Making this edit would also push the student toward "the virtue of clarity," a term I borrow from an observation that the Australian writer Clive James once made about his literary hero, the American critic and novelist Edmund Wilson. According to James, Wilson achieved the virtue of clarity by doing something as simple as it is rare. When writing, he tried to say just one thing at a time.³

Lawyers often have the opposite tendency. We try to say everything at once. That's acceptable for a first draft or even a second, third, or fourth draft. At those stages, we're still figuring out the connections among our ideas and arguments. Letting our minds roam a bit can be creatively useful. A rambling sentence or two might very

well lead to a helpful discovery, as proponents of "freewriting," such as Peter Elbow of the University of Massachusetts, often attest.⁴

But the calculation switches when it's time for the final draft, the one you plan to send out into the world and impose on your target audience's brain. With that draft, it's important to slow down, revise carefully, and deliver your thoughts in a package that is easy for people to process. Had the "Vehicles in the Park" student done that, we might have seen the following transformation:

Original Version: "Given the fact that the statute allows the presence of bicycles so long as they are being more well controlled by pushing them rather than riding them, it seems the intent of the rule is not that no vehicles at all should be allowed but that the environment of the park should be one where there are no fast-moving vehicles in areas where pedestrians may be enjoying a leisurely stroll." (1 sentence: 70 words.)

Edited Version: "The rule's intent is not to ban all vehicles, because bikes are allowed if pushed. The rule's intent is to ensure a park environment free of fast-moving vehicles." (2 sentences: 28 words.)

Plenty of other ways to revise the student's sentence exist. When it comes to editing, there is rarely a single right answer. You can take a particular set of words in a seemingly infinite number of directions.

That's why I began by saying that editing is a fundamentally creative act. Editors add. Editors delete. Editors separate, combine, and rearrange. The best ones never consider a piece of writing to be unimprovable.



Patrick Barry is clinical assistant professor of law and director of digital academic initiatives at the University of Michigan Law School. He is the author of several books and creator of multiple educational programs for online platforms like Coursera, and his teaching and research focus on creating a new vocabulary to talk about advocacy.

ENDNOTES

1. Zinsser, *On Writing Well* (New York: HarperCollins, 2006), p 87.
2. Hart, *Positivism and the Separation of Law and Morals*, 71 Harv L Rev 593, 606–15 (1958).
3. As quoted in Yagoda, *The Sound on the Page: Great Writers Talk about Style and Voice in Writing* (New York: Harper, 2005), pp 199–200.
4. For more information about freewriting, see Peter Elbow: The Democratization of Writing, <<http://peterelbow.com/>> [<https://perma.cc/K2F8-TJAE>] and Grunwald, *Freewriting*, Global Studies and Languages, MIT <<https://writingprocess.mit.edu/process/step-1-generate-ideas/instructions/freewriting>> [<https://perma.cc/6AFL-K4Y4>]. Both websites were accessed December 16, 2022.

BEST PRACTICES

Lessons learned from the trenches

BY LORI J. FRANK

While in law school, I worked for an equipment leasing company. My job was to forward claims to collection attorneys and appear as a custodial recordkeeper around the country. There, I learned not all attorneys are Perry Mason, judges don't necessarily follow the law, and good documentation is absolutely essential to winning breach of contract, open account, or account stated cases.

My law career began in May 1990. During my swearing-in ceremony, the criminal defendants in the jury box rattled their chains in applause (true story). The next step was finding a job as a lawyer, which is where I learned the following four lessons.

MAKE SURE THE FIRM IS WORTHY OF YOUR TALENTS (AND VICE VERSA)

The job market in 1990 was tight due to a recession in the late 1980s (yes, I am that old.) My first job was at a firm that mainly handled bankruptcies, but also dealt with creditors' rights cases. While dreams of arguing before the Supreme Court danced in my head, I was hit with a healthy dose of reality. On my first day, I was tasked with making collection calls about fees owed as a result of a deceased partner's work. Needless to say, this was a fruitless and frustrating endeavor.

My first court appearance was no better. My job was to obtain an adjournment (for the umpteenth time) on a 1970s probate file. As I waited in my new Brooks Brothers suit for my case to be called, I silently uttered a mantra: "Please don't cry."

When my case was called, the judge — who was presiding over the court for the last time — screamed at me and told me to take that message to the partner. I did and, of course, the partner yelled at me for getting yelled at.

I tried to move on over the course of the next six years, but this firm's reputation preceded me. The only choice I had was to go out on my own. Fortunately, I had developed a stable of clients that I could take with me.

CLIENT RELATIONSHIPS

Being a strong advocate for your clients is only the beginning for a lawyer. Here are some additional thoughts on client relationships.

Vet your client

A claim is only as viable as your client's documentation. Don't accept what your client says at face value. Make sure you vet the claim to ensure your client is licensed and/or qualified to do business in your state.

Is the case within the statute of limitations? Is the corporation open and operating? Are there any guarantors? Parenthetically, if a prospective client asks if any cash payments have to be credited to the account, run away as quickly as possible.

Make sure your fee agreement (and your client's expectations) is clear

The last thing you want is a jury trial on a contingency fee when the estate you are representing has lousy documentation. Make sure your client understands what you write or say. Remember the client, typically, did not go to law school and will have no idea what res judicata means.

Be honest with your client about the claim

When is it time to call a case uncollectible or worth less than initially thought? Managing expectations is crucial to maintaining a good relationship with your client. Remember to listen to your client and make sure you know exactly what is expected of you.

Get involved in statewide and national organizations

As a solo practitioner for almost 25 years, this has been crucial to increasing my knowledge, culling resources to call upon, and networking. Volunteer work is the best way to stand out from the crowd in the eyes of clients, and networking, networking, and more networking is the best way to grow your reputation and your firm.

Make sure your client is prepared to testify

This is true even if your client has testified in other cases. The worst witness is one who thinks he or she knows more than the lawyer. Sometimes, the toughest hurdle to clear during trial preparation or the trial itself is getting a client to actually listen. Finding the balance between insisting that the client remain quiet and rudeness is delicate. I once had a client who would fly into Michigan and just show up at my office unannounced. He was a nice guy but controlling him was impossible. I had to withdraw from representing him as a result.

Report, report, remit!

Keeping your client informed is a must; how to report to your client depends on how your client wants information reported. Along those same lines, make sure you send the client's money to the right office in the manner they choose.

REPUTATION

A lawyer's entire career is based on two things: ability and reputation. Being prepared is not just the Boy Scouts motto, but the watchword for any competent lawyer. Part of preparedness is staying abreast of developments in your area of practice, knowing your judges, and keeping up with technology.

There is no such thing as a routine case. Each case, though it may bear a resemblance to others, will have a unique aspect to it. Know what you are talking about, because the judge and opposing counsel will know when you don't.

Be aware of timelines from both the court and the client. Submitting a document late increases the risk that it won't be read. Good luck explaining that to the client. Keeping a detailed calendar is a must. Getting help to manage the calendar is a luxury that we don't all have, but I have found it very helpful.

DON'T LIE! EVER! Lying to a court, clerk, client, partner, or opposing counsel is a recipe for disaster. There was one state court case in

which the opposing attorney created "evidence." After employing an ink dating specialist and providing the results to the judge and the attorney, the case was resolved very quickly. Another time, I stepped out of the conference room so the attorney could take a private call. When I returned, the attorney was looking through my papers. That attorney was eventually disbarred for reasons not related to that case.

Be yourself. Not everyone can get away with being a bellicose bully. Be respectful to the court, clerks, opposing parties, and your client. It's OK to be funny if you are not sarcastic in tone. Keep your temper and *always* be respectful. Remember, today's opposing counsel could be tomorrow's judge.

Finally, we all win some and lose some. Sometimes we win or lose for the right reasons and sometimes for the wrong reasons. Never celebrate in court when you win or slam the desk when you don't. Act like you have been there before. Once you get in your car, you can lose the poker face and display whichever emotions you wish. The important thing is making sure you know you did your best. Whatever the result, immediately report it to the client and be honest about the outcome and the options moving forward.

THE WORK-LIFE BALANCE

In conclusion, remember the practice of law is just that — a practice. Make sure you take care of yourself and your family, and not just monetarily. Do what makes you happy, and if your life revolves around work, take a long, hard look at your priorities. After almost 25 years of being a solo practitioner, I realized that my job was my life and came before my family. Fortunately, I met some folks through various conferences and was able to transition to a new firm. The firm and I have the exact same philosophy, making for a happy professional marriage.



Lori J. Frank is a creditors' rights attorney with Markoff Law in Southfield and current president of the Michigan Creditors Bar Association. She is a past officer and board member of the Commercial Law League of America, Affirmations, and the Stonewall Bar Association; former chair of the Oakland County Bar Association Diversity Committee; and future chair of OCBA District Court Case Evaluation Committee.

LIBRARIES & LEGAL RESEARCH

Locating free and low-cost secondary sources in Michigan

BY CODY JAMES

Secondary sources are all the legal resources that describe what the law is without actually having the force of law. For example, treatises, law review articles, and practice series are secondary sources while statutes, regulations, and cases are primary sources. Although secondary sources are not binding authority, they provide valuable, up-to-date insight and commentary about existing laws. These insights are especially useful when handling matters outside of an attorney's usual areas of practice.

Unfortunately, secondary sources are not cheap — consider that a full set of Michigan Civil Jurisprudence has a retail cost of \$25,119.¹ That said, a lot of commercial legal research databases like Westlaw and LexisNexis provide access to secondary sources as part of their subscriptions. But this coverage is not comprehensive, some secondary sources are not located on either Westlaw or Lexis, and not every firm subscribes to a legal research database.

In the instances where a secondary source that you need is not available, trying to find a cost-effective alternative can be imperative. This is especially true when you need to access a secondary source only for a short amount of time and investing in the purchase of an entire book is not financially sound. In circumstances such as these, tracking down free secondary sources can be extremely useful.

LAW LIBRARIES

Law libraries are still the best free legal resource available to attorneys and the best place to locate free secondary sources. Luckily, law libraries can be found throughout the state of Michigan, though they do vary in size and in the number of resources available. Depending on the law library, you can access Westlaw, LexisNexis, or other digital legal databases. These libraries also have print collections of major secondary sources like Michigan Civil Jurisprudence and similar legal treatises.

The State Law Library, located on the third floor of the Library of Michigan in downtown Lansing, provides a good, centralized

location for lawyers in the southern part of the state. At the State Law Library, lawyers can access Westlaw, Lexis Advance, and specialized legal research databases like ProQuest Congressional.² In addition to its digital resources, the library also houses a large collection of print materials.³

But Michigan is a large state and Lansing is far away from many lawyers — especially those in the Upper Peninsula. Luckily, there are law libraries all over the state. In the U.P., for example, the Marquette County Law Library provides access to Westlaw as well as major treatises in print.⁴ In the southwestern portion of the state, the Raymond W. Fox Law Library in Kalamazoo, part of the city's public library system, offers similar services.⁵ In fact, the Library of Michigan has created an online directory of all the libraries in Michigan with legal collections.⁶ This is a good reference tool for finding the law library closest to you.

Even if the closest law library is far away, there are ways to access resources directly from your office. For example, the State Law Library offers a document delivery service that involves scanning and emailing requested documents.⁷ If the requested document is fewer than 100 pages, then the service is free. For requests of

AT A GLANCE

Although secondary sources are not binding authority, they provide valuable, up-to-date insight and commentary about existing laws. These insights are especially useful when handling matters outside of an attorney's usual areas of practice.

more than 100 pages, there is a fee.⁸ Document delivery is an especially useful tool if you know the specific sections or pages of a resource that you need to access.

THE INTERNET

Though the internet is right at your fingertips via your laptop, desktop, or smartphone, it is not the best resource for accessing secondary sources. You will not find a free copy of *American Jurisprudence* through a simple Google search, for example.

There are exceptions to this rule, however, such as law review articles and other open access publications. Many law reviews and bar journals, like the *Michigan Bar Journal*, are now open access and can be freely read online. To do this, simply search for the law review or bar journal in question to see if their website hosts past articles and issues.⁹ This can be a good way to quickly look up a law review article cited in an opposing counsel's motion.

FASTCASE

Although Fastcase is available to every member of the State Bar of Michigan at no cost, this legal research database does not include a lot of secondary sources. There are different treatises and practical guides that can be purchased in Fastcase, but, obviously, they are not included as part of the free edition. That said, Fastcase does have a fairly large collection of law journals.¹⁰ As was stated above, these journals are typically available online for free, but the one advantage of using Fastcase instead of a general internet search is that you can search journals from multiple publishers at once.

CONCLUSION

Law libraries remain the best resource for locating free, high-quality secondary sources in Michigan. The internet and Fastcase are good free resources for locating law review articles, but both have limited access to secondary sources beyond that. And no

matter where a lawyer is physically located, they should be able to access secondary sources located in a Michigan law library.



Cody James is a reference and student services librarian at the University of Michigan Law Library. He received his law degree from the University of Colorado Law School and his master's degree in library science from the University of Kentucky. He is a member of the Colorado State Bar.

ENDNOTES

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PRACTICING WELLNESS

Lawyer well-being: a recipe for positive change

BY KATIE STANLEY

When I was a child, I remember climbing onto my grandmother's tallest bar stool so I could watch her bake. Back then, kitchen counters felt as tall as mountains compared to my small stature. I was captivated by how she gently sifted the flour by hand, how the homemade dough took form as her hands kneaded it with care, and how each ingredient would fold into the others to create the cookies that would later bake in the oven and cool on the counter, their sweet smell wafting throughout the house.

My grandmother is no longer with us, but her recipes live on in her own handwriting: "one scoop from my yellow coffee mug," "one pinch" from my grandmother's hands, they read. We've tried to recreate her famous cookies, yet they never seem to taste quite the same.

Her homemade cookies — much like our families, the offices we work in, our profession, and our social structures — are wholes made up of their individual parts. Just as my grandmother's cookies are made up of each carefully selected ingredient, our systems are similarly made up of each individual operating within them; they are not self-sustaining, but rather a larger reflection of their concentric parts.

Often in lawyer well-being movements, the focus is on the individual. They tend to ask how we can increase individual productivity or reduce individual stress, anxiety, or burnout. This is how my personal journey toward well-being and my PhD research on the efficacy of mindfulness-based interventions in the law began: by asking myself how I could continue to do the work I cared about without sacrificing my mental and physical health in the process. As my work and research progressed, my perspective also broadened in a way that was transformative. I began to notice just how many small, but powerful, opportunities there were to redirect my energy or attention. I found hopeful possibilities that had previously been buried in the noise of an unquiet mind and an overstimulating world.

Rather than remaining disempowered and beholden to circumstances beyond my control, I intentionally began to shift my focus to what I *could* control and how I *could* effect positive change beyond just myself in doing so. There are so many opportunities all around us to participate in positive change — opportunities for acts of kindness, gratitude, and compassion.

This is what Gandhi, who was a lawyer first and a social justice activist second, was referring to when he asked us to "be the change" we want to see in the world. He was promoting a levels-of-change philosophy that begins first with the individual, then extends to their interpersonal or inter-group units, and lastly informs the structures of which they are a part and actively shapes them through their participation.¹ We are all a part of something greater than ourselves, and the larger "wholes" of the world are a reflection of those individual "parts." As with my grandmother's cookies, we are each one vital ingredient in what makes up this social recipe. In many ways, this is the substance of hope, not blind idealism. This is a choice that we make within, continuously and intentionally, in the face of adversity. It is a way of being that requires courage and strength.

Often, we comment on the state of the world, our profession, or our society as though they exist outside of us, rather than something we play an integral part in. Seeking to effect positive social change often feels just like staring up at my grandmother's counters as a child. The challenges loom as tall as mountains and sometimes seem impossible to see over. When we shift our perspective and give ourselves a different view, when we climb toward a new vantage point in our mind's eye, we can begin to see just how many opportunities for positive change are open to us — even in the midst of great challenges. We then also can see just how much each of us is needed in this effort.

Lawyers, in particular, are uniquely situated to shift the structures, institutions, and value orientations of the larger systems of which they are a part. The theory of my dissertation is that it is not only important to heal ourselves as individuals — because we are worthy of that care and because it improves our performance in all of the professional and personal roles that we occupy — but also that when we heal as individuals, our individual healing extends to the inter-groups and systems of which we are a part. Systems, families, offices, and professional cultures are only going to be as healthy as the people operating within them. My grandmother’s cookies are only going to be as I remember them when they are prepared by her, with her ingredients, and in the unique way that she prepared them, because they are also a whole made up of their parts.

There are many pathways toward social healing and reform, but I’d like to offer some of what I’ve learned along my own journey, particularly as it relates to mindfulness-based interventions:

- Mindfulness is not just meditation: It’s a practice in paying attention, without judgment, to the present moment. It can take place anywhere and at any time.
- It’s noticing how you’re breathing throughout the day and noticing when your breath is fast and shallow. It’s choosing to breathe more deeply to calm your nervous system and engage neural receptors in the lower lobes of your lungs, which then communicate to your mind and body that it can rest and relax. This process helps us to engage the cognitive systems of reason in our mind as opposed to allowing ourselves to be hijacked by fight-or-flight responses.²
- It’s noticing when your emotional state starts to feel inadequately regulated and, rather than simply reacting, choosing more intentionally how you want to respond (a measure in emotional intelligence).
- It’s getting curious about what matters most to you and what brings you alive with purpose. It’s being thoughtful about where you direct your time, energy, and resources so they are in alignment with the awareness you uncover.

I often share that there was a time when I viewed mindfulness as a soft skill that I didn’t have the time for. I spent most of my energy trying to will myself into maintaining forward momentum, not acknowledging the toll that engaging with systems and people (that aren’t always kind or just) can take on the mind, body, and spirit. We can do this, to some degree, above the shoulders. Eventually, our bodies will keep the score, as they say. I’ve since learned:

- Simply becoming more mindful of the quality of our breath can dramatically and positively impact our minds and bodies. See

my article “Breathing for Wellness” in the July/August 2021 Michigan Bar Journal for practical exercises and more on why how we breathe matters.³

- Mindful deep-breathing practices can help reduce stress and the harm it causes to our relationships and our ability to communicate effectively. It also impacts the state of our nervous systems, which also affects how optimistically or pessimistically we perceive the world around us.⁴
- Mindfulness practices have been shown to increase emotional intelligence, and more emotionally intelligent lawyers are statistically more likely to be successful, outperform production and revenue expectations, report increased client satisfaction, and have lower healthcare and liability costs.⁵
- Stress reduces our ability to be present with our friends, families, colleagues, and clients. It also reduces our empathy and our ability to approach situations with the proper perspective — key ingredients in successful mediation, negotiation, and the administration of justice.⁶
- Practicing mindfulness has been shown to help increase kindness and compassion. It also has been shown to reduce both cognitive and behavioral bias toward ourselves and others.⁷
- Lastly, chronic exposure to systems and human trauma that leave us feeling unable to do what we know is morally right causes a phenomenon referred to as “moral distress.” This can lead to feelings of powerlessness, pessimism, emotional exhaustion, depression, helplessness, hopelessness, anger, and decreased capacity for empathy. Those feelings can lead to burnout, distress, and other mental health-related suffering — which we see so frequently in our field.⁸

As a legal aid attorney who has represented victims of domestic violence and elder abuse, helped clients facing the loss their homes during the pandemic, and witnessed firsthand the human effects of systemic inequity, I can attest to the toll this practice takes. My personal experience is why I view lawyer well-being as a crucial component of professional responsibility as well as an important influence on the systems of which we are a part.

I leave you with what I’ve learned along the way and offer these final perspective shifts:

- We’re human beings, not just humans doing, and a mindfulness practice helps us to more deeply examine not just how we are doing in the world externally, but how we are being internally. Moreover, my experience was that my doing improved when I chose to pay more attention to how well I was being.

- Like my grandmother’s cookies, there are no wholes that aren’t made up of their individual parts. If, as Gandhi suggested, we start with ourselves and enough individual parts shift, we can create a recipe for positive change together that can shift the greater whole. One example of this in research showed that when we’re happy, it spreads to three degrees of separation beyond ourselves.⁹ In other words, kindness is contagious and has a cascading effect on social networks.¹⁰ I often think of this when it feels hard to imagine how my one, often unseen, ingredient in the recipe can heighten or sink the whole batch of cookies, so to speak.
- Lastly, as Robert F. Kennedy noted, these numberless, diverse acts of courage and beliefs shape human history; they are tiny ripples of hope, crossing each other from a million different centers of energy, that together build a current that can sweep down the mightiest walls of oppression and resistance.¹¹

We are all needed to build a movement toward greater well-being and make our profession, our lives, and our experience as “human beings” better. It starts with us, and I’m grateful to be a part of this whole with you.

Katie Stanley is a staff attorney and education manager at Legal Services of Eastern Michigan. She is also a Mindfulness Initiative advisory board member at the Crim Fitness Foundation and a Search Inside Yourself Leadership Institute fellow. Stanley is currently pursuing a doctorate with a dissertation focus on wellness in attorneys following mindfulness-based interventions.

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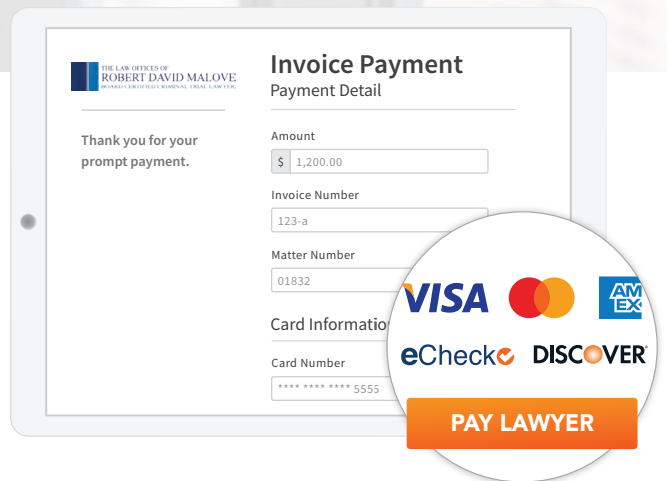
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LAW PRACTICE SOLUTIONS

ABA TECHSHOW 2023: Your gateway to tech competency

BY JOANN L. HATHAWAY

ABA TECHSHOW 2023 is just around the corner. Now in its 37th year, this annual ABA Law Practice Division event cannot be described; it must be experienced. Those who have attended in the past can attest to its unparalleled benefits. Read on to better understand why you and others in your practice should attend this conference.

TECHSHOW DEFINED

So, what exactly is ABA TECHSHOW?

It is three days of tech learning (and much more) specifically designed for lawyers and legal professionals. This event, launched in the 1980s, only gets better with every year. With a vendor hall populated by more legal tech vendors than you can count, the ABA Law Practice Division bookstore, networking opportunities galore, and five tech topic tracks with more than 60 learning sessions, this is an event you can't afford to miss.

WHERE/WHEN/LODGING

TECHSHOW 2023 is scheduled for March 1-4 at the Hyatt Regency Chicago. The Hyatt Regency is located at 151 East Wacker Drive, just north of Millennium Park in downtown Chicago. Staying at the Hyatt is worthwhile, because it allows easy access to the many activities associated with the TECHSHOW experience.

TRACKS AND SESSIONS

The highlight of TECHSHOW is, of course, the topic tracks and learning sessions. Attendees never have a difficult time finding something of use for their practices with tracks such as

financial management, marketing, operations, futures, and client experience.

TECHSHOW closes its Friday programming with its popular, fast-paced tips program followed by a closing ceremony and celebration. This year's wrap-up event is "60 in 60," which combines the best of TECHSHOW's "60 Sites," "60 Tips," and "Gadgets and Gizmos" seminars into one rollicking session, an hour featuring the latest in apps, work hacks, hot technologies, and more.

FACULTY

TECHSHOW boasts a hand-selected faculty of more than 60 tech experts and thought leaders. The full list of faculty members complete with their biographies can be found at www.techshow.com/faculty.

MATERIALS

One challenge with attending a conference is leaving with takeaway information to pass on to others in your practice and for your reference after the conference is over. That's not a problem with TECHSHOW programming; one requirement of its faculty is authoring white papers on their speaking topics. These are often accompanied by PowerPoint presentations and are provided to attendees. These reference materials are invaluable when wanting to review details of TECHSHOW sessions.

NETWORKING AND SOCIAL EVENTS

Start-up competition

Back for its seventh year is the start-up competition, which showcases 15 innovative legal start-ups. Kicking off on Wednesday just before the

welcome reception, the start-ups face off in a pitch competition; attendees determine the most innovative startup. All start-ups are also featured in the expo hall during regular TECHSHOW programming.

Welcome reception

Kick off TECHSHOW 2023 with the welcome reception in the expo hall. Experience terrific food and beverages and explore vendors while networking with fellow attendees.

TASTE OF ABA TECHSHOW

Experience the best in Chicago dining at Taste of TECHSHOW. Sign up for dinner reservations throughout the city; each dinner is based on a technology topic and hosted by an expert in that particular field. Pick from a wide variety of technology topics, restaurants, and hosts as part of this event.

VENDORS

The TECHSHOW expo hall features legal services and products presented by vendors ranging from start-ups to longtime trusted brands. Your TECHSHOW pass lets you get a first look at what's new and helps you find real solutions that fit both your practice and your budget.

TECHSHOW AFTERGLOW

There's nothing like coming back to real life with what I call TECHSHOW afterglow. You return to work full of new ideas, creativity, and the spark to significantly change your law practice. If you go to TECHSHOW alone, it's difficult to pass on everything you've

learned to others in your firm, which is why I always recommend attending with at least one other person from your firm. Perhaps you and a key support staff member, firm administrator, or another attorney could attend together. Everyone in your practice plays a different role and has a different relationship with technology. Implementing a team approach to TECHSHOW attendance can be invaluable for your firm and its tech implementation.

REGISTRATION

Registration for TECHSHOW is quick and easy at www.techshow.com, where you can also explore a variety of registration options and pricing tiers based on the length of your stay and the type of attendee. For instance, law students can join the ABA for free and receive a special TECHSHOW rate. There are different rates for ABA members, government and academic lawyers, and more.

State Bar of Michigan members can save \$100 on standard registration by using the discount code: EP2309.

CONCLUSION

For complete information on TECHSHOW 2023 or to register, visit www.techshow.com. Have specific questions about TECHSHOW or wish to speak to a seasoned attendee and previous TECHSHOW speaker? Contact the author at 517.346.6381.

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

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ORDERS OF DISCIPLINE & DISABILITY

DISBARMENT

Andrew Dag Babcock, P69502, Bridgman, by the Attorney Discipline Board Kent County Hearing Panel #4. Disbarment, effective Sept. 16, 2021.

The respondent was convicted by jury verdict of two counts of first-degree criminal sexual conduct with a person under 13 years of age in violation of MCL 750.520b(2)(b) and one count of first-degree criminal sexual conduct — relationship to victim in violation of MCL 750.520b(1)(b)(ii), felonies, in the matter titled *People of the State of Michigan v. Andrew Dag Babcock*, 2nd Circuit Case No. 2020003325-FC.

Based on his convictions, 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).

The hearing panel ordered that the respondent be disbarred from the practice of law in Michigan, effective Sept. 16, 2021, the date of his felony convictions and his automatic interim suspension from the practice of law in Michigan pursuant to MCR 9.120(B)(1). Total costs were assessed in the amount of \$1,796.50.

AUTOMATIC INTERIM SUSPENSION

Carl L. Collins III, P55982, Southfield, effective Nov. 16, 2022.

On Nov. 16, 2022, the respondent was convicted by jury verdict of five counts of making a false tax return in violation of 26

USC § 7206(1), a felony, in *United States of America v. Carl L. Collins III*, US District Court for the Eastern District of Michigan, Case No. 2:19-cr-20685. Upon the respondent's conviction, in accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended.

Upon the filing of a 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 under MCR 9.115(J)

SUSPENSION AND RESTITUTION (BY CONSENT)

William Otis Culpepper, P23520, Detroit, by the Attorney Discipline Board Tri-County

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

SIGNIFICANT ACCOMPLISHMENTS

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



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Hearing Panel #18. Suspension, 30 days, effective Dec. 14, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admissions to the factual allegations and plea of no contest that he engaged in professional misconduct during his representation of a client in a criminal matter as set forth in the administrator's amended formal complaint.

Specifically, the respondent admitted that he entered into a retainer agreement with a mother to represent her son in his pending criminal matter. Although the retainer agreement specifically stated that a portion of the fee was non-refundable, it contained a provision that stated that in the event his representation was terminated, the respondent was only allowed to keep fees that were actually earned and costs that were actually paid. When the respondent received the entire requested fee, he failed to deposit the unearned portion into an IOLTA. Instead, he deposited the entire amount into his business operating account. Thereafter, the respondent failed to provide a requested invoice and refund of unearned fees to his client's mother and, in response to a request for investigation filed by his client's mother, the respondent provided a fee breakdown that was not kept contemporaneously and contained inaccurate dates of work performed.

Based upon the respondent's admissions, plea, and the stipulation of the parties, the panel found that the respondent failed to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.3; failed to keep a client reasonably informed about the status of a matter in violation of MRPC 1.4(a); failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of MRPC 1.4(b); failed to communicate the basis or rate of his fee before or

within a reasonable time after commencing the representation in violation of MRPC 1.5(b); failed to hold property of clients or third persons in connection with a representation separate from the lawyer's own property in violation of MRPC 1.15(d); and failed to take reasonable steps to protect a client's interests upon termination of representation including surrendering property to which the client is entitled and refunding any advance payment of a fee that has not been earned in violation of MRPC 1.16(d). The panel also found that the respondent violated MCR 9.104(1)-(4) and MRPC 8.4(a) and (c).

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, effective Nov. 29, 2022, and that he pay restitution in

the total amount of \$10,000 within 90 days of the date of the order of discipline. Costs were assessed in the amount of \$750.

Prior to the Nov. 29, 2022, effective date, respondent filed a motion to modify the effective date of his suspension to Dec. 14, 2022. On Nov. 23, 2022, the panel entered an order granting respondent's motion.

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

Kimberly Shea Grzic, P79927, Howell, by the Attorney Discipline Board Ingham County Hearing Panel #3. Interim suspension, effective Nov. 8, 2022.

The respondent failed to appear at the Oct. 28, 2022, hearing and satisfactory proofs were entered into the record that

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ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

she 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 Nov. 8, 2022, and until further order of the panel or the board.

SUSPENSION (BY CONSENT)

Michael D. Langnas, P42357, Southfield, by the Attorney Discipline Board Tri-County Hearing Panel #56. Suspension, 30 days, effective Dec. 12, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admissions to the factual allegations and allegations of professional misconduct set forth in the formal complaint in its entirety.

The complaint specifically alleged that in July 2020, the Attorney Grievance Commission received notice that a check presented against the respondent's IOLTA account was rejected due to insufficient funds, prompting an overdraft of the account. In response to a grievance administrator's request for investigation and during the administrator's subsequent investigation, the respondent admitted that he transferred "future payroll funds" into his IOLTA to secure funds from an IRS levy and possible garnishment, deposited earned fees into the same account, and used it to make two premium payments for his legal malpractice insurance.

Based upon the respondent's admissions and the stipulation of the parties, the panel found that the respondent held funds other than client or third-person funds in an IOLTA in violation of MRPC 1.15(a)(3); deposited his own funds into an IOLTA in an amount more than reasonably necessary to pay

financial institution service charges or fees in violation of MRPC 1.15(f); engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b). The panel also found that the respondent violated MRPC 8.4(a) and MCR 9.104(2) and (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 effective Dec. 12, 2022, as agreed to by the parties and approved by the panel. Costs were assessed in the amount of \$759.17.

DISBARMENT AND RESTITUTION

Brian P. McMahon, P47477, St. Joseph, by the Attorney Discipline Board Berrien County Hearing Panel #1. Disbarment, effective Dec. 3, 2022.¹

The grievance administrator filed a combined Notice of Filing of Judgments of Conviction and Formal Complaint against the respondent. The judgments of conviction showed that the respondent was convicted by nolo contendere plea of embezzlement by agent or trustee \$50,000-\$100,000 in violation of MCL 750.174(6), a felony, in the matter titled *People of the State of Michigan v. Brian Patrick McMahon*, Berrien County Circuit Court Case No. 2021-000864-FH and larceny by conversion more than \$20,000, in violation of MCL 750.362(2)(A), a felony, in the matter titled *State of Michigan v. Brian Patrick McMahon*, Berrien County Circuit Court Case No. 2021-003358-FH. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended effective Feb. 28, 2022, the date of the respondent's felony convictions. Based on the convictions, 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

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tribal law pursuant to MCR 2.615 in violation of MCR 9.104(5).

Additionally, based on the respondent's default for failing to answer the formal complaint, the hearing panel found that the respondent committed professional misconduct in his representation of two separate, unrelated clients in two separate, unrelated matters. Count 1 of the formal complaint pertained to the respondent's representation of a client and her company in the sale of a liquor license and charged that he converted the sale proceeds for his own purposes and falsely claimed in his answer to a request for investigation that he properly safeguarded his client's portion of the funds.

Count 2 of the formal complaint pertained to the respondent's representation of a client and his construction company in pursuing a breach of contract action and charged that respondent failed to deposit an unearned retainer into his IOLTA; billed his client for additional fees that were not earned; stopped communicating with his client; abandoned his client's matter, requiring the client to retain new counsel to continue the matter; failed to refund any of the retainer or additional fees he received; and failed to answer a request for investigation filed against him regarding the above referenced conduct.

Specifically, the panel found that the respondent neglected a legal matter entrusted to the lawyer in violation of MRPC 1.1(c) (count 2); failed to act with reasonable diligence and promptness in representing his client in

violation of MRPC 1.3 (count 2); failed to keep a client reasonably informed about the status of their matter in violation of MRPC 1.4(a) (count 2); failed to promptly notify the client when funds or property in which the client had an interest was received in violation of MRPC 1.15(b)(1) (count 1) failed to promptly pay or deliver any funds or other property that the client is entitled to receive in violation of MRPC 1.15(b)(3) (counts 1-2); failed to render a full accounting regarding funds he was holding for the client in violation of MRPC 1.15(b)(3) (counts 1-2); failed to hold property of clients in connection with a representation separate from the lawyer's own property in violation of MRPC 1.15(d) (count 1); failed to safeguard client funds in violation of MRPC 1.15(d) (counts 1-2); upon termination of representation, failed to refund an unearned fee in violation of MRPC 1.16(d) (count 2); knowingly made a false statement of material fact in connection with a disciplinary matter in violation of MRPC 8.1(a)(1) and MCR 9.104(6) (count 1); engaged in conduct that involved dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b) (counts 1-2); and failed to answer a request for investigation in conformity with MCR 9.113

in violation of MCR 9.104(7) (count 2). The respondent was also found to have violated MCR 9.104(1)-(3) (counts 1-2) and MRPC 8.4(c) (counts 1-2).

The hearing panel ordered that the respondent be disbarred from the practice of law in Michigan and pay \$5,000 in restitution. Total costs were assessed in the amount of \$1,848.69.

1. The respondent has been continuously suspended from the practice of law in Michigan since Feb. 28, 2022. Please see Notice of Automatic Interim Suspension issued March 22, 2022.

AUTOMATIC INTERIM SUSPENSION

Thomas E. Moorhead, P23231, Owosso, effective July 14, 2022.

On July 14, 2022, the respondent was convicted by guilty plea of check non sufficient funds \$500 or more, a felony, in violation of MCR 750.1313C in a matter titled *People of the State of Michigan v. Thomas Edward Moorhead*, Ingham County Circuit Court Case No. 21-006004-VJCM-C30. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on the date the court accepted his felony conviction.

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

ERICA N. LEMANSKI

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

RHONDA SPENCER POZEHL (OF COUNSEL) (248) 989-5302

- Over 35 years experience in all aspects of the attorney discipline investigations, trials and appeals
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- Past member, SBM Professional Ethics Committee, Payee Notification Committee and Receivership Committee

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

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.

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

Matthew D. Novello, P63269, Highland, by the Attorney Discipline Board Tri-County Hearing Panel #58. Interim suspension, effective Dec. 8, 2022.

The respondent failed to appear at the Nov. 28, 2022, hearing and satisfactory proofs were entered into the record that he 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 Dec. 8, 2022, and until further order of the panel or the board.

VACATING INTERIM SUSPENSION AND REINSTATEMENT

Jennifer Michelle Paine, P72037, Novi, by Attorney Discipline Board Tri-County Hearing Panel #59. Reinstated, effective Nov. 22, 2022.

On Oct. 25, 2022, Tri-County Hearing Panel #59 issued an Order of Suspension Pursuant to MCR 9.115(H)(1) [Failure to Appear] suspending the respondent's license to practice law in Michigan effective Nov. 1, 2022.¹

On Nov. 22, 2022, the panel issued an order granting the respondent's motion to set aside the Oct. 25, 2022, Order of Suspension Pursuant to MCR 9.115(H)(1) [Failure to Appear]. The panel's order reinstated respondent's license to practice law in Michigan effective Nov. 22, 2022.

1. See Notice of Suspension Pursuant to MCR 9.115(H)(1), issued Nov. 1, 2022.

INTERIM SUSPENSION

Jennifer Michelle Paine, P72037, Novi, by the Attorney Discipline Board Tri-County Hearing Panel #59. Interim suspension, effective Dec. 13, 2022.

The respondent failed to comply with a required provision in a Nov. 22, 2022, order entered by Tri-County Hearing Panel #59 that set aside an earlier Order of Suspension Pursuant to MCR 9.115(H)(1). As a result, the hearing panel issued an order of interim suspension on Dec. 6, 2022, effective Dec. 13, 2022, and until further order of the panel or the board.

REPRIMAND (BY CONSENT)¹

David M. Parrott, P38424, Van Buren Township, by the Attorney Discipline Board Tri-County Hearing Panel #10. Reprimand, effective Dec. 3, 2022.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Reprimand in accordance with MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admission that he was convicted by no contest plea of operating while impaired, a misdemeanor, in violation of MCL 257.6253-A, in *People of the State of Michigan v. David Mark Parrott*, 85th District Court Case No. 18-0849-SD.

Based on the respondent's conviction, admissions, and the parties' stipulation, the panel found that the respondent committed professional misconduct when he engaged in conduct that was in violation of a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615 in violation of MCR 9.104(5).

In accordance with the parties' stipulation, the panel ordered that the respondent be

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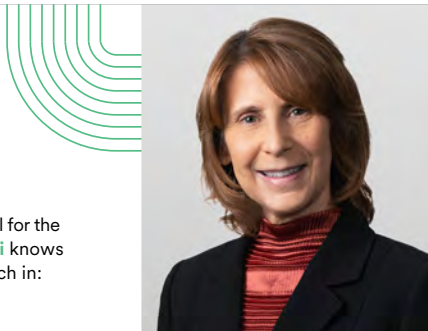
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reprimanded. Total costs were assessed in the amount of \$792.57.

1. The grievance administrator filed a motion to dismiss the formal complaint (22-66-GA) portion of the combined Notice of Filing of Judgment of Conviction and Formal Complaint filed on Aug. 26, 2022. The motion was granted by the panel in an order entered on Nov. 11, 2022.

SUSPENSION (WITH CONDITIONS)

Hussein N. Rahal, P79471, Dearborn, by the Attorney Discipline Board Tri-County Hearing Panel #16. Suspension, 90 days, effective May 27, 2022.¹

A show cause hearing was held in this matter on the grievance administrator's motion to increase discipline and petition for an order to show cause why discipline should not be increased for the respondent's failure to comply with Tri-County Hearing Panel #16's Jan. 19, 2022, Order of Suspension with Conditions (by Consent). The hearing panel found that based on the respondent's admissions, stipulations, testimony, and ex-

hibit admitted, the respondent violated an order of discipline in violation of MCR 9.104(9). Specifically, the panel found that the respondent negligently failed to file a timely affidavit of compliance with the Attorney Grievance Commission and the Attorney Discipline Board in violation of MCR 9.119(C) and practiced law, had contact with clients or potential clients, appeared as an attorney before courts, and held himself out as an attorney while he was suspended from the practice of law in violation of MCR 9.119(E)(1)(4).

The hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 90 days effective May 27, 2022, the date the respondent ceased practicing law after retaining competent disciplinary counsel. The panel further ordered that the respondent be subject to conditions relevant to the established misconduct. Costs were assessed in the amount of \$1,842.50.

1. The respondent has been continuously suspended from the practice of law in Michigan since Feb. 10, 2022.

Please see Notice of [90-Day] Suspension with Conditions (by Consent) issued Feb. 11, 2022, in *Grievance Administrator v Hussein N. Rahal*, 21 53 GA.

REINSTATEMENT

On Nov. 28, 2022, the hearing panel issued an Order of Suspension with Conditions suspending the respondent from the practice of law in Michigan for 90 days, effective May 27, 2022. On Nov. 29, 2022, the respondent submitted an affidavit pursuant to MCR 9.123(A) showing that he has fully complied with all requirements of the Order of Suspension with Conditions and will continue to comply with the conditions set forth in the order for a period of one year from the date on which he filed his affidavit of compliance. On Nov. 30, 2022, the board was advised that the grievance administrator has no objection to the affidavit and the board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that respondent, **Hussein Rahal**, is **REINSTATED** to the practice of law in Michigan effective Nov. 30, 2022.

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FROM THE MICHIGAN SUPREME COURT

ADM File No. 2022-01 Appointment of Chief Judge of the 19th District Court

On order of the Court, effective Jan. 1, 2023, Hon. Sam A. Salamey is appointed chief judge of the 19th District Court for the remainder of a term ending Dec. 31, 2023.

ADM File No. 2022-01 Appointment of Chief Judge of the 54B District Court

On order of the Court, effective immediately, Hon. Molly Hennessey Greenwalt is appointed chief judge of the 54B District Court for the remainder of a term ending Dec. 31, 2023.

ADM File No. 2002-37 ADM File No. 2017-28 Retention of the May 11, 2022 Amendments of Rules 1.109 and 8.119 of the Michigan Court Rules, with Further Amendments as Indicated

By order dated May 11, 2022, the Court adopted amendments of Rules 1.109 and 8.119 of the Michigan Court Rules. Notice and an opportunity for public comment having been provided, effective immediately, the amendments of Rules 1.109 and 8.119 are retained, with further amendment of Rule 1.109 appearing in underlining and/or strikethrough below.

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

Rule 1.109 Court Records Defined; Filing Standards; Signatures; Electronic Filing and Service; Access

(A)-(C) [Unchanged]

(D) Filing Standards.

(1)-(8) [Unchanged]

(9) Personal Identifying Information.

(a) [Unchanged.]

(b) Filing, Accessing, and Serving Personal Identifying Information.

(i)-(ii) [Unchanged.]

(iii) Except as otherwise provided by these rules, if a party is required to include protected personal identifying information in a public document filed with the court, the party shall file the document with the protected personal identifying information redacted, along with a personal identifying information form approved by the State Court Administrative Office under subrule (i). The personal identifying information form must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers listed in the personal identifying information form will be understood to refer to the corresponding complete identifier. A party may amend the personal identifying information form as of right. Fields for protected personal identifying information may be included in SCAO-approved court forms, and the information will be protected in the form and manner established by the State Court Administrative Office.

Unredacted protected personal identifying information may be included on Uniform Law Citations filed with the court and on proposed orders submitted~~presented~~ to the court. If a party submits to the court a proposed order that is required to contain unredacted protected personal identifying information once issued by the court, the party shall not attach the proposed order to another document.

(iv)-(vii) [Unchanged.]

(c)-(e) [Unchanged.]

(10) [Unchanged.]

(E)-(H) [Unchanged.]

Staff Comment (ADM File Nos. 2002-37 and 2017-28): The amendments of MCR 1.109 and MCR 8.119 aid in protecting personal identifying information included in citations, proposed orders, and

public documents filed with or submitted to the court before April 1, 2022, the effective date of the Court's orders amending rules regarding personal identifying information.

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

ADM File No. 2022-09 Amendment of Rule 3.703 of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendment of Rule 3.703 of the Michigan Court Rules is adopted, effective Jan. 1, 2023.

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

Rule 3.703 Commencing a Personal Protection Action

(A) Filing. A personal protection action is an independent action commenced by filing a petition with a court. Where e-filing is implemented, a partially-completed personal protection order must be prepared on a form approved by the State Court Administrative Office and submitted at the same time as the petition. The petitioner, or an individual who is assisting the petitioner under MCL 600.2950b(4), shall complete in the form only the case caption and the known fields with identifying information, including protected personal identifying information of the respondent; however, at a minimum the race, sex, and date of birth or age of the respondent must be provided for LEIN entry. The personal identifying information form required by MCR 1.109(D)(9)(b)(iii) shall not be filed under this rule. There are no fees for filing a personal protection action, and no summons is issued. A personal protection action may not be commenced by filing a motion in an existing case or by joining a claim to an action.

(B)-(G) [Unchanged.]

Staff Comment (ADM File No. 2022-09): The amendment of MCR 3.703 is necessary for design and implementation of the state-wide electronic-filing system. This amendment provides the court with necessary protected personal identifying information in an appropriate format and reduces workload preparing personal protection orders.

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

ADM File No. 2021-48 Amendment of Rule 6.502 of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 6.502 of the Michigan Court Rules is adopted, effective Jan. 1, 2023.

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

Rule 6.502 Motion for Relief from Judgment

(A)-(F) [Unchanged.]

(G) Successive Motions.

(1) [Unchanged.]

(2) A defendant may file a second or subsequent motion based on any of the following:

(a) a retroactive change in law that occurred after the first motion for relief from judgment was filed,

(b) or a claim of new evidence that was not discovered before the first such motion was filed, ~~or:~~

(c) a final court order vacating one or more of the defendant's convictions either described in the judgment from which the defendant is seeking relief or upon which the judgment was based.

The clerk shall refer a successive motion to the judge to whom the case is assigned for a determination whether the motion is within one of the exceptions.

The court may waive the provisions of this rule if it concludes that there is a significant possibility that the defendant is innocent of the crime. For motions filed under both (G)(1) and (G)(2), the court shall enter an appropriate order disposing of the motion.

(3) [Unchanged.]

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

Staff Comment (ADM File No. 2021-48): The amendment of MCR 6.502 codifies a third exception to the “one and only one motion” rule based on a final court order vacating one or more of a defendant’s convictions either described in the judgment or upon which the judgment was based.

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

ADM File No. 2021-39 Amendment of Rule 7.215 of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.215 of the Michigan Court Rules is adopted, effective Jan. 1, 2023.

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

Rule 7.215 Opinions, Orders, Judgments, and Final Process for Court of Appeals

(A)-(E) [Unchanged.]

(F) Execution and Enforcement.

(1)-(2) [Unchanged.]

(3) Reissuance of Judgment or Order. Any party may request that an opinion or order be reissued with a new entry date by filing a letter with the Court of Appeals setting forth facts showing that the clerk or attorney failed to send the judgment or order as provided in subrule (E)(2). The Court of Appeals will not reissue the opinion or order unless persuaded that it was not promptly sent as required and that the failure resulted in the party being precluded from timely filing a motion for reconsideration or an application for leave to appeal with the Supreme Court. Such request will be submitted to the Chief Judge for administrative decision, and the decision will be communicated by letter from the clerk.

(G)-(J) [Unchanged.]

Staff Comment (ADM File No. 2021-39): The amendment of MCR 7.215 codifies the Court of Appeals’ practice for reissuing opinions and orders.

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

ADM File No. 2022-01 Supreme Court Appointments to the Committee on Model Civil Jury Instructions

On order of the Court, pursuant to Administrative Order No. 2001-6, the following members are reappointed to the Committee on Model Civil Jury Instructions for terms beginning Jan. 1, 2023, and ending Dec. 31, 2025:

- Matthew Aneese
- Amy Johnston
- Hon. Annette Jurkiewicz-Berry
- Hon. Charles LaSata
- Emily Thomas
- Daniel Schulte

In addition, the Court appoints the following members for terms beginning Jan. 1, 2023, and ending Dec. 31, 2025:

- Adam Winn
- Richard J. Suhrheinrich
- Hon. Christopher P. Yates

ADM File No. 2022-01 Supreme Court Appointments to the Committee on Model Criminal Jury Instructions

On order of the Court, pursuant to Administrative Order No. 2013-13, the following members are reappointed to the Committee on Model Criminal Jury Instructions for terms beginning on Jan. 1, 2023, and ending Dec. 31, 2025:

- Hon. Michael C. Brown
- Hon. Terry L. Clark
- Michael J. McCarthy
- Michael L. Mittlestat
- Jerome Sabbota

The Court further appoints the following members for terms beginning Jan. 1, 2023, and ending Dec. 31, 2025:

- Hon. Margaret M. Van Houten
- Andrea S. Krause

In addition, pursuant to Administrative Order 2001-6 and effective immediately, Andrea Crumback is appointed as reporter of the Committee on Model Criminal Jury Instructions.

ADM File No. 2022-01 Supreme Court Appointments to the Foreign Language Board of Review

On order of the Court, pursuant to MCR 8.127(A), the following members are reappointed to the Foreign Language Board of Review for terms beginning Jan. 1, 2023 and ending Dec. 31, 2025:

- Hon. Tiffany A. Ankley (district court judge)
- George Strander (court administrator)
- Evelyn Villarruel (certified interpreter)

ADM File No. 2022-18 Amendment of IOP 9.207(B)-13 and Addition of IOPs 9.202(G)-6, 9.207(B)-14, and 9.207(B)-15 for the Judicial Tenure Commission

On order of the Court, the following amendment and additions of Internal Operating Procedures for the Judicial Tenure Commission are adopted, effective immediately.

[NEW] IOP 9.202(G)-6 Complaints about Commission Staff. The Commission occasionally receives complaints about staff or the executive director. In order to ensure that complaints about staff are resolved fairly and expeditiously, they will be handled as follows:

Complaints about staff other than the executive director. The executive director will promptly review all complaints about members of the staff other than the executive director. After reviewing the complaint, the executive director will take such action as they determine to be appropriate. Before taking any disciplinary action, the executive director will discuss the complaint with the staff member.

Complaints about executive director. Complaints about the executive director will be provided to the Commission chairperson and vice-chairperson. The chairperson and vice-chairperson will promptly review each complaint. If it appears that some investigation or other action may be appropriate, the chairperson or vice-chairperson will

provide the complaint to the entire Commission. The Commission will then decide, in executive session, whether to select three members of the Commission to act as a subcommittee to investigate the complaint and recommend a resolution. If the subcommittee will be recommending disciplinary action, the executive director should be given an opportunity to respond to the complaint. The Commission will then vote, in executive session, whether to accept the subcommittee's recommendation or take some other action.

IOP 9.207(B)-13 — Prompt Resolution of Complaints. The Commission recognizes that the public and judiciary have a strong interest in prompt and fair resolution of complaints alleging a judge has committed misconduct. The Commission's goal is to

- review all complaints expeditiously and impartially;
- fairly and thoroughly investigate those that warrant further examination;
- accurately and impartially determine the merits of each complaint; and
- arrive at a just resolution as quickly as practicable.

[NEW] IOP 9.207(B)-14 — Practice Regarding Investigation. It is in the interest of justice and the interest of the Commission to be aware of exculpatory information prior to recommending any action other than dismissal of the RFI. To that end, after the Commission approves a full investigation, staff will make reasonable efforts to obtain all information that appears useful to determining whether there is misconduct, in order to ensure that the investigation is both thorough and fair. If a respondent asks staff to obtain and review information that appears both relevant and useful to determining whether there is misconduct, staff will take such steps as are appropriate to obtain that information unless there are circumstances that make it unreasonable to do so.

[NEW] IOP 9.207(B)-15 — Practice Regarding Discovery. MCR 9.232(A) requires disciplinary counsel to provide the following to respondents, at least 21 days before a public hearing is scheduled to begin: names and addresses of all witnesses that disciplinary counsel intends to call at the hearing; copies of statements and affidavits given by disciplinary counsel's proposed witnesses; copies of all exhibits that disciplinary counsel intends to introduce; and copies of all exculpatory information in disciplinary counsel's possession.

It is in the Commission's interest that public charges against a respondent be resolved fairly and on the basis of all relevant evidence. To that end:

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

- Unless there are circumstances that make it unreasonable to do so, disciplinary counsel will endeavor to provide discovery to a respondent as soon as reasonably feasible after the Commission files a public complaint, but no later than the time limit in MCR 9.232(A).
- Unless circumstances make it unreasonable to do so, disciplinary counsel will make available to respondent all witness statements, without regard to whether disciplinary counsel intends to call the witness, and all evidence that is a part of the investigation, without regard to whether disciplinary counsel intends to introduce the evidence. In that way, disciplinary counsel will not be in the position of having to speculate as to what a respondent may consider to be “exculpatory.”

ADM File No. 2022-01 Supreme Court Appointments to the Judicial Education Board

On order of the Court, pursuant to Administrative Order No. 2021-7, Hon. Christopher M. Murray is reappointed as chair, and Hon. Kathleen M. Brickley is reappointed as vice-chair to the Judicial Education Board for terms ending Dec. 31, 2023.

ADM File No. 2022-01 Supreme Court Appointments to the Justice for All Commission

On order of the Court, pursuant to Administrative Order No. 2021-1, the following members are reappointed to the Justice for All Commission for terms commencing on Jan. 1, 2023, and ending on Dec. 31, 2025:

- Bonsitu Kitaba (on behalf of the State Planning Body)
- Ashley Lowe (on behalf of the Legal Services Association of Michigan)
- Yusef Shakur (on behalf of the Michigan Roundtable for Diversity and Inclusion)
- Hon. Cynthia Ward (on behalf of the Association of Black Judges)

In addition, James Heath (SBM president) is appointed for a term commencing on Jan. 1, 2023, and ending on Dec. 31, 2023; Sandra Vanderhyde (on behalf of court administrators/probate registers) is appointed for a term beginning Jan. 1, 2023, and ending on Dec. 31, 2024; and James A. Bacarella (on behalf of the Prosecuting Attorneys Association of Michigan) is appointed for a term commencing on Jan. 1, 2023, and ending on Dec. 31, 2025.

ADM File No. 2022-01 Assignment of Business Court Judge in the 9th Circuit Court (Kalamazoo County)

On order of the Court, effective Jan. 1, 2023, the Honorable Curtis J. Bell is assigned to serve as a business court judge in the 9th Circuit Court for a term expiring April 1, 2025.

ADM File No. 2022-01 Supreme Court Appointments to the Michigan Judicial Council

On order of the Court, pursuant to MCR 8.128, the following members are reappointed to the Michigan Judicial Council for terms beginning Jan. 1, 2023, and ending Dec. 31, 2025:

- Hon. William A. Baillargeon (at-large judge)
- Hon. Aaron J. Gauthier (at-large judge)
- James W. Heath (attorney)
- Sheryl M. Kubiak (member of the public)
- James A. McGrail (court administrator/probate register)
- Hon. Melissa L. Pope (Michigan Tribal State Federal Judicial Forum)
- Angela S. Tripp (Justice for All Commission member)

In addition, the Court appoints Justice Megan Cavanagh to the Michigan Judicial Council for a term beginning Jan. 1, 2023, and ending Dec. 31, 2025.

ADM File No. 2022-53 Amendment of Local Court Rule 2.119 for the Oakland County Circuit Court

On order of the Court, the following amendment to Local Court Rule 2.119 of the Oakland County Circuit Court is adopted, effective Jan. 1, 2023.

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

Rule 2.119 Motion Practice

(A)-(B) [Unchanged.]

(C) ~~Appearance at the Hearing. If counsel for the moving party on a motion praeciped for hearing does not check in with the court~~

~~clerk by 9:30 a.m., the court may dismiss the motion praecipe on its own motion or upon request of counsel for the opposing party.~~

~~If counsel for the opposing party in a motion praeciped for hearing does not check in with the clerk by 9:30 a.m., upon request of the moving party the clerk shall call the motion hearing. If appropriate, the court shall grant the relief requested.~~

Staff Comment (ADM File No. 2022-53): The amendment of Oakland LCR 2.119 is necessary because its inclusion causes the court unnecessary delays.

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

ADM File No. 2022-37 Proposed Administrative Order No. 2022-X Proposed Creation of a Vendor-Neutral Citation System

On order of the Court, this is to advise that the Court is considering an administrative order that would create a vendor-neutral citation system for Michigan appellate decisions. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notice and agendas for public hearings are posted on the Public Administrative Hearings page.

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

Administrative Order No. 2022-X — Creation of a Vendor-Neutral Citation System

Traditional appellate opinion citations are prescribed by commercial vendors and assume that every person has access to the vendors' print publications. Vendor-neutral citations, also known as public-domain citations, are different in that they do not depend on a proprietary publication. Vendor-neutral citations are also available immediately upon release of a court opinion or order, eliminating the waiting period for a permanent citation. In early 2022, the Michigan Supreme Court (MSC) and Michigan Court of Appeals (COA) formed an internal workgroup to consider whether Michigan should adopt vendor-neutral citations, and if so, what those citations would look like. That workgroup supported the idea of using citations that

are tied to the Courts' integrated docketing systems. Adoption of vendor-neutral citations has no bearing on the continued publication of the Michigan Reports and Michigan Appeals Reports.

Under this system, each citation includes the year of decision, the Court abbreviation ("MI" for the Michigan Supreme Court and "MI App" for the Court of Appeals), and a unique identifier consisting of the docket number and the event number at which the opinion or order was docketed. The event number can be found on the Courts' website. To find the event number, go to the case search page, search for the case by name or docket number, click on the case name to view the case information page, and scroll down to the list of docketed events; the event numbers are listed to the right of the event dates. For Court of Appeals opinions, the event number to be used for the citation is the event number used to docket the lead opinion, even if the reference is to a minority opinion. As is standard in Michigan appellate decisions, when citing a minority opinion a parenthetical should be included that indicates the author and the type of minority opinion (e.g., concurring in part; dissenting). An unpublished Court of Appeals opinion or order must also have "-U" appended to the Court abbreviation. Pinpoint citations are based on the page numbers of the opinion or order as released or revised by the Court. The following list provides a description of each citation type and an example:

MSC Opinion

Citation description:

[*Case Caption*], [Year] MI [Docket No.]-[Event No.].

Example:

Meyers v Rieck, 2022 MI 162094-77.

MSC Opinion with Pinpoint Reference

Citation description:

[*Case Caption*], [Year] MI [Docket No.]-[Event No.], p [Page No.].

Example:

Meyers v Rieck, 2022 MI 162094-77, p 11.

MSC Order

Citation description:

[*Case Caption*], [Year] MI [Docket No.]-[Event No.].

Example:

People v Christian, 2021 MI 162354-72.

COA Published Opinion

Citation description:

[*Case Caption*], [Year] MI App [Docket No.]-[Event No.].

Example:

Campbell v Mich Dep't of Treasury, 2020 MI App 350248-19.

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

COA Dissenting/Concurring Opinion

Citation description:

[*Case Caption*], [Year] MI App [Docket No.]-[Event No.] ([JUDGE'S LAST NAME], [Judicial Position Indicator], [Opinion Type]).

Example:

In re Baby Boy Doe, 2021 MI App 353796-35 (RONAYNE KRAUSE, P.J., dissenting).**COA Unpublished Opinion**

Citation description:

[*Case Caption*], [Year] MI App-U [Docket No.]-[Event No.].

Example:

People v Edwards, 2020 MI App-U 348807-64.**COA Published Order**

Citation description:

[*Case Caption*], [Year] MI App [Docket No.]-[Event No.].

Example:

In re AST, 2022 MI App 362349-7.**COA Unpublished Order**

Citation description:

[*Case Caption*], [Year] MI App-U [Docket No.]-[Event No.].

Example:

People v Peeler, 2021 MI App-U 357754-22.

Therefore, on order of the Court, this vendor-neutral citation system is adopted for Court of Appeals and Michigan Supreme Court opinions and orders beginning [Date]. After that date, the Michigan Supreme Court and the Michigan Court of Appeals must assign a vendor-neutral citation to their opinions and orders using this system.

Staff Comment (ADM File No. 2022-37): This administrative order would create a vendor-neutral citation system for Michigan appellate decisions. This new system would allow for permanent citations to be available immediately upon release of a court opinion or order, eliminating the waiting period for a permanent citation.

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

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by April 1, 2023 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2022-37. Your comments and the comments of others will be posted under the chapter affected by this proposal.

NOTICE TO ATTORNEYS IN
THE EASTERN DISTRICT OF MICHIGAN

Applications are now being accepted from attorneys seeking admission to the Criminal Justice Act (CJA) Panel Attorney Program to represent indigent defendants in the U.S. District Court for the Eastern District of Michigan (Detroit, Ann Arbor, Flint, Port Huron and Bay City). To download an application and/or obtain additional information regarding the CJA Panel, please visit the Federal Community Defender website at www.mie.fd.org. Please return completed applications to:

Federal Community Defender Attn: CJA Panel
613 Abbott Street, Suite 500
Detroit, Michigan 48226
Fax: (313) 962-0685

The deadline for applications is April 1, 2023. Applications will first be screened by a panel composed of attorneys representing various Bar Associations in the Southern and Northern Divisions, and then by the U.S. District Court. Sixth Circuit Rules require that an attorney appointed at trial continue through appeal.

All attorneys who are currently on the CJA Panel for the Eastern District of Michigan must renew their applications this year.

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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
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GAMBLERS ANONYMOUS

For a list of meetings, visit
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*Please note that these meetings are not specifically for
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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
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