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MARCH 2023



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- Lawyer-legislators of Michigan's 102nd Legislature
- The doctor and the judge: Norman Shumway and Avern Cohn

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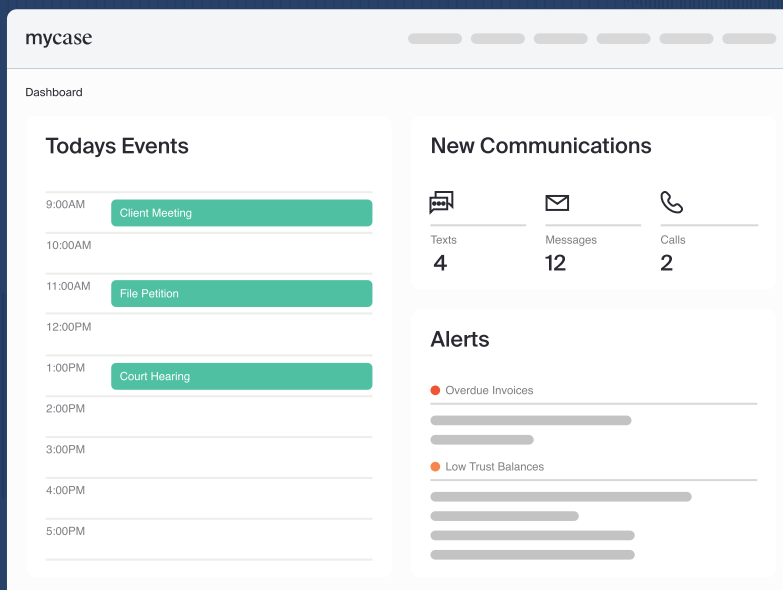
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ICLE was proud to assist the BLE in this endeavor. And together we thank the Michigan lawyers and judges who voluntarily shared their expertise.

THANK YOU!

A special thank you to these 27 Michigan judges and lawyers:

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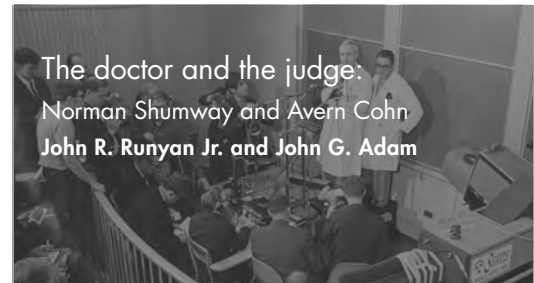
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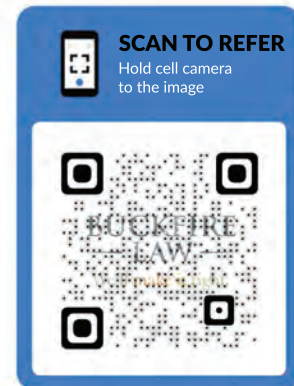
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APRIL 28, 2023
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APRIL 29, 2023
 SEPTEMBER 23, 2023



MEMBER SUSPENSIONS FOR NONPAYMENT OF DUES

The list of active attorneys who are suspended for nonpayment of their State Bar of Michigan 2022-2023 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, 2023, 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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IN BRIEF

ABA HOUSE OF DELEGATES SBM DELEGATE VACANCIES

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

ABA House of Delegates – State Bar Delegate: Two vacancies for two-year terms and one vacancy for a one-year term beginning at the close of the ABA Annual Meeting in August 2023.

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

Deadline for response is April 7, 2023.

Applications received after the deadline indicated will not be considered.

Those applying for an agency appointment should submit a résumé and a letter outlining interest in the ABA, current position in the

ABA, work on ABA committees and sections, accomplishments, and contributions to the State Bar and the ABA. Applications should be emailed to the SBM secretary in care of Marge Bossenbery at mbossenbery@michbar.org.

ALTERNATIVE DISPUTE RESOLUTION SECTION

Upcoming section events include the ADR Summit on March 21 and 28 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.

CONSUMER LAW SECTION

The Consumer Law Section is pleased to announce a new annual publication award for the best articles submitted to and published by the section. The section council will vote on the three best articles; the awards will be presented at the annual meeting. This award is open to any person with an interest in consumer law other than members of the section council. Contact Paul Matouka at pmatouka@oliver-lawgroup.com with questions or submissions.

ENVIRONMENTAL LAW SECTION

The Spring Air Conference cosponsored by the section and the Michigan Manufacturing Association will be held on April 18 at the MMA offices at 620 S. Capitol Ave. in Lansing. Our next council meeting takes place immediately after the conference. Detailed event information and past event

materials are available at connect.michbar.org/envlaw.

GOVERNMENT LAW SECTION

The Government Law Section will hold its annual summer conference on June 23-24 at Crystal Mountain Resort in Thompsonville. More details will be available in the coming weeks on our website.

LITIGATION SECTION

On Jan. 18, the Litigation Section held a successful Zoom seminar titled "Litigate on an iPad Workshop." Members wanting to learn more about the subject or interested in the seminar materials can contact section chair Edward Perdue at eperdue@perduelawgroup.com.

REAL PROPERTY LAW SECTION

Register for the Real Property Law Academy II on May 10-11 at the MSU Management Education Center in Troy. The event will be taught by some of the most respected and experienced Michigan real estate attorneys and will provide a basic understanding of the fundamental aspects of a real estate practice. It is intended for real estate attorneys and attorneys who encounter real estate issues from time to time. To register or learn more about the academy, go to na.eventscloud.com/rplsaii22. A recording of the program will be available for purchase at na.eventscloud.com/ereg/index.php?eventid=706951&.

MEMBER ANNOUNCEMENTS

When your office has something to celebrate, let the Michigan legal community know through News and Moves in the Michigan Bar Journal and at michbar.org/newsandmoves

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

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NEWS & MOVES

ARRIVALS AND PROMOTIONS

KENTON BEDNARZ has joined Wolfson Bolton Kochis.

COLBY BOMAN has joined Collins Einhorn Farrell.

DANIEL G. BONUCCHI, ASHLEY G. CHRYSLER, ADAM T. RATLIFF, AMBER M. UNDERHILL, and **CARLY A. ZAGAROLI** have been named partners with Warner Norcross & Judd.

KATHERINE G. BOOTHROYD, JULIETTE COLLINS, ABIGAIL COTÉ, BRANDON CROSS, DANICA HOSAKA, ALAN F. JURCAK, CHARLES C. KADADO, CHRISTIAN D. RHOADES, and **MARK ZUCCARO** have joined Warner Norcross & Judd.

CAROLE S. EMPEY, JOSEPH P. MCGILL, KIM J. SVESKA, and **ENRICO (ERIC) G. TUCCIA-RONE** have been elected to the membership at Foley, Baron, Metzger & Juip.

JOSEPH A. GOLDEN has joined Kostopoulos Rodriguez as of counsel.

WILLIAM KRAUS has joined FisherBroyles.

NICHOLAS HEINZ has been made a partner at McShane & Bowie.

KAYLA P. KOLBE joined Parmenter Law.

MATTHEW D. MILLS has been named partner at Parmenter Law.

ALEXANDRU SALAR has joined Collins Einhorn Farrell.

RANDY SHOEMAKER and **JAMES STEVENS JR.** of Reising Ethington have been elected shareholders of the firm.

AWARDS AND HONORS

DEANDRE' HARRIS with Warner Norcross & Judd has been recognized on Lawyers of Color's 2022 Hot List.

KYLE J. QUINN with McShane & Bowie has been elected as a fellow to the American Academy of Matrimonial Lawyers.

ANTHONY RANDAZZO, senior partner with Secrest Wardle, received the Patriot Award from the U.S. Department of Defense.

TIMOTHY F. SHERIDAN, a partner with Plunkett Cooney, was inducted into the National Academy of Distinguished Neutrals.

MICHAEL J. WILLIS of Willis Law has been recognized in The Best Lawyers in America.

WARNER NORCROSS & JUDD announced the winners of the 18th annual Dr. Martin

Luther King Jr. Social Justice Legacy Contest.

LEADERSHIP

STEPHEN P. BROWN, a partner with Plunkett Cooney, was named a fellow of the American College of Coverage Counsel.

TOM LEONARD, a partner with Plunkett Cooney, was elected to serve as a member of the Michigan Chamber of Commerce board of directors.

KURTIS T. WILDER of Butzel was elected chair of the Michigan Chamber of Commerce board of directors.

PRESENTATIONS, PUBLICATIONS, AND EVENTS

MAXWELL GOSS, a partner with Fishman Stewart, was a presenter at the Michigan Intellectual Property Law Association virtual meeting on Jan. 24. He spoke on the topic of "Trade Secrets and the Future of Non-Competes."

MARK LEZOTTE of Butzel spoke to the University of Michigan Ross School of Business Alumni Club of Ann Arbor and Southeast Michigan on Jan. 18 on "Nonprofit Affiliations and Mergers."

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IN MEMORIAM

JAMES ALBULOV JR., P33568, of Livonia, died May 31, 2022. He was born in 1948, graduated from Wayne State University Law School, and was admitted to the Bar in 1981.

MICHAEL C. AZAR, P41574, of Birmingham, died Aug. 18, 2022. He was born in 1963, graduated from University of Detroit School of Law, and was admitted to the Bar in 1988.

PATRICE L. BAKER, P48070, of Troy, died May 3, 2022. She was born in 1955, graduated from Wayne State University Law School, and was admitted to the Bar in 1993.

EILEEN A. BECKETT, P46644, of Eastpointe, died Oct. 6, 2022. She was born in 1950 and was admitted to the Bar in 1993.

CHARLES BRACKX, P38766, of Largo, Florida, died May 4, 2022. He was born in 1951, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1986.

GEORGE A. CASSAUAUGH JR., P11714, of Birmingham, died Sept. 14, 2022. He was born in 1934, graduated from Wayne State University Law School, and was admitted to the Bar in 1963.

BRUCE A. DALLAS, P41100, of Royal Oak, died Dec. 11, 2022. He was born in 1942, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1988.

ROBERT A. DAVIDOFF, P26635, of Kalamazoo, died Jan. 23, 2023. He was born in 1951 and was admitted to the Bar in 1976.

DONALD A. DAVIS, P24049, of Grand Rapids, died Feb. 5, 2023. He was born in 1948, graduated from University of Michigan Law School, and was admitted to the Bar in 1974.

HERBERT DAVIS, P12554, of Wilmington, Delaware, died Feb. 4, 2022. He was born in 1930 and was admitted to the Bar in 1960.

STANLEY L. DE JONGH, P41462, of Detroit, died Sept. 20, 2022. He was born in 1961 and was admitted to the Bar in 1988.

DAVID A. DODGE JR., P61036, of San Diego, California, died Feb. 5, 2023. He was born in 1969 and was admitted to the Bar in 2000.

ROBERT ELLIS DORDAN, P75485, of Grand Rapids, died July 4, 2022. He was born in 1983 and was admitted to the Bar in 2011.

THOMAS A. GOLDEN, P23811, of Henderson, Nevada, died Jan. 9, 2023. He was born in 1944, graduated from University of Detroit School of Law, and was admitted to the Bar in 1974.

CHARLES W. HERAN JR., P32434, of Albany, N.Y., died Jan. 21, 2022. He was born in 1955, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1981.

HARRY D. HIRSCH JR., P14997, of Roseville, died May 10, 2022. He was born in 1939, graduated from University of Michigan Law School, and was admitted to the Bar in 1965.

JOHN J. ISEMAN, P15352, of Troy, died Jan. 9, 2023. He was born in 1943, graduated from University of Michigan Law School, and was admitted to the Bar in 1969.

TIM G. JAEGER, P15422, of Bloomfield Hills, died Dec. 13, 2022. He was born in 1942, graduated from University of Detroit School of Law, and was admitted to the Bar in 1969.

GLEN W. JOHNSON, P40266, of Chicago, Illinois, died Aug. 2, 2022. He was born in 1960, graduated from Wayne State University Law School, and was admitted to the Bar in 1986.

JAMES F. JORDAN, P26554, of Hilton Head Island, S.C., died Aug. 17, 2022. He was born in 1947, graduated from University of Detroit School of Law, and was admitted to the Bar in 1976.

CHRISTINE KACZANOWSKI, P37801, of Grosse Pointe Woods, died Sept. 10, 2022. She was born in 1952, graduated from University of Detroit School of Law, and was admitted to the Bar in 1985.

JOHN F. LEARMAN, P16484, of Saginaw, died Jan. 4, 2023. He was born in 1925 and was admitted to the Bar in 1952.

HON. JAMES B. MACKIE, P16939, of Alma, died Nov. 17, 2022. He was born in 1938, graduated from Detroit College of Law, and was admitted to the Bar in 1970.

DANIEL C. MATSON, P17210, of DeWitt, died Jan. 17, 2023. He was born in 1935, graduated from Wayne State University Law School, and was admitted to the Bar in 1968.

DANIEL W. MCKELVEY, P17468, of Okemos, died Nov. 27, 2022. He was born in 1945, graduated from University of Detroit School of Law, and was admitted to the Bar in 1971.

MARILYN C. NAIMAN-KOHN, P32204, of Farmington Hills, died Oct. 14, 2022. She was born in 1956, graduated from Wayne State University Law School, and was admitted to the Bar in 1980.

THOMAS J. NOVACK, P70056, of Westerville, Ohio, died Sept. 9, 2022. He was born in 1960 and was admitted to the Bar in 2006.

JAMES A. O'TOOLE, P24856, of Clarkston, died Feb. 9, 2023. He was born in 1945, graduated from Detroit College of Law, and was admitted to the Bar in 1975.

RANDALL S. PASCUT, P38884, of Naples, Florida, died March 25, 2022. He was born in 1960, graduated from University of Detroit School of Law, and was admitted to the Bar in 1986.

DIANNE M. BURGESS PETERSON, P41417, of Farmington Hills, died Feb. 14, 2022. She was born in 1961, graduated from Wayne State University Law School, and was admitted to the Bar in 1988.

CRAIG MARC RAPPEL, P82779, of Viera, Florida, died Jan. 18, 2023. He was born in 1963 and was admitted to the Bar in 2018.

GERHARD F. RITSEMA, P24707, of Laguna Woods, California, died Jan. 5, 2023. He was born in 1936, graduated from Detroit College of Law, and was admitted to the Bar in 1975.

MICHAEL W. ROGENSUES, P34639, of Stanwood, died July 21, 2022. He was born in 1956, graduated from Detroit College of Law, and was admitted to the Bar in 1982.

ARTHUR J. ROSE III, P25610, of Warren, died Dec. 24, 2022. He was born in 1948, graduated from University of Michigan Law School, and was admitted to the Bar in 1975.

CALEB ANDRES SANDOVAL, P72673, of East Lansing, died March 13, 2022. He was born in 1977, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 2009.

PHILLIP E. SCHMITT JR., P22962, of Beverly Hills, died Dec. 31, 2022. He was born in 1948, graduated from Wayne State University Law School, and was admitted to the Bar in 1973.

JAMES D. SCHRAMM, P37496, of Pentwater, died May 25, 2022. He was born in 1941, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1985.

ROBERT W. SELBY, P20207, of Midland, died Jan. 28, 2023. He was born in 1934 and was admitted to the Bar in 1970.

JOHN J. SHINNERS, P41337, of Saginaw, died Oct. 22, 2022. He was born in 1950, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1988.

DENNIS J. SIMON, P20496, of Delray Beach, Florida, died Feb. 20, 2022. He was born in 1946, graduated from Detroit College of Law, and was admitted to the Bar in 1972.

KURT E. STEPANIAK, P36669, of Prescott, Arizona, died Aug. 29, 2022. He was born in 1958, graduated from Wayne State University Law School, and was admitted to the Bar in 1984.

LOUANN VAN DER WIELE, P33066, of Grosse Pointe Shores, died April 29, 2022. She was born in 1953, graduated from Wayne State University Law School, and was admitted to the Bar in 1981.

GARY G. VILLAS, P43399, of Eaton Rapids, died Oct. 10, 2022. He was born in 1963, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1990.

RONALD W. WANGEROW, P28549, of South Lyon, died Jan. 16, 2023. He was born in 1950, graduated from Wayne State University Law School, and was admitted to the Bar in 1978.

ERIK A. WARREN, P21994, of Flushing, died Jan. 8, 2023. He was born in 1942, graduated from Detroit College of Law, and was admitted to the Bar in 1968.

DOUGLAS E. WESLEY, P24754, of Plymouth, died Jan. 16, 2023. He was born in 1947, graduated from Wayne State University Law School, and was admitted to the Bar in 1975.

ROBERT L. WINKLER, P36314, of Corunna, died March 24, 2022. He was born in 1954, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1984.

CHRISTINE A. WU-SHEPHERD, P48845, of El Cerrito, California, died Dec. 28, 2022. She was born in 1968 and was admitted to the Bar in 1993.

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.

The background of the top half of the page is a photograph of the Michigan State Capitol building. The building is a large, classical-style structure with a prominent white dome topped by a golden spire. The facade features multiple windows and classical columns. The sky is a clear, light blue. A white rectangular box with a thin black border is centered over the image, containing the title text.

LAWYER-LEGISLATORS OF MICHIGAN'S 102ND LEGISLATURE

The 2022 general election—the first to implement legislative districts drawn by Michigan’s new Independent Citizens Redistricting Commission—ushered in tectonic shifts in the political landscape of the Great Lakes State. When the 102nd Legislature convened on Jan. 11, Democrats controlled both the House of Representatives and the Senate for the first time since 1983 (before many of the newly sworn-in legislators were even born). Fifty-four of the 110 members of the House and four of the 38 members of the Senate are new to the Legislature—a turnover rate not uncommon since voters approved term limits for legislators in 1992, but nonetheless significant.

In notable ways, the new Legislature looks quite different than those that came before it. For one, it’s decidedly younger. In the House, nearly one-third of the representatives are less than 40 years of age, while only 18% are older than 60. The Legislature’s leadership is more diverse and represents a number of historic firsts. Senate Majority Leader Winnie Brinks (D-Grand Rapids) is the first woman to serve in that role. In fact, she’s the first woman to lead either chamber in Michigan. Likewise, House Speaker Joe Tate (D-Detroit) is the first Black Michigander to serve as speaker and the first to lead either chamber. Senate Minority Leader Aric Nesbitt (R-Porter Township) and House Minority Leader Matt Hall (R-Richland Township)—an attorney—round out this term’s chamber leadership. The number of women elected and serving ticked up slightly from the 101st Legislature, with 15 women in the new Senate and 45 in the House, and this Legislature also boasts the largest (seven) contingent of openly LGBTQ lawmakers in the state’s history. At the same time, the number of Black lawmakers fell from 20 last term to 17.

Thirteen lawyer-legislators will serve in the 102nd Legislature, with one attorney elected to the Senate and 12 serving in the House. While that figure isn’t uncommon when compared to recent legislative sessions, it continues a historical slide the number of lawyer-legislators in Michigan. We need to go back to 1980 to find fewer members of the Bar serving at the state capitol. With that said, attorneys will continue to play prominent leadership roles at the committee level. For this session, the House will have both a Judiciary Committee and Criminal Justice Committee. Rep. Kelly Breen (D-Novi) will chair Judiciary with Rep. Graham Filler (R-St. Johns) serving as minority vice chair. Rep. Kara Hope (D-Holt) will chair Criminal Justice with Rep. Andrew Fink (R-Hillsdale) serving as minority vice chair. All four are attorneys. In the Senate, Stephanie Chang (D-Detroit) will chair the Senate Civil Rights, Judiciary, and Public Safety Committee with Sen. Jim Runestad (R-White Lake) serving as minority vice chair. Neither are attorneys.

There will be no shortage of issues of interest to the Bar before this Legislature: many recommendations from the Michigan Joint Task Force on Jail and Pretrial Incarceration and the Task Force on Juvenile Justice Reform remain to be debated; legislation expanding access to problem-solving courts is expected to be a priority; and legislators will need to address the perennial question of how Michigan can secure sustainable funding for our trial courts, to name but a few. Lawyer-legislators will bring their considerable expertise in a broad range of practice areas to bear on these challenges and more. Read the following profiles to learn more about them.



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**REPRESENTATIVE
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Standing Committees: Health Policy; Labor (chair); Joint Committee on Administrative Rules (chair)



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Standing Committees: Criminal Justice (minority vice chair); Health Policy; Regulatory Reform



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Standing Committees: Appropriations
Appropriations Subcommittees: General Government; Health and Human Services; Higher Education and Community Colleges (minority vice chair)



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Law School: University of Michigan Law School

Standing Committees: Appropriations; Civil Rights, Judiciary and Public Safety (majority vice chair); Energy and Environment; Housing and Human Services; Local Government; Natural Resources and Agriculture (chair)

Appropriations Subcommittees: Agriculture and Natural Resources (majority vice chair); Corrections and Judiciary (chair); Environment, Great Lakes, and Energy

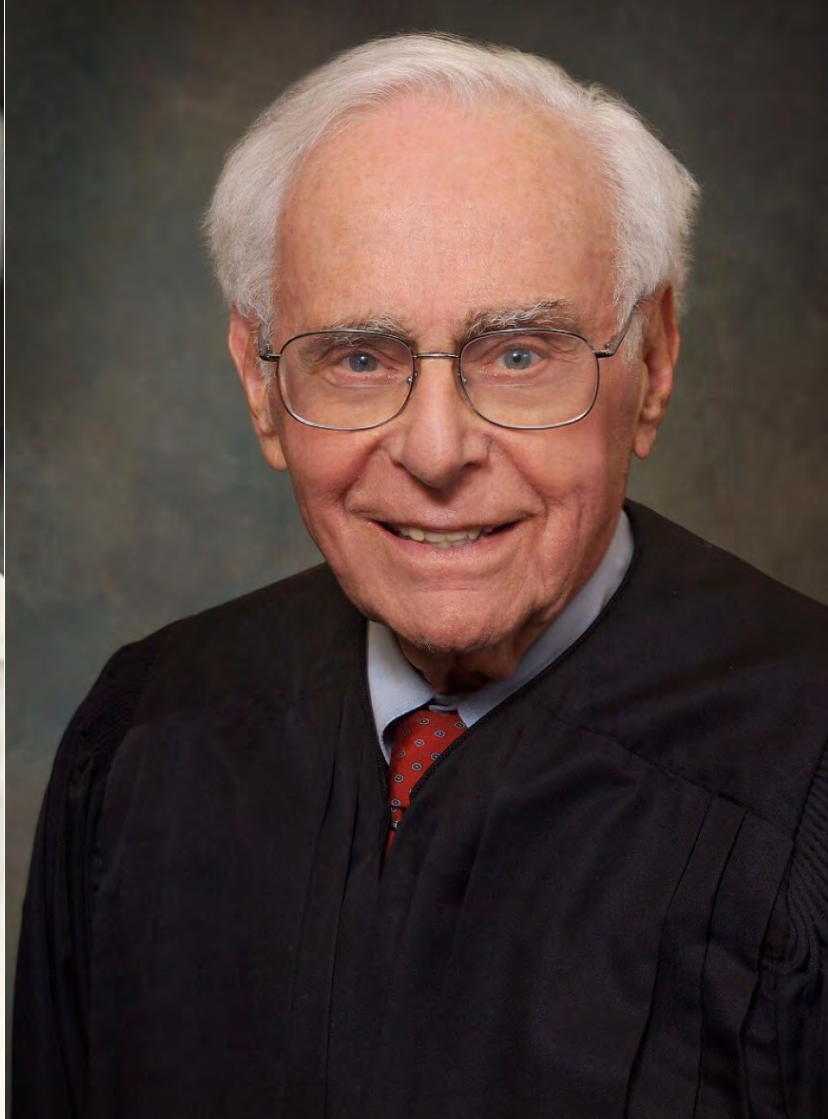
LAWYER-LEGISLATORS

YEAR (SESSION)	TOTAL	HOUSE	SENATE
2005 (93rd)	21	17	4
2007 (94th)	22	17	5
2009 (95th)	23	18	5
2011 (96th)	17	13	4
2013 (97th)	17	13	4
2015 (98th)	13	10	3
2017 (99th)	13	10	3
2019 (100th)	15	14	1
2021 (101st)	13	13	0
2023 (102nd)	13	12	1

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The doctor and the judge: Norman Shumway and Avern Cohn

BY JOHN R. RUNYAN JR. AND JOHN G. ADAM

This is a story about two remarkable Michigan men: one is well known to Bar Journal readers; the other isn't but should be.

Norman Shumway had designs on becoming a lawyer. Avern Cohn planned to be a doctor. Cohn went to Stanford University for premedical training and attended medical school for a short period.¹ Shumway became a surgeon at the Stanford University School of Medicine, where he worked from 1958 until his retirement in 1993.² Cohn, of course, was a practicing attorney for three decades and a federal judge for 40 years.³

Some might say Cohn had the personality of a surgeon. Shumway, meanwhile, was kind and patient, with a great sense of humor — characteristics not common among surgeons.

Before his passing last year, we discovered the Shumway-Cohn connection and shared with Cohn a draft article about Shumway. Cohn said he knew Shumway.⁴

Here, we tell the story of Shumway and Cohn who met briefly as young men, switched careers, and went on to lead remarkable lives.

GROWING UP

Shumway was born in 1923 in Kalamazoo, an only child who moved to Jackson at an early age. His parents ran a business called the Home Dairy consisting of a diner up front and a dairy in the rear. At Jackson High School, he was a member of the debate team that won a state championship and graduated as class valedictorian. His yearbook photo was accompanied by

the aphorism: “Norman Shumway Jr. — a man of few words but great meaning.”⁵

Cohn was born in 1924 in Detroit, the oldest of two children. His father was a prominent bankruptcy lawyer, and his mother was a homemaker. Cohn was raised in the Russell Woods neighborhood on Detroit’s west side, an upper-middle class area he described as Detroit’s “golden ghetto,” a tight-knit Jewish community — Cohn later recalled that he “had almost no non-Jewish friends or associations” growing up — and much of his early life can be traced in the Detroit Jewish News and Detroit Jewish Chronicle.⁶

Like Shumway, Cohn was an excellent student. A voracious reader, he was particularly interested in history and developed an early fascination with politics. At age 17, he graduated with honors from Detroit Central High School in January 1942 and immediately set off to college.⁷

MICHIGAN MEN AND A WAR

Coincidentally, both Shumway and Cohn enrolled at the University of Michigan as pre-law students just a few months apart. Shumway joined the Phi Delta Gamma fraternity, while Cohn joined Sigma Alpha Mu. From an early age, Cohn knew he would follow in his father’s footsteps by attending the University of Michigan — “I didn’t know there was any other university in the United States.”⁸

The Dec. 7, 1941, Japanese attack on Pearl Harbor and the United States’ entry in World War II altered their plans.

Shumway enlisted hoping to become a fighter pilot but learned that sinus problems rendered him ineligible to do so.⁹ Cohn would have enlisted but his eyesight was so poor that he decided to wait for his draft notice. Each week, he watched another of his fraternity brothers receive his draft notice, put his civilian clothes up for sale, and head off for induction. When Cohn’s notice arrived in 1943, he reported for basic infantry training at Fort Custer near Battle Creek.¹⁰

CROSSING PATHS IN TEXAS

Both Shumway and Cohn had performed well on the Army’s General Classification Test after completing basic training, so they were selected for the Army Specialized Training Program¹¹ and sent to John Tarleton Agricultural College (now Tarleton State University) in Stephenville, Texas, about 110 miles southwest of Dallas.¹² Cohn told the authors that he estimated about 200,000 men nationwide participated in the program. In addition to the pre-engineering program at Tarleton, there were programs in premedicine, medicine, and dentistry.¹³

Although they were not roommates, Shumway and Cohn lived in the same dormitory. After discovering they were both from Michigan and had briefly attended the University of Michigan, they became friends.¹⁴

Pre-engineering training was scheduled to last three quarters but was suspended while both men were in their third quarters; the Army suspected it would need reserves to replace expected casualties in Europe. They were sent to a reassignment center, Camp Maxey, near Paris, Texas. There, they both took a medical aptitude test, which resulted in Cohn being sent to Stanford and Shumway going to Baylor University for premed training.¹⁵

Incidentally, the test’s last question asked enlistees if they would be more interested in medicine or dentistry. Shumway decided the Army was going to need more doctors than dentists, so he marked “medicine.” His choice turned out to be prophetic; the dental program was later discontinued. Those officers were sent back to the infantry.¹⁶

After about nine months together in Texas, the two men never spoke again. But they went on to lead interesting and productive lives, each making significant contributions to their professions, one in medicine and the other in law.¹⁷

DR. SHUMWAY ... AND DR. COHN?

After completing his premed studies at Baylor, Shumway took a job as an orderly at a hospital in Memphis, Tennessee, while waiting for a military slot to open in medical school. In 1945, one came available at Vanderbilt University.¹⁸

Cohn, meanwhile, finished his premed training at Stanford and also had to wait for an opening at a medical school. He worked for eight months as a ward boy fetching bedpans at a VA hospital near Chicago until landing a spot at Loyola Medical School in 1945. Unlike Shumway, Cohn decided he was better suited for law than medicine and dropped out of Loyola in the spring of 1946, shortly after being honorably discharged from the service. Though he hadn’t completed his undergraduate degree, Cohn entered the University of Michigan Law School that fall and graduated in 1949, after which he immediately joined his father’s law practice.¹⁹

SHUMWAY GOES WEST

After medical school, Shumway began his surgical residency at the University of Minnesota in 1949. There, he met his future wife, Mary Lou Stuurmans, a public health nurse. Shumway’s residency was interrupted by a two-year stint in the Air Force during the Korean Conflict, but he returned to Minnesota in 1953 to complete his residency and a research thesis on the effects of cooling on the electrical activity of the heart, for which he earned a PhD in 1956. At Minnesota, Shumway trained under Dr. Owen Wangenstein, chairman of the school’s surgery department, and Dr. Walton Lillehei, the chief of thoracic surgery.²⁰

On the hunt for a job, Shumway unsuccessfully interviewed for a position at the University of California at San Francisco with Dr. Leon Goldman, the father of future U.S. Sen. Dianne Feinstein — he said he knew he wouldn’t be hired when Goldman fell asleep

during the interview. Shumway found a home at Stanford University in 1957 where he was soon joined by another heart surgeon with an interest in transplants, Dr. Richard Lower. In 1959, the duo successfully removed a dog's heart and sewed it back in; later that year, they performed the first successful experimental transplant on a dog, proving a transplanted heart could function properly.²¹

COHN COMES HOME

Irwin Cohn's Detroit law firm was a general civil practice firm with an emphasis on bankruptcy, real estate, business transactions, and labor relations; clients included Federated Department Stores, Wrigley's Supermarkets, Sinai Hospital, and the Michigan Hospital Association. Avern Cohn did debt collection, evictions, and labor arbitrations; examined abstracts; and took criminal assignments. In 1962, Cohn combined with Honigman, Miller & Schwartz to form Honigman, Miller, Schwartz & Cohn.²²

In 1954, Cohn met his future wife, Joyce Ann Hochman. The couple married in December of that year. The Cohns were politically active. Avern Cohn worked with Volunteers for Stevenson as a precinct delegate and was treasurer for Citizens for Kennedy-Johnson in Michigan. In the 1960s, he managed campaigns of Michigan Supreme Court candidates including Paul Adams and Otis Smith and was the treasurer for the U.S. Senate campaigns of G. Mennen Williams and Frank Kelley (and, much later, he did the same for his cousin, Carl Levin.)²³

In spite of his activism, Cohn appeared on a ballot only once – in 1961, he mounted a losing bid for a spot as a delegate to the Michigan Constitutional Convention. That same year, he had a final brush with elected office after Michigan's attorney general was named to the state Supreme Court; the choice of a successor came down to Cohn and Frank Kelley. Kelley was selected and stayed in office until 1999.²⁴

Many years later, Kelley told Cohn, "Avern, you got the job you should have had, and I got the one I should have — you just had to wait longer."²⁵

THE WORLD'S GREATEST HEART TRANSPLANT DOCTOR

Shumway became Stanford's chief of cardiothoracic surgery in 1965, a position he held until his retirement in 1993. In 1967, following a decade of research, he announced that he was ready to perform the first human heart transplant. The next day, a South African newspaper announced that a team led by Dr. Christiaan Barnard was on standby to perform a heart transplant.²⁶

Barnard, who had trained with Shumway at the University of Minnesota, performed the world's first human heart transplant on Dec. 3, 1967. Shumway performed his first successful human heart transplant (the world's fourth) on Jan. 8, 1968, five weeks after Barnard. Over the next year, approximately 100 transplants were performed by different doctors, but the results were poor mainly

due to host rejection. The resulting public outcry led to a 10-year moratorium on heart transplants — except at Stanford.²⁷

By some accounts, the relationship between Barnard and Shumway was strained due to the competition between the two men. But one of Shumway's daughters, Sara J. Shumway, a cardiothoracic surgery professor at the University of Minnesota, disagrees. Barnard's groundbreaking surgery excited her father because it helped surmount legal barriers that blocked surgeons at Stanford from recovering donor hearts.²⁸

"Once Barnard was able to do a heart transplant," Sara Shumway said, "it paved the way for other transplants to occur."²⁹

While Barnard was enjoying a playboy lifestyle and carousing with Hollywood stars like Sophia Loren and Gina Lollobrigida, Shumway worked to improve the care with which donors and recipients were selected, made efforts to increase the donor pool, brought about improvements in organ preservation and heart biopsies, and followed developments with respect to antirejection drugs. When the rest of the world resumed transplants, Shumway ascribed the turnaround to his "radical perseverance."³⁰

Soon, Shumway led the world in the number of heart transplants and, more importantly, in the number of successful transplants. Of the approximately 800 heart transplants he performed or oversaw, more than 80% of his patients lived for at least five years³¹ and the longest lived 20 years.³²

Shumway also developed and performed the first heart-lung transplant. Through research, he discovered that it was impossible to transplant lungs without also transplanting the heart. Along with his colleague, Dr. Bruce Reitz, he performed the first human heart-lung procedure in 1981. The patient, Mary Gohlke, lived for five years.³³

In 1973, Shumway performed heart surgery on future Supreme Court Justice John Paul Stevens. In his autobiography, Stevens wrote that Shumway performed an "amazingly successful operation," so much so that he was healthy enough to be nominated to the Supreme Court by President Gerald Ford and confirmed in 1975. Stevens called Shumway a "true pioneer."³⁴

The transplant revolution Shumway sparked extended beyond medicine by forcing reconsideration of the traditional definition of death as the moment the heart stops beating. Instead, an organ donor can now be considered dead as soon as electrical activity in the brain ceases, allowing transportation of a living heart or other organs.³⁵

COHN STIRS THE POT

During his 30 years in private practice, Cohn often used his skills to further the public interest. When the Automobile Club of Michigan moved its headquarters and 1,200 jobs from downtown Detroit to Dearborn in 1974, there was an uproar amid claims of discrimina-

tion. Cohn took a more subtle approach. In *Dozier v. Automobile Club of Michigan*, as attorney for the plaintiffs, Cohn challenged the legality of the club's bylaws which provided for nomination and election of its directors (in a self-perpetuating fashion) by the directors themselves rather than by the membership. Cohn succeeded in persuading the state Court of Appeals to reverse an adverse decision by a Wayne County judge.³⁶ Though the club amended its bylaws in response to the suit, Cohn was unsuccessful in his attempts to persuade the club to add a Black board member.³⁷

Later, Cohn questioned the applicability of Michigan's Open Meetings Act to Michigan Supreme Court meetings on administrative matters. His letter to the Court asking when they were next scheduled to meet prompted the Court's opinion, *In re the Sunshine Law*, that declared unconstitutional the portion of the act applicable "to a court while exercising rule-making authority and while deliberating or deciding upon the issuance of administrative orders."³⁸

In 1978, Cohn chaired a State Bar of Michigan special committee that authored the controversial "Report of the Special State Bar Committee on Court Congestion." The committee recommended that the Michigan Supreme Court become more transparent in its own operations; fulfill the promise of "one court of justice" laid out in the state constitution; and require greater uniformity and exercise more supervisory authority over the lower courts in Michigan. The recommendations were quite revolutionary at the time and caused a firestorm.³⁹

THE WORLD'S GREATEST FIRST ASSISTANT

Without question, Shumway's renown in the field of medicine is remarkable. A frequent lecturer, he also wrote extensively — there are 447 papers listed under his name in PubMed.⁴⁰ Of the 76 residents Shumway trained at Stanford, 22 became chiefs or chairs of significant divisions or departments in the U.S. and throughout the world. And in what is now standard practice, Shumway had his trainees alternate between cardiac and general surgery. For example, one performed a heart transplant before he had even performed a hernia operation.⁴¹

Shumway also differed from many of his peers who gave residents little opportunity to operate on patients; instead, he assisted while the trainee did the surgery. This, perhaps, was his most significant legacy and explained his personal surgical philosophy: "The most difficult thing about surgery — even open-heart surgery — is getting a chance to do it. It certainly doesn't matter as much who does the operation, as how it is done."⁴²

If a young surgeon erred, Shumway assumed command. "We used to joke that he was the world's greatest first assistant," said Dr. William R. Brody, a Shumway trainee who served as president of Johns Hopkins University and the Salk Institute. "Dr. Shumway had the ability to get people to work harder for him than anyone I have ever seen and yet never did it with a directive or unkind word. He always used humor and delegated responsibility."⁴³

COHN THE JUDGE

It is no wonder Cohn's name came to the forefront when there were vacancies on the federal bench in the late 1970s. For 30 years, he had prepared himself for such an appointment. He was a senior partner in an established, well-regarded law firm; active in the general, political, and religious communities; and supported by both organized labor and the Black community. To top it off, Democratic President Jimmy Carter was in the White House and the Democrats held congressional majorities. His investiture to the federal court in 1979 was a highly attended event.⁴⁴

During his tenure on the United States District Court for the Eastern District of Michigan from 1979-2019, Cohn oversaw many significant cases including litigation resulting from the firing of striking air traffic controllers by President Ronald Reagan in 1980, the windup of the Detroit school desegregation case, and a protracted patent infringement case brought against auto manufacturers by Robert Kearns, inventor of the intermittent windshield wiper.⁴⁵ In *Doe v. University of Michigan*,⁴⁶ a 1989 case, Cohn struck down a hate speech code instituted at his alma mater, saying it was vague, too broad, and violated the First Amendment. Six years later, he heard *U.S. v. Jake Baker*, one of the first cases involving free speech and the internet. Cohn dismissed charges against a student who posted stories about raping, torturing, and murdering women, ruling there was no evidence the author intended to commit a crime and that he had a free-speech right to his fantasies.⁴⁷ The decision was bitterly denounced in some circles, but it was never reversed.

Anyone who met Cohn soon learned that he had a huge presence, an encyclopedic mind, and sometimes displayed a volatile temper. He could be, at any moment, brilliant and caring or cranky and even irascible. Many a lawyer who appeared in his courtroom, especially those who were ill-prepared, got, in the words of Cohn's close friend Eugene Driker, a high-decibel "oral spanking."⁴⁸

Still, many found that Cohn was a judge with a heart. Nada Nadim Prouty was a native of Lebanon and a naturalized U.S. citizen who had served in both the FBI and CIA. The government accused her of crimes including naturalization fraud and conspiracy to defraud the United States. Nicknamed "Jihad Jane" by the media, she was worried upon learning her case had been assigned to Cohn, a pillar of Detroit's Jewish community. After studying the case, the judge tore into the government and the media and praised Prouty for "rendering extraordinary service to the United States." In the end, she was exonerated.

"I was ecstatic that the judge had seen through the smoke to the real facts in my case," Prouty said. "Judge Cohn was very fair. He stood apart from the rest. He had a heart."⁴⁹

SHUMWAY'S HUMAN TOUCH

Shumway was well known for how his humor and quick wit could relax and entertain an entire operating team. Colleagues referred to his "Shumwayisms" such as, "All you need to know to perform

open heart surgery is that water runs downhill and seeks its own level” and “All bleeding stops sometimes.”⁵⁰

Joanne Meagher came to Stanford as a newly graduated nurse in 1966 where, after three days of orientation, she was assigned to nights as the sole pediatrics RN. A little after midnight on her first night, Shumway, smiling and clad in rumpled scrubs, asked Meagher who she was, what was going on, and how the kids were.

“I ... tearfully replied that there were these four kids who had heart surgery and were on monitors that I had no idea how to work and was afraid that something bad would happen,” she said. “He smiled, escorted me to the room, gave me a 20-minute crash course on the basics with lots of laughs thrown in, walked out on the patio, brought in a lawn chair, and stayed there with me until morning.

“That is the Norman Shumway I knew for the next several decades[.] Kind, professional, caring, funny, dedicated, and a real gentleman.”⁵¹

COHN'S PUBLIC SERVICE

Cohn, meanwhile, frequently volunteered his time to a variety of causes. He served on several State Bar committees including the Character and Fitness Committee, the Committee on Legal Aid, and the Committee on Judicial Selection and Tenure. He was part of the Michigan Social Welfare Commission, the Michigan Civil Rights Commission, and the Detroit Board of Police Commissioners, and he was active in several Jewish organizations including the Jewish Community Council. And he sent scores of thought-provoking letters to editors of legal journals and newspapers over the years.⁵²

SHUMWAY'S AND COHN'S CONTRIBUTIONS

Dr. Norman Shumway died at his Palo Alto, California, home on Feb. 10, 2006, from complications from cancer, one day after his 83rd birthday. Judge Avern Cohn died at age 97, at Beaumont Hospital in Royal Oak on Feb. 4, 2022, after a brief illness.⁵³

The story of Norman Shumway and Avern Cohn is a story about America and what makes this country great. These men born 18 months and 140 miles apart “thought about the other fella”⁵⁴ and put their considerable intellectual gifts to work to better the world in which we live.

John R. Runyan is of counsel to Nickelhoff & Widick. He currently serves as chair of the SBM Labor and Employment Law Section and the Standing Committee on the Michigan Bar Journal. He is a past president of the College of Labor and Employment Lawyers, the Detroit Bar Association, and the Detroit chapter of the Federal Bar Association.

John G. Adam is of counsel to McKnight, Canzano, Smith, Radtke & Brault and editor of *Lawnnotes*, a quarterly journal published under the auspices of the Council of the Labor and Employment Law Section of the State Bar of Michigan.

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17. Runyan’s March 9, 2021, interview of Cohn. While they never met again. Shumway did operate on judges, including Supreme Court Justice John Paul Stevens. In his autobiography, *The Making of a Justice: Reflections on My First 94 Years* (New York City: Hachette Book Group, 2019) at 124-129, Stevens explained that in 1973 when he was a 7th Circuit judge, Shumway performed an “amazingly successful operation” on him. The heart surgery provided a complete recovery such that he was found to be healthy enough to be nominated and confirmed to the Supreme Court in 1975 by President Gerald Ford. Stevens called Shumway a “true pioneer” in heart transplant.
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SAVE THE DATE

The State Bar of Michigan is pleased to announce the return of Brunch for Bars! Join us the morning after the Barrister's Ball on Sunday, April 30, 2023, at Andiamo's Detroit Riverfront in the Renaissance Center.

RSVP BY APRIL 17

[MICHBAR.ORG/DIVERSITY/BRUNCH](https://michbar.org/diversity/brunch)

STATE BAR OF MICHIGAN ELECTION NOTICE

GENERAL ANNOUNCEMENT

Members of the State Bar of Michigan are hereby notified that the following elections will be held in June 2023:

- **Judicial Tenure Commission:** A statewide election for one non-judicial member.
- **Representative Assembly:** Elections for 75 members in 38 judicial circuits.
- **Board of Commissioners:** Elections for six members in four commissioner districts.
- **Young Lawyers Section Executive Council:** Elections for 13 members in three districts.

Nominating petitions may be filed no earlier than April 1, 2023, and no later than April 30, 2023. Ballots will be distributed via email no later than June 1, 2023. Online voting ends 11:59 p.m. June 15, 2023. Nominating petitions for all elections are on pages 28 through 32.

The following list includes the seats that will be up for election and incumbent information. Members of the State Bar of Michigan will receive ballots personalized to only the elections for which they are eligible to vote.

JUDICIAL TENURE COMMISSION

Active members will elect one non-judicial member of the Judicial Tenure Commission for a three-year term beginning Jan. 1, 2024, and expiring Dec. 31, 2026. Article 6, Section 30 of the Michigan Constitution provides that three of the commission's nine members shall be State Bar members elected by the State Bar membership. One of these shall be a judge and two shall not be judges. The seat to be filled by an election in 2023 is to be held by a member who is **not a judge**.

Any active member of the State Bar who is not a judge may be nominated by petitions bearing at least 50 valid signatures of active

members of the Bar. No member may sign a nominating petition for more than one Judicial Tenure Commission candidate. All signatures in violation of this rule will be deemed invalid. It is recommended that candidates obtain at least 75 signatures to ensure they have at least 50 valid signatures after petitions are reviewed and invalid/illegible signatures are removed.

STATEWIDE – Non-judicial

Elect one.

Incumbent eligible for reelection:
James W. Burdick

REPRESENTATIVE ASSEMBLY

Active members in certain judicial circuits will elect members of the Representative Assembly, including:

1. Election to fill Representative Assembly seats for the listed members whose terms expire at the close of the September 2023 meeting.
2. Election of members to fill the remainder of terms for vacant seats in the Representative Assembly. The elected members will assume office immediately upon the certification of the election in June 2023 and serve for the remainder of the seat's unexpired term.
3. Election of members to fill the remainder of terms for seats in the Representative Assembly currently filled by an interim appointment. The elected members will assume office immediately upon the certification of the election in June 2023 and serve for the remainder of the seat's unexpired term.

Active members of the State Bar who have their principal offices within the Representative Assembly circuit may be nominated by petitions bearing five valid signatures of members entitled to vote in the district. No member may sign a nominating petition for more circuit representatives than there are

seats to be filled in the circuit. All signatures in violation of this rule will be deemed invalid. It is recommended that candidates obtain at least seven signatures to ensure they have at least five valid signatures after petitions are reviewed and invalid/illegible signatures are removed.

NOTE:

+ Indicates the incumbent is an interim appointment to the Representative Assembly

1ST CIRCUIT – Hillsdale County

Elect one for a one-year term.

2ND CIRCUIT – Berrien County

Elect one for a three-year term.

Incumbent eligible for reelection:
Amber D. Peters

3RD CIRCUIT – Wayne County

Elect eight for three-year terms and one for a two-year term.

Incumbents (7) eligible for reelection:
Ponce D. Clay
Dawn S. Lee-Cotton
Sean Michael Myers
Shanika Amina Owens
Richard M. Soranno
Lisa Whitney Timmons
Kimberly Ann Ward

6TH CIRCUIT – Oakland County

Elect 10 for three-year terms, one for a two-year term, and one for a one-year term.

Incumbents (7) eligible for reelection:
Joshua I. Arnkoff
Colleen H. Burke
Jennifer Ann Cupples
Melissa E. Graves
Tracey L. Lee
Khara Moody +
Brian D. O'Keefe

**7TH CIRCUIT –
Genesee County**

Elect one for a three-year term.

Incumbent eligible for reelection:
Sandra K. Carlson

**8TH CIRCUIT –
Montcalm and Ionia Counties**

Elect one for a three-year term.

**9TH CIRCUIT –
Kalamazoo County**

Elect one for a three-year term and one for a two-year term.

Incumbent eligible for reelection:
Donald L.R. Roberts

**10TH CIRCUIT –
Saginaw County**

Elect two for a three-year term.

Incumbent eligible for reelection:
Jennifer Ann Van Benschoten Jones

**11TH CIRCUIT –
Alger, Luce, Mackinac,
and Schoolcraft Counties**

Elect one for a three-year term.

Incumbent eligible for reelection:
Chad William Peltier

**12TH CIRCUIT –
Baraga, Houghton,
and Keweenaw Counties**

Elect one for a two-year term.

**13TH CIRCUIT –
Antrim, Grand Traverse,
and Leelanau Counties**

Elect two for a two-year term.

**16TH CIRCUIT –
Macomb County**

Elect one for a three-year term and three for two-year terms.

Incumbent eligible for reelection:
Angela Medley

**17TH CIRCUIT –
Kent County**

Elect two for three-year terms, one for a two-

year term, and one for a one-year term.

Incumbents (2) eligible for reelection:
Jason W. Johnson
Jonathan Jeffrey Paasch

**18TH CIRCUIT –
Bay County**

Elect two for two-year terms.

**19TH CIRCUIT –
Benzie and Manistee Counties**

Elect one for a three-year term.

Incumbent eligible for reelection:
Lesya Nikolayevna Dull

**20TH CIRCUIT –
Ottawa County**

Elect one for a three-year term.

Incumbent eligible for reelection:
Paul F. Kraus

**21ST CIRCUIT –
Isabella County**

Elect one for a three-year term.

Incumbent eligible for reelection:
Becky J. Bolles

**22ND CIRCUIT –
Washtenaw County**

Elect three for a three-year term.

Incumbent eligible for reelection:
Mark William Jane

**24TH CIRCUIT –
Sanilac County**

Elect one for a three-year term.

Incumbent eligible for reelection:
Matthew Christopher Lozen

**25TH CIRCUIT –
Marquette County**

Elect one for a three-year term and one for a two-year term.

Incumbent eligible for reelection:
Karl A. Weber

**26TH CIRCUIT –
Alpena and Montmorency Counties**

Elect one for a three-year term.

**27TH CIRCUIT –
Newaygo and Oceana Counties**

Elect one for a three-year term.

**28TH CIRCUIT –
Missaukee and Wexford Counties**

Elect one for a three-year term.

**29TH CIRCUIT –
Clinton and Gratiot Counties**

Elect one for a two-year term.

**30TH CIRCUIT –
Ingham County**

Elect two for a three-year term, one for a two-year term, and one for a one-year term.

Incumbents (2) eligible for reelection:
Nicole A. Evans
Nicholas E. Gobbo

**31ST CIRCUIT –
St. Clair County**

Elect one for a two-year term.

**36TH CIRCUIT –
Van Buren County**

Elect one for a two-year term.

**37TH CIRCUIT –
Calhoun County**

Elect one for a two-year term.

**38TH CIRCUIT –
Monroe County**

Elect one for a two-year term and one for a one-year term.

**42ND CIRCUIT –
Midland County**

Elect two for a two-year term.

**43RD CIRCUIT –
Cass County**

Elect one for a two-year term.

**45TH CIRCUIT –
St. Joseph County**

Elect one for a three-year term.

Incumbent eligible for reelection:
Keely Austin Beemer +

**48TH CIRCUIT –
Allegan County**

Elect one for a three-year term.

**49TH CIRCUIT –
Mecosta and Osceola Counties**

Elect one for a three-year term.

**50TH CIRCUIT –
Chippewa County**

Elect one for a two-year term.

**54TH CIRCUIT –
Tuscola County**

Elect one for a three-year term.

**55TH CIRCUIT –
Clare and Gladwin Counties**

Elect one for a one-year term.

Incumbent eligible for reelection:
Michelle Joy Ambrozaitis +

**57TH CIRCUIT –
Emmett County**

Elect one for a two-year term.

BOARD OF COMMISSIONERS

Active members in certain commissioner districts will elect members of the Board of Commissioners to three-year terms. The terms of the following commissioners of the State Bar will expire at the close of the September meeting of the 2023-2023 Board of Commissioners.

The seats are to be filled by election in June 2023 for terms of three years, commencing at the close of the September meeting of the 2023-2023 Board of Commissioners. Following are the districts in which elections are to be held, the number of seats to be filled, and the names of the incumbents.

Active members of the State Bar who have their principal offices within the commissioner election district may be nominated by petitions bearing five valid signatures of members entitled to vote in the district. No member may sign a nominating petition for more district commissioner candidates than there are seats to be filled in the district. All signatures in violation of this rule will be deemed invalid. It is recommended that candidates obtain at least seven

signatures to ensure they have at least five valid signatures after petitions are reviewed and invalid/illegible signatures are removed.

**DISTRICT B – Judicial Circuits
7, 10, 18, 24, 40, 42, 52, and 54**

Elect one

Incumbent eligible for reelection:
B. Chris Christenson

**DISTRICT E – Judicial Circuits
5, 8, 29, 30, 35, 44, and 56**

Elect one

Incumbent eligible for reelection:
Robert A. Easterly

**DISTRICT H – Judicial Circuits
3, 38, and 39**

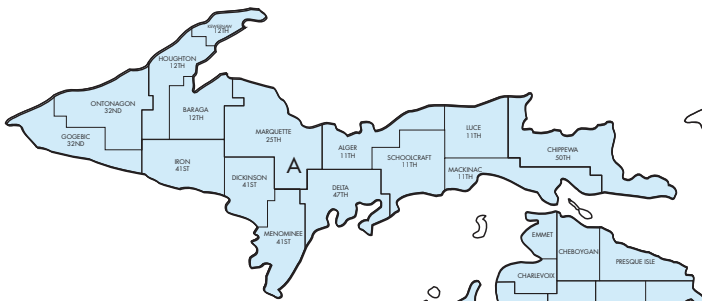
Elect two

Incumbents (2) eligible for reelection:
David A. Perkins
Mark A. Wisniewski

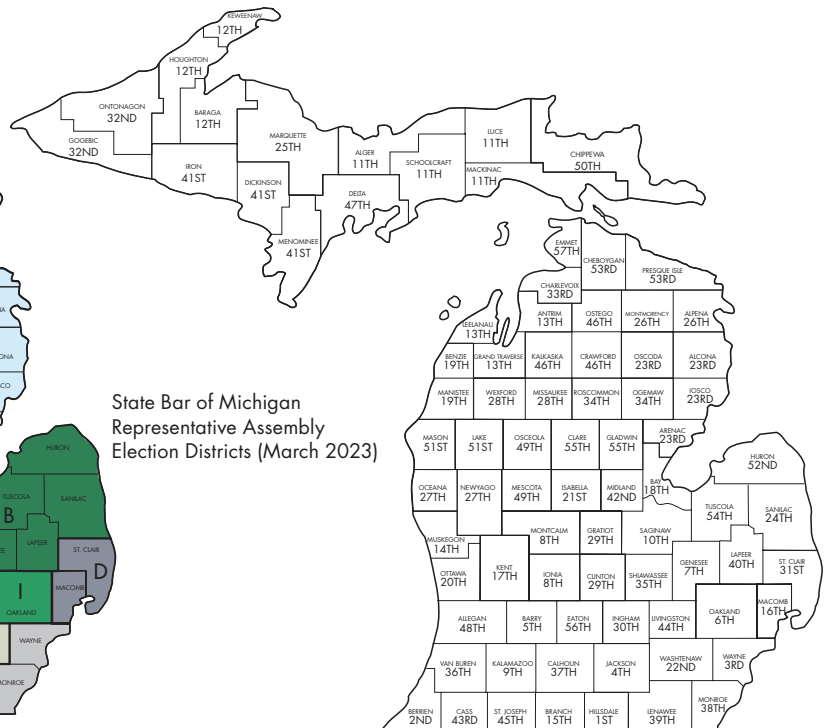
DISTRICT I – Judicial Circuit 6

Elect two

Incumbent eligible for reelection:
David C. Anderson



State Bar of Michigan
Commissioner Election Districts
(March 2023)



State Bar of Michigan
Representative Assembly
Election Districts (March 2023)

YOUNG LAWYERS SECTION

Members of the Young Lawyers Section will elect members of the executive council. The terms of the following 10 executive council members expire at the close of the Young Lawyers Section Executive Council annual meeting in September 2023 and the two-year terms of executive council members elected in June 2023 begin.

Members of the Young Lawyers Section Executive whose address on file with the State Bar is within the election district may be nominated for the executive council by petitions bearing five valid signatures of members entitled to vote in the district.

No member may sign nominating petitions for more executive council candidates than there are seats to be filled in the district. No member may sign nominating petitions for candidates outside of their district. All signatures in violation of these rules will be deemed invalid. It is recommended that candidates obtain at least seven signatures

to ensure they have at least five valid signatures after petitions are reviewed and invalid/illegible signatures are removed.

DISTRICT 1 – MACOMB AND WAYNE COUNTIES

Elect five

Incumbents (3) eligible for reelection:

- Darnell T. Barton
- Fawzeih H. Daher
- Aaron J. Hall

DISTRICT 2 – OAKLAND COUNTY

Elect four

Incumbents (1) eligible for reelection:

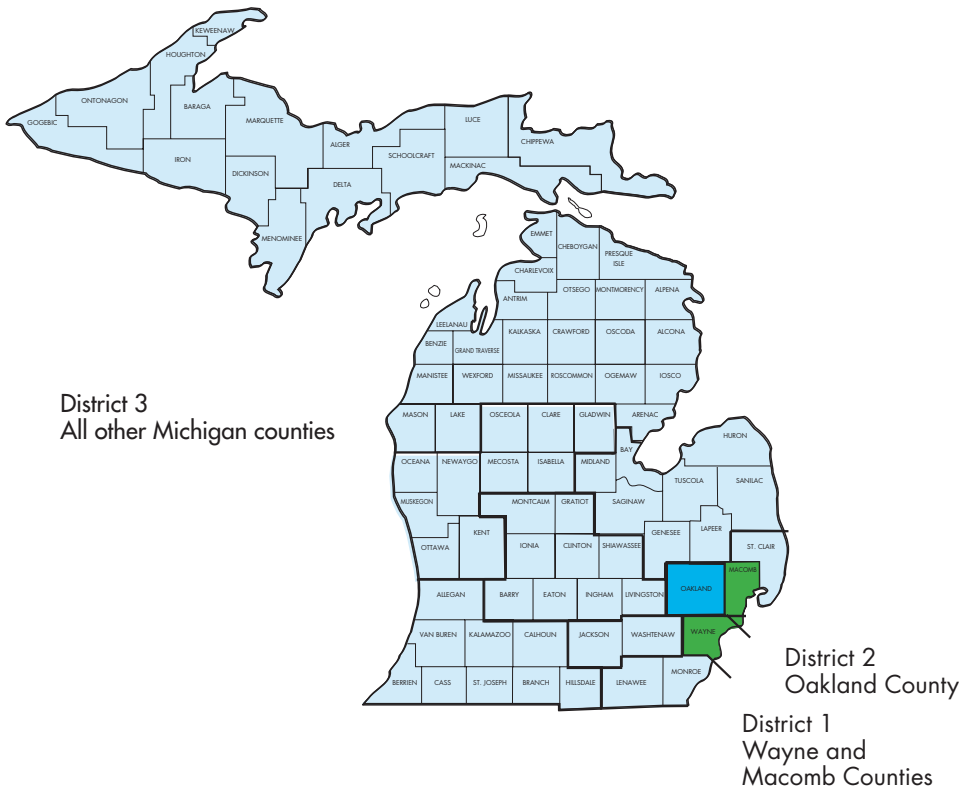
- Jessica D. Warfield

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

Elect four

Incumbents (3) eligible for reelection:

- Jacob Eccleston
- Miriam Saffo
- Alexander J. Thibodeau



STATE BAR OF MICHIGAN NOMINATING PETITION

EXECUTIVE COUNCIL MEMBER, YOUNG LAWYERS SECTION

_____ DISTRICT

We, the undersigned active members of the State Bar of Michigan, having our address of record with the State Bar within the above district, hereby nominate: _____ whose address of record

PLEASE PRINT NAME

P#

with the State Bar is located at:

ADDRESS

ZIP

in said district, for the office of Executive Council Member, Young Lawyers Section of the State Bar of Michigan from the said district, to be voted on at the election to be held therein during the year 2023.

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

P#	PRINTED NAME	PRINCIPAL OFFICE ADDRESS	SIGNATURE
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_____, an active member of the State Bar of Michigan,

PRINTED NAME OF CIRCULATOR

says that his/her address of record with the State Bar is

ADDRESS

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

Signature of Circulator

PETITIONER MAY SIGN AS CIRCULATOR

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

Candidate's Signature

SIGNATURE

DATE

STATE BAR OF MICHIGAN NOMINATING PETITION

NONJUDICIAL MEMBER, JUDICIAL TENURE COMMISSION

We, the undersigned active members of the State Bar of Michigan, having our principal offices for the practice of law as indicated below, hereby nominate: _____, an active member of the State Bar of Michigan, whose principal office is located at: _____ for the office of member, Judicial Tenure Commission, to be voted on at the election to be held in 2023.

PLEASE PRINT NAME

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

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

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

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

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

Signature of Circulator _____
PETITIONER MAY SIGN AS CIRCULATOR

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

Candidate's Signature _____ DATE _____
SIGNATURE

STATE BAR OF MICHIGAN NOMINATING PETITION

MEMBER, REPRESENTATIVE ASSEMBLY

_____ JUDICIAL CIRCUIT

We, the undersigned active members of the State Bar of Michigan, having our principal offices for the practice of law within the above judicial circuit, hereby nominate: _____ whose principal office for the practice of law is located at: _____ in said judicial circuit, for the office of member, Representative Assembly of the State Bar of Michigan from the said judicial circuit, to be voted on at the election to be held therein during the year 2023.

PLEASE PRINT NAME _____ P# _____
 ADDRESS _____ ZIP _____

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

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 PRINTED NAME OF CIRCULATOR

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

Signature of Circulator _____
 PETITIONER MAY SIGN AS CIRCULATOR

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

Candidate's Signature _____ DATE _____

STATE BAR OF MICHIGAN NOMINATING PETITION

MEMBER, BOARD OF COMMISSIONERS

COMMISSIONER ELECTION DISTRICT _____

We, the undersigned active members of the State Bar of Michigan, having our principal offices for the practice of law within the above commissioner election district, hereby nominate: _____ whose principal office for the practice of law is located at: _____ in said district, for the office of Commissioner of the State Bar of Michigan from the said district, to be voted on at the election to be held therein during the year 2023.

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

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Signature of Circulator _____
PETITIONER MAY SIGN AS CIRCULATOR

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

Candidate's Signature _____
SIGNATURE DATE

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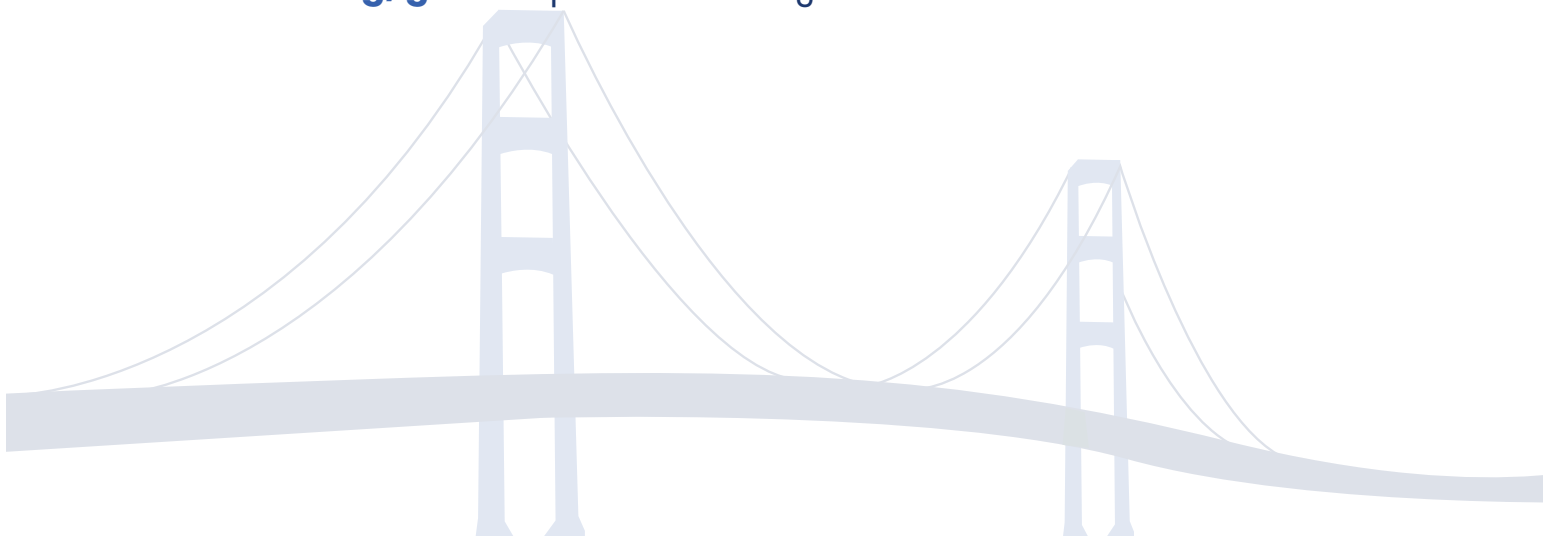
Formerly known as the Upper Michigan Legal Institute and Bar Leadership Forum, join us at the Grand Hotel for our newly combined legal conference that gives attendees the ability to fully personalize their experience by mixing and matching topics from our learning tracks.

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BEST PRACTICES

Ethical use of facial recognition technology

BY CHRIS BECKER

Prosecutors understand that their primary role in the criminal justice system is to seek justice. This role is specifically set forth in the Michigan Rules of Professional Conduct 3.8, which states:

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.

Perhaps the most critical stage in exercising this responsibility occurs with the decision to authorize or deny criminal charges submitted by a police agency. The mere act of charging someone with a crime has the potential to alter the course of a person's life. Therefore, a prosecutor's decision to do so should never be made lightly.

Exercising discretion in charging decisions has been both improved and complicated by the use of technology. The prevalence of videos, mobile phones, and other technological advances has increased the amount of information and evidence available to prosecutors. One tool that has been publicized in recent years is the use of facial recognition technology.

As with any technology, understanding the limitations of facial recognition technology is essential to its ethical use. Because of that, both the Michigan State Police (MSP) and the Prosecuting Attorneys Association of Michigan (PAAM) have adopted best practices to help ensure this powerful and very useful tool is understood and used appropriately.

FACIAL RECOGNITION USES

The MSP Biometrics and Identification Division includes the State-wide Network of Agency Photos (SNAP) Unit. SNAP has access to a large number of facial images, which it uses to assist in generating leads for law enforcement.

Facial recognition technology can be used in a variety of ways. For example, a police agency investigating a crime can submit a photo or video to SNAP, which then uses a software application to process the image and create a digital map of the subject's face. The software compares that map with the images in its database to create a gallery of people who *might* be the person depicted in the submitted image (assuming it is of sufficient quality). An examiner then compares the submitted image with the computer-generated list of potential leads and determines whether there is a close enough similarity in any of the images to present them to the submitting agency as a possible lead. Should the examiner determine there is a viable lead or candidate, that decision is reviewed by another trained examiner before the information is submitted to the police agency.

Any SNAP Unit report to police agencies emphasizes that the leads are only that — they are not positive identification, they do not provide probable cause to arrest, and further investigation must take place. And because its method only generates investigative lead reports and not positive identifications, those working in the SNAP Unit say its facial recognition system never produces a false positive.

Another use for facial recognition searches involves unidentified persons. The SNAP Unit can help identify deceased persons who have been found but lack identification. In instances such as these, facial recognition technology can assist law enforcement officials with identifying victims of violent crimes and bring closure to families whose loved one is deceased. It can also help in solving missing persons cases. Once a potential identification has been made, additional testing (such as DNA) can help conclusively determine the person's identity.

Two examples of the facial recognition database being used to help identify deceased persons include an incident in Muskegon County in which a body was found in a river; the person's fingerprints were not

on file and the family had not yet filed a missing person report. The SNAP system was able to provide a lead resulting in a proper identification. Similarly, the fingerprints of a drowning victim in Bay County had degraded by the time his body was located. Again, the SNAP Unit was able to produce a lead resulting in a positive identification.

THE PROSECUTOR'S RESPONSIBILITIES

Prosecutors have an independent responsibility to carefully vet evidence and information submitted by law enforcement when deciding whether to authorize charges. This is one of the reasons a warrant should never be authorized when the only source of identification for a suspect is a facial recognition lead report. Police agencies can and should use this information as a potential lead — similar to using a Silent Observer or Crimestoppers tip — but a facial recognition lead report is insufficient on its own to support charging someone.

The MSP is not the only agency with access to the various facial recognition programs. Leads from other agencies must also be closely scrutinized to ensure the same stringent protocols are followed.

BEST PRACTICES

PAAM has developed a best practices recommendation for facial recognition technology to help prosecutors fulfill their obligation to seek justice, protect the constitutional rights of all people, and hold offenders accountable. It recommends that prosecutors know at the warrant authorization stage whether facial recognition technology was used, consider what additional investigation was done to confirm the lead, and carefully evaluate whether witnesses or other evidence identify the suspect independent of the facial recognition lead. Examples of independent information include a close friend or relative identifying the suspect in the picture, an admission/confession by the suspect that they were at the scene at the time of the incident, or DNA or fingerprint comparisons.

Because facial recognition technology is only a tool for lead generation, it is doubtful anyone from the MSP SNAP Unit or another agency would testify at a trial. In fact, with SNAP affirming its lead generation report does not provide probable cause (let alone proof beyond a reasonable doubt), it is doubtful that its members would be allowed to testify in most cases. That limitation requires prosecutors to ensure that other evidence of identification exists outside of and independent from leads generated by facial recognition.

PAAM's best practice recommends a thorough investigation detailing the use of a lineup or other identification procedures including the basis for each witness's identification of the suspect, factors that led to the identification and selection of the suspect, and additional measures taken to verify that facial recognition identification matched the physical features of the suspect. Many offices, mine included, have made this PAAM recommendation a specific part of their policy and procedure manual:

A warrant shall not be authorized solely on the use of facial recognition technology that reportedly identifies a defendant. This technology is a useful tool, and can be used as part of an investigation, but the technology is not perfect and other evidence must be present in addition to facial recognition identification before a warrant should be issued.

Taking it another step further, the attorney handling the case at the preliminary examination and pretrial stages should again review the identification procedures and verify the credibility and sufficiency of the evidence. This includes interviewing witnesses to confirm whether an in-court identification can be made and, if so, whether that identification is sufficiently based on reliable evidence and procedures. As in any case, witnesses should be instructed to honestly state whether they can identify the suspect. If the person in court is not believed to be the person that committed the crime, witnesses must be advised to state that fact.

In the event that a live lineup is requested, the attorney handling the case should agree to one — provided a delay would not prejudice the case. If a live lineup would be prudent, the attorney should ensure that witnesses are not able to see the defendant in the courtroom. Lastly, facial recognition technology must not be used as the only evidence to identify the suspect.

CONCLUSION

Technology brings with it an obligation to ensure its ethical use. Michigan prosecutors take their role as ministers of justice seriously; we have a duty to protect the rights of victims justly and see that the accused are treated fairly. During my two decades as a prosecutor, the use of technology in the criminal justice system has increased tremendously from the use of in-car video to mobile phones to body cameras and now to facial recognition technology.

Every technological advance impacts how we practice and the evidence juries expect to see at trial. Whenever new technology comes forward, prosecutors are dedicated to only utilizing practices that are imperative to ensure justice in an ethical manner. At the forefront of a prosecutor's ethical use of technology is its role in determining whether to charge an individual with a crime. Careful review and understanding the limitations of new and emerging technologies is crucial to ensuring its proper use in the criminal justice system.



Chris Becker is Kent County prosecuting attorney. A graduate of Michigan State University and Valparaiso School of Law, he has worked in the Kent County Prosecutor's Office since 1995 and served as chief assistant prosecutor from 2011-2016, when he was elected prosecutor.

ETHICAL PERSPECTIVE

The reality of fraud

BY JOE RIVET AND ALECIA M. CHANDLER

Fraud and using others to earn financial gain through crime dates back to the 15th century case of Perkin Warbeck. Warbeck preyed on those who despised Richard III of York through a well-planned (for its time) identity scheme. Warbeck became Richard, Duke of York, under the guise of the true heir apparent in an attempt to overtake the throne from Tudor King Henry VII. The plan ultimately failed, but not before he raised an army of 6,000 men and gathered the support of many European royals.

Fast forward to the 1830s, when Francois and Joseph Blanc committed the first known telecommunications fraud. The Blancs were traders in France's Bordeaux stock exchange who focused on government bonds. In France at that time, one way of transmitting information was through an optical telegraph, which used a series of towers outfitted with adjustable wooden signal arms. The arms would be moved to send trade-related messages to the next tower. The Blancs hacked the network, bribing signalers to send secret messages about stock market changes in Paris. The brothers profited from their scheme but were caught and jailed; they were later released from prison because, at the time, France had no laws against that type of crime.

Any discussion of fraud would not be complete without mentioning the birth of the Ponzi scheme in the 1920s. Charles Ponzi was the architect of the scheme, which promised investors a return on their money; however, Ponzi paid earlier investors with the funds of later investors. Essentially, Ponzi's scheme involved buying international postal coupons.¹

Lawyers are increasingly used in furthering scams. Typically, these scams involve moving money through IOLTA by fraudulent wire transfers or fraudulent bearer paper.

FRAUD IN REAL LIFE

What follows is one example of a story that we're sharing strictly for educational purposes to help other attorneys identify possible scams and the subsequent steps to take once the scam has been revealed.

Recently, a \$5 million fraud scheme was foiled by the diligence and quick action of a Michigan attorney.

An individual reached out to the attorney via LinkedIn asking if the attorney could help a business associate in need of legal assistance. This was not unusual; the attorney had received similar requests through social media platforms. Normally, the attorney provided contact information to share with the potential client.

The potential client sent an email directly to the attorney explaining the legal matter and requested a meeting to discuss the situation. The potential client was from Mexico and the adverse party was a well-known Michigan-based corporation.

The attorney and potential client connected via telephone, and the attorney determined they could provide legal services. After a conflict check and research on both companies, the parties were determined to be legitimate corporations.

The attorney sent a client engagement letter specifically describing the scope of representation, which included drafting and issuing a demand letter. The fee agreement provided for a flat fee to send the demand letter plus a percentage of any amount collected as a result of the lawyer's representation. The attorney provided his operating account routing and transit numbers to the client for deposit of the earned flat fee for the demand letter. The potential client transferred the flat fee into the lawyer's operating account.

In preparation for drafting the letter and as an exercise of due diligence, the attorney requested the contract and all communication between the client and the adverse party. The attorney received an executed contract and nearly two years of emails where the adverse party acknowledged the company owed \$5 million based on a breach of the contract. The attorney reviewed the contract and found it contained specific clauses addressing any breach. Upon conducting an audit of the adverse party, the client discovered the adverse party had breached the terms of the contract, triggering the clause for damages. The parties entered into a settlement agreement which was drafted and signed by both parties.

The attorney reviewed all documents and information supplied to him by the client and found that payment on the contract continued to be delayed due to a downturn in business resulting from the COVID-19 pandemic. The parties agreed to a payment plan. Through the attorney's research, the adverse party was acquired by a buyer shortly after the terms of the repayment plan agreement were set to begin. The delay appeared to coincide with the adverse party being acquired by another entity.

The attorney sent the demand letter. The adverse party emailed the lawyer requesting a phone meeting to discuss the matter. During the conversation, the adverse party asked for another extension and advised that it would propose a new payment plan. The attorney requested the adverse party pay \$1 million as a matter of assurance, which the adverse party agreed to do.

Unexpectedly, the attorney received two payments: the first installment of \$335,000 and a second in the amount of \$35,000, which were woefully below the agreed-upon amount of \$1 million. Thinking the wire transfers were odd, the attorney contacted the bank. The bank confirmed that the transfers came from two different company accounts on a Friday.

Knowing the deposits had been made, the client asked when the funds would be received. The attorney contacted the adverse party asking why they did not make the \$1 million assurance payment. The adverse party indicated that their accountant made an error and additional assets needed to be liquidated.

The following Monday morning, the attorney received a call from his bank regarding the wire transfers. The FBI had notified the bank that the \$335,000 transfer was fraudulent; the account did not belong to the remitter.

The attorney immediately called the State Bar of Michigan Ethics Helpline for advice. The attorney noted that he had ethics defense insurance through his malpractice carrier. The Ethics Helpline advised that he contact his carrier. The advice given by the Ethics

Helpline was consistent with what the malpractice carrier recommended. The IOLTA was frozen, and the wire transfer funds were returned to the owners.

STEPS TO PROTECT YOUR PRACTICE

Verify emails

Fraudulent actors often spoof actual email accounts. In the incident described above, the company's legitimate email addresses ended in .com, and the email the attorney received was from a .org sender. The email appeared to have the proper client and adverse party names at first glance but clicking on the recipient's name on the email showed that the actual email address did not end in .com, which was inconsistent with the company's domain.

Verify principal parties

Fraudulent actors often impersonate an actual employee within a company. Verify that the person with whom you are communicating is who they purport to be. This can be as simple as looking someone up on LinkedIn and messaging them through their profile, calling them directly, or sending an email to an address the lawyer finds on the company's website. Some sophisticated scammers impersonate representatives of the defendant who agree to remit funds, but it is all a fraud.

Be aware of common scams

We've all received emails from purported wealthy businesspeople and overseas royalty. Other scams are not as apparent, however. Proceed cautiously if a transaction involves barges, farm machinery, airplanes, construction equipment, large commercial loans, commercial real estate sales or lease payments, COVID-19 vaccine transactions, or dog bite or personal injury cases in which the client does not want to litigate.²

Establish a wire transfer policy

Wire transfers are one of the safest ways to send and receive funds. However, not everything is completely safe. Steps you can take to help prevent becoming a victim of fraud:

- Obtain and verify information from parties sending and receiving wire transfers. There are many news reports regarding hacking attorney emails with new, fraudulent routing and transit information so confirm your identity to your client and vice versa.³
- Be cautious about transfers coming from multiple accounts.
- Do not accept changes to wire transfer information at the last minute. If changes are necessary, double check with the parties that the change is correct. It may be appropriate to confirm the numbers verbally or via an alternate means of communication.

- Do not transfer money at a specific time requested by the party. You must verify that the funds have cleared (more on this below) and the transaction is not fraudulent and thereby cannot be reversed before remitting the client's portion of the funds.

Verify funds

Verifying funds is not as simple as looking at your account online. Just because wire transfer funds appear in your account does not mean they have cleared. This is particularly important for any deposits made by cashier's check, business check, or personal check. You can ask your bank to confirm the validity of a cashier's check prior to its deposit; the bank can verify through a database shared by financial institutions. Fraudulent cashier's checks can sometimes be indistinguishable from the real thing.⁴

Call your bank for the wire transfer information; it should provide you with the account name, its owner, and, in some cases, the owner's phone number. Call the account owner to verify that the funds were authorized to be transferred and that they are aware of the transfer.

Legal engagement letter

The legal engagement letter should clearly describe the scope of representation. Include language confirming that all funds will be verified by the receiving banks and funds will not be disbursed until verified by financial institutions including, but not limited to, confirming with the owner of the account fund transfers. This puts fraudulent clients on notice and may deter them from further scams.

Terminate legal representation

Once it's determined that there is a fraud, immediately send the client a letter terminating legal representation.

Memo to file

In situations of fraud, keep copious notes. Immediately create a memo for your file. There are numerous calls to make — your bank's local and corporate branches, investigators, federal authorities, the SBM Ethics Helpline, malpractice carriers, and ethics defense insurance attorneys — and you don't know when you may need to refer to your notes of the events that took place.

Freeze and close accounts

If your practice is the victim of fraud, immediately freeze all accounts. Open new accounts to prevent additional financial harm.

DUTIES OWED TO FRAUDULENT CLIENTS

There are competing arguments regarding a lawyer's duty to a cli-

ent who is a fraudulent actor but, either way, information may be shared with law enforcement. Under MRPC 1.6, the exception contained within MRPC 1.6(c)(3) allows an attorney discretion to disclose "confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used[.]"

There is an argument that MRPC 1.6 requires a lawyer hold a client's confidences and secrets. However, because the fraudulent actor is not a real client, the lawyer owes no duty of confidentiality under MRPC 1.6. Therefore, the lawyer should reveal all information to law enforcement.

Additional examples of scams and information regarding whom to contact in the event of a scam is on the SBM website at www.michbar.org/generalinfo/scamalerts.



Joe Rivet, Esq. is managing attorney with Rivet Health Law with a practice focusing on reimbursement and is often called upon by providers and lawyers to handle audit responses. Rivet is author of three editions of "E/M Auditing: A Step-By-Step Guide to Update Coding, Reimbursement, and Compliance."



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

ENDNOTES

1. Neural Technologies, *Five Cases of Historical Fraud that Transformed the World*, <<https://www.neuralt.com/5-cases-of-historical-fraud-that-transformed-the-world/>>.
2. State Bar of Michigan, *Scams Targeting Attorneys Reported in Michigan*, <<https://www.michbar.org/generalinfo/scamalerts>>.
3. Debra Cassens Weiss, ABA Journal, *BigLaw Firm Sued Over \$3M Wire Transfer to Fraudster's Account* <<https://www.abajournal.com/news/article/biglaw-firm-sued-over-wire-transfer-to-fraudsters-account>> (posted July 23, 2020); Sharon Nelson, John W. Simek, and Michael C. Maschke, Above the Law, *Two Law Firm Data Breaches And New Breach Stats* <<https://abovethelaw.com/2022/05/two-law-firm-data-breaches-and-new-breach-stats/>> (posted May 3, 2022); Kathryn Rubino, Above the Law, *Lady Gaga Documents Leaked After Law Firm Was Hacked* <<https://abovethelaw.com/2020/05/lady-gaga-documents-leaked-after-law-firm-was-hacked/>> (posted May 18, 2020); Sean West, Above the Law, *There Are Only Law Firms That Have Been Hacked And Those That Will Be* <<https://abovethelaw.com/2022/08/there-are-only-law-firms-that-have-been-hacked-and-those-that-will-be/>> (posted August 22, 2022).
4. Chandler, *Ins and Outs of the Lawyer Trust Account*, 101 Mich B J 47-49 (July/August 2022) <<https://www.michbar.org/journal/Details/Ins-and-outs-of-the-lawyer-trust-account?ArticleID=4469>>

MONEY JUDGMENT INTEREST RATE

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

For a complaint filed after Dec. 31, 1986, the rate as of July 1, 2022, is 3.458%. This rate includes the statutory 1%.

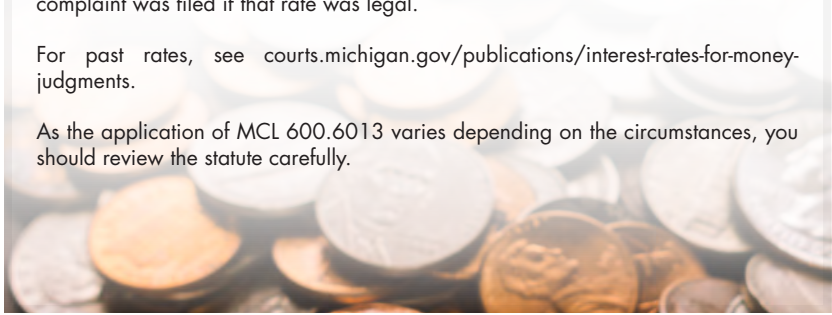
A different rule applies for a complaint filed after June 30, 2002, that is based on a written instrument with its own specific interest rate. The rate is the lesser of:

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**:

Grievance Administrator

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

Attorney Discipline Board

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

Premises Liability Lawyer

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Do you have a client who fell or was injured on a dangerous or improperly maintained:

- Pedestrian walkway or sidewalk
- Building entrance or exit
- Home or residence
- Hotel or apartment building
- Retail Store
- Restaurant
- Construction site
- Office Building
- Stairway or ramp
- Common area
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- Parking Lot

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Zoom: Not a one-trick pony

BY JOANN L. HATHAWAY

In 2020, when the COVID-19 pandemic ushered in the need for profound changes for remote collaboration, Zoom quickly became the tool of choice. Three years out, it's still widely used and with no end in sight.

How are lawyers and legal professionals using Zoom? Most say they routinely use it for client meetings, court hearings, and inter-office interactions such as meetings with colleagues working remotely. Fortunately, Zoom doesn't disappoint and has quickly rolled out new features and enhancements.

According to its public relations department, Zoom added more than 1,500 enhancements to its platform in 2022, and more updates have launched in 2023.¹ Here are some features that can be especially useful for law firms.

ESSENTIAL ZOOM TOOLS

In-meeting message threads

The popular chat feature in Zoom is commonly used during meetings to share information, comments, and more. Zoom also offers messages threads, which organize the chat messages to clarify to which messages participants are responding. It helps for conversation clarity and makes capturing information for post-meeting review and archiving much easier.

Zoom Meetings Q&A

You may not know that Zoom offers a webinars platform. While it has a similar look and feel to Zoom Meetings, there are quite a few differences.

One standard feature in Zoom Webinars is its Q&A pane, which allows hosts to assign, dismiss, and answer participant questions

from one designated area. It's a great feature but be prepared: seasoned Zoomers more familiar with the traditional Zoom Meetings chat box might need some time to get used to the Webinars chat tool. I frequently use the Zoom Webinars platform, so this feature is nothing new, but even with pre-webinar instructions, I still find attendees submit questions in the chat box. This can be sidestepped by enabling a chat lockdown for everyone except for hosts and co-hosts but doing so may eliminate dialog between participants that often streams through the chat box during the webinar.

As of this writing, the Q&A is only available with its Zoom One Business, One Business Plus, One Enterprise, and One Enterprise Plus accounts. Zoom's website provides a good how-to article for those interested in this feature.²

Immersive view

By using Zoom's immersive view feature, all meeting participants are pulled into a single virtual space that allows everyone to collaborate cohesively. Envision participants sitting at a virtual conference table instead of the tiles we are accustomed to seeing in Zoom Meetings.

This feature is limited to 25 participants and available for all subscribers — just make sure you're running the latest version of Zoom.

PowerPoint virtual background

This newly enhanced interface, which was long overdue, allows users to display a PowerPoint presentation as a virtual background with an overlay webcam image of the presenter in the corner that easily can be resized and repositioned. It makes for a much more impressive, interactive, and lifelike presentation than a shared screen with a standard thumbnail headshot.

Breakout rooms based on polls

Hosts can now create breakout rooms on the fly based on participants' answers to polls. Poll respondents can automatically be selected to collaborate with one another based on similar or dissimilar answers depending upon the goals of the meeting. It's a very useful function that can alleviate the need for small-group breakout preplanning.

ZOOM VS. CLIENT PORTALS

Besides Zoom, there are many collaborative tools available with client portals being one. Both Zoom and portals allow users to share information with others, but it certainly isn't an apples-to-apples comparison.

Portals are more useful as a solo interface for clients to access information. Adding whiteboards, screen sharing, and Zoom's interactive engagement functionality can further enhance the client interaction and the experience. Properly using the two in tandem can be a winning combination for your law firm.

In 2022, the ABA Legal Technology Resource Center surveyed attorneys on portal usage as part of its annual Legal Technology Survey. In her summary of the survey, Legal Ease Consulting President Allison C. Shields Johs noted that:

Only 33% of respondents to this year's survey said that they use a client portal to communicate with their clients, which is only a slight increase over the previous three years. ... Fewer than 25% of firms with fewer than 50 lawyers use secure client portals.³ (Emphasis added).

Clearly, portal usage is not on the rise and, even more alarming, a large percentage of lawyers who do use them are not doing so securely.

ZOOM SECURITY AND DATA PRIVACY

We've all heard stories of Zoom bombing where unauthorized attendees slide into meeting rooms stealthily unbeknownst to meeting hosts. Perhaps you've been a victim of one of these tricks. The consequences of a breach of client confidences are devastating and can potentially result in disciplinary and malpractice actions.

Michigan lawyers have a duty to be technologically competent.⁴ It includes not only understanding technology and cybersecurity, but also taking reasonable steps to implement cybersecurity measures. Fortunately, end-to-end encryption measures are standard in Zoom; however, even with its recent security improvements, it's still important to ensure you follow best practices to secure your meeting space.

ZOOM: LOOKING FORWARD

In an article in the September 2022 issue of the business magazine *Fast Company*, Zoom CEO Eric Yuan discussed the company's success and future goals.

"Zoom might have a symbiotic relationship with online meetings," Yuan told author Harry McCracken, "but that doesn't mean it's a one-trick pony."⁵

Yuan told McCracken that Zoom has many happy users who think of it solely as a videoconferencing service and the company wants to fix that misperception. Yuan referenced recent additions that diversify the Zoom lineup, including:

- Zoom Events, which is for large-scale virtual gatherings ranging from internal sessions to ticketed affairs open to the public;
- Zoom Contact Center, a customer service platform that incorporates voice, chat, and text messaging along with video; and
- Zoom IQ for Sales, which uses artificial intelligence to assess interactions with customers.

From hybrid work refinements to metaverse transformations, Zoom's additions in the years ahead will matter, but keeping the platform simple and user friendly is a primary goal for Yuan.

"I still remember that in the early days of Zoom, sometimes I'd look at a screen literally for one hour without doing anything, thinking about how to simplify the user interface," Yuan told *Fast Company*. "To add a feature is easy, but to simplify is so hard."⁶

Zoom's website has great resources for users to stay current on updates and enhancements. Among its offerings:

- A release notes page highlighting product changes, enhancements, and bug fixes categorized by date.
- A Zoom Community page that helps users find solutions, ask questions, and collaborate with other Zoom users.
- A learning center offering free on-demand courses, live training, and short videos.

CONCLUSION

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Contact the Practice Management Resource Center at pmrhelp@nichbar.org or 800.341.9715 for assistance with your practice management needs.

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

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PRACTICING WELLNESS

Boundaries, balance, and well-being

BY THOMAS J. GRDEN

“You want to change the system? Going home at 5 p.m. is not going to do it.”

Those words — belonging to David Wang, a Biglaw chief information officer, and published in the December 2022 ABA Journal¹ — jumped off the screen and hit me like a ton of bricks. After a nuanced, albeit brief, commentary in support of healthy boundaries further down in the article brought me back to my senses, the idea took shape: What an excellent opportunity to take a deeper dive into the connections between workplace boundaries and mental well-being! After all, no less than contemporary rhythmic poet Marshall Mathers has surprised would-be collaborators by treating composition as a 9-to-5 job (complete with a 1 p.m. lunch break.)² If Eminem is able to maintain success in an industry on par with the legal profession in terms of hostility to work-life balance, then certainly an equity partner can allow associates to use accrued vacation time ... right?

To his credit, Wang authored a lengthier essay prior to his recent quote in the ABA Journal, explaining that his aversion to what he termed “quiet quitters” stems from his concern for young workers engaging in their job with a lack of passion.³ I can applaud the sentiment. As someone who also dabbles in the world of lawyer well-being, I can say with confidence that prolonged incongruence between one’s thoughts, feelings, and actions *will* lead to burnout. Yet I also can’t help but wonder how a term coined to describe boundary-setting with an employer could be conflated with “coasting” — the term Wang used — or why it deserves such a pejorative.

That’s rhetorical, of course. Yours is a profession that has taken the already toxic “If you aren’t 10 minutes early, you’re late” attitude and

allowed it to snowball into, as one attorney told me, “Sometimes, we have to work until 1 a.m. on Saturday night.” As surveys on lawyer well-being are conducted consistently by an ever-growing number of respected entities,⁴ the results remain unchanged: Lawyers experience stress, anxiety, depression, and substance abuse at a rate far exceeding the general population, and these problems are most acute for lawyers who have less than 10 years of experience.⁵

The term “quiet quitter” means different things to different people, but the ABA Journal defined quiet quitters as “people who haven’t actually left their jobs but mentally have checked out and are doing only the bare minimum.”⁶ Since checking out mentally is impossible to discern without also referencing observable behavior, we’re left with “doing only the bare minimum.” Put another way, we choose to defy the age-old “above and beyond” mentality that has burned out workers in all professions for decades and join the radicals who understand their job descriptions and deliver to their employer exactly what is required, no more and (importantly) no less.

The number of lateral-moving and newly minted lawyers who expect their employer to respect their time and well-being has radically grown in the past two years thanks in part to the effects of the COVID-19 pandemic.⁷ Setting these types of boundaries would have been unthinkable a few short years ago when the legal landscape dictated that prospective associates compete for coveted jobs. However, beginning in 2021, the balance of power began to shift as the world began to open up and as the economy improved, the need for lawyers grew.⁸ The competition for jobs morphed into a competition to find and retain talented associates; young lawyers, particularly those under 40, began to redefine their definition of a “coveted job” by incorporating hybrid work options; emphasizing well-being; and investing in diversity, equity, and inclusion

programs.⁹ With this newfound leverage, many associates chose to prioritize workplace flexibility and a healthy culture on the same level as financial compensation when considering a lateral move.¹⁰

Lawyers experience stress, anxiety, depression, and substance abuse at a rate far exceeding the general population, and these problems are most acute for lawyers who have less than 10 years of experience.

What can we learn from this unprecedented period of movement? One theory is that younger attorneys are cognizant of the idea that once they hit a certain salary threshold, any further raises will have diminishing returns on happiness.¹¹ However, recent research that incorporates real-time mood tracking combined with retrospective analysis indicates that the relationship between salary and well-being continues to show a direct positive correlation well past the \$400,000 threshold.¹² A 2022 Thomson Reuters study titled “The Go/Stay Report” also supports the existence of several non-financial well-being factors. In this study, the top 25% of firms that had the most turnover during the previous two years were labeled “go” firms, while the top 25% in terms of employee retention were labeled “stay” firms. Among the important findings:

- Associate compensation at “go” firms is roughly 18% higher than “stay” firms.
- Annual billable hours per lawyer is higher at “stay” firms by about 51 hours.
- Productivity is higher at “stay” firms.
- Lawyers at “stay” firms rated their overall satisfaction higher than those at “go” firms, including satisfaction with compensation.¹³

These findings support the conclusion that something more than money was responsible for the advantages “stay” firms have in terms of retention and productivity.

Wang’s comments have inspired this plea to legal stakeholders to resist the urge to deride wellness-seeking behaviors or attribute boundary setting to yet another generation of blasé youth who expect to be handed their dream job. Instead, it’s an opportunity to recalibrate your sensitivity to the pulse of your workplace. A recent study commissioned by the ABA intended to help define future best practices by polling both managing partners and chief legal officers as well as lawyers “not in top positions.” Among nonmanagement lawyers, 27% indicated that mental health and wellness was “very or extremely important” compared to 22% of managing partners.¹⁴ Conversely, 31% of managing partners indicated that designated in-office days for meetings and training was “very or extremely important” compared to 23% of nonmanagement lawyers.¹⁵ While research supporting the importance of meaningful connection with others exists,¹⁶ I am skeptical that research is the reason for the disparity in responses between management and nonmanagement.

Other reports indicate the market may be moving back to the place where large firms have more leverage than the talent that fuels them.¹⁷ Even so, the number of attorneys uninterested in complicating the relationship between work and home continues to grow.¹⁸ Some may even insist upon a more platonic, transactional relationship with their employers where they perform their duties (passionately, of course) for a set number of hours negotiated upon their hiring in exchange for a predetermined sum of money. That concept may sound foreign, but I assure you it has already caught on outside of the legal profession.

It remains to be seen whether quiet quitting will be a catalyst for the much-needed cultural overhaul of work-life balance in the legal profession. But with the Washington Post recently reporting that the legal industry is the country’s most stressful profession,¹⁹ it bears mentioning that the State Bar of Michigan Lawyers and Judges Assistance Program exists to offer resources, guidance, and support.

Call the LJAP Helpline at 800.996.5522.



Thomas Grden is a clinical case manager with the State Bar of Michigan Lawyers and Judges Assistance Program.

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ORDERS OF DISCIPLINE & DISABILITY

REINSTATEMENT

On Nov. 4, 2022, Tri-County Hearing Panel #18 entered an Order of Suspension and Resitution (By Consent), suspending the respondent from the practice of law in Michigan for 30 days, effective Nov. 29, 2022. The respondent's motion to modify the effective date of the order of suspension from Nov. 29,

2022, to Dec. 14, 2022, was granted in an order issued on Nov. 23, 2022. On Jan. 16, 2023, the respondent, William Otis Culpepper, submitted an affidavit pursuant to MCR 9.123(A) attesting that he has fully complied with all requirements of the panel's order and will continue to comply with the order until and unless reinstated. The grievance administrator

did not file an objection to the respondent's affidavit pursuant to MCR 9.123(A) and the board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that the respondent, William Otis Culpepper, is **REINSTATED** to

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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.

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- 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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the practice of law in Michigan effective Jan. 24, 2023.

REPRIMAND (BY CONSENT)

Patrick E. Nyenhuis, P76343, Grosse Pointe Park, by the Attorney Discipline Board Tri-County Hearing Panel #3. Reprimand, effective Jan. 28, 2023.

The respondent and the grievance administrator filed an Amended Stipulation for Consent Order of Discipline and Waiver pursuant to MCR 9.115(F)(5) that was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based upon the respondent's no contest plea as set forth in the parties' amended stipulation, the panel found that the respondent committed professional misconduct while representing a client during a police interrogation involving a shooting death in which the respondent's client was a suspect.

Based upon the respondent's plea of no contest and the parties' amended stipulation, the panel found that the respondent failed to seek the lawful objectives of a client through reasonable available means permitted by law and these rules in violation of MRPC 1.2(a) and counseled a client to engage or assist a client in conduct that the lawyer reasonably should know is illegal or fraudulent in violation of MRPC 1.2(c). The panel also found that the respondent violated MCR 9.104(1)-(3) and MRPC 8.4(c).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded. Costs were assessed in the amount of \$912.67.

THREE-YEAR SUSPENSION (BY CONSENT)

Derrick N. Okonmah, P68221, Bloomfield Hills, by the Attorney Discipline Board Tri-County Hearing Panel #71. Suspension, three years, effective Jan. 28, 2023.¹

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline which was approved by the Attorney Grievance Commission and

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- Former Senior Associate Counsel, Attorney Grievance Commission; former partner, Moore, Vestrand & Pozehl, PC; former Supervising Senior Associate Counsel, AGC Trust Account Overdraft program
- Past member, SBM Professional Ethics Committee, Payee Notification Committee and Receivership Committee

accepted by the hearing panel. The stipulation contained the respondent's admission that he was convicted on June 21, 2022, of operating while intoxicated, 3rd offense, a felony, in violation of MCL 257.6256D and operating while license suspended, revoked, or denied, second or subsequent offense, a misdemeanor, in violation of MCL 257.904(1)(c) in *People of the State of Michigan v. Derrick Nbabuife Okonmah*, Oakland County Circuit Court Case No. 2021-276708-FH, and that he violated the terms of his order of reinstatement with conditions as set forth in the grievance administrator's motion for order to show cause. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended effective June 21, 2022, the date of his felony conviction.

Based on the respondent's admissions and the parties' stipulation, the panel found that the respondent violated a criminal law of a state or of the United States, an ordinance, or tribal law which constituted professional misconduct under MCR 9.104(5) and MRPC 8.4(b) and, as a result, violated the terms of his order of reinstatement with conditions.

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 three years, effective Jan. 28, 2023. Total costs were assessed in the amount of \$987.12.

1. Respondent has been continuously suspended from the practice of law in Michigan since June 21, 2022. Please see Notice of Automatic Interim Suspension issued Aug. 5, 2022.

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FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted the following renumbered (from M Crim JI 20.29 to 5.10a) and amended model criminal jury instruction, M Crim JI 5.10a (Limiting Instruction on Behavioral Expert Testimony), broadening the scope of expert testimony about behaviors exhibited by crime victims. This new instruction is effective March 1, 2023.

[RENUMBERED/AMENDED] M Crim JI 5.10a Limiting Instruction on Behavioral Expert Testimony

(1) [*Name expert*] testified as an expert in the field of [*identify area of expertise*] and gave an opinion in [*his/her*] area of expertise. Experts are allowed to give opinions in court.

(2) However, you do not have to believe an expert's opinion. Instead, you should decide whether you believe it and how important you think it is. When deciding whether you believe an expert's opinion, think carefully about the reasons and facts [*he/she*] gave for [*his/her*] opinion and whether those facts are true. You should also think about the expert's qualifications and whether [*his/her*] opinion makes sense when you think about the other evidence in the case.

(3) If you do believe [*name expert*]'s opinion, you should consider it only for the limited purpose of deciding whether [*name complainant*]'s behavior and words after the alleged crime were consistent with those described by the expert. You cannot use [*name expert*]'s opinion as proof that the crime charged here was committed or that the defendant committed it.¹ Nor can it be considered an opinion by [*name expert*] that [*name complainant*] is telling the truth.

Use Note

This instruction is used where expert testimony is offered to explain the behavior of a sexually abused child or of a physically or psychologically abused person that may appear inconsistent with having been abused. See, e.g., *People v. Beckley*, 434 Mich 691, 725; 456 NW2d 391 (1990).

1. The language in this sentence may have to be eliminated or amended where the expert is not testifying for the prosecution describing conduct applicable to a criminal case.

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 7.16 (Duty to Retreat to Avoid Using Force or Deadly Force) to correct a misstatement concerning requirements for using non-deadly force. This amended instruction is effective March 1, 2023.

[AMENDED] M Crim JI 7.16 Duty to Retreat to Avoid Using Force or Deadly Force

(1) A person can use [*force/deadly force*] in self-defense only where it is necessary to do so. If the defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the defendant honestly and reasonably believed [*he/she*] needed to use [*force/deadly force*] in self-defense.*

(2) A person is never required to retreat if attacked in [*his/her*] own home, or if the person reasonably believes that an attacker is about to use a deadly weapon, or if the person is subject to a sudden, fierce, and violent attack.

(3) Further, a person is not required to retreat if he or she

(a) has not or is not engaged in the commission of a crime at the time the [*force/deadly force*] is used,

(b) has a legal right to be where he or she is at that time, and

[*Select from the following according to whether the defendant used deadly force or nondeadly force:*]

(c) has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent [*death/great bodily harm/sexual assault*] of [*himself/herself*] or another person.

or

(c) has an honest and reasonable belief that the use of force is necessary to prevent the imminent unlawful use of force of against [*himself/herself*] or another person.

Use Note

Use this instruction when requested where some evidence of self-defense has been introduced or elicited. Where there is evidence that, at the time that the defendant used force or deadly force, he or she was engaged in the commission of some other crime, the Committee on Model Criminal Jury Instructions believes that circumstances of the case may provide the court with a basis to instruct the jury that the defendant does not lose the right to self-defense if the commission of that other offense was not likely to lead to the other person's assaultive behavior. See *People v. Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974). The committee expresses no opinion regarding the availability of self-defense where the other offense may lead to assaultive behavior by another.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

*This sentence in paragraph (1) should be given only if there is a dispute whether the defendant had a duty to retreat. See *People v. Richardson*, 490 Mich 115; 803 NW2d 302 (2011).

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 17.25 (Stalking) to clarify that only one act of unconsented contact had to be committed after a court order, rather than the entire course of stalking conduct, and to provide the jury with examples of unconsented conduct in the instruction. This amended instruction is effective March 1, 2023.

[AMENDED] M Crim JI 17.25**Stalking**

(1) [The defendant is charged with/You may consider the lesser offense of] stalking. To establish this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant committed two or more willful, separate, and noncontinuous acts of unconsented contact[†] with [name complainant]. *Unconsented contact* means that the defendant initiated or continued contact with [name complainant] without [his/her] consent and includes [following or appearing within sight of (name complainant)/approaching (name complainant) in public or on private property/appearing at (name complainant)'s workplace or home/entering or remaining on property owned, leased, or occupied by (name complainant)/contacting (name complainant) by telephone/sending an electronic communication or mail to (name complainant)/placing an object on or delivering an object to property owned, leased, or occupied by (name complainant)].¹

(3) Second, that the contact would cause a reasonable individual to suffer emotional distress.

(4) Third, that the contact caused [name complainant] to suffer emotional distress.²

(5) Fourth, that the contact would cause a reasonable individual to feel terrorized, frightened, intimidated, threatened, harassed, or molested.³

(6) Fifth, that the contact caused [name complainant] to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

[For aggravated stalking, add the following:]

(7) Sixth, at least one act of unconsented contact⁴

[was committed in violation of (a court order/a condition of [parole/probation])]

[was committed in violation of a restraining order of which the defendant had actual notice]

[included the defendant making one or more credible threats⁴ against (name complainant), a member of (his/her) family, or someone living in (his/her) household]. A credible threat is a threat to kill or physically injure a person made in a manner or context that causes the person hearing or receiving it to reasonably fear for his or her safety or the safety of another person.⁵

[Where appropriate under the evidence, add the following:]

(8) You have heard evidence that the defendant continued to make repeated unconsented contact with [name complainant] after [he/she] requested the defendant to discontinue that conduct or some different form of unconsented contact and requested the defendant to refrain from any further unconsented contact. If you believe that evidence, you may, but are not required to, infer that the continued course of conduct caused [name complainant] to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Even if you make that inference, remember that the prosecutor still bears the burden of proving all of the elements of the offense beyond a reasonable doubt.

Use Note

1. *Unconsented contact* is defined at MCL 750.411h(1)(e) and is not limited to the forms of conduct described in this jury instruction. The court may read all of the types of contact mentioned in the statute or may select those that apply according to the charge and the evidence, or the court may describe similar conduct it finds is included under the purview of the statute.

2. The second and third elements constitute *harassment* as defined at MCL 750.411h(1)(c).

3. The fourth and fifth elements are part of *stalking* as defined at MCL 750.411h(1)(d).

4. If the basis for aggravated stalking is a prior conviction, do not read this element.

5. *Credible threat* is defined at MCL 750.411i(1)(b). By this definition, a "credible threat" appears to meet the "true threat" standard of *Virginia v. Black*, 538 US 343, 358 (2003).

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instruction, M Crim JI 20.1 (Criminal Sexual Conduct in the First Degree) to provide language where the defendant is a female causing a complainant's penetration of defendant. This amended instruction is effective March 1, 2023.

[AMENDED] M Crim JI 20.1

Criminal Sexual Conduct in the First Degree

(1) The defendant is charged with the crime of first-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant engaged in a sexual act that involved

[Choose (a), (b), (c), or (d):]

(a) entry into [(name complainant)/the defendant]'s [genital opening¹/anal opening] by [(name complainant)/the defendant]'s [penis/finger/tongue/(name object)]. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(b) entry into [(name complainant)/the defendant]'s mouth by [(name complainant)/the defendant]'s penis. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(c) touching of [(name complainant)/the defendant]'s [genital openings¹/genital organs] with [(name complainant)/the defendant]'s mouth or tongue.

(d) entry by [any part of one person's body/some object] into the genital or anal opening¹ of another person's body. Any entry, no matter how slight, is enough. It is alleged in this case that a sexual act was committed by [state alleged act]. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(3) [Follow this instruction with one or more of the nine alternatives, M Crim JI 20.3 to M Crim JI 20.11, as warranted by the evidence.]

(4) [Where the defendant is charged under MCL 750.520b(2)(b) with the 25-year mandatory minimum for being 17 years of age or older and penetrating a child under 13 years old, instruct according to M Crim JI 20.30b.]

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, M Crim JI 20.2 (Criminal Sexual Conduct in the Second Degree) and M Crim JI 20.13 (Criminal Sexual Conduct in the Fourth Degree) to provide

language for causing a complainant to have sexual contact with the defendant, which are included under the MCL 750.520c and 750.520e. This amended instruction is effective March 1, 2023.

[AMENDED] M Crim JI 20.2

Criminal Sexual Conduct in the Second Degree

(1) The defendant is charged with the crime of second-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [touched (name complainant)'s/made, permitted, or caused (name complainant) to touch (his/her)] [genital area/groin/inner thigh/buttock/ (or) breast] or the clothing covering that area.

(3) Second, that this was done for sexual purposes or could reasonably be construed as having been done for sexual purposes.

(4) [Follow this instruction with one or more of the 13 alternatives, M Crim JI 20.3 to M Crim JI 20.11d as warranted by the evidence. See the table of contents on p. 20-1 for a list of the alternatives.]

[AMENDED] M Crim JI 20.13

Criminal Sexual Conduct in the Fourth Degree

(1) The defendant is charged with the crime of fourth-degree criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [touched (name complainant)'s/made, permitted, or caused (name complainant) to touch (his/her)] [genital area/groin/inner thigh/buttock/(or) breast] or the clothing covering that area.

(3) Second, that this touching was done for sexual purposes or could reasonably be construed as having been done for sexual purposes.

(4) [Follow this instruction with M Crim JI 20.14a, M Crim JI 20.14b, M Crim JI 20.14c, M Crim JI 20.14d, M Crim JI 20.15, M Crim JI 20.16, or M Crim JI 20.16a as warranted by the evidence.]

Use Note

Use this instruction where the facts describe an offensive touching.

Where an offensive touching involving an employee of the Department of Corrections is alleged, an appropriate instruction conforming to MCL 750.520e(1)(c) should be drafted.

The Committee on Model Criminal Jury Instructions has adopted the following amended "human trafficking" model criminal jury instructions, M Crim JI 36.1 (Obtaining a Person for Forced Labor or Services), 36.3 (Knowingly Subjecting a Person to Forced Labor or Debt

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

Bondage), 36.4 (Participating in a Forced Labor, Debt Bondage, or Commercial Sex Enterprise for Financial Gain), 36.4a (Participating in a Forced Labor or Commercial Sex Enterprise for Financial Gain or for Anything of Value with a Minor), and 36.6 (Using Minors for Commercial Sexual Activity or for Forced Labor or Services). The instructions are amended to accommodate a statutory amendment to the “human trafficking” statute, MCL 750.462a, *et seq.* These amended instructions are effective March 1, 2023.

[AMENDED] M Crim JI 36.1

Obtaining a Person for Forced Labor or Services

(1) The defendant is charged with the crime of obtaining a person for forced labor or services. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] to perform forced labor or services.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], the defendant knew that it was for the purpose of having [*name complainant*] perform forced labor or services, whether or not such labor or service was actually provided.

(4) “Forced labor or services” are labor or services obtained or maintained by force, fraud, or coercion.

[Provide any or all of the following definitions, according to the evidence:]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [*scheme/plan/pattern*] intended to cause someone to think that [*psychological harm/physical harm/harm to the person’s reputation*] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [*arrested/deported*], regardless of whether the person could be [*arrested/deported*].

(iv) [*destroying/concealing/removing/confiscating*] a [*passport/immigration document/government identification document*] from any person, even if the document was fraudulently obtained.

(v) facilitating or controlling access to [*identify controlled substance(s) per MCL 333.7104*] without a legitimate medical purpose.

These are examples of [*force/fraud/coercion*] and not an exhaustive list.

[*This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.*]

[AMENDED] M Crim JI 36.3

Knowingly Subjecting a Person to Forced Labor or Debt Bondage

(1) The defendant is charged with the crime of knowingly subjecting a person to [*forced labor or services/debt bondage*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant purposefully recruited, enticed, harbored, transported, provided, or obtained [*name complainant*] by any means.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [*name complainant*], the defendant knew that [*name complainant*] would be subjected to [*perform forced labor or services/debt bondage*].

[Provide appropriate definitions:]

(4) “Forced labor or services” are labor or services obtained or maintained by force, fraud, or coercion.

[Provide any or all of the following definitions, according to the evidence:]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [*select any that apply*]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme/plan/pattern] intended to cause someone to think that [psychological harm/physical harm/harm to the person's reputation] would result from failing to perform an act.

(iii) abusing or threatening to abuse the legal system by threatening to have the person [arrested/deported], regardless of whether the person could be [arrested/deported].

(iv) [destroying/concealing/removing/confiscating] a [passport/immigration document/government identification document] from any person, even if the document was fraudulently obtained.

(iv) facilitating or controlling access to [*identify controlled substance(s) per MCL 333.7104*] without a legitimate medical purpose.

These are examples of [force/fraud/coercion] and not an exhaustive list.

(5) "Debt bondage" includes, but is not limited to, a promise by [*name complainant or person who had control over complainant*] that [*name complainant*] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.

[*This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.*]

[AMENDED] M Crim JI 36.4

Participating in a Forced Labor, Debt Bondage, or Commercial Sex Enterprise for Financial Gain

(1) The defendant is charged with the crime of participating in an enterprise involving forced labor, debt bondage, or commercial sex for financial gain. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant participated in an enterprise that engaged in forced labor or services, debt bondage, or commercial sexual activity.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services, debt bondage, or commercial sexual activity.

(4) Third, that the defendant benefited financially or received anything of value from [his/her] participation in the enterprise.

(5) I will now define some of the legal terminology that was used in this instruction.

[*Provide appropriate definitions:*]

(a) An enterprise is an organization for conducting business and can be an individual person, a sole proprietorship, a partnership, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any legal or illegal association of persons.

(b) "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[*Provide any or all of the following definitions, according to the evidence:*]

(i) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(ii) Fraud includes false or deceptive offers of employment or marriage.

(iii) Coercion includes [*select any that apply*]:

(A) threats of harm or restraint to any person.

(B) using a [scheme/plan/pattern] intended to cause someone to think that [psychological harm/physical harm/harm to the person's reputation] would result from failing to perform an act.

(C) abusing or threatening to abuse the legal system by threatening to have the person [arrested/deported], regardless of whether the person could be [arrested/deported].

(D) [destroying/concealing/removing/confiscating] a [passport/immigration document/government identification document] from any person, even if the document was fraudulently obtained.

(E) facilitating or controlling access to [*identify controlled substance(s) per MCL 333.7104*] without a legitimate medical purpose.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

These are examples of [force/fraud/coercion] and not an exhaustive list.

(c) “Debt bondage” includes, but is not limited to, a promise by [name complainant or person who had control over complainant] that [name complainant] would perform services to pay back a debt where the value of the services, or the nature of the services and the time that they are to be performed, is not spelled out or defined, or the value of the services is not applied to reduction of the debt. This is not an exhaustive list of the types of debt bondage.

(d) “Commercial sexual activity” means performing acts of sexual penetration or contact, child sexually abusive activity, or a sexually explicit performance.

[This crime is a 10-year offense that may be increased by aggravating factors. If the prosecution has charged one of those factors, the jury must be instructed under M Crim JI 36.5.]

[AMENDED] M Crim JI 36.4a

Participating in a Forced Labor or Commercial Sex Enterprise for Financial Gain or for Anything of Value with a Minor

(1) The defendant is charged with the crime of participating in an enterprise involving forced labor or services or commercial sexual activity with a minor for financial gain or for anything of value. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant participated in an enterprise that engaged in forced labor or services or commercial sexual activity involving a person or persons less than 18 years old. It does not matter whether defendant knew the age of the person or persons.

(3) Second, that the defendant knew that the enterprise was engaged in forced labor or services or commercial sexual activity with this person or persons.

(4) Third, that the defendant benefited financially or received anything of value from [his/her] participation in the enterprise.

(5) I will now define some of the legal terminology that was used in this instruction.

[Provide appropriate definitions:]

(a) An enterprise is an organization for conducting business and can be an individual person, a sole proprietorship, a partner-

ship, a corporation, a limited liability company, a trust, a union, an association, a governmental unit, any other legal entity, or any legal or illegal association of persons.

(b) “Forced labor or services” are labor or services obtained or maintained by force, fraud, or coercion.

[Provide any or all of the following definitions, according to the evidence:]

(i) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(ii) Fraud includes false or deceptive offers of employment or marriage.

(iii) Coercion includes [select any that apply]:

(A) threats of harm or restraint to any person.

(B) using a [scheme/plan/pattern] intended to cause someone to think that [psychological harm/physical harm/harm to the person’s reputation] would result from failing to perform an act.

(C) abusing or threatening to abuse the legal system by threatening to have the person [arrested/deported], regardless of whether the person could be [arrested/deported].

(D) [destroying/concealing/removing/confiscating] a [passport/immigration document/government identification document] from any person, even if the document was fraudulently obtained.

(E) facilitating or controlling access to [identify controlled substance(s) per MCL 333.7104] without a legitimate medical purpose.

These are examples of [force/fraud/coercion] and not an exhaustive list.

(c) “Commercial sexual activity” means performing acts of sexual penetration or contact, child sexually abusive activity, or a sexually explicit performance.

[AMENDED] M Crim JI 36.6

Using Minors for Commercial Sexual Activity or for Forced Labor or Services

(1) The defendant is charged with the crime of engaging a minor for [commercial sexual activity/forced labor or services]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

[Select (2) according to the charged conduct:]

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [name complainant] for commercial sexual activity. Commercial sexual activity means performing acts of sexual penetration or contact, child sexually abusive activity, or a sexually explicit performance.

(2) First, that the defendant recruited, enticed, harbored, transported, provided, or obtained [name complainant] to perform forced labor or services. "Forced labor or services" are labor or services obtained or maintained by force, fraud, or coercion.

[Provide any or all of the following definitions, as applicable:]

(a) Force includes physical violence, restraint, or confinement, or threats of physical violence, restraint, or confinement.

(b) Fraud includes false or deceptive offers of employment or marriage.

(c) Coercion includes [select any that apply]:

(i) threats of harm or restraint to any person.

(ii) using a [scheme/plan/pattern] intended to cause someone to think that [psychological harm/physical harm/harm to the person's reputation] would result from failing to perform an act.

(iv) abusing or threatening to abuse the legal system by threatening to have the person [arrested/deported], regardless of whether the person could be [arrested/deported].

(iv) [destroying/concealing/removing/confiscating] a [passport/immigration document/government identification document] from any person, even if the document was fraudulently obtained.

(v) facilitating or controlling access to [identify controlled substance(s) per MCL 333.7104] without a legitimate medical purpose.

These are examples of [force/fraud/coercion], and not an exclusive list.

(3) Second, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [name complainant] [for commercial sexual purposes/to perform forced labor or services], [name complainant] was less than 18 years old, regardless of whether the defendant knew [he/she] was less than 18 years old.

(4) Third, that when the defendant recruited, enticed, harbored, transported, provided, or obtained [name complainant], the defendant intended that [name complainant] would perform [commercial sexual activity/forced labor or services], whether or not [commercial sexual activity/forced labor or service] was actually provided.

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FROM THE MICHIGAN SUPREME COURT

ADM File No. 2022-03 Proposed Amendment of Rule 1.109 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 1.109 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings webpage. Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

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

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1) Form and Captions of Documents.

(a) [Unchanged.]

(b) The first part of every document must contain a caption stating:

(i)-(vi) [Unchanged.]

Parties and attorneys may also include any personal pronouns in the name section of the caption, and courts are required to use those personal pronouns when referring to or identifying the party or attorney, either verbally or in writing. Nothing in this subrule prohibits the court from using the individual's name or other respectful means of addressing the individual if doing so will help ensure a clear record.

(c)-(f) [Unchanged.]

(2)-(10) [Unchanged.]

(E)-(H) [Unchanged.]

Staff Comment (ADM File No. 2022-03): The proposed amendment of MCR 1.109(D)(1)(b) would allow attorneys to provide personal pronouns in document captions and require courts to use those personal pronouns when addressing the party or attorney, either verbally or in writing, unless doing so would result in an unclear record. The Court is interested in receiving comments addressing the constitutional implications of this proposal.

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 1.109. Comments on the proposal may be submitted by May 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 submitting a comment, please refer to ADM File No. 2022-03. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ZAHRA and VIVIANO, JJ., would decline to publish the proposed amendments for comment.

ADM File No. 2022-16 Proposed Amendment of Rule 7.211 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rule 7.211 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings webpage. Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 7.211 Motions in Court of Appeals

(A)-(B) [Unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1)-(6) [Unchanged.]

(7) Confession of Error by Prosecutor. In a criminal case, if the prosecutor concurs in the relief requested by the defendant, the prosecutor shall file a confession of error so indicating, which ~~must~~ may state reasons why concurrence in the relief requested is appropriate. The confession of error shall be submitted to the ~~court~~ judge pursuant to MCR 7.211(E)(1). If the ~~court~~ judge approves the confession of error, the ~~court~~ judge shall enter an order or opinion granting the relief and state the reason(s) for the approval. If the ~~court~~ judge rejects the confession of error, the court must state the reason(s) for the rejection, and the case shall be submitted for decision through the ordinary processes of the court, and the confession of error shall be submitted to the panel assigned to decide the case.

(8)-(9) [Unchanged.]

(D)-(E) [Unchanged.]

Staff Comment (ADM File No. 2022-16): The proposed amendment of MCR 7.211(C)(7) would modify the Court of Appeals process for handling confessions of error.

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 7.211. Comments on the proposal may be submitted by May 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 submitting a comment, please refer to ADM File No. 2022-16. Your comments

and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2022-13 Proposed Amendment of Rule 9.123 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rule 9.123 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings webpage. Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 9.123 Eligibility for Reinstatement

(A)-(C) [Unchanged.]

(D) Petition for Reinstatement; Filing Limitations.

(1)-(2) [Unchanged.]

(3) An attorney whose license to practice law has been re-~~vo~~ked or suspended because of conviction of a felony for which a term of incarceration was imposed may not file a petition for reinstatement until six months after completion of the sentence, including any period of parole.

(4) [Unchanged.]

(E) [Unchanged.]

Staff Comment (ADM File No. 2022-13): The proposed amendment of MCR 9.123(D)(3) would clarify that a disbarred attorney who was sentenced to incarceration following a felony conviction and who wants to be reinstated to the bar must wait until six months after completing the sentence.

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

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 9.123. Comments on the proposal may be submitted by May 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 submitting a comment, please refer to ADM File No. 2022-13. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2021-30 Proposed Amendments of Rules 9.220, 9.221, 9.223, 9.232, and 9.261 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 9.220, 9.221, 9.223, 9.232, and 9.261 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings webpage. Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 9.220 Preliminary Investigation

(A) [Unchanged.]

(B) Confidentiality. A request for investigation shall be kept confidential as provided in MCR 9.261(B).

(CB) Investigation. Upon receiving a request for investigation that is not clearly unfounded or frivolous, subject to any limitation imposed by MCR 9.261, the commission shall direct that an investigation be conducted to determine whether a complaint should be filed and a hearing held.

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

Rule 9.221 Evidence

(A)-(D) [Unchanged.]

(E) Cooperation With Investigation. A judge, clerk, court employee, member of the bar, or other officer of a court must comply with a reasonable request made by the commission in its investigation, including a request to keep the investigation, or any part of it, confidential. Failure to cooperate may be considered judicial misconduct or attorney misconduct. No court may charge the Judicial Tenure Commission for copying costs or certification costs, whether under MCL 600.2546 or otherwise, unless the Michigan Supreme Court specifically so authorizes.

Rule 9.223 Conclusion of Investigation; Notice

(A) [Unchanged.]

(B) Notice to Grievant and Respondent.

(1) On final disposition under subrule (A)(1), if the commission has not conducted any investigation other than interviewing the grievant, grievant’s attorney, or the State Court Administrative Office, the commission shall provide written notice to the grievant that the matter has been resolved without the filing of a complaint. The commission may provide notice of the request for investigation and the dismissal to the respondent only if the commission has not determined that the identity of the grievant shall be kept confidential under MCR 9.261.

(2) Before taking action under subrule (A)(2)-(5), the commission must first have given written notice to the respondent of the nature of the allegations ~~in the request for investigation~~ and afforded the respondent a reasonable opportunity to respond in writing, pursuant to MCR 9.221(B), MCR 9.222(A), or both. Where the commission has determined that the grievant’s identity should be kept confidential under MCR 9.261 and the grievant’s identity has not already been revealed to the respondent, the commission shall continue to make reasonable efforts to keep the grievant’s identity confidential to the extent consistent with taking the selected action.

(C) [Unchanged.]

Rule 9.232 Discovery

(A)-(C) [Unchanged.]

(D) Discovery shall not include the request for investigation or the identity of a grievant that the commission has determined to keep

confidential under MCR 9.261 and who has not been revealed during the investigation, unless the request for investigation contains exculpatory material or the grievant is a witness in the hearing.

Rule 9.261 Confidentiality; Disclosure

(A) [Unchanged.]

(B) Before Filing a Complaint.

(1) A grievant may request that his or her identity be kept confidential, including from the respondent, and the commission shall determine whether to grant the request. Confidentiality does not extend to communications under subrule (G).

(a) If the commission grants the grievant's request for confidentiality, the request for investigation shall not be disclosed to the respondent or other persons, either during or at the conclusion of the investigation except as necessary to conduct the investigation, unless either

(i) the grievant waives the confidentiality that the commission granted, or

(ii) the commission has filed a public complaint against the respondent, and

(A) disclosure of the grievance is necessary to comply with MCR 9.232(A)(1)(b);

(B) the grievant is a witness in the proceeding and the request for investigation is material to the grievant's testimony, or

(C) as otherwise necessary to protect the respondent's due process interests at the hearing.

(b) If the commission denies the grievant's request for confidentiality, the request for investigation will be kept confidential as required by this rule. The commission shall return the request for investigation to the grievant without taking other action, unless the grievant withdraws the request for confidentiality.

(21) [Renumbered but otherwise unchanged.]

(32) The commission may at any time make public statements as to matters pending before it on its determination by a majority vote that it is in the public interest to do so, limited to statements

(a)-(c) [Unchanged.]

Any statements made under this subrule shall not identify a grievant who has been granted confidentiality under this rule.

(C)-(K) [Unchanged.]

Staff Comment (ADM File No. 2021-30): The proposed amendments of MCR 9.220, 9.221, 9.223, 9.232, and 9.261 would help protect the confidentiality of a grievant who submits a request for investigation to the Judicial Tenure Commission.

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

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 9.220, 9.221, 9.223, 9.232, and 9.261. Comments on the proposal may be submitted by May 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 submitting a comment, please refer to ADM File No. 2021-30. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2017-28 Retention of the 4/1/22 Amendment of Rule 1.109 of the Michigan Court Rules, With Further Amendments as Indicated

By order dated Dec. 6, 2021, the Court adopted amendments of Rule 1.109 of the Michigan Court Rules, effective April 1, 2022. Notice and opportunity for public comment having been provided, effective immediately, the amendment of Rule 1.109 is retained, with further amendment appearing in underlining and/or strike-through below.

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

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

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1)-(8) [Unchanged.]

(9) Personal Identifying Information.

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

(a) [Unchanged.]

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

(i)-(iv) [Unchanged.]

(v) Consent.

(A) [Unchanged.]

(B) The State Court Administrative Office will maintain a list of authorized individuals who are permitted ~~may have~~ access to a party's date of birth contained in a court record for purposes of verifying the identity of that particular person without the need to present a stipulation to the court. To be placed on this list, these individuals must conform to the following procedures:

(1) In a written document, identify the entity for which they work and provide assurance to the State Court Administrative Office that each time they seek verification of a party's date of birth, it will be in the course of their work and with that person's consent. The consent must ~~may~~ be retained in the possession of the authorized individual, the entity for whom the individual works, the person or organization seeking the information about the person, or someone acting on behalf of that person or organization. Such assurance may be satisfied by a letter from the entity for which the individual works or other document establishing authorization. The assurance required under this provision shall be updated at least every six months, beginning from the date of the original submission. The update must ~~may~~ be provided by the individual who seeks access to a person's date of birth or by the

entity that authorizes the individual to operate on its behalf in accessing the information.

(2) Submit proof of their employer's or hiring entity's current professional liability insurance in effect during the period when an authorized individual will be seeking date of birth information from a court. Failure to do so will result in the individual being removed from the list or in the individual not being placed on the list. The information provided in support of this provision shall be nonpublic. The proof of insurance required under this provision shall be updated upon the expiration or termination of the insurance policy ~~annually~~.

(3) Courts must verify the identity of anyone who claims to be an authorized individual by ensuring the name on the individual's state-issued identification matches the name in SCAO's authorized user list. Courts and the State Court Administrative Office may create secure, individualized accounts that allow authorized individuals to access a party's date of birth electronically. A court must ~~may~~ issue a public register of actions or other public document that includes a party's date of birth to an authorized individual.

(vi)-(vii) [Unchanged.]

(c)-(e) [Unchanged.]

(10) [Unchanged.]

(E)-(H) [Unchanged.]

Staff Comment (ADM File No. 2017-28): The amendments of MCR 1.109(D)(9)(B) clarify some aspects of the process for providing authorized individuals access to a party's date of birth for purposes of identity verification.

PUBLIC POLICY REPORT

IN THE HALL OF JUSTICE

Proposed Administrative Order No. 2022-X (ADM File No. 2022-37) – Creation of a Vendor-Neutral Citation System (See Michigan Bar Journal January 2023, p 65).

STATUS: Comment period expires April 1, 2023; public hearing to be scheduled.

POSITION: Oppose.

LEGAL NOTICE

RECEIVERSHIP

The 51st Circuit Court in Mason County has ordered that:

Attorney **Nicholas C. Krieger**, P68383
121 E. Ludington Ave., Suite 12
Ludington, MI 49431
231.843.3221

is hereby appointed receiver over the files and records of deceased:

Attorney **Douglas E. Stevenson**, P26079
212 E. Ludington Ave.
Ludington, MI 49431
231.845.7129

to ensure that Attorney Stevenson's former clients are able to obtain their client files, records, and other property, with all powers set forth in MCR 9.119(G).

Ordered by 51st Circuit Chief Judge Jeffrey C. Nellis on Jan. 12, 2023.

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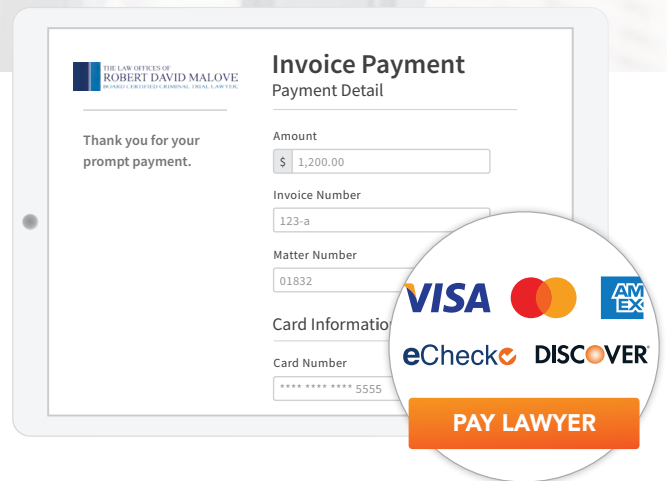
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LAWYERS & JUDGES ASSISTANCE

MEETING DIRECTORY

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

For questions about any of the meetings listed, please contact the Lawyers and Judges Assistance Program at 800.996.5522 or jclark@michbar.org.

PLEASE DO NOT HESITATE TO CONTACT LJAP DIRECTLY WITH QUESTIONS PERTAINING TO VIRTUAL 12-STEP MEETINGS. FOR MEETING LOGIN INFORMATION, CONTACT LJAP VOLUNTEERS ARVIN P. AT 248.310.6360 OR MIKE M. AT 517.242.4792.

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.
Just east of I-96 and 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*

Virtual meeting
Contact Mike M. for meeting information
517.242.4792

Lansing

SUNDAY 7 PM*

Virtual Lawyers and Judges AA Meeting
(Contact Arvin P. at 248.310.6360
for Zoom login information)

Lansing

SUNDAY 7 PM*

Virtual meeting
Contact Mike M. for meeting information
517.242.4792

Royal Oak

TUESDAY 7 PM*

Lawyers and Judges AA
St. John's Episcopal Church
26998 Woodward Ave.

Stevensville

THURSDAY 4 PM*

Al-Anon of Berrien County
4162 Red Arrow Highway

THURSDAY 7:30 PM

Zoom
(Contact Arvin P. at 248.310.6360
for Zoom login information)

GAMBLERS ANONYMOUS

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

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

OTHER MEETINGS

Bloomfield Hills

THURSDAY & SUNDAY 8 PM

Manresa Stag
1390 Quarton Rd.

Detroit

TUESDAY 6 PM

St. Aloysius Church Office
1232 Washington Blvd.

Detroit

FRIDAY 12 PM

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

Farmington Hills

TUESDAY 7 AM

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

Monroe

TUESDAY 12:05 PM

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

Rochester

FRIDAY 8 PM

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

Troy

FRIDAY 6 PM

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

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