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JULY/AUGUST 2023

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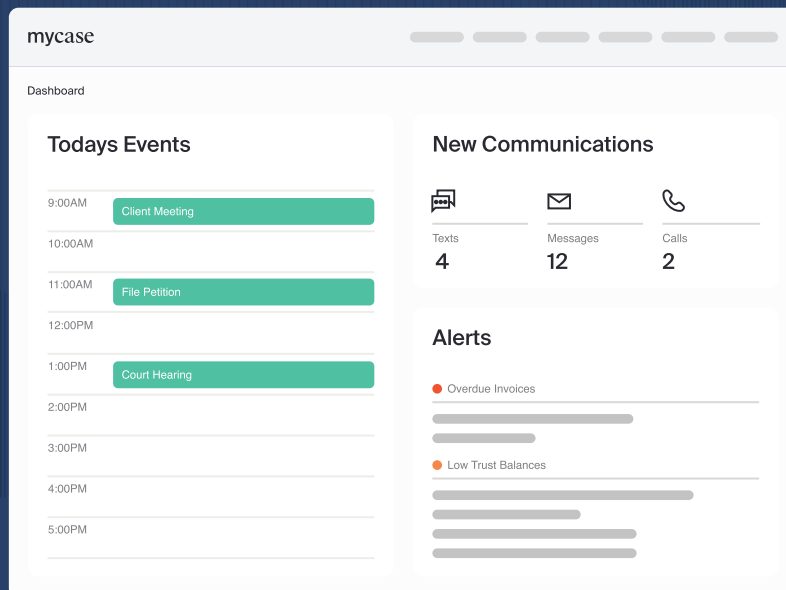
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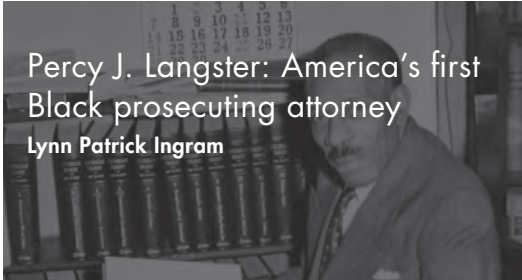
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- Sexual Assault
- Defective Premises
- Poisonings
- Other Personal Injuries





2023 MEETINGS

BOARD OF COMMISSIONERS

SEPTEMBER 21, 2023
 NOVEMBER 17, 2023
 JANUARY 19, 2024
 MARCH 1, 2024 (IF NECESSARY)
 APRIL 19, 2024
 JUNE 14, 2024
 JULY 26, 2024

REPRESENTATIVE ASSEMBLY

SEPTEMBER 21, 2023
 APRIL 20, 2024
 SEPTEMBER 2024



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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RECENTLY RELEASED

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**6TH EDITION
8TH SUPPLEMENT (2021)**

The Eighth Supplement (2021) to the 6th Edition of the Michigan Land Title Standards prepared and published by the Land Title Standards Committee of the Real Property Law Section is now available for purchase.

Still need the 6th edition of the Michigan Land Title Standards and the previous supplements? They are also available for purchase.

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
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IN BRIEF

MICHIGAN FEDERAL JUDGE TO RECEIVE ABA CIVILITY AWARD

The American Bar Association Judicial Division has selected Hon. Thomas L. Ludington of the U.S. District Court in Bay City as recipient of the 2023 Hon. William D. Missouri Civility Award.

The Missouri Award honors judges and legal professionals who exhibit exceptional qualities of civility, courtesy, and professionalism toward colleagues, litigants, and the public. It is named in honor of the late Hon. William D. Missouri of Maryland, who embodied courtesy in the courtroom.

Ludington, who will receive the Missouri Award at the 2023 ABA Annual Meeting in Denver on Thursday, Aug. 3, was nominated for the honor by his chambers staff and was supported with letters from fellow judges.

"Not everyone who appears before [Judge Ludington] leaves with the satisfaction of victory," wrote U.S. District Judge David M. Lawson. "But to a person, they all understand that they have been heard and their cause has been taken seriously ... Judge Ludington treats those with whom he interacts with dignity and respect. He is a kind and gracious man."

Ludington is the only judge in the U.S. District Court serving the Northern Division of Michigan's Eastern District.

The Northern Division staff "treats every litigant with respect and kindness," wrote U.S. District Judge Judith E. Levy. "This emanates from Judge Ludington, there can be no doubt about that. He sets the tone for the building and all of its staff, and it is one of kindness and cooperation."

Ludington, a Midland native, has served as a federal judge since 2006. Prior to that, he was 42nd Circuit Court chief judge for 11 years.



ALTERNATIVE DISPUTE RESOLUTION SECTION

The ADR Section annual conference is

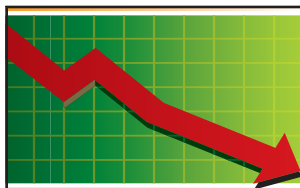
scheduled for Friday-Saturday, Sept. 29-30, and the annual ADR awards banquet will take place on Tuesday, Oct. 24, at the Inn at St. John's in Plymouth. Information on additional events, registrations, past event materials, and the latest Michigan Dispute Resolution Journal can be found at connect.michbar.org/adr/.

GOVERNMENT LAW SECTION

The Government Law Section annual meeting will take place via Zoom on Saturday, Sept. 9, beginning at 10 a.m. Details will be posted at connect.michbar.org/govlaw/ as soon as they are available. We hope you will join us!

LABOR AND EMPLOYMENT LAW SECTION

On Wednesday, May 31, the Labor and Employment Law Section welcomed Commissioner Keith Sonderling from the U.S. Equal Employment Opportunity Commission for an informative conversation with Adam Forman of Epstein Becker Green on artificial intelligence and the workplace. An internationally recognized authority on AI, Sonderling discussed the technology and its ability to mitigate the risks of bias and promote accessibility (e.g., through "glasses" that can describe a scene) as well as its unintended consequences.



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NEWS & MOVES

ARRIVALS AND PROMOTIONS

ANDREW S. ABDULNOUR has joined the Ann Arbor office of Butzel.

AARON L. DAVIS and **MARK MANSOUR** have been elected shareholders with Butzel.

CHARLES A. PETERSON has joined Collins Einhorn.

AWARDS AND HONORS

GEORGE B. DONNINI with Butzel was elected president of the Federal Bar Association's Eastern District of Michigan Chapter.

OTHER

PLUNKETT COONEY achieved Mansfield Rule certification for midsize law firms fol-

lowing completion of an 18-month program designed to promote and support diversity and inclusion in law firm leadership.

PRESENTATIONS, PUBLICATIONS, AND EVENTS

The **MICHIGAN DEFENSE TRIAL COUNSEL** and the **MICHIGAN ASSOCIATION FOR JUSTICE** square off in the Battle of the Bar softball game on Friday, Aug. 11, at the Corner Ballfield in Detroit on the former site of Tiger Stadium. A portion of the proceeds will go to the Detroit Police Athletic League.

Have a milestone to announce? Please send your information to News & Moves at newsandmoves@michbar.org.

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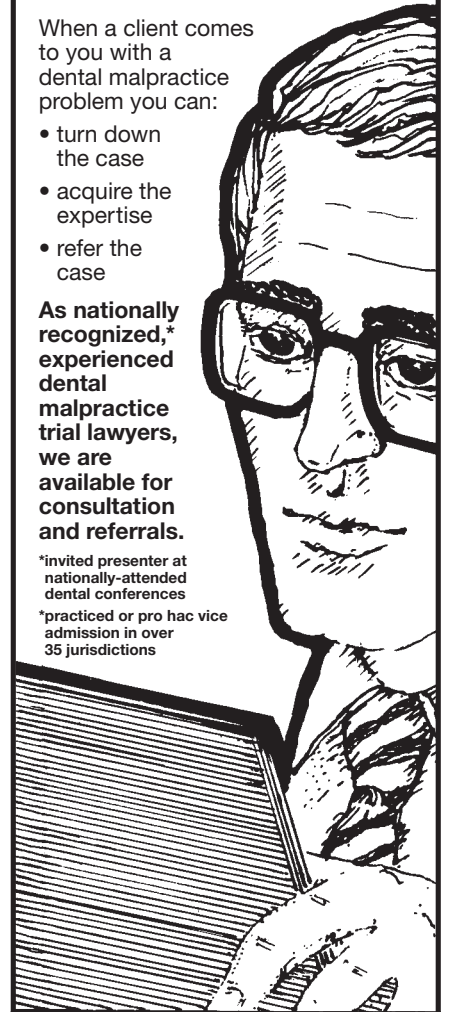
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IN MEMORIAM

ALEXANDER DANIEL BOMMARITO, P62704, of Freeland, died May 23, 2023. He was born in 1973, graduated from University of Akron Law School, and was admitted to the Bar in 2001.

JOHN R. BROWN, P11288, of Orange, California, died Jan. 11, 2023. He was born in 1935, graduated from University of Detroit School of Law, and was admitted to the Bar in 1961.

CARL V. BRYSON, P24615, of East Lansing, died May 13, 2023. He was born in 1948, graduated from University of Michigan Law School, and was admitted to the Bar in 1974.

PETER B. CAPLING, P11593, of Bad Axe, died Nov. 13, 2022. He was born in 1934, graduated from Detroit College of Law, and was admitted to the Bar in 1964.

HON. GEORGE R. CORSIGLIA, P12239, of Douglas, died Jan. 29, 2023. He was born in 1935, graduated from Detroit College of Law, and was admitted to the Bar in 1960.

MICHAEL A. DARBY, P37644, of Davison, died June 12, 2023. He was born in 1959, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1985.

MATTHEW W. DELEZENNE, P57918, of Plymouth, died Feb. 3, 2023. He was born in 1965, graduated from Wayne State University Law School, and was admitted to the Bar in 2000.

KATHRYN S. DENHOLM, P60357, of Manistique, died May 21, 2023. She was born in 1952 and was admitted to the Bar in 1999.

MICHAEL S. FRIEDMAN, P13728, of Royal Oak, died April 20, 2023. He was born in 1940 and was admitted to the Bar in 1966.

WAYNE K. FROST, P51457, of Detroit, died Oct. 10, 2022. He was born in 1963, graduated from Detroit College of Law, and was admitted to the Bar in 1994.

DAVID M. HARTSOOK, P14712, of East Lansing, died April 9, 2023. He was born in 1941, graduated from University of Michigan Law School, and was admitted to the Bar in 1968.

WILLIAM M. HATCHETT, P23350, of Pontiac, died Feb. 12, 2023. He was born in 1946, graduated from Wayne State University Law School, and was admitted to the Bar in 1973.

EMIL H. JOSEPH JR., P28609, of Grand Blanc, died June 17, 2023. He was born in 1949, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1978.

TERRANCE E. KLUMP, P23787, of Whitmore Lake, died May 3, 2023. He was born in 1943, graduated from Detroit College of Law, and was admitted to the Bar in 1974.

MICHAEL T. MCMANUS, P29544, of Detroit, died Feb. 20, 2023. He was born in 1952 and was admitted to the Bar in 1978.

HON. WARFIELD MOORE JR., P17938, of Detroit, died April 15, 2023. He was born in 1934, graduated from Wayne State University Law School, and was admitted to the Bar in 1961.

JOANNE K. NAPIEWOCKI, P30481, of Bloomfield Hills, died May 5, 2023. She was born in 1936, graduated from Wayne State University Law School, and was admitted to the Bar in 1979.

THOMAS A. SWANSON, P25759, of Roscommon, died June 13, 2022. He was born in 1944, graduated from Detroit College of Law, and was admitted to the Bar in 1975.

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.

INTEREST RATES FOR MONEY JUDGMENTS

Subsection 6 of Section 6013 and Subsection 2 of Section 6455 of Public Act No. 236 of 1961, as amended, (M.C.L. Sections 600.6013 and 600.6455) state the following:

Sec. 6013(6) Except as otherwise provided by subsection (5) and subject to subsection (11), for complaints filed on or after Jan. 1, 1987, interest on a money judgment recovered in a civil action shall be calculated at six month intervals from the date of filing the complaint at a rate of interest which is equal to 1% plus the average interest rate paid at auctions of five-year United States treasury notes during the six months immediately preceding July 1 and Jan. 1, as certified by the state treasurer, and compounded annually, pursuant to this section.

Sec. 6455 (2) Except as otherwise provided in this subsection, for complaints filed on or after Jan. 1, 1987, interest on a money judgment recovered in a civil action shall be calculated from the date of filing the complaint at a rate of interest which is equal to 1% plus the average interest rate paid at auctions of five-year United States treasury notes during the six months immediately preceding July 1 and Jan. 1, as certified by the state treasurer, and compounded annually, pursuant to this section.

Pursuant to the above requirements, the state treasurer of the state of Michigan hereby certifies that 3.743% was the average high yield paid at auctions of five-year U.S. treasury notes during the six months preceding July 1, 2023.

TIME PERIOD	INTEREST RATE	TIME PERIOD	INTEREST RATE
7/1/2023	3.762%	1/1/2005	3.529%
1/1/2023	3.743%	7/1/2004	3.357%
7/1/2022	2.458%	1/1/2004	3.295%
1/1/2022	1.045%	7/1/2003	2.603%
7/1/2021	0.739%	1/1/2003	3.189%
1/1/2021	0.330%	7/1/2002	4.360%
7/1/2020	0.699%	1/1/2002	4.140%
1/1/2020	1.617%	7/1/2001	4.782%
7/1/2019	2.235%	1/1/2001	5.965%
1/1/2019	2.848%	7/1/2000	6.473%
7/1/2018	2.687%	1/1/2000	5.756%
1/1/2018	1.984%	7/1/1999	5.067%
7/1/2017	1.902%	1/1/1999	4.834%
1/1/2017	1.426%	7/1/1998	5.601%
7/1/2016	1.337%	1/1/1998	5.920%
1/1/2016	1.571%	7/1/1997	6.497%
7/1/2015	1.468%	1/1/1997	6.340%
1/1/2015	1.678%	7/1/1996	6.162%
7/1/2014	1.622%	1/1/1996	5.953%
1/1/2014	1.452%	7/1/1995	6.813%
7/1/2013	0.944%	1/1/1995	7.380%
1/1/2013	0.687%	7/1/1994	6.128%
7/1/2012	0.871%	1/1/1994	5.025%
1/1/2012	1.083%	7/1/1993	5.313%
7/1/2011	2.007%	1/1/1993	5.797%
1/1/2011	1.553%	7/1/1992	6.680%
7/1/2010	2.339%	1/1/1992	7.002%
1/1/2010	2.480%	7/1/1991	7.715%
7/1/2009	2.101%	1/1/1991	8.260%
1/1/2009	2.695%	7/1/1990	8.535%
7/1/2008	3.063%	1/1/1990	8.015%
1/1/2008	4.033%	7/1/1989	9.105%
7/1/2007	4.741%	1/1/1989	9.005%
1/1/2007	4.701%	7/1/1988	8.210%
7/1/2006	4.815%	1/1/1988	8.390%
1/1/2006	4.221%	7/1/1987	7.500%
7/1/2005	3.845%	1/1/1987	6.660%

STATE BAR OF MICHIGAN

2023 ELECTION RESULTS

Two newly elected attorneys will join the Board of Commissioners and four incumbents won re-election in the 2023 State Bar of Michigan elections. SBM members also elected representatives to the Judicial Tenure Commission, Representative Assembly, and the Young Lawyers Section Executive Council.

THE NEWLY ELECTED COMMISSIONERS ARE:



PONCE D. CLAY, who was elected to serve District H representing Lenawee, Monroe, and Wayne counties. Clay, of Detroit, is the current president of the D. Augustus Straker Bar Association and serves on the State Bar of Michigan Unauthorized Practice of Law Committee. He is founder and managing attorney with Clay Law PLC in Detroit, focusing on real estate transactions, probate estate administration, veterans' law, landlord-tenant matters, and business development.



JOSHUA A. LERNER, who was elected in District I to represent Oakland County. Lerner is a member of the SBM Representative Assembly, panelist for the Attorney Discipline Board, past chair of the Young Lawyers Section, and former member of the Board of Commissioners. He is a partner at Cohen Lerner & Rabinovitz in Royal Oak, focusing on civil litigation including personal injury law, medical provider collections, business, and commercial litigation.

RE-ELECTED COMMISSIONERS ARE:

DAVID C. ANDERSON of Southfield, who was re-elected in a contested race in District I to represent Oakland County.

HON. B. CHRIS CHRISTENSON of Flint, who was re-elected in an uncontested race to serve District B representing Bay, Genesee, Iosco, Midland, Saginaw, Sanilac, Saginaw, and Tuscola counties.

ROBERT EASTERLY of East Lansing, who was re-elected in an uncontested race to serve District E representing Barry, Clinton, Eaton, Gratiot, Ingham, Ionia, Livingston, and Shiawassee counties.

HON. DAVID A. PERKINS of Detroit, who was re-elected in a contested race to serve District H representing Lenawee, Monroe, and Wayne counties.

The Board of Commissioners provides oversight to the State Bar on finance, public policy, professional standards, member services, and communications. This year's newly and re-elected commissioners will serve three-year terms expiring in September 2026.

JUDICIAL TENURE COMMISSION

James W. Burdick of Bloomfield Hills won a contested election to serve a three-year term on the Judicial Tenure Commission

from Jan. 1, 2024, to Dec. 31, 2026. The Judicial Tenure Commission is a constitutionally created body that promotes the integrity of the judicial process and preserves public confidence in the courts.

SBM REPRESENTATIVE ASSEMBLY

The 150-member Representative Assembly was created in 1972; it serves as the final policy-making body for the State Bar of Michigan.

Elected representatives in uncontested races were:

2ND CIRCUIT (BERRIEN COUNTY)

Amber D. Peters, St. Joseph.

3RD CIRCUIT (WAYNE COUNTY)

Richard M. Soranno, Detroit; LaKena T. Crespo, Detroit; Lisa W. Timmons, Detroit; Dawn S. Lee-Cotton, Detroit; Macie D.A. Tuiasosopo Gaines, Grosse Pointe; Kimberley A. Ward, Detroit; Shanika A. Owens, Detroit.

6TH CIRCUIT (OAKLAND COUNTY)

Dennis M. Flessland, Huntington Woods; Michael J. Blau, Farmington; Tracey L. Lee, West Bloomfield; Mary A. Bowen, Troy; Jennifer A. Cupples, Berkley; Rynne E. Rizzo, Birmingham.

9TH CIRCUIT (KALAMAZOO COUNTY)

Donald L. R. Roberts, Kalamazoo.

10TH CIRCUIT (SAGINAW COUNTY)

Jennifer A. Jones, Saginaw.

**11TH CIRCUIT (ALGER, LUCE, MACKINAW,
AND SCHOOLCRAFT COUNTIES)**

Chad W. Peltier, Newberry.

17TH CIRCUIT (KENT COUNTY)

Jonathan J. Paasch, Grand Rapids; Natasha L. Rao, Grand Rapids.

18TH CIRCUIT (BAY COUNTY)

Stephan M. Gaus, Bay City.

19TH CIRCUIT (BENZIE AND MANISTEE COUNTIES)

Lesya N. Dull, Manistee.

20TH CIRCUIT (OTTAWA COUNTY)

Anna C. White, Holland.

21ST CIRCUIT (ISABELLA COUNTY)

Becky J. Bolles, Mt. Pleasant.

22ND CIRCUIT (WASHTENAW COUNTY)

Mark W. Jane, Ann Arbor.

24TH CIRCUIT (SANILAC COUNTY)

Matthew C. Lozen, Sandusky.

25TH CIRCUIT (MARQUETTE COUNTY)

Hon. Karl A. Weber, Marquette.

30TH CIRCUIT (INGHAM COUNTY)

Nicole A. Evans, East Lansing.

37TH CIRCUIT (CALHOUN COUNTY)

Lee D. Graham, Battle Creek.

50TH CIRCUIT (CHIPPEWA COUNTY)

Robert L. Stratton III, Sault Ste. Marie.

57TH CIRCUIT (EMMETT COUNTY)

Christina L. DeMoore, Petoskey.

**YOUNG LAWYERS SECTION
EXECUTIVE COUNCIL**

The Young Lawyers Executive Council governs the members of the Young Lawyers Section, one of the State Bar's largest sections. The section provides education, information, and analysis about issues of concern through meetings, seminars, public service programs, and newsletters. The section has won numerous awards for its public service and educational programs.

Winners of uncontested races for seats with two-year terms expiring in 2025 are:

DISTRICT 1 (MACOMB AND WAYNE COUNTIES)

Darnell T. Barton, Detroit; Fawzeih H. Daher, Detroit; Aaron J. Hall, Mt. Clemens.

DISTRICT 2 (OAKLAND COUNTY)

Isra K. Khuja, Troy; Alexander P. Sheldon-Smith, Farmington Hills; Kayla M. Toma, Auburn Hills; Jessica D. Warfield, Southfield.

**DISTRICT 3 (ALL COUNTIES
EXCEPT MACOMB, OAKLAND, AND WAYNE)**

Jacob Eccleston, Kalamazoo.

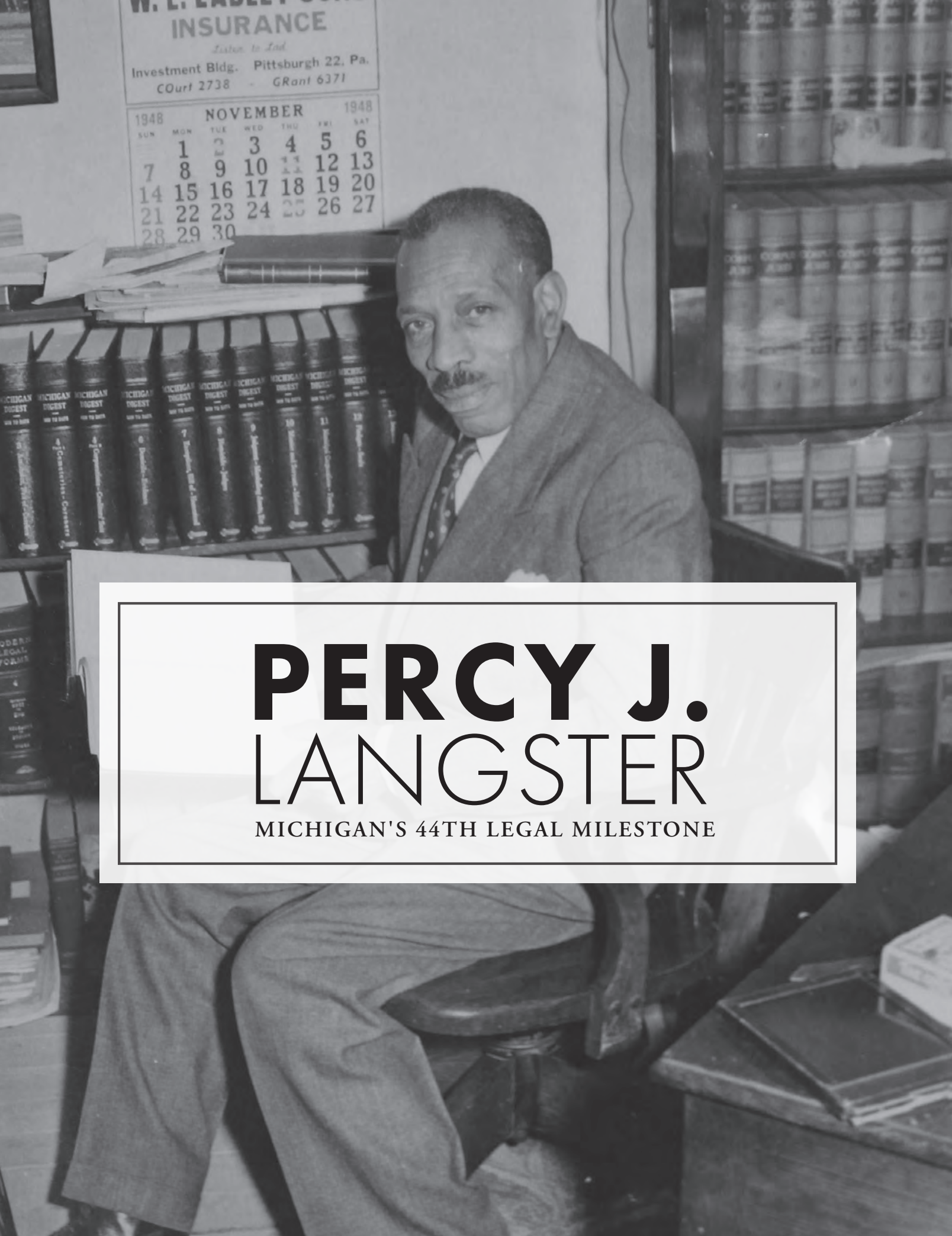


STATE BAR OF MICHIGAN

Promotes the professionalism of lawyers; advocates for an open, fair, and accessible justice system; and provides services to members to help them best serve clients.

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PERCY J. LANGSTER

MICHIGAN'S 44TH LEGAL MILESTONE

America's first Black prosecuting attorney

BY LYNN PATRICK INGRAM

Some stories are meant to be told. This is one of them.

Late one Friday, author Nancy Vogl was doing research on Idlewild, Michigan, for a screenplay she was writing. About 10 minutes before the library closed, she stumbled upon a remarkable discovery.

"I opened a drawer in a file cabinet, and a file folder was sticking up that appeared to be misfiled," Vogl said. "I picked it up and out fell a single, yellowed newspaper clipping from the Kalamazoo Gazette. I scanned the article and was instantly intrigued."

The article detailed the election of Percy J. Langster, the first Black person voted into office as a prosecuting attorney in the United States.

Over the next several days, Vogl continued her research only to find there was little information about Langster. It seemed his achievements — an important piece of the state and nation's legal, political, and cultural history — had been largely overlooked.

Determined that his story be told, she nominated Langster for recognition by the State Bar of Michigan.

Percy J. Langster is the 44th Michigan Legal Milestone and this is his story.

HUMBLE BEGINNINGS

Percy Langster was born in December 1889 in Brownsville, Pennsylvania,¹ and in 1896 moved with his parents to Oil City,² city of less than 5 square miles located at the mouth of Oil Creek along the Allegheny River at the foot of the Appalachian Mountains. Oil wells were first drilled in the area less than 30 years before Langster's birth, and the emerging petroleum industry fueled massive population growth. The number of Oil City residents more than tripled between 1870 and 1880³ and increased another 50% from 1880 to 1890.⁴ It once simultaneously housed the headquarters of Pennzoil, Quaker State, and Wolf's Head oil companies⁵

According to Vogl, Langster faced significant hurdles growing up. He was the only Black child in Rouseville Borough.⁶ At 8 years old, Langster left primary school to become a shoeshine boy at the barbershop in the Arlington Hotel to help support his family.⁷

Young Percy was smart, "and I suspect he was as scrappy as all get-out," Vogl said.

Along the way, he fell in love with the idea of one day becoming a lawyer.

"As he would shine shoes, he would listen to the legal banter among the local attorneys, which surely inspired him to be a lawyer, his life-long dream," Vogl said.

Two customers took a particular interest in him: Judge George S. Criswell and attorney William J. Breene, both of whom had children about Langster's age. They encouraged him to go to high school and helped Langster, a standout football player at Oil City High School, get an athletic scholarship to Cornell University.⁸

Unfortunately, during his freshman year at Cornell, Langster ran out of funds and had to leave school.⁹ For the next 16 years, he did whatever he could to earn a living and slowly saved money so he could someday continue his education. He worked various jobs including a stint as a Pullman porter, where he met his wife, Marie Williams, a passenger on the train and the woman who would remain by his side for the rest of his life.¹⁰

BECOMING A LAWYER

In 1924, Langster, now 35, finally saved enough money to return to college. He attended Duquesne University and worked as a waiter while going to school. Langster earned his bachelor's degree from Duquesne in 1928 and earned his law degree in 1932, becoming the first Black student to graduate with two degrees from the university.¹¹

Unfortunately, even with his stellar education, Langster fell victim to the Great Depression. He graduated with his law degree when one of every four workers was unemployed, banks were failing, and hunger marches were common throughout the nation.¹²

“He lost his modest house in a foreclosure, and he and Marie were forced to rent a home while still caring for his mother,” Vogl said. “Percy tried to find work as a lawyer, but no one would or could hire him, and he didn’t have the funds to open his own practice.”

Meanwhile, one of his law professors at Duquesne, Eugene Strasburger, suggested he work as a butler — and Marie as a maid — for an old college roommate and attorney in Chicago until the couple could get on their feet again.

“Just imagine ... he has a law degree and he’s been reduced to waiting on wealthy people again,” Vogl said.

The downturn didn’t last long.

Within a few months, Langster and his wife settled in Woodland Park, Michigan,¹³ and he was admitted to the State Bar of Michigan in 1933.¹⁴ He opened his first law practice in nearby Bitely and served both Black and white clients.¹⁵

Though Langster had a distinctive deep voice, his soft-spoken nature and sense of humor helped pave his pathway to success.¹⁶

BLACK EDEN

Woodland Park is a small community nestled in northwestern Nawaygo County, just off M-37. It is located 60 miles north of Grand Rapids and, more importantly for the purpose of this narrative, 15 miles south of Idlewild.¹⁷

We don’t know exactly how Langster ended up here, but we do know that Woodland Park and its more famous sister community, Idlewild, were resort communities designed and developed to serve prominent Blacks from Chicago, Detroit, and other areas nationwide — people who, because of segregation and Jim Crow laws, were excluded from other vacation destinations and property ownership.

These places grew into meccas of Black entertainment, entrepreneurship, and opportunity. Langster’s story is inherently intertwined with both communities.

Langster operated his law practice until 1938, when he became the first Black educational advisor for the Civilian Conservation Corps (CCC), the Depression-era federal works program that

employed men to make improvements in public lands, forests, and parks.¹⁸

During this time, seasonal and year-round residents enjoyed swimming and sailing on Woodland Lake and formal dining at the nearby Royal Breeze Hotel, which also featured a wrap-around, screened porch.¹⁹ Idlewild was also flourishing; among the community’s property owners were Violette Neatley Anderson — the first Black woman to practice law before the U.S. Supreme Court²⁰ — and educator, scholar, and activist W.E.B. DuBois.²¹

Langster, who had avoided serving in the military during World War I because he was caring for his mother,²² put his practice and his life in this Black Eden on hold in 1942 to contribute to the war effort.²³ At the age of 53, he left the CCC to become a civilian technical advisor for the Air Corps Technical Training Command at Chanute Field in Rantoul, Illinois, during World War II.²⁴

“He was recommended to military staff at Rantoul by the higher-ups at the CCC despite the fact that he had no technical experience,” Vogl said.

Langster arrived at Chanute just a few months after the Tuskegee Airmen completed their training there and transferred to Alabama.²⁵ More than 200,000 soldiers were trained in aircraft maintenance, weather observation, life support, and metal processing at Chanute during the war.²⁶

After the war, Langster returned to Michigan and in 1947 moved a bit further up M-37, taking up residence in Baldwin, located in Lake County about four miles from Idlewild.²⁷

HISTORIC ELECTION

Idlewild was coming into its heyday as the “Summer Apollo of Michigan,” hosting entertainers including The Four Tops, Etta James, Aretha Franklin, and Della Reese.²⁸ According to a Detroit News article from the time:

This sparsely settled county of slightly more than 6,000 population has the largest negro summer resort colony in America. Property owners and guests in the 36 square mile area known as Idlewild come from every state in the Union, and also from Labrador and Hawaii.

Idlewild was established ... as a place where negroes could enjoy themselves without racial restrictions and prejudice. It contains hotels, resorts and 1,000 homes of which 350 are permanent, schools, churches, riding trails and all the other outdoor facilities for recreation.²⁹

44TH MICHIGAN LEGAL MILESTONE CELEBRATION SET FOR AUG. 25

As part of its Michigan Legal Milestone program, the State Bar of Michigan will unveil a bronze plaque commemorating the life and legacy of Percy J. Langster in a celebration on Friday, Aug. 25, from 2-5 p.m. at the Yates Township Hall in Idlewild.

Langster was the first Black person in the nation to be elected as a prosecuting attorney. He served as Lake County prosecutor from 1949-1950.

Hon. Jacquelyn A. McClinton, chair of the Michigan Legal Milestones Committee, will serve as emcee for the event, which will also include remarks from James W. Heath, president of the State Bar of Michigan; Ronald J. Stephens, professor of African American studies at Purdue University and Idlewild historian; and author Nancy Vogl, who nominated Langster for Michigan Legal Milestones recognition.

The event is free and open to the public. Registration at michbar.org/milestones is required.

Michigan Legal Milestones are adopted by the State Bar of Michigan Board of Commissioners upon recommendation from a committee of volunteer attorneys to recognize significant people and legal cases in Michigan history. Bronze plaques are dedicated and placed in local communities to commemorate the significance of each Michigan Legal Milestone.

After the plaque is unveiled, it will be permanently installed at the Lake County Courthouse in Baldwin.

Yates Township Hall is located at 6437 South Nelson Road in Idlewild, about 4 miles east of Baldwin, Michigan.

Langster, then 58, threw his hat in the ring to serve as Lake County prosecutor, challenging three-term incumbent Dic I. Cooper in a county that, even with Idlewild's year-round residents, was predominantly white.

It was 1948. Ronald Reagan was acting in movies,³⁰ the term "big bang theory" hadn't yet been coined,³¹ the Voting Rights Act of 1965 was still a generation away, and Langster and Cooper were the only two attorneys in Lake County.³²

Langster faced an unexpected obstacle in his quest; he was disqualified from the primary election because of a procedural oversight — but that might have provided just the boost his candidacy needed. Almost all the candidates for county offices were disqualified because they failed to file affidavits of identity, then a new requirement for office seekers. Only two candidates successfully filed all the paperwork to run for office; one was Cooper, who filed for both re-election as county prosecutor and a run for state representative.³³

"The filing of affidavits of identity was a new mandate by the state that had changed a couple of years prior," Vogl explained. "Previously, the state required this of the bigger communities like Detroit, Lansing, and Grand Rapids, but changed it to include all elections throughout the state."

The disqualified candidates accused Cooper of failing to properly notify them of the new requirement, and Langster gained an important ally in incumbent Sheriff Edward Engel, who also was barred from the primary ballot.³⁴

As a result, Langster was forced to run as a sticker candidate — literally, he asked voters to place a sticker bearing his name on the ballot over the name of his opponent — and he switched parties to directly challenge Cooper on the Republican ballot.³⁵

Although Lake County certainly had an unusually high concentration of Black residents, white voters outnumbered Black voters 3 to 1. While there was little evidence of "racial animosity" in the campaign,³⁶ Langster's campaign literature directly addressed his race.

"I stand as a symbol of tolerance in a community which Negroes and whites are sharing peacefully and profitably. As prosecutor, I will deal impartially with all races and creeds. Were I to favor my own people, they would be the first to condemn me.

"The eyes of the nation are on me in this test."³⁷

Langster won the primary with 677 votes to Cooper's 568. Cooper also lost his bid for state representative in the primary, so he decided to

run again for prosecutor in the general election. This time, Cooper was the sticker candidate, and Langster won again, 1,138 to 986 votes.³⁸

On Jan. 1, 1949, just a few days after his 59th birthday, Percy J. Langster was sworn in as Lake County prosecutor.

Langster admitted even he was surprised by his victory:

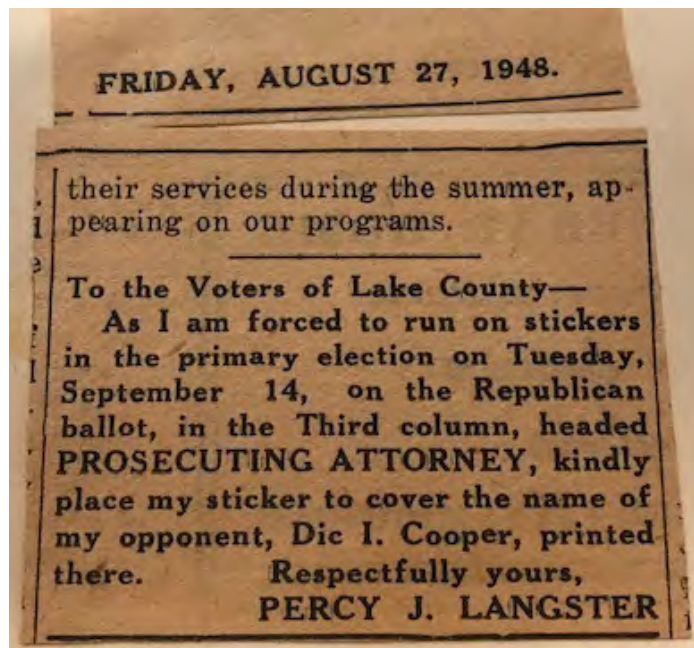
“My election could only happen in America, of course, but even here it could not have happened several years ago. Better inter-racial feeling is slowly developing in this nation.

“I campaigned for justice to all and bias towards no man. And somehow, I think, the people grasped hold of that idea.”³⁹

A LASTING LEGACY

With his historic election, Langster quietly blazed a trail for other Black attorneys, judges, and politicians across America.

“A lifetime of pursuing his dreams of a career in law came to fruition in a remarkable, groundbreaking way,” Vogl said. “Percy paved the way for the Eric Holders and Kamala Harris and any other person of color vying for their right to serve their communities and country.”



Langster was forced to run as a sticker candidate – literally, he asked voters to place a sticker bearing his name on the ballot over the name of his opponent. (Lake County Star)

And he did so with class and dignity.

“Percy always found a way to find common ground with people – as a youth and as an adult – regardless of the color of one’s skin. He was a shining example of decency, integrity, and honor,” Vogl said.

Langster ran for re-election in 1950 but lost to Cooper in the primary by 55 votes. Rather than calling for a recount, the Sept. 15, 1950, edition of the Lake County Star reported that Langster “accepted defeat with his usual courtesy and grace.”⁴⁰

Following his defeat, Langster returned to private practice in Baldwin for four years. He died at age 64 on Nov. 28, 1954, at St. Mary’s Hospital in Grand Rapids while awaiting surgery to remove a cyst on his right lung.⁴¹

State Bar of Michigan President James W. Heath said Langster’s impact continues to resonate.

“I am so proud that Percy Langster will forever be memorialized through this Michigan Legal Milestone recognition,” said James W. Heath, president of the State Bar of Michigan. “His courage and perseverance allowed him to challenge both direct and institutional racism. As the elected prosecutor for Lake County, he committed himself to delivering equal justice within a system which overtly marginalized Black citizens. All of us who have in some way taken on the task of making our society more fair and more just owe Percy Langster a tremendous debt of gratitude.”

On August 25, 2023, the State Bar of Michigan will unveil a bronze plaque honoring the life and legacy of Percy J. Langster as the 44th Michigan Legal Milestone at Yates Township Hall in Lake County. The plaque will be permanently placed at the Lake County Courthouse in Baldwin.⁴²

“Two years ago, nobody knew Percy was the first Black prosecutor in America,” Vogl said. “That’s about to change.”

Lynn Patrick Ingram is legal editor and publications development manager at the State Bar of Michigan.

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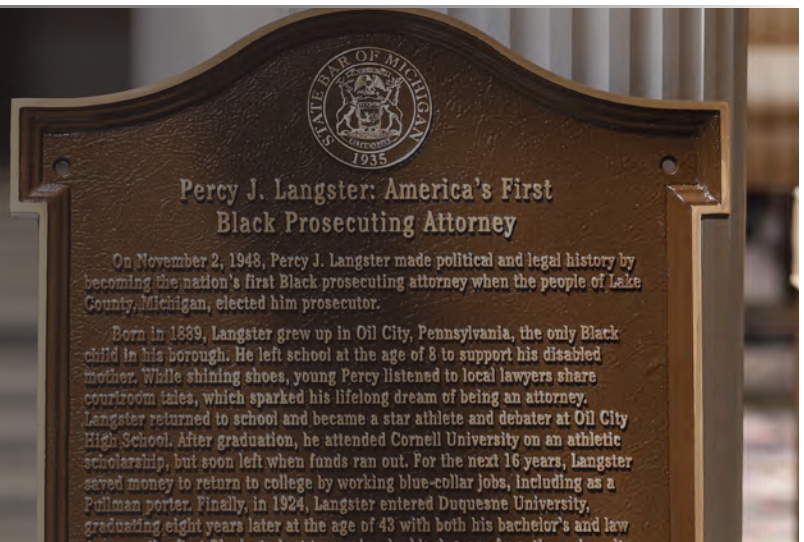
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MICHIGAN LEGAL
MILESTONE
 DEDICATION CEREMONY & CELEBRATION

FRIDAY, AUGUST 25 | 2 - 5 P.M.
 YATES TOWNSHIP HALL

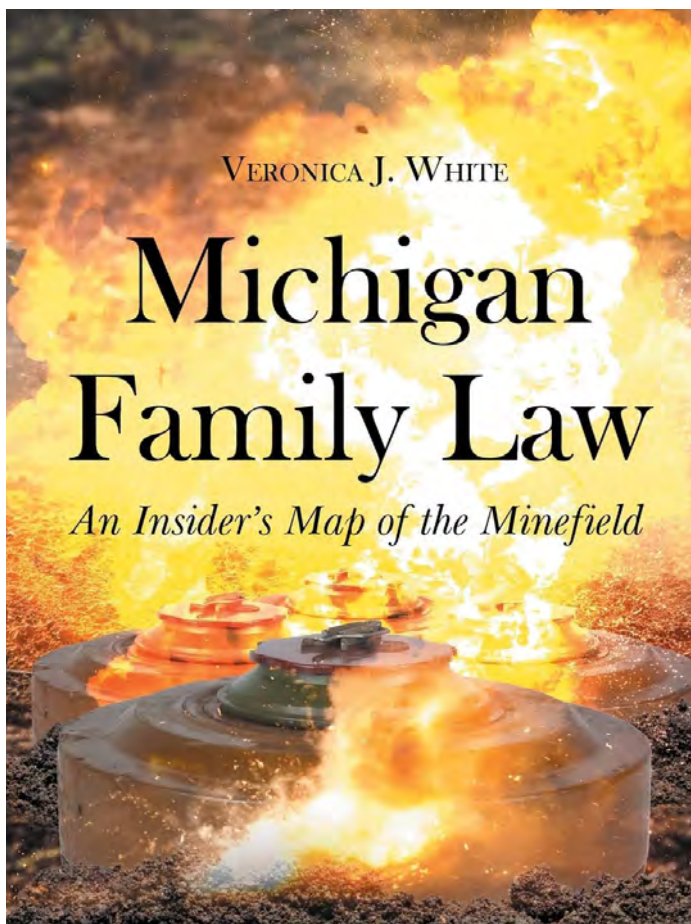
REGISTER AT [MICHBAR.ORG/MILESTONES](https://michbar.org/milestones)



BOOK REVIEW

Michigan Family Law: An Insider's Map of the Minefield

REVIEWED BY MATTHEW SMITH-MARIN



Written by Veronica J. White
Published by Page Publishing (2022)
Soft Cover | 118 Pages | \$14.95

"One of the primary mistakes that parties make in family law cases is when they, in their perceived righteous anger, continue to show anger and grief over what the other party has done for too long ... The best way to keep your sanity is to lower your expectations and hope that the facts as you see them will be interpreted the same way in court. They may or may not be, but even if they are, it will most likely only be in part. The point is to present your case calmly if you hope to be heard at all. Don't be white noise or you will never truly be heard." (p. 116).

* * * *

"There is not a lot of overlap between morality and the law, either in the written code or in a judicial hearing. The chance of someone feeling truly vindicated by the end of their family law case is slim. Family law has evolved over the years to the point where explaining it to clients only makes sense in part." (p. 117).

* * * *

Veronica White, a State Bar of Michigan member who has practiced family law since 2004, originally became an attorney because of her experiences during her own divorce and subsequent coparenting ramifications. White attended Eastern Michigan University, where she completed three years of a four-year bachelor's degree program before being admitted to Thomas M. Cooley Law School. She graduated from Cooley in 2003 and since opening her family law practice in Ann Arbor more than 17 years ago, she has handled nearly 700 cases.

In the introduction to her book, "Michigan Family Law: An Insider's Map of the Minefield," she notes that "[i]t's hard to find an attorney who understands the three-level chess that is domestic violence ... who can relate to those in a financially difficult position ... [and] who you can connect with." (p. 9). Though she wrote the book with the intent of helping those without a law degree, her examples, commentary, and personal viewpoints provide helpful insight to those in the legal profession and family law practices, too.

White opens the book by walking the reader through the process of finding and retaining a family law attorney. Regarding those topics, she emphasizes to the reader specific reasons and cases where and why a family law attorney could fire a client. She then moves on to describe personal and professional interactions with family law judges; in particular, White underscores client expectations and her experiences — some expected and others unexpected — with the more than 30 judges she has dealt with during her career.

"Michigan Family Law: An Insider's Map of the Minefield" continues on to provide an overview of other personnel that family law attorneys and clients may interact with on a consistent basis including Friend of the Court social workers, mediators, parenting coordinators, guardians ad litem, and other evaluators. White comments on how clients and lawyers may have positive and negative interactions with those parties — complete with examples — and shows how they can affect the outcome of cases.

White then spends the next few chapters describing and illustrating the landscape of a typical family law case. She walks the reader

through custody (both legal and physical), giving specific examples regarding how best-interest factors of the children under Mich. Comp. Laws § 722.23 are interpreted and weighed by different judges. She continues by explaining to readers the pitfalls to avoid when dealing with parenting time; strategies for when children do not want to see their parents; exchanges and possible conflicts arising between significant others, stepparents, and other parties; and child and spousal support. As White notes, "[p]arents need to prepare to be down the legal rabbit hole for quite a while and learn to keep their wits about them while they're in it." (p. 76).

As a whole, "Michigan Family Law: An Insider's Map of the Minefield" provides a good overview of the family law case process. Regardless of whether you are a seasoned attorney or a new practitioner, it is worth the read because of the utility it can provide for current or future clients. Another plus is that it's written in a way that even those without law degrees can understand. In addition to being able to recommend the book to clients as a resource, it can just as easily be provided to family members, friends, or neighbors seeking a better understanding of family law in Michigan.

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TRAUMA

An introduction to trauma-informed lawyering

BY ALEXANDER S. RUSEK AND AYLISH B. GALLAGHER

Being trauma-informed is not just the newest social science buzzword. Rather, it is an important set of research-based guiding principles that attorneys in most practice areas must recognize to provide the most effective representation possible for their clients.

So, what is trauma? What does it mean to be trauma-informed? What is trauma-informed lawyering? And where can you learn more about these concepts?

DEFINITIONS

The Centers for Disease Control and Prevention has stated that:

"[a]n event, or series of events, that causes moderate to severe stress reactions, is called a traumatic event. Traumatic events are characterized by a sense of horror, helplessness, serious injury, or the threat of serious injury or death. Traumatic events affect survivors, rescue workers, and friends and relatives of victims who have been directly involved."¹

These effects may not be immediate, can be extremely long lasting, and can impact many, if not all, areas of a survivor's life.

Our justice system and related services also, regrettably, present the possibility of causing further trauma by creating situations where those who have experienced it are re-traumatized. When this happens, clients can experience a lack of control and further abrupt changes in their lives, and feel threatened, vulnerable, exposed, and responsible for what they're going through. Recognizing trauma and its potential effects are the first steps to becoming trauma-informed.

It has been said that "'[t]rauma-informed practice' is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner puts the realities of the client's trauma experiences at the forefront in engaging with the client, and adjusts the practice approach informed

by the individual client's trauma experience."² Vivianne Mbaku of Justice in Aging has also written that "[a] trauma-informed legal practice aims to reduce re-traumatization and recognize the role trauma plays in the lawyer-client relationship. Integrating trauma-informed practices provides lawyers with the opportunity to increase connections to their clients and improve advocacy."³

More simply, a trauma-informed lawyer "asks clients not, 'What is wrong with you?' but instead, 'What happened to you?'"⁴ Delivering trauma-informed services is not accomplished by following a single checklist or set of techniques, but rather it requires "constant attention, caring awareness, sensitivity, and possibly a cultural change at an organizational level."⁵ A trauma-informed lawyer must also understand that the trauma a client has experienced does not define them as a whole.

BENEFITS OF TRAUMA-INFORMED LAWYERING

Sometimes, it will be obvious that a lawyer needs to incorporate trauma-informed principles into their practice because of the nature of a case, such as when representing survivors of sexual abuse and survivors of tragic accidents in civil litigation, or when prosecutors work with victims of traumatizing crimes. Other times, it may not be as apparent that a lawyer needs to incorporate these principles, such as representing a survivor of domestic abuse in a divorce or child custody matter or representing a criminal defendant who has suffered trauma that has contributed to issues such as substance abuse.

The first step is recognizing the potential impact the trauma has had on a client and providing a safe environment for them to express their concerns and share their experiences with a lawyer who will listen to them and not judge them, minimize their experiences, or disregard them.

In addition to the positive effects on a client's well-being, trauma-informed lawyering offers numerous other benefits. Clients who are comfortable with and trust their lawyers are far more likely to share their experiences, potentially providing far more useful information than they would otherwise provide. For example, a civil trial lawyer may learn critical information regarding their client's damages that would otherwise remain hidden. A prosecutor may obtain information that transforms perceived weaknesses in their case into strong evidence of the guilt of the accused with the additional context

provided by the victim. It is also often true that a client will hold the trauma-informed lawyer in higher regard, thus creating a stronger rapport and, ultimately, a more effective attorney-client relationship.

BECOMING A TRAUMA-INFORMED LAWYER

Some have argued that the four key characteristics of trauma-informed lawyering are identifying trauma, adjusting the attorney-client relationship, adapting litigation strategy, and preventing vicarious trauma.⁶ To accomplish these goals, the trauma-informed lawyer works to ensure that their client:

- feels safe,
- can trust them and feel that their relationship has transparency,
- feels as though they have the ability to make the choices that will impact their lives and are actually empowered to make those decisions,
- has a collaborative relationship with the lawyer, and
- recognizes that the lawyer has considered cultural, historical, race, gender, and other identity issues that the client may be experiencing.^{7,8}

In practice, the first step is recognizing the potential impact the trauma has had on a client and providing a safe environment for them to express their concerns and share their experiences with a lawyer who will listen to them and not judge them, minimize their experiences, or disregard them.

TRAUMA-INFORMED LAWYERING RESOURCES

There are several existing materials available about trauma-informed lawyering. For example, The National Center on Domestic Violence, Trauma, and Mental Health started the Trauma-Informed Legal Advocacy Project (TILA) which "offers guidance on applying trauma-informed principles to working with survivors of domestic violence in the context of legal proceedings."⁹ It is important to note that the resources available through TILA, while focused on survivors of domestic violence, are not limited to or only applicable to trauma caused by intimate partner violence. The same is true for other trauma-informed resources not directed at lawyers, such as those for first responders and healthcare workers.

Other useful resources include podcasts, webinars, and articles readily available on the internet such as The Trauma-Informed Lawyer podcast hosted by Myrna McCallum¹⁰ and the Trauma-Informed Legal Advocacy: An Introduction webinar presented by Rachel White-Domain.¹¹ In March, the American Bar Association Law Practice Management Section published a book titled "Trauma-Informed Law: A Primer for Lawyers in Practice."¹²

The aforementioned resources are not an exhaustive list; the body of research and literature on trauma-informed practice grows every day. It is also important to remember that we must recognize our own limitations and levels of expertise. This often means learning

about available resources and being prepared to offer them to the client when needed, such as the assistance of counselors and community organizations.

It is also important to keep in mind that being trauma-informed alone is not enough this — the lawyer is not the only person the client will interact with. Thus, training staff and providing them with the resources to be trauma-informed is also critical.

SECONDARY TRAUMA

The effects of learning about and experiencing another person's trauma — sometimes called secondary trauma, secondary traumatic stress, vicarious trauma, or indirect trauma — include symptoms similar to people who have directly experienced trauma.¹³ Secondary trauma can result in severe job burnout, compassion fatigue, re-living of the trauma, negative changes in beliefs and feelings, and other adverse effects.¹⁴ As such, being a trauma-informed lawyer “also encompasses the practitioner employing modes of self-care to counterbalance the effect the client's trauma experience may have on the practitioner.”¹⁵

There are resources that address the effects of secondary trauma and how lawyers and others who experience it can manage it. Examples include “Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others” by Laura van Dernoot Lipsky and Connie Burk; “The Age of Overwhelm: Strategies for the Long Haul” by Laura van Dernoot Lipsky; “Reducing Compassion Fatigue, Secondary Traumatic Stress, and Burnout” by William Steele; and “Burnout: The Secret to Unlocking the Stress Cycle” by Emily Nagoski and Amelia Nagoski. While these titles are highly recommended, they certainly do not encompass all available resources.

CONCLUSION

Recognizing trauma and being mindful, compassionate, empathetic, and aware of it is of the utmost importance in the legal profession. Lawyers often work with clients who have experienced — and are still experiencing — the worst situations that life can expose to someone. The trauma-informed attorney strives to leave the client in a better place than they found them.

A high-level official in the Church of Jesus Christ of Latter-day Saints named Carl W. Buehner once said, “They may forget what you said, but they will never forget how you made them feel.”¹⁶ Being trauma-informed will not only enhance the attorney-client relationship but can lead to significantly better outcomes for clients legally and personally — outcomes that we should all fully embrace.

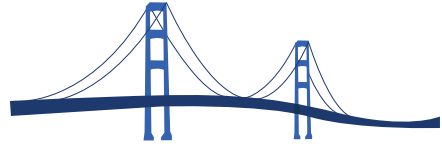
Alexander S. Rusek is an attorney with Foster Swift Collins & Smith in Lansing. A graduate of Oakland University and Michigan State University College of Law, he is a founding director of The Army of Survivors, a national nonprofit organization with the goal of ending sexual assault against young athletes by ensuring perpetrators and enablers are held accountable, creating transparency in reporting, building an environment in which athletes do not fear retaliation when reporting abuse, and advocating for change to protect survivors.

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GREAT LAKES LEGAL CONFERENCE



Thank you to all who attended the first-ever Great Lakes Legal Conference! Mark your calendars for the 2024 Great Lakes Legal Conference scheduled for June 14-15 at the Grand Hotel on Mackinac Island.



Teaching AI to use plain language

BY MARK COONEY

A few years ago, I signed this lease guaranty to secure my daughter's college apartment:

In consideration for, and as an inducement to us in making the Lease to Resident, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, you, as Guarantor, guarantee irrevocably, absolutely and unconditionally, to us and our successors and assigns, the full performance and prompt observance of all the agreements and conditions of the Lease and of any amendments, revisions or renewals of the Lease (and all documents that are a part of the Lease), including, but not limited to, the payment of Rent and other sums due under the Lease. You acknowledge that you have a relationship with the Resident and as a result of that relationship you will derive a substantial benefit from the making of the Lease to Resident. Once you sign this Guaranty it is your legal obligation to pay us sums due under the Lease. You hereby waive any legal defenses to this Guaranty based on notice of acceptance, presentment, demand, notice of protest, notice of dishonor or default, and notice of any changes, renewals or modifications. Unless we are seeking money from you for your payment responsibilities under this Guaranty, we do not have to provide any notices to you. You hereby waive each and every notice to which you or the Resident might be entitled to under the Lease, or otherwise, including, without limitation, notice of any breach of default by you or the Resident. Once any sums are due under the Lease we may collect them from you without making efforts to sue or otherwise try to collect such sums from the Resident. This is a guaranty of payment and performance and not of collection and your liability is primary and not second-

ary. You expressly waive any defenses based upon any applicable statute of limitations, failure of us to enforce the Lease against the Resident, any failure to give notice of default to the Resident or other notices due under the Lease and any duty to give you notice of facts about the Resident. We may, on one or more occasions, in our sole discretion, waive terms of the Lease, grant concessions or other indulgences to the Resident all without any notice to you or effect on your obligations to us. As used in this Guaranty, the term "you" shall also include all other persons claiming by, through or under you, including your heirs or personal representatives. You may not assign your obligations under this Guaranty to anyone else. Your liability under this Guaranty continues in full force and effect even if the Resident becomes incapacitated, disabled or bankrupt. You are not released from your guarantee obligations until we have been fully paid all sums due under the Lease. If we institute any legal proceedings against you to enforce this Guaranty and prevail in such action, you will be liable for the costs and expenses of such action incurred by us, including our reasonable attorneys' fees, in addition to any amounts awarded to us in such action. You consent to the jurisdiction of, and venue in, any local or state court otherwise having subject matter jurisdiction and located within _____ County in the State of _____. Your signature below confirms that you have had the opportunity to read and understand this Guaranty and to consult legal counsel if you so desire.

Had I been acting on a client's behalf, I'd have dissected this snarl of legalese with care. But with only my own financial fate on the line (and already knowing what the document was meant to do), I decided against sacrificing my time — and my sanity — to review

this parody of legal excess. Instead, I just signed on the dotted line, as most college parents do, I suspect.

An attorney acting in bad faith might consider this a win: hardcore legalese intimidating another consumer into signing without careful reflection. But if you were acting in good faith and were saddled with using this form, how might you improve it to clearly communicate your meaning? The task would be cumbersome — and potentially costly for your client.

Enter artificial intelligence.

In a recent State Bar of Michigan podcast, lawyer and tech expert Nicole Black included “updating forms and creating documents” on her list of legal tasks for which generative AI will quickly prove its value.¹ Let’s give it a try.

REVISION NO. 1 (TWO STEPS)

I used the most basic (free) version of ChatGPT to redraft our daunting lease guaranty.² My first instruction was to “redraft this contract clause so that it is better organized and uses plain language” — after which I copied and pasted the entire guaranty provision into the text window, as prompted.

ChatGPT’s initial redraft improved the original, but it was still fairly dense. So I followed up and asked ChatGPT to “add informative headings.” Below is the second version it produced, after my follow-up instruction. I’ve made no edits (other than bolding the title and headings).

GUARANTY OF LEASE AGREEMENT

Consideration and Inducement

In consideration for making the Lease to Resident and for other good and valuable consideration, you, as Guarantor, guarantee the full performance and prompt observance of all the agreements and conditions of the Lease.

Guarantor’s Relationship with Resident

As Guarantor, you acknowledge that you have a relationship with the Resident and will derive a substantial benefit from the making of the Lease to Resident.

Guarantor’s Obligations

Once you sign this Guaranty, you are legally obligated to pay sums due under the Lease. Your liability is primary, and you may not assign your obligations under this Guaranty to anyone else.

Waiver of Legal Defenses

By signing this Guaranty, you waive your right to any legal defenses based on notice of acceptance, presentment, demand, notice of protest, notice of dishonor or default, and notice of any changes, renewals, or modifications.

Waiver of Notices

You waive your right to any notices regarding the Resident’s breach of the Lease or any other notices you or the Resident may be entitled to.

Collection from Guarantor

We can collect sums due under the Lease from you without trying to collect from the Resident first.

Waiver of Defenses

You expressly waive any defenses based upon any applicable statute of limitations, failure of us to enforce the Lease against the Resident, any failure to give notice of default to the Resident or other notices due under the Lease, and any duty to give you notice of facts about the Resident.

Waiver of Concessions to Resident

We may waive terms of the Lease, grant concessions or other indulgences to the Resident, all without any notice to you or effect on your obligations to us.

Continuing Liability

Your liability under this Guaranty continues even if the Resident becomes incapacitated, disabled, or bankrupt.

Legal Proceedings

If we need to take legal action to enforce this Guaranty and we prevail, you will be responsible for the costs and expenses incurred by us, including reasonable attorneys’ fees.

Consent to Jurisdiction and Venue

You consent to the jurisdiction and venue of any local or state court with subject matter jurisdiction and located within _____ County in the State of _____.

Confirmation of Understanding

By signing below, you confirm that you have read and understood this Guaranty and have had the opportunity to consult with legal counsel if you so desire.

This redraft still needs a lot of work. There are vestiges of legalese throughout, despite my request for plain language. For instance,

lay readers would surely question the meaning of “good and valuable consideration” and “subject matter jurisdiction.” They’d wonder about most of the “Waiver of Legal Defenses” clause. The redraft also needs better typography and more sophisticated division and classification of text. For example, some of the waiver clauses should probably be merged.

Still, what you see in the redrafted version is far more approachable than the original version. And it took seconds to do it.

I intentionally did *not* ask ChatGPT to add headings “and subheadings.” I was curious whether AI would figure out subdivision on its own. It didn’t. Another wave of instructions might’ve helped.

At this point, it’s helpful to remember the “chat” part of ChatGPT. Users should think of generative AI as a conversation as much as instruction. Tell ChatGPT what you’re up to. Tell it that you’re “trying to create a clear, reader-friendly legal form that laypeople can easily understand.” Let it know so it can tap into its data store and best serve your needs.

Let’s try again, using a more conversational (and persistent) approach.

REVISION NO. 2 (FIVE STEPS)

For my second attempt to reimagine the dense guaranty form, I began by giving ChatGPT (still the free version) an overview of my project and purpose. Then, with each revision it generated, I followed up to ask for refinements.

This process ended up feeling a bit circular. As the language improved, I asked for better structure. But as I increased my typographical and organizational demands, the text began to revert to legalese. Again, I didn’t upgrade to the more sophisticated GPT-4, which might have produced better results.³

Below are my exact prompts to ChatGPT (in five rounds), along with quick notes about each iteration’s merits or shortcomings:

First Prompt:

I am trying to create a legal form that is clear and easy for laypeople to read and understand. I’d like it to be organized with informative, helpful headings and subheadings. I do not want any legalese, only plain language that is easy to understand. This should be a helpful consumer document. Here is the original form that I want you to redraft. It is too confusing and repetitive. [Original provision inserted.]

Second Prompt (reacting to the initial revision, which had omitted headings):

This is much better, but can we add some helpful headings and subheadings so that a reader can easily navigate the document?

Third Prompt (reacting to the second revision, which looked quite good; perhaps I was getting a bit greedy here):

Can you indent new paragraphs and subheadings so that it doesn’t feel so boxy?

Fourth Prompt (reacting to the third revision, which had slipped back into heavy legalese):

This language is too complicated for a lay reader. Can you remove all legalese?

Fifth Prompt (reacting to the fourth revision, which was vastly improved but had omitted headings; my final prompt reflects my fear that a renewed request for headings might again cause the software to revert to legalese):

I like this plain language. Can you leave the text exactly like this but add some informative headings and, if helpful, subheadings?

The version you see below is what ChatGPT generated after my fifth and final prompt. I’ve bolded the headings and centered the title, and I’ve removed the word “heading” that appeared next to each heading. But I’ve changed nothing else. I still see possible edits, but again, compare this to the original version that started this article:

GUARANTY AGREEMENT

Purpose of Agreement

This agreement guarantees that you will be responsible for making sure that the resident pays rent and fulfills all other obligations under the lease agreement.

Your Responsibilities

By signing this agreement, you agree to be responsible for any unpaid rent or other payments due under the lease agreement. You are also responsible for any other obligations or responsibilities of the resident under the lease agreement. This includes obligations such as maintaining the property, paying utilities, and any other obligations set forth in the lease agreement.

Relationship with Resident

You are agreeing to these responsibilities because you have a relationship with the resident and will benefit from the lease agreement.

Payment Obligations

If any payments become due under the lease agreement, we can collect them from you without first trying to collect them from the resident. Your liability is primary, not secondary.

Release from Obligations

You are not released from your guarantee obligations until all payments due under the lease agreement have been paid in full.

Review the Agreement

Please read this agreement carefully and make sure you understand it before you sign.

THE END IS THE BEGINNING

The two redrafts you see here reflect what many lawyers and law professors have noted in recent months: AI-generated documents mark the beginning of the lawyering process, not the end. Whether creating a draft with ChatGPT or using a document from a form bank, lawyers must work carefully to make that draft their own — substantively, linguistically, and typographically. They must update, modify, rearrange, and check for substantive inaccuracies or omissions. Depending on document type, they must strive to create cohesion, enhance points of emphasis, and more.

For all the hoopla over AI technology, using it to reimagine existing legal forms will have a familiar feel to any practicing lawyer. Lawyers have always relied on preexisting drafts to get the ball rolling, whether created by predecessors, underlings, or the authors of trusted formbooks. Using AI is different but the same.

You've sensed by now that although I urge caution, my overriding message isn't cautionary. Just a few tries at drafting contracts or contract provisions with generative AI reveal its tremendous capac-

ity to help lawyers work more efficiently and, with careful use, produce first drafts that are more accessible than typical forms.

If our profession had a history of drafting and designing legal documents with readers in mind, AI's rapid rise might irk me. But alas, that isn't our profession's history.⁴ And the human element will remain. Careful lawyers will apply their editorial skills, research, and substantive expertise while using their chosen AI platform to create drafts. And they'll continue to apply those skills when revising and refining AI drafts. In fact, in our new AI world, a lawyer's editorial care, skills, and savvy could even take on a heightened role.



Mark Cooney is a professor at Western Michigan University Cooley Law School, where he chairs the Research & Writing Department. He is a senior editor of *The Scribes Journal of Legal Writing* and author of the book "Sketches on Legal Style." He was co-recipient (with Joseph Kimble) of the 2018 ClearMark Award for legal documents and is a past chair of the SBM Appellate Practice Section.

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Miscellany on the UCC and its primary drafters

BY VIRGINIA C. THOMAS

The history of the Uniform Commercial Code (UCC) is well-documented. Compilations of drafts, confidential drafts, proceedings, and commentary have been published.¹ Individual treatises track specific UCC articles.² A compiled legislative history records the enactment of the UCC in the District of Columbia.³ While the enactment of the UCC in Michigan⁴ may not be detailed in a legislative history, other sources offer practical guidance and research support.⁵

As essential as these resources are to the evolution of the UCC, they do not interpret the dynamics of the process or characterize the contributions of the individuals whose leadership resulted in this monumental uniform law. Nor should they. That is the stuff scholarship is made of.

According to one author, “[t]he history of the UCC’s drafting can be seen as a conflict pitting the standardizing forces of statutory dictates, administrative regulation, and trade norms against the individualization of private contract ... therefore, [it] is the story of how the drafters attempted to make room for each vision, to choose between the visions, and to come up with devices that would mediate between them.”⁶ Two principal drafters of the UCC who shepherded the process were Karl N. Llewellyn and Soia Mentschikoff. In 1942, the American Law Institute designated Llewellyn, then a professor at Columbia University Law School, as the chief reporter for the UCC drafting project.⁷ In this role, Llewellyn had general supervision over all other reporters and instructed them with respect to theory, style, and comments.⁸ Mentschikoff, then general counsel for a New York-based corporation, was named assistant reporter.⁹

While Mentschikoff’s and Llewellyn’s roles in drafting the UCC have been extensively discussed by scholars and biographers, it

is exciting to note that their respective papers are now housed at the University of Chicago Library. It’s likely that these collections contain materials that have not been accessible before.

THE LLEWELLYN PAPERS AND MENTSCHIKOFF PAPERS

Llewellyn and Mentschikoff were married in 1946. They left New York to join the law faculty at the University of Chicago in 1951. Llewellyn remained on the faculty until his death in 1962; Mentschikoff left in 1974 to assume the law school deanship at the University of Miami.

Detailed aids for searching the papers of both Llewellyn and Mentschikoff are available on the University of Chicago website.¹⁰ Both collections are extensive and include series related to their work with the UCC.¹¹ For example, series VI of the Llewellyn collection (uniform state laws) includes minutes of National Conference of Commissioners on Uniform State Laws meetings, drafts of uniform laws other than the UCC, and correspondence, notes, and memoranda. Series X (Uniform Commercial Code) includes Llewellyn’s comments on Uniform Sales Act sections, his memoranda to the Committee on Uniform Commercial Acts, annotated UCC drafts, and a substantial amount of pertinent correspondence.

Similarly, series II (correspondence) of the Mentschikoff papers includes exchanges during the formative years of the UCC as well as correspondence with Llewellyn and his biographer. Series VI (revised Uniform Sales Act) contains drafts and comments. It is no surprise that the substantial series VII (Uniform Commercial Code) contains an expansive amount of documentation on Articles 1-9 of the UCC and correspondence, reports, and testimony from the states. No information regarding Michigan is included in this subseries.

Both collections have promise for researchers whose interests extend beyond the documentary history of the UCC.

“BUT THE LEARNING IS BY THE DOING.”¹²

Llewellyn was a legal realist who advocated a practice-oriented focus on legal education. Simply reviewing court decisions amounted to a poor learning habit — certainly not the optimal way to study every legal subject. He appreciated the importance of doctrinal legal principles, but suggested that doctrine, unexamined, was “vacuous, an illusion.”¹³ Doctrine should be examined and taught in the context of how it is exercised in practice.

Llewellyn’s “theory of crafts” outlined his view that law students should be taught certain selected skills directly and systematically. Among these are advocacy, counseling, judging, lawmaking, and administration; mediation, organization, policing, teaching, and scholarship could be added in as well.

The case method is not the most effective way to teach these skills. Llewellyn provided the following example when he addressed the 1947 Association of American Law Schools conference.

“[I]f you are going to teach statutory construction, I have become convinced that you do not want cases to teach it with. You want problems that are not cases — a problem and a statutory text.”¹⁴

Llewellyn went on to explain that he and his wife were both teaching statutory construction courses, but she had managed to advance her students almost a month ahead of his. Mentschikoff’s teaching tools were problems and statutory texts. Llewellyn, however, used a casebook to teach the subject. “The ... effect was they tried to read them like cases and kept away from the text of the statute, like the resistant puppy that you drag along by the leash. ... She, on the other hand, operating by pure problems, nothing but the problem and the text, which forced them into the statute because they had nothing else to work with. It is a simple psychological thing that anybody ought to have known. Why it should take me twenty years to find it out, I am sure I don’t know, but I can learn when I see.”¹⁵

While dean at Miami, Mentschikoff collaborated with Miami professor Irwin P. Stotzky to incorporate Llewellyn’s theory of crafts and practical pedagogy in an introductory textbook “designed to explore the theoretical bases of the law and the technical craftsmanship of the lawyer.”¹⁶ This text has been used to help generations of first-year students understand the relationship between legal theory and craft.

Although legal research was not on Llewellyn’s list of law crafts, he underscored the importance of pleadings as a primary element in educating the court and in understanding the court’s decision

once rendered.¹⁷ He also has commented on the utility of empirical research as applied to the discipline of law — a tool to be used for studying the legal profession itself. The growing popularity of empirical legal research courses today seems consistent with Llewellyn’s perspective.

CONCLUSION

Mentschikoff and Llewellyn were major influencers in their time. Their contributions to the UCC project, legal education, law school curricula, and the legal profession in general continue to enrich the study and practice of law.

I have the sense that they would be pleased to know that their papers are available to scholars and researchers who seek to learn more about the law.

Virginia C. Thomas is a librarian IV at Wayne State University.

ENDNOTES

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10. *Guide to the Karl N. Llewellyn Papers 1890-1983*, University of Chicago Library <<https://www.lib.uchicago.edu/e/src/findingaids/view.php?eadid=ICU.SPCL.LLEWELLYNK>> [<https://perma.cc/M988-XAAZ>] and *Guide to the Soia Mentschikoff Papers 1913-1987*, University of Chicago Library <<https://www.lib.uchicago.edu/e/src/findingaids/view.php?eadid=ICU.SPCL.MENTSCHIKOFF>> [<https://perma.cc/W9ZS-APZ8>]. All websites cited in this article were accessed June 20, 2023.
11. *Id.* The Llewellyn collection extends 89.25 linear feet and the Mentschikoff collection extends 64 linear feet.
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14. *Association of American Law Schools Handbook* (1947), p 72.
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16. Mentschikoff & Stotzky, *The Theory and Craft of American Law* (Durham: Carolina Academic Press, 1981). The source of the language quoted here is taken from Carolina Academic Press web page for this book <<https://cap-press.com/books/isbn/9780820562803/The-Theory-and-Craft-of-American-Law>> [<https://perma.cc/KG23-FJLA>].
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LAW PRACTICE SOLUTIONS

How law practice management software is different from Outlook

BY DAN BERLIN

The best way to think about the difference between Microsoft Outlook and law practice management software is the old expression, “Jack of all trades and master of none.”

Microsoft created Outlook to be general enough that anyone can use it. It’s likely that your doctor, your accountant, and the owner of your favorite restaurant all use Outlook. It is the jack of all trades.

Conversely, law practice management software focuses on one type of user: attorneys. Every feature is designed with law firms in mind. That difference can save you time, make organizing your practice easier, and help you capture more of your billable time. Here are some key differences:

BUSINESS CARD VS. CLIENT FILE

Contacts in Outlook are designed to keep track of basic personal information like the information on a business card. In contrast, law practice management software is designed to track entire client files, not just contact information.

What does that mean? Out of the box, Outlook is ready to track information like nicknames, birthdays, and spouses. Law practice management software, on the other hand, has matter and client files that are ready to organize information like jurisdiction, area of practice, documents related to a matter, meeting notes, research, and email.

CONFLICT OF INTEREST SEARCH

Outlook can search your computer for emails, appointments, and contact information for signs of a conflict. Law practice management software can search the records of everyone in your firm for emails, appointments, contacts, meeting notes, details in fee and cost en-

tries, research, and other client file information. Your conflict search can include the entire office — no matter who is out of the office that day — and it only takes a few seconds.

TRACKING TIME

Besides being designed specifically for law firms, law practice management software is also designed to typically work seamlessly with time and billing software applications. That means you can easily turn your appointments, emails, research, and time spent writing documents into billing entries. Tracking your time is much more efficient when you can convert any appointment on your calendar into billable time.

DOCUMENT ASSEMBLY

Outlook and Microsoft Word integrate through mail merge functionality which lets you insert fields from a contact into a standard letter, but your options are limited to the standard fields tracked in Outlook (e.g., name, address, etc.). With law practice management software, you can do the same thing and much more with document assembly functionality.

Law practice management software allows you to insert any information into a document from a matter file (e.g., insurance carrier, opposing counsel, etc.). The document assembly process can also automatically create a billing entry for the time you spend working on a document. It can automatically schedule a follow-up task for a specified number of days after you create the document; for example, it can alert you to follow up with opposing counsel regarding a letter you are sending them. You can even have the document assembly process prompt you to fill in a few blanks for information that you may not have in the law practice

management software matter file, such as the date a document was signed.

SHARING INFORMATION

Law practice management software makes it easier to work with a team of people within your law firm. You can view appointments for members of your team to check when someone is free for a meeting. When you pull up a client file, you can see all the matter information including every email anyone has sent or received regarding the case along with all the associated documents, research, and notes. This helps save time you would otherwise spend keeping track of the work other people in the office have (or have not) done.

Unlike Microsoft Outlook, which is designed for any business to use, all features in law practice management software are specialized for law firms.

CHAIN OF EVENTS AND COURT RULES

Outlook lets you create recurring events. For example, you can schedule a regular staff meeting for 9 a.m. every Tuesday. Law

practice management software can do that as well, but it can also automatically create a series of appointments and tasks that you can reuse. This feature can be helpful if there are a series of things you need to do every time you open a new case file. It can also help with tracking court rules or tasks you need to complete prior to a trial. Items in a calendar plan can be created and scheduled automatically based on a reference date like the date of a trial. Once created, each item appears on your calendar or task list based on the timeline calculated from the trial date. If the reference date changes, law practice management software can automatically recalculate and adjust the related dates accordingly.

COST TO CUSTOMIZE

You can get around some of Microsoft Outlook's limitations through customization which can be expensive. But for law firms, Outlook cannot approach the level of usefulness that law practice management software can offer. Do not try to stuff your client file into a Rolodex. If you want software that helps you manage your practice, you should use practice management software designed specifically for attorneys.

Dan Berlin is president and CEO of Software Technology, the maker of Tabs3 software. Tabs3 has been at the forefront of developing software for law firms for nearly 45 years. For more information, call 402.419.2200 or visit www.Tabs3.com.

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BEST PRACTICES

Empathy in practice

BY KELLY ROBERTS AND ROBERT CARBECK

The successful practice of law not only requires all the substantive knowledge and technical skills that we acquire in law school, but also demands effective communication and professionalism. Perhaps nowhere are these “soft skills” more important than when working with court staff, including judicial staff. Like most employers these days, trial courts are struggling to locate, hire, train, and retain staff at all levels. Would it surprise you to know that during exit interviews, it is not uncommon for staff to cite rude, abusive, and difficult attorneys as one of the reasons they are leaving?

The authors have both witnessed numerous examples of this behavior and have addressed it as it came up, which it often has, disappointingly. We are both attorneys, have many years of experience both in practice and working in the courthouse, and have positions that convey a certain level of authority. Contrast that with a young clerk, perhaps working at their first job, recently trained in court procedure and practice, dealing with the public and attorneys at the front counter. Difficult attorneys are remembered, and unpleasant experiences are shared. Think of the courthouse as a small town in terms of information movement and one can readily appreciate the potential for the unanticipated consequences of rude and unpleasant behavior.

For new attorneys, the transition from the classroom to the clerk’s counter can be difficult. In law school, one is rewarded for identifying arcane bits of procedure and precedent. In practice, impatiently presenting an obscure pleading or action without explanation or context that most court staff will never see again in their careers will not be well received. A bit of patience, respect, and empathy will go a long way toward establishing a professional reputation that will serve any attorney in very good stead. We think

the elements of professional interaction can be broken down into five general categories:

1. Empathy
2. Precision/concision
3. Preparation and reputation
4. Candor and accountability
5. Resourcefulness

EMPATHY

This is perhaps the easiest factor to define and perhaps the hardest to practice. It also has the potential to make the biggest impact. It can be difficult for us as attorneys, especially newly minted counsel, to be able to bridge the gap from a highly trained expert focused on advocacy and substance to a clerk bound to follow strict rules regarding the form of processing pleadings, scheduling hearings, or processing a jury. Be mindful of the fact that while your single motion is very important to you and your client, it is one of several dozen — or more — that the clerk will process that day or that week.

You are at a courthouse, which is an intense work environment where court staff sees the worst in humanity. Litigants are often at their worst when they are at court. They are there because of a catastrophic car accident, a divorce, or a felony charge. Needless to say, this creates a ripe environment for rudeness and confrontation. Keep this in mind if you or staff regularly interact with court staff. Invest the time to learn court staff and their functions. Judicial staff, except in very small courts, is not the same as the court clerk or court recorder/reporter.

PRECISION/CONCISION

Details are very important to court staff, who may literally have a checklist they are following to process your case. Many clerks have no leeway at all regarding what they can accept, and leeway is not created by arguing with or belittling them. Attorneys should assume that clerks are well-trained in their jobs; if they cannot perform an action requested by counsel, they have a court rule, statute, or court policy to point to.

**A bit of patience, respect,
and empathy will go a long
way toward establishing a
professional reputation that
will serve any attorney in
very good stead.**

As the attorney, you are expected to know which type of hearing or action you are working with. Prayers for relief need to be specific and allowable under the law, and formatting needs to be correct, as do case type codes and other pleading requirements. Know which types of hearings may be set for a particular case. It is important to know the requirements for each type of hearing. For example, a settlement conference is very different than a pretrial scheduling conference; a show cause hearing is very different than a motion for an order to show cause; criminal contempt is different than civil contempt.

Due to high volumes, courts have short attention spans. Learn the art of crafting a concise email or leaving a concise voice message. If you do reach out to the court, have your case number and case name ready. Knowing exactly what to say in as few words as possible is appreciated!

PREPARATION AND REPUTATION

Good preparation makes for a great reputation. As an attorney, your reputation is everything, not just to opposing counsel and potential clients, but also to court staff. It is a good idea to introduce yourself to court staff in a courteous, professional manner. Review the court's pretrial orders and details. Advise your staff to review the court's pretrial orders and calendar all dates including filed-by and heard-by dates. It is the responsibility of counsel, not court staff, to compute time under the court rules.

Expect a certain turnaround time for entry of orders. Aim to submit motions for second summons and those for alternate service with adequate lead time; in our court, the former should be submitted about a week before the summons expires and the latter about a month before. Be punctual and if you are delayed, reach out to the court as soon as possible.

CANDOR AND ACCOUNTABILITY

Never underestimate the power of simply admitting you made a mistake or misunderstood something. The role of the attorney is to advise the court. You need to be seen as a reliable, trustworthy advocate to the bench and judicial staff and an organized, competent practitioner to court staff. Everyone has forgotten to calendar a date or deadline. It happens. When that occurs, admit the error. Court staff will be more inclined to help when someone honestly and openly admits an error. As the old saw goes, "You catch more flies with honey than vinegar."

RESOURCEFULNESS

While we all operate under the same statutes, rules, and administrative orders, the specifics of how we operate can vary widely from court to court. It is essential to learn the technology the court utilizes even if you are not preparing for trial. Make sure you and your staff are familiar with the court's case management and e-filing systems. Review the court's website. Often, you can access information about ordering transcripts, approved mediator lists, judges' profiles, scheduling information, and telephone numbers and email addresses for different departments. This familiarity will save you and your staff the trouble of calling the court. It is also advisable to join your local bar association as they are usually up to date on all court changes and developments.

CONCLUSION

Our hope is that by following these elements of professional interaction, both counsel and staff will have a more satisfactory and less stressful experience in court. These tips may seem obvious, but that does not mean they are consistently followed. Whether you have been practicing for many years or just recently passed the bar exam, simple kindness and empathy goes a long way and is much appreciated.

Kelly Roberts is judicial attorney to Hon. Patrick J. Conlin of Washtenaw County Trial Court.

Robert Carbeck is the Washtenaw County Trial Court chief deputy administrator.

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Supporting access to justice is a well-established tradition among many members of the legal community. Many Michigan lawyers regard pro bono legal service and financial support for access to justice as a personal endeavor and an aspirational obligation. The generous donations of both time and financial contributions support the ongoing effort to provide free civil legal aid to low-income individuals.

A photograph of the Michigan Hall of Justice building, a large, modern structure with a light-colored facade. The words "MICHIGAN HALL OF JUSTICE" are prominently displayed in large, raised letters on the front of the building. Below the text, a circular seal is visible, featuring the text "SEAL OF THE STATE OF MICHIGAN". The building is set against a clear blue sky with a few wispy clouds.

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 Vincent C. Kuebler
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 Jarred R. Pickering
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 Lane C. Powell
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 Lowell D. Salesin

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 Phillip Shane
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 Brook M. Smith
 Jarrod T. Smith
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Raymond W. Henney	Peter J. Johnson	Amy M. Kwiatkowski	James F. Mauro
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Matthew W. Heron	Richard A. Jones	James S. Laing	Scott A. McBain
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William J. Hurles	Margery S. Klausner	Emily E. Long	Timothy I. Miner
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Courtney K. Roberts
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Jean-Paul H. Rudell
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Franklin M. Smith
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Jeffrey C. Stearns
Bruce Stein
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Lee Stevens and Barbara Roulo
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Niki M. Sturm
Angela M. Sujek
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Thomas J. Tallerico
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Traci B. Ward	Sarah J. Williams	Lucy X. Yang	Michael F. Zipser
Jennifer S. Warren	Mark E. Wilson	Anne M. Yantus	John D. Zoller
		Janet K. Yarling	Sara Z. Zwickl

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PUBLIC POLICY REPORT

AT THE CAPITOL

HB 4384 (Meerman) **Criminal procedure: sentencing; Corrections: jails; State agencies (existing): corrections;** Criminal procedure: sentencing; duties of the Michigan sentencing commission; provide for. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 34b to ch. IX.

POSITION: Support with the following amendments:

- The membership of the commission should be altered to ensure that it is balanced, and representative of the interests and stakeholders involved in, and impacted by, sentencing policy. Similar to the Joint Task Force on Jail and Pretrial Incarceration. The membership is too heavily weighted toward law enforcement and prosecutors, while leaving out or underrepresenting other valuable perspectives.
- The chair of the commission should not be the commission's "chief of staff," nor should the chair be a paid position.
- The Legislature should also consider language charging the commission with making recommendations as to the extent to which sentencing guidelines should or should not apply to habitual offenders and the extent to which sentencing guidelines should apply to probation violations or be modified if applied to probation violations.

(Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, Bennett, Bryant, Christenson, Clement, Detzler, Easterly, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Murray, McGill, Newman, Nyamfukudza, Perkins, Potts, Quick, Reiser, Simmons, Van Dyk, Washington. Commissioner abstaining: Walton.)

HB 4421 (Young) **Civil procedure: other; Communications: video services; Consumer protection: privacy;** Civil procedure: other; certain public video recordings of court proceedings; allow the victims' faces to be blurred. Amends secs. 8, 38 & 68 of 1985 PA 87 (MCL 780.758 et seq.).

POSITION: Support HB 4421 with amendments to provide that a victim's image must be blurred, and that blurring does not apply to contemporaneous streaming.

HB 4624 (Morse) **Human services: children's services; Human services: county services; Children: child care;** Human services: children's services; county child care fund reimbursement rate; increase. Amends sec. 117a of 1939 PA 280 (MCL 400.117a).

POSITION: Support.

HB 4625 (Carter) **Juveniles: criminal procedure; Juveniles: juvenile justice services;** Juveniles: criminal procedure; use of screening tool for minors eligible for a certain diversion option; require. Amends secs. 2, 3, 6 & 9 of 1988 PA 13 (MCL 722.822 et seq.).

POSITION: Support.

(Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, Bennett, Bryant, Christenson, Clement, Detzler, Easterly, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Murray, McGill, Newman, Nyamfukudza, Perkins, Potts, Quick, Reiser, Simmons, Van Dyk, Washington. Commissioner voting in opposition of the position: Walton.)

HB 4626 (Hope) **Juveniles: other; Juveniles: juvenile justice services;** Juveniles: other; length of time youth can be placed on precourt diversion program; limit. Amends secs. 5 & 6 of 1988 PA 24 (MCL 722.825 & 722.826).

POSITION: Support with amendment to eliminate the possibility of restitution being used to exclude eligibility for pre-court diversion and the consent calendar, and to provide adequate criteria for determining when diversion should be extended beyond three months.

(Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, Bennett, Bryant, Christenson, Clement, Detzler, Easterly, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Murray, McGill, Newman, Nyamfukudza, Perkins, Potts, Quick, Reiser, Simmons, Van Dyk, Walton. Commissioner voting against the position: Washington.)

HB 4627 (Tsernoglou) **Courts: family division; Juveniles: criminal procedure; Juveniles: juvenile justice services;** Courts: family division; use of risk and needs assessment for juveniles in the juvenile justice system before disposition; require. Amends sec. 18, ch. XIA of 1939 PA 288 (MCL 712A.18).

POSITION: Support.

HB 4628 (Brabec) **Courts: family division; Juveniles: criminal procedure; Juveniles: juvenile justice services;** Courts: family division; use of screening tool for minors sought to be placed on the consent calendar; require. Amends sec. 2f, ch. XIA of 1939 PA 288 (MCL 712A.2f).

POSITION: Support.

(Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, Bennett, Bryant, Christenson, Clement, Detzler, Easterly, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Murray, McGill, Newman, Nyamfukudza, Per-

kins, Potts, Quick, Reiser, Simmons, Van Dyk, Washington. Commissioner voting in opposition of the position: Walton.)

HB 4629 (O’Neal) **Juveniles: other; Juveniles: juvenile justice services; Criminal procedure: other;** Juveniles: other; detention of juveniles in certain circumstances; modify. Amends sec. 15 & 16, ch. XIA of 1939 PA 288 (MCL 712A.15 & 712A.16).

POSITION: Support with an amendment, consistent with the Board’s position on the underlying Task Force recommendation, that: “Any statements, admissions, confessions, or incriminating evidence obtained from a minor in the course of a screening under this section are not admissible into evidence in any adjudicatory hearing in which the minor is accused and are not subject to subpoena or any other court purpose for use in any other proceeding or for any other purpose.”

HB 4630 (Lightner) **Courts: other; Juveniles: juvenile justice services;** Courts: other; Michigan indigent defense commission act; expand duties to include indigent defense of youth. Amends title & secs. 3, 5, 7, 9, 11, 13, 15, 17, 21 & 23 of 2013 PA 93 (MCL 780.983 et seq.).

POSITION: Support.

HB 4631 (Lightner) **Courts: other; Juveniles: juvenile justice services;** Courts: other; duties of the appellate defender; include requirement to defend youth. Amends title & secs. 2, 4, 6 & 7 of 1978 PA 620 (MCL 780.712 et seq.) & adds secs. 1a & 8a.

POSITION: Support with following amendments:

- Add a new subsection (d) to Section 1a, defining “local contribution” in a manner that incorporates proposed new language in the MIDC Act addressing annually compounding inflationary increases to local costs:
- (d) “Local contribution” means an indigent defense system’s average annual expenditure for attorney fees and expenses during the first 3 full fiscal years in which the system has complied with the standard procedure established under subsection 8a(2), excluding expenditures reimbursed under subsection 8a(4). If the Consumer Price Index has increased since November 1 of the prior state fiscal year, the local contribution must be adjusted and compounded annually by that number or 3%, whichever is less.
- Revise Section 8a with reference to the newly defined “local contribution” as follows:
- (4) Subject to appropriation, if an indigent defense system provides payment to locally appointed private counsel under subsection (2) pursuant to the rates and policies established under subsection (3), the state shall reimburse the system for 1/2 of the cost expenditures to the system. After a system has complied with subsection (2) for 3 full

fiscal years, the state shall reimburse the system for all costs expenditures exceeding 1/2 of the system’s average annual pre-reimbursement cost during its first 3 years of compliance the system’s local contribution. It is the intent of the legislature to fully fund this reimbursement.

HB 4633 (Breen) **Juveniles: other; Juveniles: juvenile justice services; Courts: family division;** Juveniles: other; factors in designating or waiving certain juvenile cases; require the court to consider, and place certain limits on consent calendar plans. Amends secs. 2d, 2f & 4, ch. XIA of 1939 PA 288 (MCL 712A.2d et seq.).

POSITION: Oppose.

(Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, Bennett, Bryant, Christenson, Clement, Detzler, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Murray, McGill, Newman, Nyamfukudza, Perkins, Quick, Reiser, Simmons, Van Dyk, Walton, Washington. Commissioner voting in opposition of the position: Potts. Commissioner abstaining: Easterly.)

HB 4634 (Hope) **Juveniles: other; Juveniles: criminal procedure;** Juveniles: other; juvenile fines, fees, and costs; eliminate. Amends secs. 2f, 18, 28 & 29 of 1939 PA 288 (MCL 712A.2f et seq.); adds sec. 29a to ch. XIA & repeals sec. 18m, ch. XIA of 1939 PA 288 (MCL 712A.18m).

POSITION: Support.

HB 4635 (Andrews) **Juveniles: other; Juveniles: criminal procedure; Criminal procedure: DNA;** Juveniles: other; DNA fine for juveniles; eliminate. Amends sec. 6 of 1990 PA 250 (MCL 28.176).

POSITION: Support.

HB 4636 (Dievendorf) **Juveniles: other; Juveniles: criminal procedure;** Juveniles: other; late fee for juveniles; eliminate. Amends sec. 4803 of 1961 PA 236 (MCL 600.4803).

POSITION: Support.

HB 4637 (Glanville) **Juveniles: other; Juveniles: criminal procedure;** Juveniles: other; juvenile sentenced as adult fee; eliminate. Amends sec. 1, ch. IX of 1927 PA 175 (MCL 769.1).

POSITION: Support.

HB 4655 (Young) **Criminal procedure: bail;** Criminal procedure: bail; procedure for pretrial release determinations, criteria a court must consider for pretrial release determination, and reporting of data on pretrial release decisions; provide for. Amends secs. 6 & 6a, ch. V of 1927 PA 175 (MCL 765.6 & 765.6a) & adds sec. 6g to ch. V.

POSITION: Support.

(Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, Bennett, Bryant, Christenson, Clement, Detzler, Easterly, Gant, Hamameh, Heath, Howlett, Lars-

en, Low, Mantese, Murray, McGill, Newman, Nyamfukudza, Perkins, Potts, Quick, Reiser, Simmons, Van Dyk, Washington. Commissioner voting in opposition of the position: Walton.)

HB 4656 (Hope) **Criminal procedure: bail**; Criminal procedure: bail; criteria a court must consider before imposing certain conditions of release and due process hearing related to pretrial detention; provide for. Amends sec. 6b, ch. V of 1927 PA 175 (MCL 765.6b) & adds sec. 6f to ch. V.

POSITION: Support.

(Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, Bennett, Bryant, Christenson, Clement, Detzler, Easterly, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Murray, McGill, Newman, Nyamfukudza, Perkins, Potts, Quick, Reiser, Simmons, Van Dyk, Washington. Commissioner voting in opposition of the position: Walton.)

HB 4662 (VanWoerkom) **Criminal procedure: other**; Criminal procedure: other; certain definitions in the code of criminal procedure and time period required for disposition of criminal charges; provide for. Amends sec. 1, ch. I & sec. 1, ch. VIII of 1927 PA 175 (MCL 761.1 & 768.1).

POSITION: Support.

(Position adopted by non-unanimous vote. Commissioners voting in support of the position: Anderson, Bennett, Bryant, Christenson, Clement, Detzler, Easterly, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Murray, McGill, Newman, Nyamfukudza, Perkins, Potts, Quick, Reiser, Simmons, Van Dyk, Washington. Commissioner voting in opposition of the position: Walton.)

SB 0248 (Lauwers) **Courts: other; Animals: service animals**; Courts: other; age requirement for the use of a courtroom support dog; modify. Amends sec. 2163a of 1961 PA 236 (MCL 600.2163a).

POSITION: Support.

(Position adopted after non-unanimous vote. Commissioners voting in support of the position: Anderson, Bennett, Bryant, Burrell, Christenson, Clement, Cripps, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Mason, Murray, Newman, Quick, Reiser, Simmons, Simpson, Walton, Washington. Commissioner voting in opposition of the position: Bilowus, Easterly, McGill, Ohanesian, Potts.)

SB 0257 (Runestad) **Civil procedure: other; Courts: other**; Civil procedure: other; video recordings of court proceedings; provide for availability and review. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1429.

POSITION: Oppose. The Board strongly supports courtroom transparency but believes that this issue is properly addressed by the court, not the Legislature. SBM stands ready to partner with the court to develop an appropriate, uniform rule governing access to court recordings.

IN THE HALL OF JUSTICE

Proposed Amendment of Rule 1.8 of the Michigan Rules of Professional Conduct (ADM File No. 2020-31) – Conflict of Interest; Prohibited Transactions (See *Michigan Bar Journal* May 2023, p 55).

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

POSITION: Support the proposed amendment to MPRC 1.8 in concept, but not as currently drafted. SBM supports its humanitarian exception proposal as submitted to the Court previously.

Proposed Amendment of the Michigan Rules of Evidence (ADM File No. 2021-10) – Scope; Definitions; Purpose; Rules on Evidence; Preliminary Questions; Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes; Remainder of or Related Writings or Recorded Statements; Judicial Notice of Adjudicative Facts; Judicial Notice of Law; Presumptions in Civil Cases; Presumptions in Criminal Cases; Test for “Relevant Evidence”; General Admissibility of Relevant Evidence; Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons; Character Evidence; Other Crimes, Wrongs, or Acts; Methods of Proving Character; Habit; Routine Practice; Subsequent Remedial Measures; Compromise Offers & Negotiations; Offers to Pay Medical and Similar Expenses; Pleas, Plea Discussions, and Related Statements; Liability Insurance; Privilege in General; Competency to Testify in General; Need for Personal Knowledge; Oath or Affirmation to Testify Truthfully; Interpreters; Judge’s Competency as a Witness; Juror’s Competency as a Witness; Who May Impeach a Witness; A Witness’s Character for Truthfulness or Untruthfulness; Impeachment by Evidence of a Criminal Conviction; Religious Beliefs or Opinions; Mode and Order of Examining Witnesses and Presenting Evidence; Writing or Object Used to Refresh a Witness; Witness’s Prior Statements; Court’s Calling or Examining Witness; Excluding Witnesses; Opinion Testimony by Lay Witnesses; Testimony by Expert Witnesses; Bases of an Expert; Opinion on an Ultimate Issue; Disclosing the Facts or Data Underlying an Expert’s Opinion; Court-Appointed Expert Witnesses; Use of Learned Treatises for Impeachment; Definitions That Apply to Rules 801-807; Exclusion from Hearsay; The Rule Against Hearsay; Exceptions to the Rule Against Hearsay; Hearsay Exception; Child’s Statement About a Sexual Act; Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a Witness; Hearsay within Hearsay; Attaching and Supporting the Declarant; Residual Exception; Authenticating or Identifying Evidence; Evidence That Is Self-Authenticating; Subscribing Witness; Definitions That Apply to Rules 1001-1008; Requirement of the Original; Admissibility of Duplicates; Admissibility of Other Evidence of Content; Copies of Public Records to Prove Content; Summaries to Prove Content; Testimony or State of a Party to Prove Content; Functions of the Court and Jury; Applicability of the Rules; Title (See *Michigan Bar Journal* May 2023, p 52).

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

POSITION: Support the amendments of the Michigan Rules of Evidence with a recommendation that the Court add language stating explicitly that the amendments are stylistic, not substantive, changes; and further recommend that the Court reestablish a Standing Committee on Rules of Evidence.

Amendments of Rules 6.001 and 8.119 and Addition of Rule 6.451 of the Michigan Court Rules (ADM File No. 2023-06) – Scope; Applicability of Civil Rules; Superseded Rules and Statutes; Court Records and Reports; Duties of Clerks; Reinstatement of Convictions Set Aside Without Application (See *Michigan Bar Journal* May 2023, p 56).

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

POSITION: Support.

Proposed Amendments of Rules 6.110 and 8.119 (ADM File No. 2023-06) – The Preliminary Examination; Court Records and Reports; Duties of Clerks (See *Michigan Bar Journal* May 2023, p 58).

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

POSITION: Support the proposed amendments to Rule 6.110 and oppose the proposed amendments to Rule 8.119; recommends that the amendment to Rule 8.119 should be rewritten more narrowly for the purpose of ensuring that the public cannot access case records held by district courts related to convictions that have been subsequently set aside, and not in a manner that encompasses all district court case records.

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ORDERS OF DISCIPLINE & DISABILITY

SUSPENSION WITH CONDITIONS

David Charron, P39455, Grand Rapids, by the Attorney Discipline Board, affirming the Kent County Hearing Panel #4 order of suspension with conditions. Suspension, 60 days, effective June 10, 2023.

Based on the evidence presented to the hearing panel at hearings held in this matter in accordance with MCR 9.115, the hearing panel found that the respondent committed professional misconduct during his representation of the defendant in an insurance business dissolution dispute that involved lengthy and contentious litigation in both the Michigan and federal courts beginning in 2007 and concluding in 2019.

The panel found that the respondent engaged in undignified or discourteous conduct

toward the tribunal in violation of MRPC 3.5(d); failed to treat others in the legal process with courtesy and respect in violation of MRPC 6.5(a); in the course of representing a client, made a knowingly false statement to a third person in violation of MRPC 4.1; engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b); engaged in conduct prejudicial to the proper administration of justice in violation of MCR 9.104(1) and MRPC 8.4(c); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); and engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3).

The panel ordered that the respondent's license to practice law be suspended for a period of 60 days and that he be subject to conditions relevant to the established misconduct. The grievance administrator filed a timely petition for review and the respondent filed a cross-petition for review and a petition for stay of discipline which resulted in an automatic stay of the hearing panel's order of suspension with conditions.

After conducting review proceedings in accordance with MCR 9.118, the board affirmed the hearing panel's order of suspension with conditions on June 15, 2022. On Oct. 20, 2022, the respondent filed a timely application for leave to appeal with the Michigan Supreme Court, pursuant to MCR 9.122(A). On May 19, 2023, the Court issued an order denying the respondent's application

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EXEMPLARY TRIALS OF NOTE

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

SIGNIFICANT ACCOMPLISHMENTS

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



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for leave to appeal. Costs were assessed in the total amount of \$3,039.65.

REPRIMAND (BY CONSENT)

Rochelle E. Guznack, P61675, Temecula, California, by the Attorney Discipline Board Tri-County Hearing Panel #14. Reprimand, effective June 14, 2023.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline pursuant to MCR 9.115(F)(5) that was approved by the Attorney Grievance Commission and accepted by the hearing panel. The parties' stipulation contained the respondent's admission that she committed professional misconduct on various occasions between March 2017 and October 2018 by transferring client funds from her IOLTA into her personal and/or business account and by making deposits to her IOLTA to rectify shortfalls she created by removing unearned fees from the account.

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent held funds other than client or third person funds in an IOLTA in violation of MRPC 1.15(a)(3); failed to hold property of clients or third persons in connection with a representation in trust and separate from the lawyer's own property in violation of MRPC 1.15(d); deposited her own funds into an IOLTA in an amount more than reasonable necessary to pay financial institution services charges or fees in violation of MRPC 1.15(f); and engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded. Costs were assessed in the amount of \$1,642.50.

SUSPENSION (BY CONSENT)

Zachary Hallman, P78327, Dearborn, by the Attorney Discipline Board Tri-County Hearing Panel #1. Suspension, 45 days, effective May 27, 2023.

The respondent and the grievance administrator filed a Stipulation for Consent Order of a 45-Day Suspension pursuant to MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contains the respondent's admission to the factual allegations and allegations of misconduct set forth in the three-count formal complaint filed by the administrator, in its entirety. Specifically, the respondent admitted to neglecting a whistleblower action he was retained to file on behalf of a client, failing to reduce his contingency fee agreement with his client to writing, failing to tell his client that the action had been dismissed because of his neglect and unresponsiveness, failing to return his client's file materials despite a specific request that he do so,

failing to respond to a request for investigation subsequently filed by his client, and failing to provide a copy of his client's entire file when subpoenaed to do so by the grievance administrator.

Based upon the respondent's plea of no contest and the parties' amended stipulation, the panel found that the respondent handled a legal matter without preparation adequate in the circumstances in violation of MRPC 1.1(b) (count 1); neglected a legal matter entrusted to him in violation of MRPC 1.1(c) (count 1); failed to seek lawful objectives of client in violation of MRPC 1.2(a) (count 1); failed to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.3 (count 1); failed to keep a client reasonably informed

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ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

about the status of a matter in violation of MRPC 1.4(a) (count 1); failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of MRPC 1.4(b) (count 1); failed to reduce his contingency fee agreement with his client to writing and, or failed to have his client, sign a contingency fee agreement in violation of MRPC 1.5 (count 1); failed to surrender papers and/or property to which the client is entitled in violation of MRPC 1.16(d) (count 2); failed to make reasonable efforts to expedite litigation consistent with the interests of the client in violation of MRPC 3.2 (count 2); knowingly failed to respond to a lawful

demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2) (count 3); failed to answer the request for investigation in conformity with MCR 9.113(A) and (B)(2) and in violation of MCR 9.104(7) (count 3); engaged in conduct that is a violation of the Michigan Rules of Professional Conduct in violation of MRPC 8.4(a) and MCR 9.104(4) (count 3); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b) (count 1); engaged in conduct prejudicial to the administration of justice in

violation of MCR 9.104(1) and MRPC 8.4(c) (counts 1-3); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2) (counts 1-2); and engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3) (counts 1-2).

In accordance with the stipulation of the parties, the hearing panel ordered that respondent's license to practice law in Michigan be suspended for 45 days effective May 27, 2023, as agreed to by the parties. Total costs were assessed in the amount of \$1,540.21.

AUTOMATIC INTERIM SUSPENSION

Samir W. Mashni, P32552, Redford, effective Jan. 18, 2023.

On Jan. 18, 2023, the respondent was convicted by guilty plea of conspiracy to engage in bribery through scheme to commit honest services mail fraud in violation of 18 USC §§ 371, 1341, and 1346, a felony, in *United States of America v. Samir Mashni*, U.S. District Court for the District of Colorado, Case No. 21-cr-00359-RMR-1. Upon the respondent's conviction in accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended.

Upon the filing of a judgment of conviction, this matter will be assigned to a hearing panel for further proceedings. The interim suspension will remain in effect until the effective date of an order filed by a hearing panel under MCR 9.115(J).

SUSPENSION

Hanna M. Renna, P83589, Elmira, N.Y., by the Attorney Discipline Board. Suspension, 90 days, effective May 30, 2023.

In a reciprocal discipline proceeding filed pursuant to MCR 9.120(C), the grievance

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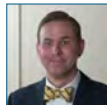


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administrator filed a certified copy of an order of 90-day suspension with terms and conditions entered by the Supreme Court of Florida on Jan. 4, 2023, in a matter titled *The Florida Bar v. Hanna Mary Renna*, Supreme Court of Florida Case No. SC221484.

An order regarding imposition of reciprocal discipline was served upon the respondent on March 15, 2023. The 21-day period referenced in MCR 9.120(C)(2)(b) expired without objection by either party and the respondent was deemed to be in default. Based on that default, the Attorney Discipline Board ordered that the respondent's license to practice law in Michigan be suspended for 90 days. Costs were assessed in the amount of \$1,509.

REPRIMAND

Toi Jasmin Thomas, P82295, Southfield, by the Attorney Discipline Board Tri-County Hearing Panel #55. Reprimand, effective June 1, 2023.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline pursuant to MCR 9.115(F)(5) that was approved by the Attorney Grievance Commission and accepted by the hearing panel after the parties provided additional information in further support of the stipulation at two separate virtual status conferences held before the panel in January and March 2023. The stipulation contained the respondent's admissions that she was convicted on Sept. 3, 2019 by a jury verdict of Operating While Intoxicated (2nd), a

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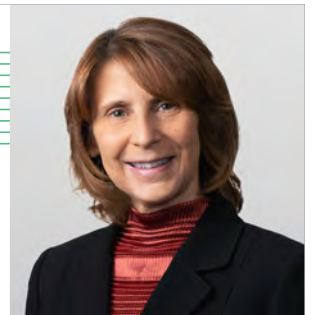
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ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

misdemeanor, in *People v. Toi Jasmin Thomas*, 46th District Court, Case No. 19S00215, and that she failed to comply with the terms of a stipulation for contractual probation that she entered into with the grievance administrator on Dec. 13, 2019, and failed to comply with a monitoring agreement she entered into with the Lawyers and Judges Assistance Program (LJAP) on Jan. 21, 2020.¹ Both the stipulation for contractual probation and the monitoring agreement with LJAP resulted from the Attorney Grievance Commission's investigation into the respondent's criminal conviction.

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent engaged in conduct that violated a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615 in violation of MCR 9.104(5); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(2); engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3); and engaged in conduct that violated the standards or

rules of professional conduct adopted by the Michigan Supreme Court in violation of MRPC 8.4(a) and MCR 9.104(4).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded. Costs were assessed in the amount of \$1,128.80.

ENDNOTES

1. In March 2022, the respondent advised the grievance administrator that she was not going to continue with LJAP. On April 12, 2022, the commission terminated the respondent's contractual probation agreement.

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FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by Nov. 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The committee proposes a model criminal jury instruction, M Crim JI 7.25a (Self-Defense as Defense to Brandishing a Firearm), for the defense found in the brandishing a firearm in public statute found at MCL 750.234e(2)(b). The instruction is entirely new.

[NEW] M Crim JI 7.25a

Self-Defense as Defense to Brandishing a Firearm

(1) The defendant claims that [he/she] acted in lawful [self-defense/defense of *(identify person)*] when [he/she] brandished the firearm. A person may brandish a firearm to defend [himself/herself/another person] under certain circumstances, even where it would otherwise be unlawful for [him/her] to point it, wave it about, or display it in a threatening manner. If a person brandishes a firearm to act in lawful [self-defense/defense of others], [his/her] actions are justified, and [he/she] is not guilty of brandishing a firearm.

(2) Just as when considering the claim of self-defense to the charge of [*identify principal assaultive charge to which the defendant is asserting self-defense*],¹ you should consider all the evidence and use the following rules to decide whether the defendant used a firearm to act in lawful [self-defense/defense of *(identify person)*]. You should judge the defendant's conduct according to how the circumstances appeared to [him/her] at the time [he/she] acted.

(3) First, when [he/she] acted, the defendant must have honestly and reasonably believed that [he/she] had to brandish the firearm to protect [himself/herself/*(identify person)*] from the imminent unlawful use of force by another. If [his/her] belief was honest and reasonable, [he/she] could act to defend [himself/herself/*(identify person)*] with a firearm, even if it turns out later that [he/she] was wrong about how much danger [he/she/*(identify person)*] was in.

(4) Second, a person is only justified in brandishing a firearm when necessary at the time to protect [himself/herself/*(identify person)*] from danger of death, great bodily harm, or sexual assault.² The defendant may only point, wave about, or display a firearm in a threatening manner if it is appropriate to the attack made and the circumstances as [he/she] saw them. When you decide whether the brandishing of the firearm was what seemed necessary, you

should consider whether the defendant knew about any other ways of protecting [himself/herself/*(identify person)*], but you may also consider how the excitement of the moment affected the choice the defendant made.

(5) Third, at the time [he/she] brandished the firearm, the defendant must not have been engaged in a criminal act that would tend to provoke a person to try to defend [himself/herself] from the defendant.³

Use Notes

The court must read M Crim JI 7.20, Burden of Proof — Self Defense, for this instruction.

1. There will not always be an assaultive-offense count charged with the brandishing-a-firearm charge. Eliminate this first phrase if no assaultive offense is charged as a principal offense.

2. *People v Ogilvie*, 341 Mich App 28; 989 NW2d 250 (2022), holds that merely pointing a firearm is not deadly force. The Committee on Model Criminal Jury Instructions expresses no view whether the limitation of brandishing a firearm to cases where the danger of death, great bodily harm, or sexual assault was alleged to have been the reason for brandishing the firearm as used in this sentence may be too restrictive.

3. This paragraph should be given only when supported by the facts; that is, where there is evidence that, at the time the defendant brandished the firearm, he or she was engaged in the commission of some crime likely to lead to the other person's assaultive behavior. For example, this paragraph is usually unwarranted if the defendant was engaged in a drug transaction and used force in self-defense against an unprovoked attack by the other party in the transaction. See *People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974). On the other hand, this paragraph would apply to a defendant who engaged in a robbery of another person and that other person reacted with force. This paragraph is unnecessary where there are no issues other than who was the aggressor in the situation, whether the defendant had an honest and reasonable belief of the use of imminent force by another, or whether the degree of force used was necessary.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by Nov. 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The committee proposes the following new model criminal jury instructions to cover the various provisions of Section 8 of the Tobacco Products Tax Act found at MCL 205.428 including M Crim JI 12.10 (Illegal Sale or Disposition of Untaxed Cigarettes), M Crim JI 12.10a (Illegal Possession or Transportation of Untaxed Cigarettes), M Crim JI 12.10b (Making, Possessing, or Using an Unauthorized Department of Treasury Tobacco Tax Stamp), M Crim JI 12.10c (Illegally Purchasing or Obtaining a Department of Treasury Tobacco Tax Stamp), M Crim JI 12.10d (Falsifying a Tobacco Manufacturer's Label), and M Crim JI 12.10e (Making or Possessing a False License to Purchase or Sell Tobacco Products as a Retailer or Wholesaler). These instructions are entirely new.

[NEW] M Crim JI 12.10**Illegal Sale or Disposition of Untaxed Cigarettes**

(1) The defendant is charged with the crime of illegal sale or disposal of untaxed cigarettes by a manufacturer's representative. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was a manufacturer's representative for [*identify tobacco manufacturer*].

(3) Second, that the defendant [exchanged/sold/offered to sell/dispensed of] tobacco cigarettes or a tobacco product.

(4) Third, that the tobacco cigarettes or product [did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid/had a tax stamp from another state].

(5) Fourth, that when the defendant [exchanged/sold/offered to sell/dispensed of] tobacco cigarettes or a tobacco product, [he/she] knew that the tobacco cigarettes or product [did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid/had a tax stamp from another state].

[NEW] M Crim JI 12.10a**Illegal Possession or Transportation of Untaxed Cigarettes**

(1) [The defendant is charged with the/You may also consider the less serious] crime of acquiring, possessing, transporting, or offering for sale [(3,000 or more untaxed cigarettes/untaxed tobacco products with a value of \$250 or more)/(between 1,200 and 2,999 untaxed cigarettes/untaxed tobacco products with a value between \$100 and \$249.99)/(between 600 and 1,199 untaxed cigarettes/untaxed tobacco products with a value between \$50 and \$99.99)]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [acquired/possessed/transported/offered for sale] tobacco cigarettes or a tobacco product.

(3) Second, that the tobacco cigarettes or product did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid.

(4) Third, that when the defendant [acquired/possessed/transported/offered for sale] the tobacco cigarettes or tobacco product, [he/she] knew that the tobacco cigarettes or product did not have a stamp from the Michigan Department of Treasury showing that the tax imposed under the Tobacco Products Tax Act has been paid.

(5) Fourth, that the defendant [acquired/possessed/transported/offered for sale] [(3,000 or more untaxed cigarettes/untaxed tobacco products with a value of \$250 or more)/(between 1,200 and 2,999 untaxed cigarettes/untaxed tobacco products with a value between \$100 and \$249.99)/(between 600 and 1,199 untaxed cigarettes/untaxed tobacco products with a value between \$50 and \$99.99)].

[NEW] M Crim JI 12.10b**Making, Possessing, or Using an Unauthorized Department of Treasury Tobacco Tax Stamp**

(1) The defendant is charged with the crime of making, possessing, or using [a counterfeit tobacco tax stamp/a tobacco tax stamp without authorization from the Michigan Department of Treasury]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally [made/possessed/used] [a counterfeit tobacco tax stamp/a tobacco tax stamp without authorization from the Michigan Department of Treasury].

(3) Second, that the defendant knew that the tobacco tax stamp [he/she] [made/possessed/used] was [a counterfeit tobacco tax stamp/a tobacco tax stamp not authorized by the Michigan Department of Treasury].

[NEW] M Crim JI 12.10c**Illegally Purchasing or Obtaining a Department of Treasury Tobacco Tax Stamp**

(1) The defendant is charged with the crime of illegally purchasing or obtaining a Michigan Department of Treasury tobacco tax stamp as a licensee. To prove this charge, the prosecutor must prove the following elements beyond a reasonable doubt:

(2) First, that the defendant was a licensee under the Tobacco Products Tax Act.

(3) Second, that the defendant bought or obtained a Michigan Department of Treasury stamp for showing that the tax imposed

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

under the Tobacco Products Tax Act has been paid from a person other than the Michigan Department of Treasury.

(4) Third, that when the defendant bought or obtained the Michigan Department of Treasury stamp for showing that the tax imposed under the Tobacco Products Tax Act had been paid, [he/she] knew that the person from whom [he/she] bought or obtained a Michigan Department of Treasury stamp was not an employee of the Michigan Department of Treasury.

[NEW] M Crim JI 12.10d Falsifying a Tobacco Manufacturer's Label

(1) The defendant is charged with the crime of falsifying a tobacco manufacturer's label. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally made a label that was an imitation of a label used by the tobacco manufacturer [*identify tobacco manufacturer*].

(3) Second, that the defendant used the imitation label to falsely identify cigarettes that [he/she] knew were not produced by [*identify tobacco manufacturer*] as being made by [*identify tobacco manufacturer*].

[NEW] M Crim JI 12.10e Making or Possessing a False License to Purchase or Sell Tobacco Products as a Retailer or Wholesaler

(1) The defendant is charged with the crime of [making or possessing a false license to purchase or sell tobacco products as a retailer or wholesaler/possessing a device that could be used to forge, alter, or counterfeit a license to purchase or sell tobacco products as a retailer or wholesaler]. To prove this charge, the prosecutor must prove beyond a reasonable doubt:

[*Select according to the charge and evidence:*]

(2) That the defendant intentionally [made, counterfeited, or altered/assisted in making or caused to be made/purchased or received] a false [license to purchase or sell tobacco products as a retailer or wholesaler/vending machine disc or marker for the sale of tobacco cigarettes or products] knowing it was false.

[Or]

(2) That the defendant intentionally possessed a device that [he/she] knew could be used to forge, alter, or counterfeit a [license to purchase

or sell tobacco products as a retailer or wholesaler/vending machine disc or marker for the sale of tobacco cigarettes or products].

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PROPOSED

The committee proposes the following amended model criminal jury instruction, M Crim JI 13.15 (Assaulting a Prison Employee), under MCL 750.197c to match the statutory language as observed by the Court of Appeals panel in *People v. Nixon*, unpublished opinion (COA #353438) issued April 21, 2022. The statute forbids an assault "through the use of violence, threats of violence or dangerous weapons," while the instruction as currently written only requires proof of an assault, not mentioning violence, threats of violence, or dangerous weapons. Deletions are in strikethrough and new language is underlined.

[AMENDED] M Crim JI 13.15 Assaulting Employee of Place of Confinement

(1) The defendant is charged with the crime of assaulting an employee of [*state place of confinement*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was legally confined at [*state place of confinement*].

(3) Second, that ~~[he/she] was legally confined there~~ [*name complainant*] was employed at [*state place of confinement*].

(4) Third, that ~~[he/she] assaulted an employee of [*state place of confinement*]. To prove that there was an assault, the prosecutor must prove each of the following elements beyond a reasonable doubt: [*state elements of assault*].² the defendant knew that [*name complainant*] was an employee at [*state place of confinement*].~~

(5) Fourth, that ~~at the time of the assault, the defendant knew that [*name complainant*] was an employee of [*state place of confinement*];~~ the defendant assaulted [*name complainant*]. An assault is an attempt to commit a battery or to do something that would cause someone to fear a battery. A battery is a forceful, violent, or offensive touching of the person.

(6) Fifth, that the defendant committed the assault through the use of violence, a threat to use violence, or the use of a dangerous weapon.

Violence is the use of physical force likely to cause embarrassment, injury, or death.² A dangerous weapon is an instrument that is used in a way that is likely to cause serious physical injury or death.

Use Notes

*Use ~~M Crim JI 17.1~~ This is a specific intent crime. See *People v Norwood*, 123 Mich App 287; 333 NW2d 255; *leave denied*, 417 Mich 1006 (1983).

~~When the use of a dangerous weapon is alleged, give the definition of dangerous weapon, M Crim JI 11.18. See *People v Macklin*, 46 Mich App 297, 208 NW2d 62 (1973).~~

1. Place of confinement in this context may include a prison. See *People v Wingo*, 95 Mich App 101; 290 NW2d 93 (1980).

2. This definition of *violence* comes from *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

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PROPOSED

The committee proposes the following amended model criminal jury instruction, M Crim JI 13.17 (Absconding on a Bond), under MCL 750.199a to add an element involving notice to the defendant concerning conditions of bond consistent with *People v. Rorke*, 80 Mich App 476; 264 NW2d 30 (1978). Deletions are in strikethrough and new language is underlined.

[AMENDED] M Crim JI 13.17 Absconding on a Bond

(1) The defendant is charged with the crime of absconding on a bond posted in a criminal case. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was on bond for a felony charge. ~~[(State charge) is a felony.]~~¹ A bond is an agreement to do or not do certain things, including to appear in court when required.

(3) Second, that the defendant was informed that [he/she] could not leave the state of Michigan without permission of the court and that [he/she] had to appear at all scheduled court dates unless otherwise directed by the court.

(4) Third, that the defendant absconded on the bond. Absconding means to leave the state of Michigan or to hide or conceal oneself.

(5) Fourth, that the defendant left the state of Michigan or hid or concealed [himself/herself] with the intent to avoid the legal process.

Use Note

1. The defendant may stipulate that he or she was on bond for a felony to avoid the court identifying that specific felony and the prosecutor offering proof of that felony. See *People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997), citing *Old Chief v United States*, 519 US 172 (1997). If that is the case, the court may say, “The defendant stipulates that [he/she] was on bond for a felony.”

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by Nov. 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The committee proposes the following new model criminal jury instruction, M Crim JI 27.6, for dumping refuse on the property of another to cover criminal activity under MCL 750.552a. This instruction is entirely new.

[NEW] M Crim JI 27.6 Dumping Refuse on the Property of Another

(1) The defendant is charged with the crime of dumping refuse or garbage on property belonging to another person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [name complainant] owned, rented, or possessed the property or premises located at [identify address of property, including city or township and county].

(3) Second, that the defendant placed, deposited, or dumped filth, garbage, or refuse on [name complainant]'s property or premises at [identify address of property].

(4) Third, that the defendant did not have [name complainant]'s specific permission to place, deposit, or dump the filth, garbage, or refuse on the property or premises at [identify address of property].

(5) Fourth, that the defendant knew that the location where [he/she] dumped, deposited, or placed the filth, garbage, or refuse was not [his/her] own property.¹

Use Note

1. The Committee on Model Criminal Jury Instructions believes that a claim by the defendant that he or she thought he or she was dumping the refuse on his or her own property is an affirmative

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

defense, and this paragraph should only be read when there is evidence to support the defense.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by Nov. 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The committee proposes the following new model criminal jury instruction, M Crim JI 27.7, for trespassing on state correctional facility property to cover criminal activity under MCL 750.552b. This instruction is entirely new.

[NEW] M Crim JI 27. 7

Trespassing on State Correctional Facility Property

(1) The defendant is charged with the crime of trespassing on the property of a state correctional facility. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [entered/remained/entered and remained] on property that was part of [identify state correctional facility], which is a state correctional facility.

(3) Second, that the defendant knew [he/she] [entered/remained/entered and remained] on property that was part of a state correctional facility.

[Select the appropriate third element:]

(4) Third, that the defendant did not have permission or authority to [enter/remain/enter and remain] on the property of the state correctional facility.

[or]

(4) Third, that the defendant [entered/remained/entered and remained] on the property without permission or authority after being instructed [not to enter/to leave] the property.

(5) Fourth, that the defendant knew that [he/she] did not have permission or authority to [enter/remain/enter and remain] on the property.¹

Use Note

1. This paragraph may not be necessary where the defendant was instructed not to enter or was instructed to leave the property.

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PROPOSED

The committee proposes the following new model criminal jury instruction, M Crim JI 35.13b (Using a Computer to Commit a Crime), for offenses found in MCL 752.796 of the “Fraudulent Access to Computers” chapter of the penal code.

[NEW] M Crim JI 35.13b

Using a Computer to Commit a Crime

(1) The defendant is also charged with the separate crime of using a computer to commit [or attempt to commit, conspire to commit, or solicited another person to commit]¹ the crime of [name underlying offense].

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

(3) First, that the defendant [committed/attempted to commit/conspired to commit/solicited another person to commit] the crime of [name underlying offense], which has been defined for you. It is not necessary, however, that anyone be convicted of that crime.

(4) Second, that the defendant intentionally used a computer to [commit/attempt to commit/conspire to commit/solicit another person to commit] that crime.

“Computer” means any connected, directly interoperable, or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.²

Use Notes

1. The court may read any that apply.

2. The definition of *computer* comes from MCL 752.792. MCL 750.145d(9)(a) provides the same definition but adds the following language: “Computer includes a computer game device or a cellular telephone, personal digital assistant (PDA), or other handheld device.”

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by Nov. 1, 2023. Comments may be sent in

writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The committee proposes the following new model criminal jury instruction, M Crim JI 40.6 (Indecent or Obscene Conduct), for offenses found in MCL 750.167(f), a subsection of the “disorderly persons” statute.

[NEW] M Crim JI 40.6

Indecent or Obscene Conduct

(1) The defendant is charged with the crime of indecent or obscene conduct. To prove this charge, the prosecutor must prove each of

the following elements beyond a reasonable doubt:

(2) First, that the defendant was in a public place at *[identify location]* or was exposed to persons who could see defendant from a public place.

(3) Second, that while at *[identify location]*, the defendant performed an act of *[(describe sexual conduct by the defendant)/(describe other conduct alleged to have been indecent or obscene)]*.

(4) Third, that the defendant’s conduct was shocking to the sensibilities of a reasonable person, was outside of reasonable societal standards of decency, and would be offensive to a reasonable person.

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FROM THE MICHIGAN SUPREME COURT

ADM File No. 2021-24 Amendment of Rule 5.5 and Official Comment of the Michigan Rules of Professional Conduct

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 5.5 of the Michigan Rules of Professional Conduct and its accompanying comment is adopted, effective Sept. 1, 2023.

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 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a)-(d) [Unchanged.]

(e) A lawyer admitted in another jurisdiction of the United States and not disbarred or suspended may practice the law of the jurisdiction(s) in which the lawyer is properly licensed while physically present in the State of Michigan, if the lawyer does not:

(1) hold themselves out as having an office in the State of Michigan,

(2) provide legal services in the State of Michigan, unless otherwise permitted by law or Supreme Court rule, or

(3) offer to provide legal services in the State of Michigan, unless otherwise permitted by law or Supreme Court rule.

Comment

[Paragraphs 1-21 unchanged.]

Paragraph (e) is not meant to infringe upon any authorized practice in the federal courts. See, e.g., *In re Desilets*, 291 F3d 925 (CA 6, 2002).

Staff Comment (ADM File 2021-24): The addition of subrule (e) and the amendment of MRPC 5.5's accompanying comment clarify that lawyers may practice law in another jurisdiction while physically present in Michigan.

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

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

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 3.613 of the Michigan Court Rules is adopted, effective July 1, 2023.

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

Rule 3.613 Change of Name

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

(BA) Published Notice; Contents. Unless otherwise provided in this rule, the court must order publication of the notice of the proceeding to change a name in a newspaper in the county where the action is pending. A published notice of a proceeding to change a name must shall include the name of the petitioner; the current name of the subject of the petition; the proposed name; and the time, date, and place of the hearing. Proof of service must be made as provided by MCR 2.106(G)(1).

(C) No Publication of Notice; Confidential Record. Upon receiving a petition establishing good cause, the court must order that no publication of notice of the proceeding take place and that the record of the proceeding be confidential. Good cause includes but is not limited to evidence that publication or availability of a record of the proceeding could place the petitioner or another individual in physical danger or increase the likelihood of such danger, such as evidence that the petitioner or another individual has been the victim of stalking, domestic violence, human trafficking, harassment, or an assaultive crime, or evidence that publication or the availability of a record of the proceeding could place the petitioner or another individual at risk of unlawful retaliation or discrimination.

(1) Evidence supporting good cause must include the petitioner's or the endangered individual's sworn statement stating the reason supporting good cause, including but not limited to fear of physical danger, if the record is published or otherwise available. The court must not require proof of an arrest or prosecution to reach a finding of good cause.

(2) The court must issue an ex parte order granting or denying a petition requesting nonpublication and confidential record under this subrule.

(3) If a petition requesting nonpublication under this subrule is granted, the court must:

(a) issue a written order;

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

(c) if a minor is the subject of the petition, direct the petitioner to notify the noncustodial parent as provided in subrule (E), except that if the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, notice to the noncustodial parent that is not directed solely to that parent, such as by publication under subrule (E)(2)(a), must not include the current or proposed name of the minor.

(4) If a petition requesting nonpublication under this subrule is denied, the court must issue a written order that states the reasons for denying relief and advises the petitioner of the right to

(a) request a hearing regarding the denial,

(b) file a notice of dismissal, or

(c) proceed with a hearing on the name change petition by submitting a publication of notice of hearing for name change form with the court within 14 days of entry of the order denying the petition requesting nonpublication. If the petitioner submits such form, in accordance with subrule (B) the court must set a time, date, and place of a hearing and order publication.

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

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

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

(8) The petitioner must attend the hearing under subrule (4)(a). If the petitioner fails to attend the hearing, the court must adjourn and reschedule. If the petitioner fails to attend the rescheduled hearing, the court may adjourn and reschedule, dismiss the petition for name change, or notify the petitioner that it will publish notice of the name change proceeding if

the petitioner does not file a notice of dismissal within 14 days from the date of the rescheduled hearing.

(9) Following the hearing under subrule (4)(a), the court must provide the reasons for granting or denying a petition requesting nonpublication on the record and enter an appropriate order.

(10) If a petition requesting nonpublication under this subrule is denied, and the petitioner or the court proceed with setting a time, date, and place of a hearing on the petition for a name change as provided in subrules (4)(c) or (6), the court must order that the record is no longer confidential.

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

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

(1) Address Known. If the noncustodial parent's address or whereabouts is known, that parent ~~must~~ be served with a copy of the petition and a notice of hearing at least 14 days before the hearing in a manner prescribed by MCR 2.107(C).

(2) Address Unknown. If the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, that parent ~~must~~ be served with a notice of hearing by one of the following methods:

(a) by publishing in a newspaper and filing a proof of service as provided by MCR 2.106(F) and (G)(1). Unless otherwise provided in this rule, the notice must be published one time at least 14 days before the date of the hearing, must include the name of the noncustodial parent and a statement that the result of the hearing may be to bar or affect the noncustodial parent's interest in the matter, and that publication must be in the county where the court is located unless a different county is specified by statute, court rule, or order of the court. A notice published under this subrule need not set out the contents of the petition if it contains the information required under subrule (AB). A single publication may be used to notify the general public and the noncustodial parent whose address cannot be ascertained if the notice contains the noncustodial parent's name.

(b) upon the petitioner's request, and in the court's discretion, the court may order service by any manner reasonably calculated to give the noncustodial parent actual notice of the proceedings and an opportunity to be heard. The petitioner must specify the proposed method of service and explain how it is reasonably calculated. The request and order under this subrule must be made on a form approved by the State Court Administrative Office.

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

Proof of service must be made as provided by MCR 2.104(A)(2) or (3).

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

Staff Comment (ADM File No. 2021-21): The amendment of MCR 3.613 clarifies the process courts must use after receiving a petition requesting nonpublication and confidentiality of a name change proceeding.

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.

CAVANAGH, J. (*concurring*). I applaud the Court's decision to adopt these changes, which provide a straightforward, accessible name-change process for overwhelmingly unrepresented petitioners as well as for the courts handling the process. These improvements have been thoughtfully considered by the Court¹ to improve clarity while accommodating stakeholder concerns and remaining well within our rule-making authority.

I disagree with the dissenting justices that several changes are substantive rather than procedural in nature and are therefore outside the Court's rulemaking authority. Instead, these changes are consistent with the statutory language and fill in the gaps where guidance is lacking. First, although the court rule says that the court "must" order nonpublication on a showing of good cause, MCR 3.613(C), and the statute uses "may," MCL 711.3(1), the use of "may" does not always signal discretion resting exclusively with the court. For example, in *James Twp v. Rice*, 509 Mich 363, 372-376 (2022), we held that language in the Right to Farm Act, MCL 286.471 *et seq.*, stating that a prevailing farm or farm operation "may recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred" did not give courts discretion to refuse to award costs altogether, but instead entitled the prevailing party to recover costs with courts merely maintaining discretion as to whether the expenditures were "reasonably incurred."

Like all statutory language, the word "may" is properly understood only when read in context with the statute and the statutory scheme. *Honigman Miller Schwartz & Cohn LLP v. Detroit*, 505 Mich 284, 307 (2020). The use of "may" versus "must" is not the sole determinant of whether a statute is mandatory or permissive and can be overcome by the Legislature's intent. See *Kment v. Detroit*, 109 Mich App 48, 61-62 (1981); see also 7 Sutherland, *Statutes and Statutory Construction* (7th ed), § 25:3 ("[N]o formalistic rule of grammar or word form should stand in the way of carrying out legislative intent."). "As a general rule, the word 'may' will not be treated as a word of command unless there is something in the context or subject matter of the act to indicate that it was used in such a sense." *Mill Creek Coalition v. South Branch of Mill Creek Intercounty Drain Dist*, 210 Mich App 559, 565 (1995).

Here, the word "may" must be considered in the context of the placement and purposes of the twin statutory provisions. MCL 711.1 explains the name-change process and requirements and that publication is the default; MCL 711.3 explains that the publication requirement may be waived for good cause. It makes little sense to read MCL 711.3 as allowing a court to refuse to order nonpublication despite its determination that good cause had been shown. Under the dissent's approach, a court would have the discretion to refuse to order nonpublication even if that court concluded that publication "could place the petitioner or another individual in physical danger[.]" MCL 711.3(1). Such a decision would be contrary to the statute's purpose and would smack of arbitrary application of the law outside the range of reasonable and principled outcomes. See *Maldonado v. Ford Motor Co*, 476 Mich 372, 388 (2006).

I further disagree that this amendment expands the definition of "good cause" beyond that contained in MCL 711.3. The statute uses broad "includes, but is not limited to" language as to what evidence can establish good cause for nonpublication. MCL 711.3(1). The rule now provides an illustrative list of reasons that, if supported by credible evidence, give rise to a finding of good cause, including statutory language on fear of physical danger as well as fear of additional crimes, discriminatory conduct, or retaliatory conduct against which our laws offer protection. Again, the circuit court must still assess and weigh the evidence to determine whether it credibly establishes good cause. MCL 711.3(1). The rule does not divest courts of discretion to deny a request for nonpublication.

Much of the disagreement appears to stem from differing viewpoints on the level of guidance that we should be providing to the circuit courts. But it is well within this Court's authority to clarify the rules of practice and procedure, and we should take the opportunity to do so, especially when stakeholders tell us that the existing rules and statutes are confusing and inconsistently applied by courts. It makes perfect sense in this context to allow largely unrepresented petitioners an additional chance to attend a hearing on a request for nonpublication, with courts retaining discretion to dismiss or publish the petition after the second missed hearing. See MCR 3.613(C)(8). Similarly, it is logical to require courts to issue an appropriate order following a hearing on the denial of an *ex parte* order for nonpublication, MCR 3.613(9), just as the rules require in the personal-protection-order context, see MCR 3.705(B)(6) ("At the conclusion of the hearing the court must state the reasons for granting or denying a personal protection order on the record and enter an appropriate order."). These amendments, to be paired with user-friendly SCAO forms, provide maximum flexibility to courts while balancing the ability of largely *pro se* petitioners seeking name changes to access justice.

WELCH, J., joins the statement of CAVANAGH, J.

ZAHRA, J. (*dissenting*).

Although I agree with some of the changes aimed at making MCR 3.613 more consistent with the statutory requirements in MCL 711.3 regarding petitions not to publish notice of a name-change proceeding, I dissent from several aspects of this Court's order that go well beyond implementation of the statute. In short, several of this Court's changes to MCR 3.613 — which were not included in this Court's April 13, 2022 order publishing for public comment the proposed revisions to MCR 3.613 — impermissibly modify the substantive law pertaining to the discretion circuit courts have in deciding petitions requesting nonpublication of a name-change proceeding. Thus, these proposed amendments to our court rule fall outside the bounds of this Court's rulemaking authority.

The Michigan Constitution provides this Court with rulemaking authority pertaining to the practice and procedure of our courts.² In accordance with separation-of-powers principles, this Court's rulemaking authority is exclusive and “extends only to rules of practice and procedure, as ‘this Court is not authorized to enact court rules that establish, abrogate, or modify the substantive law.’”³ “Therefore, if a particular court rule contravenes a legislatively declared principle of public policy, having as its basis something other than court administration[,] the court rule should yield.”⁴

MCL 711.1 sets out the requirements and procedure for a petition seeking a name change. MCL 711.3 discusses publication of a name-change proceeding and provides, in relevant part:

(1) In a proceeding under [MCL 711.1], the court may order for good cause that no publication of the proceeding take place and that the record of the proceeding be confidential. Good cause under this section includes, but is not limited to, evidence that publication or availability of a record of the proceeding could place the petitioner or another individual in physical danger, such as evidence that the petitioner or another individual has been the victim of stalking⁵ or an assaultive crime.

(2) Evidence under subsection (1) of the possibility of physical danger must include the petitioner's or the endangered individual's sworn statement stating the reason for the fear of physical danger if the record is published or otherwise available. If evidence is offered of stalking or an assaultive crime, the court shall not require proof of an arrest or prosecution for that crime to reach a finding of good cause under subsection (1).

As a matter of public policy, then, the Legislature intended for circuit courts to decide whether a petitioner has established good cause to waive publication of a name-change proceeding and whether to grant a request for nonpublication. Although new Subrules (C) and (C)(1), as published for comment, modeled the language set forth in MCL 711.3(1) and (2),⁶ the changes this Court now enacts conflict with the Legislature's policy determinations.

First, MCL 711.3(1) states that “the court *may* order for good cause that no publication of the [name-change] proceeding take place and that the record of the proceeding be confidential.”⁷ The plain language of the statute vests discretion in the circuit court to decline to require publication of notice of a name-change proceed-

ing on a showing of good cause. This Court, however, has effectively rewritten the statute to strip circuit courts of that discretion by changing “may” to “must” in MCR 3.613(C), thereby *requiring* a court to order nonpublication of a name-change proceeding upon receiving a petition establishing good cause.⁸ In other words, while MCL 711.3(1) clearly leaves discretion for the circuit court to deny a petition requesting nonpublication even if good cause is shown, this Court now removes that discretion altogether.

Second, this Court expands the statutory definition of “good cause” beyond what MCL 711.3(1) provides. MCL 711.3(1) defines “good cause” to include evidence involving possible physical danger, such as stalking or an assaultive crime. Thus, the Legislature not only chose to partially define the standard for nonpublication under its definition of “good cause,” it also intended for the circuit courts to have the discretion to determine what else may constitute “good cause.” Rather than effectuating that intent, this Court now creates a laundry list of circumstances that would definitively constitute “good cause” that, in conjunction with the prior change, automatically require the circuit court to grant the petition requesting nonpublication if good cause is established. Simply put, further defining “good cause” in MCR 3.613(C) goes beyond implementing MCL 711.3(1) under this Court's rulemaking authority and, instead, constitutes an impermissible substantive amendment to the statute.⁹

Third, this Court's changes to MCR 3.613(C)(8)¹⁰ now mandate that circuit courts adjourn and reschedule a hearing regarding a denial of a petition requesting nonpublication if the petitioner fails to appear. Why is this Court meddling in the procedure and process of the circuit courts? There is no logical reason to *require* the circuit court to reschedule a hearing for which the petitioner — who requested the hearing in the first place — failed to appear. Once the petitioner fails to appear, the circuit court should have the discretion to reschedule it or proceed with publication unless the petitioner opts to dismiss the petition for a name change altogether.¹¹ New Subrule (C)(8) not only eliminates the discretion our circuit courts have in resolving with finality a petition requesting nonpublication, it also encroaches on the circuit courts' inherent authority to control their own dockets and “manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”¹²

Finally, new MCR 3.613(C)(9) requires the court to “enter an appropriate order” after the conclusion of a hearing under Subrule (C)(4) regarding the denial of a petition requesting nonpublication. However, Subrule (C)(4) already requires the court to issue a written order stating the reasons for denying the petition requesting nonpublication, so it is unclear what this second “appropriate order” is supposed to be. Is this Court requiring the court to reaffirm its previous order if it continues to deny relief? Additionally, are requests for a hearing regarding the denial under Subrule (C)(4)(a) more appropriately categorized as motions for reconsideration, in which case the petitioner would need to show palpable error under MCR 2.119(F)(3)? The confusion Subrule (C)(9) is likely to cause further underscores the problems with these rule changes and the haste with which this Court adopts them.

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

In sum, although some of these changes may be well-intentioned, it is not our role to utilize our rulemaking authority to modify the policy choices of the Legislature, no matter how well-intentioned our actions may be.¹³ Because the aforementioned changes have no basis in the statute they are intended to implement and, instead, modify the substance of that statute, these changes go beyond our rulemaking authority. Accordingly, I dissent from this Court's order.

VIVIANO, J., joins the statement of ZAHRA, J.

1. The Court published an initial draft of the amendment for comment on April 13, 2022, held a public hearing on Sept. 21, 2022, directed staff to work with stakeholders and commenters to improve the amendment, voted to adopt an amended version, and is now publishing with an effective date of July 1, 2023, to allow courts, partners, and staff to complete internal processes.

2. See Const 1963, art 6, § 5 ("The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state.").

3. *People v Watkins*, 491 Mich 450, 472-473 [2012], quoting *McDougall v Schanz*, 461 Mich 15, 27 (1999).

4. *McDougall*, 461 Mich at 30-31 [quotation marks, citation, and brackets omitted].

5. MCL 711.3(5) provides that "stalking" is defined according to MCL 750.411h and MCL 750.411i, which define the term as "a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested." MCL 750.411h(1)(d); MCL 759.411i(1)(e).

6. Proposed MCR 3.613(C), as published for comment, stated in part:

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

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

7. Emphasis added.

8. See *James Twp v Rice*, 509 Mich 363, 372 [2022] ("[T]he term 'may' is ordinarily considered to be permissive."). Justice CAVANAGH states that "the use of 'may' does not always signal discretion resting exclusively with the court," citing *Rice* in support. Unlike MCL 711.3(1), the plain language of the statute in *Rice* gave the prevailing farm or farm operation the discretion to recover attorney fees, not the court. *Id.* at 372 ("MCL 286.473b does not say that the court 'may award' costs, expenses, and fees but that the prevailing farm or farm operation 'may recover' them.")

9. Justice CAVANAGH relies on the statute's use of the "includes, but is not limited to" phrase to support the Court's extension of the definition of "good cause." I agree that the phrase contemplates circumstances constituting "good cause" for nonpublication beyond those

that place the petitioner in physical danger. But the Legislature left it for the circuit courts to determine what those circumstances may be, not for this Court to prescribe those circumstances under the guise of our rulemaking authority.

10. Proposed MCR 3.613(C)(8), as published for comment, stated: "The petitioner must attend the hearing under subrule (4). If the petitioner fails to attend the hearing, the court may adjourn and reschedule or dismiss the petition for a name change."

11. Justice CAVANAGH believes it "makes perfect sense in this context to allow largely unrepresented petitioners an additional chance to attend a hearing on a request for nonpublication, with courts retaining discretion to dismiss or publish the petition after the second missed hearing." Although courts may generally afford pro se litigants some leniency in pursuing their claims, such as drafting pleadings, see *Haines v Kerner*, 404 US 519, 520 (1972) (noting allegations in a pro se complaint are held "to less stringent standards than formal pleadings drafted by lawyers"), I see no reason why that leniency, which is not without its limits, should allow a party to miss a hearing that the party requested.

12. *Maldonado v Ford Motor Co*, 476 Mich 372, 376 [2006], citing *Chambers v NASCO, Inc*, 501 US 32, 43 (1991).

13. See *People v Schaefer*, 473 Mich 418, 432 [2005] ("A court is not free to cast aside a specific policy choice adopted on behalf of the people of the state by their elected representatives in the Legislature simply because the court would prefer a different policy choice. To do so would be to empower the least politically accountable branch of government with unbridled policymaking power. Such a model of government was not envisioned by the people of Michigan in ratifying our Constitution, and modifying our structure of government by judicial fiat will not be endorsed by this Court.")

ADM File No. 2023-05 Proposed Amendment of Rule 3.613 of the Michigan Court Rules

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

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

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

Rule 3.613 Change of Name

(A)-(G) [Unchanged.]

(H) The petitioner may request that the cost of publication under this rule be paid by the court. Upon the petitioner's request and supported by a verified statement that:

(1) a request to waive fees under MCR 2.002 is being filed with this request or payment of fees has been waived under MCR 2.002,

(2) publishing notice of the name change proceeding is required by law, and

(3) publication of the notice has not been waived under this rule,

the court must enter a nonpublic order either granting or denying the request under this subrule. The court must enter an order granting the petitioner's request under this subrule only if the court enters an order to waive fees under MCR 2.002. The request and order under this subrule must be made on a form approved by the State Court Administrative Office. If known at the time of filing the petition that publication will be required, the request under this subrule may be included with the request to waive fees under MCR 2.002.

Staff Comment (ADM File No. 2023-05): To avoid confusion, the proposed amendment of MCR 3.613 incorporates the amendment of MCR 3.613 (ADM File No. 2021-21), which takes effect July 1, 2023.

The proposed amendment of MCR 3.613 in *this* ADM file would add a new subrule (H) that is similar to MCR 2.002(I) and would require a court to pay the costs of publication in a name change proceeding if fees are waived under MCR 2.002, publication is required by law, and publication has not been waived under MCR 3.613.

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

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by Sept. 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. 2023-05. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.211 of the Michigan Court Rules is adopted, effective Sept. 1, 2023.

[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.

(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 must file a confession of error and state reasons why concurrence in the relief requested is appropriate. The confession of error will be submitted to the courtone judge under MCR 7.211(E)(1). If the courtjudge approves the confession of error, the courtjudge will enter an order or opinion granting the relief and state the reason(s) for the approval. If the courtjudge rejects the confession of error, the court must state the reason(s) for the rejection, and the case will be submitted for decision through the ordinary processes of the court, and the confession of error will be submitted to the panel assigned to decide the case.

(8)-(9) [Unchanged.]

(D)-(E) [Unchanged.]

Staff Comment (ADM File No. 2022-16): The amendment of MCR 7.211 modifies the Court of Appeals' process for handling confessions of error by requiring the confession of error to be submitted to the Court of Appeals for a decision, not just one judge. It also requires the Court of Appeals to state its reason(s) for approving or rejecting the confession 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.

ADM File No. 2023-01 Appointments to the Michigan Tribal State Federal Judicial Forum

On order of the Court pursuant to Administrative Order No. 2014-12, the following members are reappointed to the Michigan Tribal State Federal Judicial Forum for terms commencing on July 2, 2023, and ending on July 1, 2026.

Judge Timothy P. Connors
Judge Cheryl L. Hill
Former Justice Michael F. Cavanagh
Referee Anthony Crutchfield

Additionally, Judge Marian F. Kromkowski and Judge Jennifer L. Whitten are appointed to the Michigan Tribal State Federal Judicial Forum for terms commencing on July 2, 2023, and ending on July 1, 2026.

Judge Allie Greenleaf Maldonado shall serve as the Court of Appeals liaison to the forum.

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