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FEBRUARY 2024

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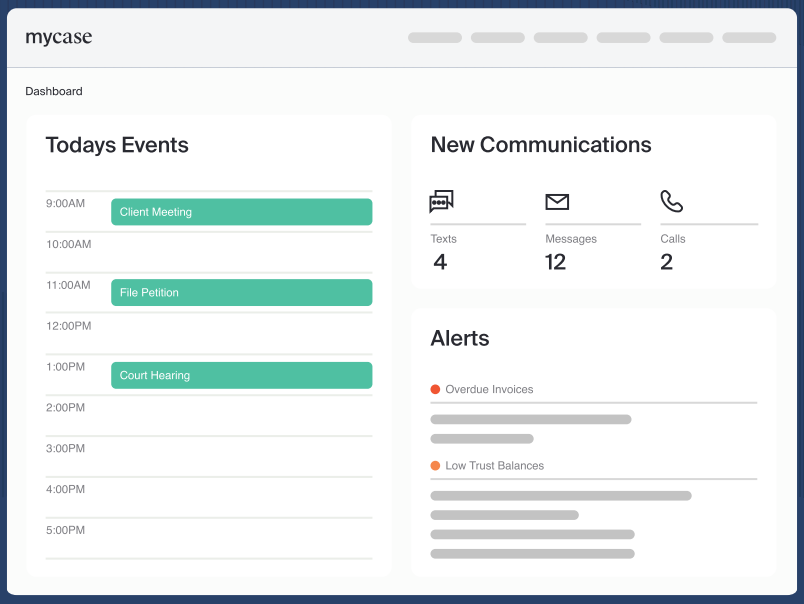

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ON THE COVER: The "Million Dollar Courtroom" at the Theodore Levin United States Courthouse in Detroit was disassembled before the city's original federal building was demolished and reassembled in its current location in the mid-1930s.

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IN MEMORIAM

JOHN E. BERG, P40428, of Detroit, died Sept. 5, 2023. He was born in 1960 and was admitted to the Bar in 1987.

GEORGE E. BRUMBAUGH JR., P24469, of Clinton Township, died May 8, 2023. He was born in 1950, graduated from University of Detroit School of Law, and was admitted to the Bar in 1974.

KATHLEEN BUCKLEY, P32522, of Grand Blanc, died Jan. 9, 2024. She was born in 1954, graduated from Detroit College of Law, and was admitted to the Bar in 1981.

HON. JOHN L. CONOVER, P12147, of Davison, died March 10, 2023. He was born in 1941, graduated from Detroit College of Law, and was admitted to the Bar in 1970.

ROBERT WARREN DICKENS, P70170, of Grand Rapids, died Nov. 13, 2023. He was born in 1955, graduated from Michigan State University College of Law, and was admitted to the Bar in 2006.

BRUCE W. FRANKLIN, P13645, of Roseville, California, died Dec. 18, 2023. He was born in 1936 and was admitted to the Bar in 1963.

DAVID ALEXANDER GRANT, P73093, of Irvine, California, died Jan. 24, 2023. He was born in 1979, graduated from Michigan State University College of Law, and was admitted to the Bar in 2009.

ANTHONY C. GREENE, P49303, of Grand Rapids, died August 6, 2023. He was born in 1955 and was admitted to the Bar in 1994.

JAMES W. HECKMAN, P24479, of Troy, died Dec. 22, 2023. He was born in 1947, graduated from Detroit College of Law, and was admitted to the Bar in 1974.

JAMES F. HEWSON, P27127, of Oak Park, died July 28, 2023. He was born in 1952, graduated from University of Detroit School of Law, and was admitted to the Bar in 1977.

B. J. HUMPHREYS, P15268, of Saginaw, died July 20, 2023. He was born in 1930, graduated from Detroit College of Law, and was admitted to the Bar in 1957.

MARK E. KAMAR, P35038, of Lansing, died Dec. 30, 2023. He was born in 1956, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1983.

BOBBIE G. MATHIS, P17208, of Palm Coast, Florida, died Jan. 29, 2023. He was born in 1932, graduated from Detroit College of Law, and was admitted to the Bar in 1969.

DAVID E. MCCRIGHT, P39092, of Troy, died August 15, 2023. He was born in 1946, graduated from University of Detroit School of Law, and was admitted to the Bar in 1986.

RANDALL J. MOON, P37688, of Mooresville, North Carolina, died Dec. 5, 2023. He was born in 1959, graduated from Wayne State University Law School, and was admitted to the Bar in 1985.

RORY D. MORTIMER, P40341, of Alpena, died Feb. 22, 2023. He was born in 1950, graduated from Detroit College of Law, and was admitted to the Bar in 1979.

ROBERT V. PARENTI, P18632, of Stuart, Florida, died Dec. 27, 2023. He was born in 1925 and was admitted to the Bar in 1951.

JAMES P. RICKER, P19433, of Cape Elizabeth, Maine, died Dec. 31, 2023. He was born in 1928, graduated from University of Michigan Law School, and was admitted to the Bar in 1956.

GERALD D. SCHERR, P24368, of Farmington Hills, died Jan. 28, 2023. He was born in 1949, graduated from Wayne State University Law School, and was admitted to the Bar in 1974.

KRISTOFFER W. TIEBER, P71562, of Lansing, died June 21, 2023. He was born in 1976, graduated from Michigan State University College of Law, and was admitted to the Bar in 2008.

REBECCA L. THOMAS, P52148, of Grand Rapids, died Nov. 19, 2023. She was born in 1965, graduated from Detroit College of Law at Michigan State University, and was admitted to the Bar in 1998.

ROBERT M. VERCRUYSSE, P21810, of Detroit, died Feb. 1, 2023. He was born in 1944, graduated from University of Michigan Law School, and was admitted to the Bar in 1969.

MEGAN JEAN WELLS, P76107, of Taylors, South Carolina, died Jan. 15, 2024. She was born in 1985, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 2012.

GORDON R. WYLLIE, P22594, of Jacksonville, Florida, died Jan. 9, 2024. He was born in 1933, graduated from Wayne State University Law School, and was admitted to the Bar in 1968.

In Memoriam information is published as soon as possible after it is received. To notify us of the passing of a loved one or colleague, please email barjournal@michbar.org.

FROM THE PRESIDENT

DANIEL D. QUICK

Atticus Finch does not live here anymore

Abe Lincoln. Atticus Finch. The myth of the "country lawyer" runs deep in America. As one scholar described the stereotypical depiction:

> Everyone knows what a "country lawyer" looks like. He (it's always a "he") is middle-aged or older, an avuncular mix of wisdom and good humor. He is a generalist, in a small town, deeply connected to his community. He is trusted and respected. The person who is called upon when trouble threatens.[1]

Like most myths, there is a foundational truth at the core. Rural attorneys played key roles in communities across the nation. And some have speculated that these real-world lawyers, tied tightly to local communities, contributed positively to the image of lawyers as people to be trusted, honest brokers, and upstanding professionals.[2] Sure, those lawyers were paid, but clearly the practice of law was conducted less like a business than it is today.

As our economy grew and became more specialized, so, too, did the legal profession. More than 70 years ago, this was noted by Supreme Court Justice Hugo Black, who relayed a story attributed to Chief Justice Harlan Fiske Stone:

> Chief Justice Stone made an address some years ago which I would recommend that lawyers read from time to time. He pointed out there the changes that had resulted in society, and that lawyers should recognize that those changes had occurred. There were times, as in the little village from whence I came in Alabama, when the country lawyer took clients as they came. He did not know who the next client would be. There are some lawyers like that, of course, today; but Chief Justice Stone pointed out that as the economy of our society had changed there had been corresponding changes on the part of the legal profession. Lawyers had become specialists, precisely as business had been specialized. He pointed out that there were many firms in the country — not in criticism, but in recognition of the existing facts — which acted more on the basis of mass production.[3]

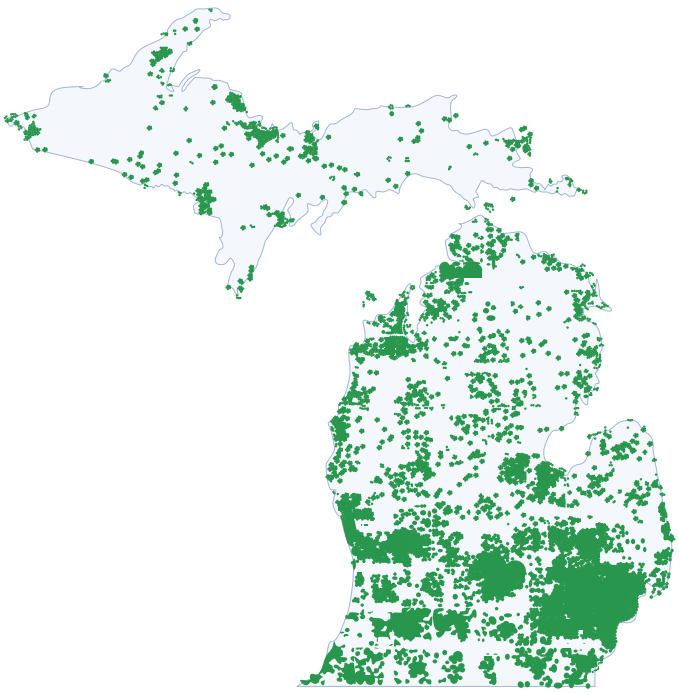
Things haven't gotten better since Justice Stone's remarks. As large-firm practice has evolved, as attorney specialization has increased, and as mobility away from one's home has become easier and more commonplace, rural America has been left without lawyers. In modern parlance, the phrase is "legal deserts," defined by the American Bar Association as counties with fewer than one attorney per 1,000 residents. South Dakota tried to tackle the problem in 2012 by actually paying lawyers to live in rural communities.[4] The ABA held a major program in 2020 on the issue.[5] At a recent conference I attended of bar leaders from across the country, about half were actively analyzing the issue and what to do about it. Illinois has been particularly active in this space.[6]

Michigan is not unique. The state's population has remained essentially flat for the last 20 years[7] and so has the number of active attorneys (in 2022, 35,001 reside in Michigan.)[8] But those attorneys are more and more concentrated in our urban areas. In October 2023, the National Center for State Courts issued a report with compiled data to help Michigan target geographic areas with the greatest number of barriers to legal resources. Interactive maps help illustrate the areas of greatest need based on indicators of risk factors such as a limited number of attorneys compared to the population, long drive times to the courthouse, poverty, limited English proficiency, and lack of internet and/or broadband availability.[9]

Look at the map below. It tells a basic story: rural areas, which also have relatively high poverty rates and low internet accessibility, also lack local lawyers.

MICHIGAN'S LEGAL DESERTS

This map represents the distribution of attorneys in the state of Michigan. Each dot represents one attorney.



Source: National Center for State Courts
experience.arcgis.com/experience/832501b9ffe74b21a79a5a3910d7f7e7/page/Michigan/

The State Court Administrative Office is working with the State Bar of Michigan and other stakeholders to increase the number of attorneys working in these legal deserts. As part of the broader civil access to justice issue in our state, the Supreme Court's Justice For All Commission also is developing recommendations that will help ameliorate the absence of the rural attorney whether through better self-help mechanisms, easier and more user-friendly courts, or the ability in limited areas for non-attorneys to assist clients in navigating the legal system.

But these steps will not fully make up for the absence of local attorneys in rural communities. I do not think it is wistfully nostalgic to emphasize that actually having lawyers in these locales is valuable on many levels. Nor should it be understated that living in these communities provides a rich life, precisely the sort of work-life balance sought by newer generations of lawyers or perhaps more senior lawyers looking to jump off the hamster wheel of big-city practice.

The Bar will continue to focus on this issue and consider potential solutions; my friend and fellow SBM Commissioner Suzanne Larsen (from Marquette) is already rolling up her sleeves. She rightfully notes this is (at least) a two-pronged problem: how to get attorneys to practice in rural areas and how to support the unique needs of rural practitioners so they can provide a high level of legal service for the population they serve. Stay tuned for more to come on this important issue.

If this is important to you, let us know and get involved.

ENDNOTES

1. Cornett & Bosau, *The Myth of the Country Lawyer*, 83 Alb L Rev 125 (2019).
2. *Id.*
3. *Id.*, quoting Hugo L. Black, *The Lawyer and Individual Freedom,* 21 Tenn L Rev 461, 466-67 (1950).
4. Brian Peteritas, Governing.com, *South Dakota Pays Lawyers to Practice in Rural Areas* <https://www.governing.com/archive/gov-south-dakota-subsidizes-lawyers.html> [https://perma.cc/9UR3-NKHR] (posted April 11, 2013) (all websites accessed January 23, 2024).
5. American Bar Association, *Webinar: Legal Deserts in America: A Threat to Justice for All* <https://www.americanbar.org/news/abanews/aba-news-archives/2020/07/webinar-video--legal-deserts-in-america-a-threat-to-justice-fo/?login> [https://perma.cc/U4N3-EA97] (posted July 28, 2020) (ABA membership required to access).
6. Marcia M. Meis, Illinois Courts, *Midwest Summit explores growing issue of legal service deserts* <https://www.illinoiscourts.gov/News/1297/Midwest-Summit-explores-growing-issue-of-legal-service-deserts/news-detail/#:~:text=Data%20from%202020%20shows%20that,states%20to%20address%20lawyer%20shortages> [https://perma.cc/ZXP8-6H38].
7. MacroTrends, *Michigan Population 1900-2023* <https://www.macrotrends.net/states/michigan/population> [https://perma.cc/8MHX-UHAS].
8. State Bar of Michigan, *New report details Michigan attorney demographics* <https://www.michbar.org/News/NewsDetail/New-report-details-Michigan-attorney-demographics?nid=5910> [https://perma.cc/33KA-ZFBL] (posted October 22, 2022). For 2000 statistics, see <https://www.michbar.org/file/opinions/statewidedemographics2019.pdf>.
9. Michigan Courts, *Data Points Out Legal Deserts in Michigan* <https://www.courts.michigan.gov/news-releases/2023/october/data-points-out-legal-deserts-in-michigan/> (posted October 26, 2023).

IN FOCUS

LITIGATION SECTION

BY FATIMA M. BOLYEA

The articles in this month's edition of the Michigan Bar Journal were written by members of the State Bar of Michigan Litigation Section. With more than 2,000 members, the Litigation Section is one of the largest in the State Bar. The section strives to bring educational content and learning opportunities related to litigation and trial preparation to its members, as well as networking opportunities.

The four articles in this issue represent a broad spectrum of litigation-related topics. In her article "The Evolution of Michigan's Open and Obvious Doctrine," section governing council member Ryanne Rizzo analyzes the recent Michigan Supreme Court opinions in *Kandil-Elsayed v. F&E Oil, Inc* and *Pinsky v. Kroger Co of Michigan* and explores the effects on the state's open and obvious doctrine in premises liability cases.

With fewer opportunities for direct trial participation, sharing war stories has become more important than ever. In "Takeaways from My First Jury Trial," section member Milica Filipovic takes readers behind the scenes of her recent successful jury trial and highlights some dos and don'ts for all trial attorneys.

Artificial intelligence-based tools have exploded in the last couple years. With such tools come both incredible opportunities and important ethical obligations. In his article "The Artificial Intelligence Revolution: A Look Back at 2023 and the Future of Artificial Intelligence and the Law," governing council member Alexander S. Rusek guides readers through the various benefits of and precautions regarding AI, which all members of the legal community should be aware of.

Lastly, in our article "The Collaborative Advantage: Including Clients in the Litigation Process," governing council member Emily Fields and I discuss the many benefits of attorneys including clients in the ongoing litigation and trial preparation process. Such inclusion fosters trust between clients and their legal team, ensures that clients are invested in the process, and provides an important source of ongoing information for counsel.

The SBM Litigation Section hopes these articles provide helpful information to the readers of the Michigan Bar Journal. We welcome all members of the Bar to join the Litigation Section either as a member or by attending one of our events. Find us at connect.michbar.org/litigation.

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The evolution of Michigan's open and obvious doctrine

BY RYANNE RIZZO

In law school, my torts professor, Pamela Wilkins, drilled into our brains the elements of a tort: duty, breach, causation, and harm. These four elements are what all attorneys practicing in negligence litigation think about day in and day out. So where does the open and obvious doctrine come in and how does it relate to these elements?

This has been a question Michigan jurisprudence has been trying to answer for nearly a century. While the open and obvious nature of a hazard was once a complete bar to recovery, it has evolved over time. The question that must be answered is whether the open and obvious doctrine related to breach and is a question of fact for a jury to decide or is it instead related to a landowner's duty and, therefore, a question of law for the judge to decide?

This article briefly explores that history and examines how the Michigan Supreme Court reached its 5-2 decision in last year's combined cases of *Kandil-Elsayed v. F&E Oil, Inc* and *Pinsky v. Kroger Co*.[1]

THE FIRST RESTATEMENT OF TORTS

In the years prior to 1965, Michigan was still developing its body of case law related to premises liability. Michigan courts treated the Restatement of Torts as persuasive[2] and, at times, even adopted parts of it into the common law. §343 of the First Restatement of Torts stated that a land possessor was "subject to liability for bodily harm caused to business visitors" only with respect to "condition[s] … involving an unreasonable risk to them[.]"[3] But where the landowner had "reason to believe [the business visitor would] discover the condition or realize the risk involved therein," they were categorically not subject to liability.[4] Whether an unsafe condition encountered by a plaintiff was considered to be open and obvious at that time was relevant to a court's determination of whether the

plaintiff was contributorily negligent and contributory negligence was, as a matter of law, a complete bar to plaintiff's recovery.[5]

THE SECOND RESTATEMENT OF TORTS

In 1965, the Second Restatement of Torts was published. §343 states:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.[6]

And §343A states in relevant part:

> (1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.[7]

Under the Second Restatement, it remained unclear which portions of the analysis fell under "duty" and which fell under "breach" and, therefore, which portions should be decided by a judge and which should be decided by a jury.

MCL 600.2957-600.2959

In 1979, Michigan eliminated the principle of contributory negligence and replaced it with the comparative fault doctrine as codified by the Michigan Legislature in MCL 600.2957-600.2959. While the new law made clear that comparative fault was an issue of fact to be determined by a jury, the case law that followed continued to muddle which components of the open and obvious danger doctrine pertained to duty and which to breach.

THE *LUGO* ERA

Michigan courts in 2001 addressed the unclear open and obvious danger doctrine head on in *Lugo v. Ameritech Corp, Inc.*,[8] placing it directly within the element of duty — a question of law for the judge to decide.

Lugo involved an individual who was walking into a business through its parking lot when she stepped into a pothole, causing her to fall and be injured. The trial court granted summary disposition to the business owner defendant, holding that the plaintiff had an inherent duty to pay attention to where she was walking and thus barring her from recovery.[9]

In a split decision, the Michigan Court of Appeals reversed the lower court's ruling, holding that in Michigan, which was now a comparative negligence state, the plaintiff's negligence can only reduce the amount of recovery and not eliminate the defendant's liability. The appeals court also determined that the open and obvious rule did not apply because there was a genuine issue of material fact regarding whether the defendant should have expected that an individual traversing through a busy parking lot might be distracted by the need to avoid a moving vehicle or might even reasonably step into the pothole to avoid traffic.[10]

The case was then taken up by the Michigan Supreme Court, which focused its analysis on the extent of the open and obvious doctrine in premises liability cases. The Court started by discussing duties premises owners owed to invitees, stating that "a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land."[11] The Court went on to explain this duty generally does not extend to dangers that are open and obvious, stating that "[w]here the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee."[12]

The *Lugo* Court went on to discuss that there may be special aspects that make the risk of harm unreasonable and, accordingly, a defendant may be found to have breached the duty to keep the premises reasonably safe by failing to remedy the dangerous condition. An example of this is a commercial building with only one exit for the general public but the floor leading to that exit is covered with standing water. While the condition is open and obvious, a customer wishing to exit the store must leave through the water, rendering the open and obvious condition effectively unavoidable. Additionally, something like an unguarded 30-foot hole in a parking lot may present an unreasonably unsafe situation as the substantial likelihood of death or severe injury would be present.

Ultimately, the *Lugo* Court held that typical open and obvious dangers do not have these special aspects associated with them. A pothole for example, would be a condition that is open and obvious and, thus, cannot form the basis of liability against a premises owner.

The *Lugo* decision resulted in the open and obvious doctrine being analyzed under the defendant's duty (an issue of law to be decided by a judge), whereas it had previously been unclear or related to the plaintiff's comparative negligence or breach (issues of fact for a jury to decide).

KANDIL-ELSAYED AND *PINSKY*

Lugo was reversed in 2023 by the Michigan Supreme Court in its decision in the combined cases of *Kandil-Elsayed v. F&E Oil, Inc.* and *Pinsky v. Kroger Co.*[13] Under the new analysis, whether a condition is open and obvious will again be analyzed under comparative negligence and breach rather than duty, which are questions of fact for a jury to decide.

In *Kandil-Elsayed*, an individual walked across a parking lot covered in snow and ice to pay for gas.[14] The plaintiff fell and injured herself while walking and argued that the snow-and-ice-covered path into the store was effectively unavoidable, so there was a special aspect associated with the open and obvious nature of the hazard. The trial court ruled the hazard was open and obvious and there were no special aspects and, thus, summary disposition was granted. The Court of Appeals affirmed. In *Pinsky*, the plaintiff was walking into a store when she tripped and fell over a small, thin cable an employee had used to indicate a lane closure.[15] It is unclear at what height the cable was placed and the trial court, holding that questions of fact remained, refused to grant summary disposition. The defendant appealed, and the Court of Appeals reversed the trial court decision. Both plaintiffs appealed to the Michigan Supreme Court.

In reaching its majority opinion, the *Kandil-Elsayed/Pinsky* Court went through the history of the open and obvious doctrine in detail, starting with the First Restatement of Torts and continuing through to the modern Third Restatement of Torts. In doing so, the Court concluded that *Lugo* had been wrongly decided for two reasons. First, it ruled that the *Lugo* Court erred by relating the open and obvious doctrine's exceptions to duty:

> While *Lugo* certainly provided clarity, it failed to grapple with how situating the open and obvious danger doctrine and its exceptions in duty — rather than breach — would operate in practice. In particular, it failed to account for the inherent tension with Michigan's clear policy of comparative fault. Duty is a threshold question of law for the court to decide before a case can get to a jury.[16]

The Court went on to note that "Michigan is a comparative-fault jurisdiction, meaning that it is the policy of our state that when a plaintiff is at fault, it does not bar recovery, but rather reduces the amount of damages they can recover by their percentage of fault."[17]

Second, the Court concluded that *Lugo*'s special aspects test was wrongly decided, laying out the numerous confusing and widely varying decisions that had come out since that test had been established. The Court wrote:

> We conclude that Lugo was wrongly decided and must be overruled. We hold, in accordance with decades of precedent prior to Lugo, that a land possessor owes a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land. Lugo's holding that the open and obvious danger doctrine is relevant to the defendant's duty is overruled. While the open and obvious nature of a condition, assessed by asking whether it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon causal inspection, remains relevant, it is a question of breach and comparative fault, not duty. Lastly, the special-aspects doctrine is overruled to the extent it is inconsistent with the Second Restatement's anticipation standard. We hold that instead, when assessing whether a defendant has breached their duty to take reasonable care to protect invitees from an open and obvious danger, courts should ask whether the possessor should anticipate the harm.[18]

WHAT COMES NEXT

Going forward, Michigan's premises liability cases will likely reach juries much more often than they have in the past 22 years. Now that the open and obvious nature of hazards will be analyzed under the element of breach and comparative negligence rather than duty, it is likely that far fewer premises liability cases will be decided by dispositive motions. However, this does not mean that the plaintiff's comparative fault will not come into question. Should a premises liability case come to a jury that decides that the defendant did in fact breach its duty, it can still take into account the open and obvious nature of the hazard and the plaintiff's decision to traverse it anyway, resulting in a lower, nominal, or even no award for the plaintiff.

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ENDNOTES.

1. *Kandil-Elsayed v F&E Oil, Inc* and *Pinsky v Kroger Co*, ___ Mich ___; ___ NW3d ___ (2023) (Docket Nos. 162907 & 163430).
2. *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 114 (2023) citing *Livings Estate v Sage's Investment Group, LLC*, 507 Mich 328, 345 n 12; 968 NW2d 397 (2021).
3. 1 Restatement Torts, §343(a), pp 938-939.
4. *Id.* at §343(b), p 939.
5. *See Spear v Wineman*, 335 Mich 287, 290; 55 NW2d 833 (1952).
6. 2 Restatement Torts, 2d, § 343, pp 215-216.
7. *Id.* at p 218.
8. *Lugo v Ameritech Corp*, 464 Mich 512; 629 NW2d 384 (2001).
9. *Id.*
10. *Lugo v Ameritech Corp*, unpublished opinion of the Court of Appeals, issued June 19, 1998 (Docket No. 194352), rev'd 464 Mich 12 (2001).
11. Lugo, 464 Mich at 516, citing *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).
12. *Id.* citing *Riddle v McLouth Steel Prods Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992).
13. *Kandil-Elsayed*, ___ Mich at 2.
14. *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 103; ___ NW2d ___ (2023).
15. *Id.* at 103.
16. *Id.* at 28-29.
17. *Id.* at 30, citing MCL 600.2959.
18. *Id.* at 48-49 (internal citations and quotations omitted).

Takeaways from my first jury trial

BY MILICA FILIPOVIC

I'll never forget the feeling I had walking into the Breslin Center on July 28, 2015, going down the stairs to our assigned seats for the bar exam. It was the first time in my life that the air had escaped my body, I was light-headed, and my legs turned to Jello. I felt as if I would faint right then and there going down those stairs.

Since that day, I have had plenty of opportunities as a young associate to feel nervous and experience the uncertainty of moving forward, but nothing quite like *that* feeling. That is, until May 17, 2023, when I walked into Judge Matthew Leitman's courtroom in the Theodore Levin Courthouse in Detroit for jury selection for my first solo jury trial.

I felt as ready as I could be prior to the trial and willed myself into that courtroom. But I instantly lost all trust in my legs as I stood to greet potential jurors as they walked in. In the months, weeks, and days leading up to this moment, I prepared for every moment and contingency; I planned and practiced every aspect of my first trial. I thoroughly prepped witnesses, had family and friends listen to my opening, and even recorded my opening and begged for as much feedback as possible. Nothing, however, prepared me for how I would feel when I saw those potential jurors.

As a bit of background, on Christmas Eve 2016, my client went to let his chocolate Labrador outside. The dog saw a squirrel and escaped from my client before he could put her on a leash. At that moment, a process server came to his home. My client told the process server that the dog was off-leash and friendly, but it was too late. She saw the process server and as she ran towards him, the process server pulled out his pistol and shot at the dog with my client standing

directly behind her. The bullet ricocheted; to this day, it remains in my client's neck between his carotid artery and his spine.

From the moment the potential jurors walked in until their two days of deliberations were over — resulting in a verdict for the plaintiff for $1.959 million — every single minute was a learning experience, teaching me lessons I will take with me into every future trial. I learned so many things, but it all came together when we talked to the jury after the verdict was in and asked them their thoughts.

While there is always room to grow and improve, the foundation of any trial I have in the future will rest on these takeaways, mostly gleaned from the jury:

- Be yourself.
- Know the facts of your case.
- Don't get caught in the weeds.
- Make your client as likeable to the jury as possible.
- Journal/debrief every day as much as possible.

BE YOURSELF

As I prepared for trial, the one piece of advice that I got from everybody was to be myself. The problem with that: What do you do when you know you are an acquired taste and haven't really discovered who you are in a courtroom? We all battle with knowing that some people love us and some hate us, so how do you let yourself be who you are without knowing which way the jury will go?

As the jurors were called, I grabbed my legs under the table to make sure they were still semi-functioning. Relief came only when one juror stood up to introduce himself and, with a shaky voice, apologized for being nervous. That was my opening.

I decided to use his comment as an icebreaker to get out of my own head and connect with the people who would hold my client's fate in their hands. When I stood up, I thanked the juror for his bravery for saying he was nervous, which paved the way for me to admit that I was, too. That very moment, that first exchange, set the tone for who I was and who I wanted to be. I knew then that the authentic me would have to be the quirky, sassy, and self-deprecating me unapologetically, whether loved or hated.

My notes, outlines, and road maps went out the window, and I got up to just talk to the jurors. I knew the case, I knew the facts, and I knew what I wanted to convey. In that split-second acknowledgment of that juror's nerves, I decided to trust the process and treat them like I would any person on the street, telling a story using my normal mannerisms. Every single time I knew I messed up, I looked to the jury and pleaded for them to hold it against me, not my client. Every time I knew I made a great point, I looked to the jury, wanting them to know I was high-fiving my client in my head. I made jokes at my own expense, like I always do, every time I stumbled, tripped, or dropped something because I am nothing without my normal gaffes.

Don't get me wrong — there were a lot of cringe-worthy moments, including an exchange I had with the defendant when my five-inch heel broke at the podium; I limped throughout the questioning until someone brought new shoes to my rescue. There were more times than I could count where I screamed "Idiot!" in my mind as I left the courtroom and replayed an exchange in my car on the ride home.

But guess what? The jurors liked it!

Even when they called me out for my cringiest moments, they all agreed that they completely dismissed it and thought I was doing the best I could to advocate for my client. The foreperson acknowledged that despite the rough parts, she "wanted to clap" during moments when I regained my footing. Ultimately, jurors can and will forgive your quirks, but not disingenuity.

KNOW THE FACTS OF YOUR CASE

As I was preparing for trial, I caught myself creating outlines of what I wanted to convey and most of those outlines were coming from memory. When I decided to ditch the outline for my opening statement, I also decided to do the same for direct examination of witnesses. I made a list of documents and/or evidence I wanted to get in through each witness, but I made the questioning flow like a conversation so it was organic and I wouldn't be tempted to get more information than I needed.

Knowing the facts and evidence allowed me to focus on each witness's responses without worrying about a checklist. When you know which facts you can save for later witnesses and which you absolutely need to get in with the witness in front of you, you can focus on the current witness's responses. Then, you can get what you need when you need it and develop other issues you weren't even thinking about or planning for, which makes for a far more logical presentation of your client's story.

DON'T GET CAUGHT IN THE WEEDS

I wish I could tell you everything went perfectly. For the most part, it went better than expected. I remember coming home after the first few days in court and feeling like that courtroom is where I belonged and where I was meant to be. After the first day of witnesses, I was on top of the world. I could not have imagined it going any better than it did, and to my surprise, every single piece fell in place exactly as I had wanted it. I checked in regularly with

Jim Harrington, a partner at Fieger Law and my mentor, and got his advice daily. I incorporated what I felt comfortable with and ditched what I didn't. Luckily for me, I had all the support I needed to "do my best" and have "fun with it."

The day I called the defendant, however, was a complete disaster. To provide a bit of background, before calling this defendant at trial, I had the distinct displeasure of deposing him. The deposition was terminated, and court intervention was sought after he refused to answer my questions and was completely disrespectful to me on a personal and professional level. Knowing how difficult that deposition was, I was extremely stressed out about the direct examination. In preparing for his testimony, I tried to incorporate the advice I got and answers I couldn't get before and became hyperfocused on catching every single inconsistency and lie. This is where I was stuck in the weeds. I treated that trial testimony as deposition testimony, and I know it was not my finest moment. However, not every piece of testimony is an issue, and not every question needs to be impeached.

I felt like a total failure that day. As I drove home completely gutted, I got a great piece of advice from Harrington, who reminded me that even boxers take a couple to the jaw and lose a few rounds. He told me to put it behind me and come back swinging better, stronger, and more deliberately. Luckily this happened on a Friday, so I let myself be in my feelings and then channeled my inner Rocky Balboa over the weekend to look forward and not back. Thinking about it now, that was probably the defining moment of the trial for me and the advice I would give to anybody else tackling their first trial.

MAKE SURE THE JURY LIKES YOUR CLIENT

It isn't just about the jury liking you. They have to like your client, and the only way that can happen organically is when *you* like your client and show the jury that you believe in them. Maybe it's the lawyer's ego or arrogance that we all have to some degree or just my inexperience, but I didn't consider how the plaintiff and defendant themselves would impact the jury. I focused on our presentation of our case. The one thing that stuck with me was when the jurors looked at the defense counsel and told him how much they disliked his client. They painstakingly elaborated on how they noticed every grunt, smirk, chuckle, and the time he dozed off during the case and they held it against him. They noticed that my client did not wear a suit, but they also noticed how often I touched his shoulder and that the "burly Harley biker" choked up with tears when I talked about him and what he went through like I was a long-time friend.

During that exchange, I learned to make sure my client wears a suit not because they judge his looks, but because it's a level of respect for the jurors who also have to wear nicer clothes. I also learned that jurors aren't necessarily looking at the evidence, but rather the reaction of the parties to the evidence. They look at how plaintiffs and defendants treat the process as well as how we treat them as their advocates.

JOURNAL/DEBRIEF

Every single day when trial was over, I would rush home to prepare for the next day. There isn't really any down time. What I think was most surprising for me was how time-consuming physical preparation would be. As a woman, daily trial prep meant not only making sure that everything was ready for the case itself, but for myself. Opposing counsel told me he had the luxury of rotating two suits with a different tie every day. Meanwhile, I had a new suit, new top, new jewelry, new heels, new makeup to match my outfit, and curled and styled my hair daily.

I was fueled by caffeine and adrenaline the entire time. Even though I was advised to sleep well, eat, exercise, and decompress, that was not something I could do (and don't see myself ever embracing.) However, I did follow the advice of my colleague, Greg Wix, and made sure I found a bit of time each night to keep a "trial journal" of what went well, what didn't, what I liked, and what I learned.

Ultimately, that journal became my therapy and allowed me to get in the right mindset every day. It essentially unburdened me from the things I thought I screwed up or could have done better and reminded me of the small victories I experienced every day. Every single night, that journal wiped the slate clean for me and gave me purpose for the following day — either to do better or keep the momentum rolling. Since that trial ended, I have gone to that journal so many times. You would think those moments and details always stick with you, but when every single day is powered by adrenaline and panic, those little moments fade into the past and the details that once meant everything suddenly aren't as clear.

When it came time to talk to the jury after the trial had concluded, I reread that journal. It helped me figure out what I wanted to ask them. You better believe their advice and thoughts were documented that night, too!

Milica Filipovic graduated from Wayne State University Law School in 2015 and began her career as an immigration and criminal defense attorney. In 2018, she began working at Fieger Law handling civil personal injury litigation.

The AI revolution: A look back at 2023 and the future of AI in the law

BY ALEXANDER S. RUSEK

2023 may go down in history as the "Year of Artificial Intelligence" and if it does not, it should at least be recognized as the "Year of *Accessible* Artificial Intelligence." In late 2022, ChatGPT, a large language model artificial intelligence program, was publicly released,[1] finally bringing an accessible AI tool to the masses. Since then, ChatGPT has proven itself as a very capable AI program, even passing the Uniform Bar Examination.[2] During this short period of time, there has been an explosion of AI tools being released that can do things such as generate text, sounds, voices, pictures, and videos. AI has also crept into the legal industry in multiple ways. This article provides a brief background on the flood of AI tools and what to expect from AI in the near future.

WHAT IS AI?

While there is no agreed-upon definition of artificial intelligence, Stanford computer science professor John McCarthy, one of the early pioneers in the field, defined it as "the science and engineering of making intelligent machines, especially intelligent computer programs. It is related to the similar task of using computers to understand human intelligence, but AI does not have to confine itself to methods that are biologically observable."[3]

ChatGPT, when asked by this author, "What is artificial intelligence?" replied, in part, that:

> Artificial Intelligence (AI) is a field of computer science and technology that focuses on creating systems and machines capable of performing tasks that typically require human intelligence. These tasks include things like problem-solving, learning, reasoning, perception, understanding natural language, and making decisions. AI systems aim to replicate or simulate human-like cognitive functions and abilities.

ChatGPT,[4] which is short for Chat Generative Pre-trained Transformer, was created and is maintained by OpenAI and is the most well-known generative AI internet chatbot.[5] The underlying technology "is capable of generating human-like text and has a wide range of applications, including language translation, language modelling, and generating text for applications such as chatbots. It is one of the largest and most powerful language processing AI models to date, with 175 billion parameters."[6]

In practice, using generative AI tools feels and looks very similar to using a traditional messaging application such as Slack, Facebook Messenger, iMessage, WhatsApp, or one of the countless others available. Put simply, a user types in a command or question into the website's prompt and the program then provides a written answer (or image, sound, or video, depending on the system.) Users can then enter follow-up questions or commands and the AI system will use the additional inputs to refine its output. OpenAI explains that "[t]he dialogue format makes it possible for ChatGPT to answer follow-up questions, admit its mistakes, challenge incorrect premises, and reject inappropriate requests."[7]

WHAT CAN AI DO?

Accessible AI burst onto the scene in late 2022 and its use expanded greatly throughout 2023. New AI technologies like ChatGPT are being created seemingly every day. In a little over a year since the public release of ChatGPT, generative AI has been used to pass the Uniform Bar Exam;[8] cheat on grade-school tests;[9] write and debug programming code;[10] create workout routines;[11] create or reference recipes;[12] write music and film and television scripts;[13] write a résumé and cover letter;[14] write jokes;[15] solve math problems;[16] get a B grade on a Wharton business school exam;[17] attempt to diagnose health problems;[18] explain scientific and mathematical concepts at different levels of sophistication;[19] and much more. AI systems can also assist with internet searches (e.g., Microsoft Bing), create electronic art (e.g., OpenAI Dall-E 2, Dream Studio, Midjourney, DeepAI, Remini, and Stable Diffusion), and generate sounds, voices, and videos.

WHAT ARE AI'S LIMITATIONS?

As one asks ChatGPT to perform increasingly complicated tasks, its limitations quickly become apparent. OpenAI itself acknowledges that ChatGPT may occasionally generate incorrect information, produce harmful instructions or biased content, and has limited knowledge of the world and events after a specified date — remember, ChatGPT is not a search engine and may not have the most up-to-date information in its knowledge bank.[20] At least one attorney has been caught using AI to write a brief wherein the AI system simply made up case law.[21] AI programs are contoured by the underlying data used to build and train it, which can result in AI seemingly becoming racist, sexist, or otherwise biased because of the data it used to "learn."[22]

Other problems have arisen over the last year stemming from the proliferation of accessible AI tools. Issues related to using AI to cheat on tests in grade schools and higher education is a major concern, as is the issue of deepfakes. Deepfakes are defined as "a fake, digitally manipulated video or audio file produced by using deep learning, an advanced type of machine learning, and typically featuring a person's likeness and voice in a situation that did not actually occur."[23]

Deepfakes using the likeness of celebrities to sell goods and services without their authorization have begun to appear online.[24] In one instance, a deepfake of actor Tom Hanks was used to advertise a dental plan.[25] More disturbing are numerous reports of people using AI tools to generate pornographic images of others without their knowledge or consent.[26] Several states have implemented criminal penalties for creation of nonconsensual pornographic deepfakes.[27]

Recently, authors such as John Grisham, Jodi Picoult, and George R.R. Martin have sued OpenAI alleging "systemic theft on a mass scale" for generating output based on their copyrighted material used to train the system.[28] Intellectual property issues arising from the use of generative AI are only expected to grow. It should be noted that this article has only touched briefly upon the numerous legal and ethical issues surrounding the use of AI, and this author expects these issues to be hotly debated in the coming years.

AI IN THE LEGAL FIELD

In the legal field, AI can assist with research and cite checking; drafting and reviewing pleadings and other papers such as complaints and motions to compel discovery; drafting, analyzing, and reviewing transactional documents such as buy-sell agreements or operating agreements for a limited liability company; and analyzing and reviewing discovery, amongst other uses.

Both Thomson Reuters and LexisNexis have rolled out AI tools and intend to release more in the future. Relativity, perhaps the most well-known e-discovery platform, also offers AI-driven discovery review tools. Scott Wrobel, managing member of Michigan-based N1 Discovery, told this author that in the future, "it will be interesting to see how generative AI tools will assist attorneys with determining appropriate search terms based on the type of case or concepts within a case."

TESTING AI IN THE REAL WORLD

ChatGPT and other AI systems are relatively easy to use but can be difficult to effectively utilize without recognizing and accounting for its limitations. Always keep in mind that AI can — and routinely does — provide inaccurate or incomplete information and is not a substitute for the legal advice of a licensed, qualified attorney. Attorneys should also use traditional research tools to confirm the accuracy of AI-generated documents and research. In general, AI out-

put is most useful and accurate when the user provides the program with detailed information and parameters for the desired output.

To try out ChatGPT for the first time, go to www.chat.openai.com. After creating a free account, you will be taken to the main ChatGPT web page where you are greeted by a simple search bar somewhat reminiscent of Google's home page. Input your question or command; ChatGPT almost instantaneously begins generating its response on your screen. After ChatGPT delivers its initial response, users can ask additional questions and provide additional commands. ChatGPT will then craft a response that, hopefully, has taken the additional input and builds upon its previous answer. Users are also able to rate the accuracy of the response, which can be used to further train the system to provide more accurate and human-like responses in the future.

Let's look at an example of how generative AI can help lawyers. In this example, ChatGPT was prompted, "Draft a cease-and-desist letter from the owners of the real property known as Blackacre to the owners of the real property known as Greenacre demanding that the owner immediately stop trespassing on Blackacre. Use Michigan statutes and case law to support the cease-and-desist letter."

ChatGPT produced the template below:

[Your Name]
[Your Address]
[City, State, Zip Code]
[Date]

[Recipient's Name]
[Recipient's Address]
[City, State, Zip Code]

Re: Cease and Desist Trespassing on Blackacre Property

Dear [Recipient's Name],

I am writing to you as the legal owner of the real property known as "Blackacre," situated in [City], [County], Michigan, with a legal description as follows: [Insert Legal Description of Blackacre Property].

It has come to our attention that you, as the owner of the real property known as "Greenacre," situated adjacent to Blackacre, have been trespassing onto Blackacre property without authorization or legal right. Such actions are in direct violation of Michigan law, including but not limited to Michigan Compiled Laws (MCL) § 750.552, which defines criminal trespass, and established case law, such as [Reference relevant Michigan trespassing case law, if applicable].

Criminal trespass in Michigan is defined under MCL § 750.552 as follows:

Criminal trespass in Michigan is defined under MCL § 750.552 as follows:

"Any person who shall willfully enter upon the lands or premises of another without lawful authority, after having been forbidden so to do by the owner or occupant thereof, or any person who shall enter upon lands or premises open to the public, upon which posted notice forbidding entry is given by the owner or occupant thereof, without lawful authority, or after having been forbidden so to do by the owner or occupant thereof, shall be guilty of a misdemeanor."

In light of the aforementioned legal provisions, I hereby demand that you cease and desist from any further trespassing onto Blackacre property immediately. This includes but is not limited to entering, occupying, or otherwise accessing Blackacre without the express permission of the lawful owner.

Failure to comply with this cease and desist demand will leave us with no choice but to pursue legal remedies available under Michigan law, including seeking injunctive relief, damages, and any other remedies provided by law. We urge you to seek legal counsel and rectify this situation promptly to avoid any legal consequences.

Please acknowledge your receipt of this cease and desist letter in writing within [reasonable time frame, e.g., 10 days] from the date of this letter. Failure to respond may be used against you in legal proceedings to demonstrate your willful disregard for our demands.

This letter is not intended to be a complete or exhaustive statement of our rights, remedies, claims, or defenses, but rather a notice of our position and demands. We expressly reserve all rights and remedies available to us under Michigan law.

Sincerely,

[Your Name]
[Your Contact Information]

cc: [Attorney's Name, if applicable]

CAUTION AND CONCLUSION

While there is significant room for improvement, AI can be effectively used by attorneys who understand its power but are also aware of and respect its limitations. As with most tools, how AI is implemented, and not necessarily its inherent characteristics, should be the measure of its usefulness. Attorneys aware of AI's limitations and the knowledge to implement it within those parameters will be best positioned to leverage it for their clients' benefit in the future. However, with that said, AI is not likely to replace attorneys anytime soon.

Finally, attorneys must always keep in mind their ethical obligations under the Michigan Rules of Professional Conduct (MRPC) when incorporating new technology into their practices. At a minimum, attorneys should keep in mind their obligations to become and remain competent under MRPC 1.1 and keep client information confidential under MRPC 1.6 — ChatGPT does not guarantee that your inputs will be kept confidential. While a full discussion of the ethical concerns surrounding AI is beyond the scope of this article, numerous resources have been published to help guide attorneys through the ethical minefield that AI presents.[29]

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The collaborative advantage: Including clients in the litigation process

BY FATIMA M. BOLYEA AND EMILY S. FIELDS

In the realm of law, the attorney-client relationship is often regarded as the cornerstone of justice. Attorneys are not merely legal representatives, but trusted advocates who work diligently to protect their clients' rights and interests. To achieve the best possible outcome, attorneys should embrace a collaborative approach that actively includes their clients in the litigation process. This article explores the importance of involving clients in litigation, highlighting how this practice helps attorneys gather essential factual information and historical data about the case.

CLIENT PERSPECTIVE: A VALUABLE RESOURCE

When working up a case for trial, attorneys rely on many sources of expertise and information — their education and experience; their internal legal team; outside financial, consulting, accounting, and other experts; and research databases. One source of information attorneys should never overlook is the knowledge and experiences of their clients.

By actively involving clients in their own cases, attorneys can gain firsthand knowledge, unique insights, and personal experiences related to the legal matter at hand. This direct perspective can significantly impact the outcome of the case and enhance the attorney's understanding of the client's objectives.

Legal cases are not abstract matters of fact and law. They are grounded in real-life experiences and events. Attorneys who collaborate with their clients recognize the invaluable role clients play as a source of real-world knowledge. Clients can provide firsthand accounts of the events leading up to the legal case, their interactions with other parties involved, and the emotions and motivations driving their actions.

Attorneys can develop a deeper understanding of the context of the case by actively listening to the client and encouraging them to share their experiences and insight with the attorney. This understanding can be instrumental in crafting a persuasive argument as it allows the attorney to convey the case's human dimension, making it more relatable and compelling to judges, juries, or opposing parties.

COLLECTING FACTUAL INFORMATION

Clients possess a wealth of information about their cases indispensable for building a strong legal strategy. Attorneys should encourage clients to share all relevant details, documents, and evidence associated with their case. This open exchange of information can uncover crucial details that may otherwise remain hidden and strengthen the attorney's argument and the case itself.

Clients often have access to documents, records, and other evidence directly relevant to the case. Be it contracts, correspondence, financial records, medical reports, eyewitness accounts, or knowledge that provides needed context, the client is a repository of valuable information. This documentation and information can corroborate the client's version of events, support legal claims, or serve as a basis for challenging opposing arguments. Attorneys should make sure to obtain and review these documents as early in the client relationship as possible to develop a more fulsome understanding of the case and its context.

Moreover, clients can provide insights into potential witnesses or experts who may have relevant information or expertise. Their knowledge about key players in the case can be instrumental in identifying and securing testimony that bolsters the legal strategy.

Attorneys should maintain open lines of communication with their clients throughout the case to ensure that any new information or documents that emerge are promptly shared and integrated into the legal strategy. Facts are the backbone of a strong case; active client involvement can ensure that no critical details are overlooked.

HISTORICAL DATA AND CONTEXT

Every legal case is embedded in a historical context, and clients are often the best historians of their own circumstances. By involving clients, attorneys gain access to the historical data necessary to construct a compelling narrative for the case. Clients can help attorneys understand the nuances, timelines, and intricacies of their situation, which can be pivotal in litigation.

While the law operates in the present, legal cases often involve events that have transpired over time. Whether it's a contract dis-

pute, a personal injury claim, or a criminal case, the historical context matters. Clients can provide essential insights into the sequence of events that led to the legal issue and the personalities involved, shedding light on the circumstances that gave rise to the dispute.

For example, in a personal injury case, a client's recollection of events leading up to the accident, the actions of the parties involved, and any prior incidents can be critical in determining liability and damages. Similarly, in a contract dispute, understanding the negotiation process, changes in terms, and the parties' conduct throughout the contractual relationship is essential.

A helpful exercise for clients to undertake at the beginning of a case is drafting a timeline of important events for the legal team. This encourages the client to commit their memory to paper, assists them in determining any documents they must locate, and sets out the facts in a way that is helpful for the attorney to review.

Involving clients in discussing and documenting the historical context of their case allows attorneys to better craft compelling narratives that align with their legal strategies which can be particularly important in cases that involve a universe that may be unfamiliar to outsiders, such as an industry with its own terminology or accepted practices. A coherent and plausible story is often more persuasive than a disjointed set of facts and legal arguments.

A COMPREHENSIVE LEGAL STRATEGY

Incorporating clients into the litigation process enables attorneys to develop a more comprehensive legal strategy. Clients can provide information that goes beyond legal textbooks and precedents, helping attorneys tailor their approach to the client's specific needs and goals.

Legal cases are not one size fits all. By involving clients, attorneys can design a strategy that considers not only the legal aspects of the case but also the client's personal and financial interests.

Client involvement can help attorneys prioritize legal objectives. For example, in a divorce case, a client may place a high value on maintaining an amicable relationship with the ex-spouse for the sake of their children. In a business dispute, a client may prioritize a swift resolution to minimize disruptions to ongoing operations. Furthermore, clients can provide insight into their tolerance for risk and the outcome they realistically hope to achieve. These considerations can guide attorneys in making strategic decisions, such as whether to pursue settlement negotiations or prepare for a trial.

By incorporating clients into development of legal strategies, attorneys demonstrate a client-centered approach, which often leads to more satisfying outcomes and strengthens the attorney-client relationship.

BUILDING TRUST AND TRANSPARENCY

Trust is the bedrock of the attorney-client relationship. Clients must trust their attorneys to act in their best interests, make sound legal decisions, and represent them competently. This trust can be developed in several ways.

First, clients are more likely to trust attorneys who listen to their concerns and involve them in making decisions. A collaborative approach demonstrates that the attorney values the client's input and respects their perspective, which can lead to a more effective working relationship.

Second, transparency is a key element in building trust. Clients have a right to know what is happening in their case, and a lack of information can breed uncertainty and anxiety. Attorneys can keep clients informed and engaged by providing regular updates on case progress, developments, and potential challenges.

Third, involving clients in the litigation process enables them to understand the reasoning behind decisions and strategies. When clients grasp the rationale for a particular course of action, they are more likely to trust that the attorney is acting in their best interests.

A strong attorney-client relationship built on trust and transparency is beneficial not only for the current case but also for possible future legal needs. Clients who have positive experiences with their attorneys are more likely to return for additional legal services and recommend the attorney to others.

Establish communication preferences with your client early in the representation. While many clients enjoy staying involved in the case and receiving regular updates, some clients may prefer to be informed only periodically. Make sure you and your client are on the same page and check in regularly throughout the case to determine whether the client's communication preferences have changed.

INFORMED DECISION-MAKING

Legal decisions can have far-reaching consequences that affect not only the result of the current case, but also the client's financial well-being, personal life, and future prospects. Clients have a significant stake in these decisions; their input is invaluable.

Attorneys should take the time to educate clients about the legal process, potential outcomes, and implications of various strategies. By actively involving clients, attorneys empower them to make informed decisions about their case. This not only gives clients a sense of control, but also allows them to understand the potential risks and benefits associated with different legal strategies. For example, in a criminal defense case, clients should understand the potential consequences of going to trial versus accepting a plea bargain. In a civil dispute, clients should be aware

of the risks and costs associated with protracted litigation versus negotiation and settlement.

Involving clients in the decision-making process allows attorneys to ensure that clients fully comprehend their options and that their decisions align with their goals and values. This approach can help clients make choices consistent with their best interests.

CONCLUSION

Including clients in the litigation process is not merely a matter of courtesy; it is a strategic choice that leads to better informed and more effective legal representation. Attorneys who actively engage their clients benefit from access to a wealth of factual information, historical data, and a deeper understanding of their clients' goals and concerns. This collaborative approach builds trust, transparency, and ensures clients are active participants in their own legal journey.

Ultimately, justice is most effectively pursued and obtained through the partnership between attorney and client. A successful attorney-client relationship is built on open communication, shared information, and a mutual commitment to achieving the best possible outcome. By embracing the collaborative advantage, attorneys can serve their clients more effectively and uphold the principles of justice in the legal system.

Fatima M. Bolyea is a past chair of the SBM Litigation Section and an ex-officio member of its governing council. As senior counsel of the commercial litigation group at Taft Stettinius & Hollister in Southfield, she focuses on small businesses, close corporations, family-owned companies, and their owners and executives.

Emily S. Fields is an associate at Mantese Honigman in Troy, where her practice is focused on commercial litigation. A member of the governing council of the SBM Litigation Section since 2018, she handles a variety of corporate governance matters in addition to all aspects of litigation and arbitration.

PLAIN LANGUAGE

What the Michigan summmons should look like (Part 1)

BY KAREN SCHRIVER

In spring 2021, with the approval of the former Chief Justice and encouragement from the State Court Administrative Office and leaders of the State Bar Justice for All Commission, the Kimble Center for Legal Drafting began work on revising Michigan's summons. The form was designed by Karen Schriver, who is internationally recognized as a top expert in document design and plain language. Of course, others connected with the Kimble Center reviewed each draft. We held Zoom meetings with several people at SCAO who work on forms and another Zoom meeting with several court clerks. After we had prepared one of the earlier drafts, we sent it to SCAO and to those same court clerks for their comments — and we received lots of good ones. We also received comments from the Ottawa County Legal Self-Help Center and from the Legal Design Lab at Stanford Law School. All told, the form went through 20 drafts. We submitted the final draft in January 2022. We have always been prepared to test it with users — the gold standard for whether a document works. Note that the form itself has been reduced by about 10 percent for publication here. Next month, the proof of service. —JK

Karen Schriver is president of KSA Communication Design & Research in Pittsburgh, Pennsylvania. A former faculty member at Carnegie Mellon University, she taught students to apply research on document design, plain language, and cognitive science to design everyday communications. Her book, *Dynamics in Document Design: Creating Texts for Readers*, was named a landmark by the Society of Technical Communication. Winner of many awards for her research, Schriver focuses on making complex information clear, compelling, and usable.

40 FORTY YEARS OF PLAIN LANGUAGE

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 40 years. To contribute an article, contact Prof. Kimble at Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, visit www.michbar.org/plainlanguage.

Summons — Notice to Respond to a Court Case
State of Michigan

To be filled out by the Court Clerk

Which Michigan Court?

_____ District Court
_____ Circuit Court
_____ Probate Court

Court Address

_____

_____

Court Phone Number

_____

Case Number

Judge

Who gets this form?
Original – Court
1st copy – Defendant
2nd copy – Plaintiff
3rd copy – Process Server

Plaintiff: Follow these instructions

You are starting a court case against the defendant(s).
1. Fill out **Section A**: **Parties in your case.**
2. Fill out **Section B: Related cases.**
3. Submit this form to the court clerk, along with your complaint, and (if necessary) a case inventory (form MC 21).

→ Need a form?
https://www.courts.michigan.gov/SCAO-forms/

Defendant: What you need to know

The plaintiff has started a court case against you.
→ See the **Summons** on the next page.

Section A: Parties in your case

If you have more than one plaintiff, you may use one name and write "and others."

If there is more than one defendant, you may use a separate form for each one.

Plaintiff(s): name(s), postal address(es), email address(es), and phone number(s)

If the plaintiff has an attorney: name, bar number, postal address, email adddress, and phone number(s)

Defendant(s): name(s), postal address(es), email address(es), and phone numbers(s)

Section B: Related cases

Domestic-Relations Cases
The plaintiff must check the one that applies.

Is there a pending (still in court) or resolved (no longer in court) case in the family division of the circuit court involving a family member of the plaintiff or the defendant?
- ❑ No
- ❑ Yes. I have separately filed a completed case inventory (form MC 21) for the other case(s).
- ❑ I don't know

Other Civil Cases
("civil" means not a criminal case)

The plaintiff must check any that apply (continued on next page).

- ❑ There is a previously filed civil case between these parties arising out of the same transaction or occurrence alleged in this complaint. It was filed earlier in:
  - ❑ This court
  - ❑ Another court:
    - Court _____
    - Case Number _____
    - Judge _____

  Is the previously filed case still pending?
  - ❑ No
  - ❑ Yes

Summons — Notice to Respond to a Court Case

State of Michigan

Case Number

Section B: Related cases (continued)

❑ This is a business case that involves a business or commercial dispute under a Michigan statute, MCL 600.8035.

Other Civil Cases

The plaintiff must check any that apply.

❑ The Michigan Department of Health and Human Services (MDHHS) and a contracted health plan may have a right to recover expenses in this case. I will provide a notice and copy of this complaint to MDHHS, and (if applicable), the health plan as required by MCL 400.106(4).

Plaintiff: STOP HERE

➔ File pages 1 and 2 with the court clerk, along with your complaint, and (if necessary) a case inventory (form MC 21).

Notice to the Defendant

Summons

This summons is issued in the name of the people of the State of Michigan.

What to Know

- The plaintiff has started a court case against you.
- Here is how much time you have to answer after you received this summons and a copy of the complaint:

If they were delivered to you personally	21 days after you received them.
If you received them in the mail	28 days after the date you received them.

- If you do not answer before your time runs out, the court may enter a legal judgment against you for what the plaintiff is asking for.

What to Do

- If you want to respond and participate in the case, you must file a written answer (form MC 03)—or take other lawful action—with the court.
- Do you need an accommodation?

If you have a disability	fill out form MC 70.
If you need a foreign language interpreter	fill out form MC 81.

- If you need help, call the court at the phone number on page 1. The court can answer questions on procedure, but cannot give legal advice.

For the Court Clerk

Place the court seal on this page.

Court Clerk's Issuance of Summons

Issue Date _____ Expiration Date _____

(Invalid if not served on or before this date.)

Court Clerk _____

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BEST PRACTICES

Best practices in pleading and proving exemplary damages

BY JENNIFER AND CHAD ENGELHARDT

The drunk driver knew she had ingested too much alcohol to drive safely.[1] She knew that swerving her SUV through rush-hour traffic at a high rate of speed was dangerous. She knew she had alcohol in the car. She knew that running a red light posed a high risk of danger to others. These conditions existed when she crashed her large SUV into an innocent man who was on his way home from work, causing him serious injury.

As the injured man lay trapped in his car waiting for emergency personnel to arrive and extract him from his vehicle using the Jaws of Life, the drunk driver added insult to injury. She got out of her SUV and screamed at the injured man, yelling curses and racial epithets at the trapped and helpless driver. She neither apologized nor took responsibility for her actions. And when the police arrived, she made false accusations about the driver. When proven false by the evidence and eyewitnesses, she proceeded to make similar false statements about the officers.

Compounding his debilitating physical injuries, the innocent man suffered post-traumatic stress because of the drunk driver's post-crash actions. Once an active and extroverted person, the injured man now suffers nightmares and panic attacks. In addition to the physical and other typical injuries which result from being hit by an SUV, the injured man — who was in no way responsible for the crash — suffers from emotional distress and outrage because of the drunk driver's post-crash misconduct.

Are ordinary non-economic damages sufficient for this aggravated negligence? Or can additional exemplary damages be awarded with careful pleading and evidentiary development?[2]

Exemplary damages are a special type of non-economic damages recoverable to a plaintiff for injured feelings. In Michigan, exemplary damages are recoverable as compensation to a plaintiff.[3] While often mistaken for punitive damages, exemplary damages differ from punitive damages. Punitive damages are intended to punish the wrongdoer and deter him or her — and others — from similar extreme conduct.[4] Exemplary damages serve as additional compensation for aggravated injured feelings "where the defendant commits a voluntary act which inspires feelings of humiliation, outrage, and indignity. But the conduct must be malicious or so willful and wanton as to demonstrate a reckless disregard of the plaintiff's rights."[5]

As the Michigan Supreme Court explained, "[t]he theory of these cases is that the reprehensibility of the defendant's conduct both intensifies the injury and justifies the award of exemplary damages as compensation for the harm done the plaintiff's feelings."[6] A defendant's act must be voluntary for the plaintiff to recover exemplary damages.[7] Ordinary negligent conduct is not sufficient to justify an award of exemplary damages.[8]

> An award of exemplary damages is considered proper if it compensates a plaintiff for the "humiliation, sense of outrage, and indignity" resulting from injuries "maliciously, willfully and wantonly" inflicted by the defendant. The theory of these cases is that the reprehensibility of the defendant's conduct both intensifies the injury and justifies the award of exemplary damages as compensation for the harm done the plaintiff's feelings.[9]

"Best Practices" is a regular column of the Michigan Bar Journal, edited by George Strander for the Michigan Bar Journal Committee. To contribute an article, contact Mr. Strander at gstrander@ingham.org.

While there is some overlap with emotional distress, exemplary damages "pick up where actual damages leave off by in effect compensating the plaintiff for injured feelings attributable solely to the egregiousness of defendant's conduct."[10]

Some statutes expressly provide for exemplary damages. These include:

- MCL 600.2907a (encumbrance of a property in violation of MCL 565.25 without lawful intent with intent to harass or intimidate)
- MCL 600.2911 (libel or slander)
- MCL 600.2917 (unreasonable force used during false imprisonment, unlawful arrest, assault, battery, libel, slander by a merchant)
- MCL 600.2953a (motion picture recording violation)
- MCL 600.2954 (civil action by victim of stalking)
- MCL 600.2962 (cable theft)

In the right case with the right facts, pleading and proving gross negligence can be an effective pathway to exemplary damages. Allegations of voluntary acts, gross negligence, and exemplary emotional distress damages should be set forth in separate counts in your complaint, distinct from the claims of ordinary negligence and the damages arising out of that claim.[11] While pleading in the alternative is allowed under the Michigan Court Rules,[12] precise pleading of distinct exemplary damages will provide clarity and avoid an argument over "double recovery." A verdict form should likewise delineate between general non-economic damages (including emotional distress) and the more specific exemplary damages.[14]

In addition to careful pleading, another key to obtaining exemplary damages is developing a proper record through the testimony of the parties, lay witnesses, and expert witnesses. This is accomplished through eliciting thorough deposition and trial testimony from the plaintiff(s), family members, friends, and, when available, treating physicians, mental health providers, and/or retained experts. Effort should be undertaken to comprehensively question witnesses on the conduct giving rise to the underlying claim as well as the exemplary damages claim. The practitioner is wise to elicit testimony regarding the injured party's pain, suffering, disability, and emotional distress from the underlying cause of action and then elicit testimony of the additional and exacerbated emotional distress caused by the outrageous or intentional conduct for which exemplary damages are sought. With respect to lay witnesses, MRE 701 allows such testimony including opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of witness testimony or the determination of a fact in issue.

Some argue that exemplary damages are not recoverable in wrongful death actions because they are not expressly identified in the Wrongful Death Act.[15] Others argue that the catchall provision in that act, along with subsequent case law, do afford for such damages.[16]

Exemplary damages are not limited to civil litigation in state courts. For instance, they may also be awarded in arbitration under the Uniform Arbitration Act, MCL 691.1701(1), where "the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim." Likewise, exemplary damages may be available in certain administrative actions.[17]

WHAT ABOUT THE CORPORATE PLAINTIFF?

The Michigan Court of Appeals held that under the right circumstances, exemplary damages may be awarded to a corporation for commercial injury. For instance, exemplary damages are available to compensate for possible injury to reputation.[18] Exemplary damages are only available for injuries which cannot be measured or estimated in monetary terms.[19] Quantifiable damages, such as lost future profits or lost employee time, are not recoverable as exemplary damages.[20]

WHAT IS THE MEASURE OF DAMAGES?

This is a quintessential issue for the trier of fact where the amount is not otherwise set by law or statute. However, if the jury awards exemplary damages in an amount which is unjustifiably excessive, the defendant has the right to petition the trial court for remittitur. Specific to such an award, the Michigan Supreme Court held that "[i]n reviewing damage awards in cases tried to juries, this Court has asked whether the award shocks the judicial conscience, appears unsupported by the proofs, or seems to be the product of improper methods, passion, caprice, or prejudice; if the amount awarded falls reasonably within the range of the evidence and within the limits of what reasonable minds would deem just compensation for the injury sustained, the verdict has not been disturbed."[21]

Because exemplary damages may not be covered — and are sometimes specifically excluded — under insurance policies, they can expose a party to significant personal exposure. Exemplary damages may not be available in most cases, but it cases in which such damages are legally and factually supported, they can drive settlement or expand the scope of recoverable damages.

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3. *Kewin v Massachusetts Mutual,* 409 Mich 401, 419; 295 NW2d 50 (1980).
4. 7 Mich Civ Jur Damages § 161 (2013).
5. *Jackson Printing Co, Inc v Mitan,* 169 Mich App 334, 341; 425 NW2d 791 (1988); *Bailey v Graves,* 411 Mich 510, 515; 309 NW2d 166 (1981). See also *McFadden v Tate,* 350 Mich 84, 85 NW2d 181 (1957).
6. *Kewin v Mass Mut,* 409 Mich 401, 419; 295 NW2d 50 (1980).
7. *Detroit Daily Post Co v McArthur,* 16 Mich 447, 452 (1868).
8. *Veselenak v Smith,* 414 Mich 567, 575, 327 NW2d 261 (1982). While not allowing exemplary damages based on the evidentiary record, the Court rejected the argument that medical malpractice defendants were immune from exemplary damages: "The argument that recitation of the Hippocratic oath should raise a conclusive presumption of good faith, thus insulating physicians from any charges of malicious conduct arising out of the physician-patient relationship, flies in the face of legal accountability." *Id.* at 572.
9. *Kewin,* 409 Mich at 419, citing *McFadden,* 350 Mich at 89.
10. *White v City of Vassar,* 157 Mich App 282, 291; 403 NW2d 124 (1987).
11. See, e.g., Graves, *Point,* State Bar of Michigan Negligence Law Quarterly (Fall 2002), pp. 3-4. <https://higherlogicdownload.s3.amazonaws.com/MICHBAR/8d29d9a3-9803-4628-98f8-80a37ad6f9d5/UploadedImages/pdf/newsletter/fall02.pdf> [https://perma.cc/YK3A-SQJ7] (website accessed Jan. 11, 2024).
12. It is black letter law that a party may attempt to recover based on alternate theories. See, e.g., *VanZanten v H VanderLaan Co,* 200 Mich App 139, 141; 503 NW2d 713 (1993). See also MCR 2.111(A)(2)(b).
13. *Veselenak,* 414 Mich at 575-576.
14. *Green v Evans,* 156 Mich App 145, 151-152; 401 NW2d 250 (1985).
15. MCL 600.2922. See also *Tobin v Providence Hosp,* 244 Mich App 626; 624 NW2d 548 (2001).
16. See, e.g., *Denney v Kent Cty Rd Comm,* 317 Mich App 727; 896 NW2d 808 (2016), where the court held that the word "including" in MCL 600.2922(6) "indicates an intent by the Legislature to permit the award of any type of damages, economic and noneconomic, deemed justified by the facts of the particular case." See also, *Wesche v Mecosta Cty Rd Comm,* 480 Mich 75, 89, 746 NW2d 847 (2008) ("The mere fact that our legislative scheme requires that suits for tortious conduct resulting in death be filtered through the so-called 'death act' does not change the character of such actions except to expand the elements of damage available.")
17. See, e.g., Mich Admin Code R 408.9034.
18. *Joba Constr Co v Burns & Roe, Inc,* 121 Mich App 615, 643; 329 NW2d 760 (1982).
19. *Unibar Maintenance Servs, Inc v Saigh,* 283 Mich App 609; 769 NW2d 911 (2009).
20. *Id.*
21. *Precopio v Detroit Dep't of Transp,* 415 Mich 457, 465; 330 NW2d 802 (1982).

LIBRARIES & LEGAL RESEARCH

Who's going to sue? A look at environmental citizen suits

BY VIRGINIA C. THOMAS

You may be familiar with lawsuits brought by private individuals or non-government organizations under statutes that provide some measure of protection to non-human species.[1] These civil actions brought by citizen plaintiffs are commonplace these days. In fact, strategic use of the citizen-suit provisions in environmental statutes allowed animal welfare advocates to successfully seek appropriate remedies in federal and state courts.[2]

But aren't government agencies delegated the authority to enforce statutes intended to promote animal welfare? The short answer is yes. However, there is a critical difference in the enforcement provisions of anti-cruelty statutes in place and those that protect the environment more broadly. A growing number of environmental law statutes, including the Endangered Species Act,[3] explicitly provide for citizens to compel compliance with the law if the designated agency fails to do so despite its legal mandate. That means suing alleged violators and seeking injunctions, civil penalties, and attorney's fees.

CITIZEN-SUIT LEGISLATION: BLAME MICHIGAN

The concept of the citizen suit may be second nature to environmentalists, but perhaps not to others. The first federal citizen-suit provision was added to the Clean Air Amendments of 1970 (CAA 1970).[4] Essentially, §304(a) of CAA 1970 enables any individual or organization to initiate a civil action in a federal district court against a person who has acted in violation of the act or against the Environmental Protection Agency for failure to perform its nondiscretionary duties under the act.[5]

Almost two years in the making, this legislation was not a bicameral slam dunk. As the 91st Congressional session drew to a close, two primary bills were in play: HR 17255 and S 4358. The original House bill, which ultimately was enacted, did not include citizen-suit language. That provision, which was featured prominently in the various Senate bills, was the source of considerable debate.[6] Citizen-suit proponents advocated for greater public participation in setting environmental standards,[7] while the conference committee juxtaposed citizen concerns with corporate resistance.[8] Ultimately, the provision was added to HR 17255 per conference committee recommendation. The House and Senate voted to approve the conference committee report and President Richard M. Nixon signed the bill into law on Dec. 31, 1970.

Joseph L. Sax, a member of the University of Michigan law faculty when the statute was enacted, has been credited as the source of the citizen-suit concept.[9] Sax was a fervent advocate of citizen-initiated environmental litigation as evidenced by his scholarly writings and legislative engagement. In fact, he drafted the bill that became the Michigan Environmental Protection Act.[10] And, yes, that legislation included a citizen-suit provision.[11] His citizen-suit ideas also reached Sen. Edmund S. Muskie, D-Maine, who largely shepherded the CAA 1970 measure through the legislative process. Ironically, Muskie is said to have "hated" the idea at first.[12]

More than 20 federal environmental statutes and a number of state laws have included similar citizen-suit provisions since the enactment of the CAA 1970.[13]

NOT WITHOUT (CASE OR) CONTROVERSY

The constitutionality of the citizen-suit provision has not gone unchallenged.[14] Legal scholars have expressed concerns regarding Article II separation of powers issues, suggesting that citizen suits controvert executive branch authority to enforce, appoint personnel, and execute the law.[15]

The doctrine of standing also raises constitutional concerns under Article III. Can standing be legislated? Or is it not within the purview of the courts to decide whether a plaintiff has met the requisite standards for determining whether a case or controversy exists?

Still, the cases keep coming. In 2022, for example, the Animal Legal Defense Fund (ALDF) filed suit in the U. S. District Court for the Eastern District of Texas against Tiger Creek Animal Sanctuary for

violations of the Endangered Species Act.[16] The ALDF alleged that Tiger Creek was responsible for the deaths of numerous animals since 2018 including nine lions and tigers. The court rejected Tiger Creek's argument that the Big Cat Public Safety Act strips the sanctuary's lions and tigers of the protections they receive under the Endangered Species Act.[17] At this writing, the case is still pending.

CITIZEN SUITS AND MICHIGAN COURTS

With the enactment of its Environmental Protection Act (MEPA) in 1970, Michigan's citizen-suit provision had been regarded among "the most muscular" of all the states.[18] Residents and non-residents alike were permitted to initiate suit on virtually any environmental issue. Since then, however, the Michigan Supreme Court has fine-tuned the broad "any person" standard for bringing a citizen suit under the MEPA.

In a 2001 non-environmental case, *Lee v. Macomb County Board of Commissioners,* the Court applied the U.S. Supreme Court's test for standing set out in *Lujan v. Defenders of Wildlife*.[20] The *Lee* Court wrote that "to neglect the importance of standing would imperil the constitutional architecture" of our government.[21] Specifically, the claim would have to demonstrate "particularized" and "imminent" injury to meet the Court's requirements for standing.

In 2004, however, the Court in *National Wildlife Federation v. Cleveland Cliffs Iron Co.*[22] addressed "whether the Legislature can by statute confer standing on a party who does not satisfy the judicial test for standing."[23] In this case, environmental citizen plaintiffs sought an injunction under MEPA's "any person" provision. The Court ruled that the plaintiffs did indeed have standing under the MEPA, however, it also questioned the constitutionality of its citizen-suit provision in dicta.[24]

A few years later, the Court applied the *Lujan* test in *Michigan Citizens for Water Conservation v. Nestle Waters North America Inc.*[25] and found that the plaintiff demonstrated the requisite injury with respect to one affected area to support its MEPA claim but failed to meet the bar for others. More recently, the Court denied leave to appeal under MEPA in *Lakeshore Group v. State*[26] in a split decision that was deemed significant for its impact on the future of environmental law.

Ongoing developments in MEPA's citizen-suit provision analyzed in the Wayne Law Review's Annual Survey of Environmental Cases.[27] Stay tuned.

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4. 42 USC 7604. Meltz, *The Future of the Citizen Suit After Steel Co.* and *Laidlaw, Congressional Research Service* (January 5, 1999) at [1].
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20. *Lujan v Defenders of Wildlife,* 504 US 555 (1992).
21. *Id.* at 735.
22. *National Wildlife Federation v Cleveland Cliffs,* 471 Mich 608 (2004).
23. *Id.* at 663.
24. Comment, *Still Standing but Teed Up: The Michigan Environmental Act's Citizen Suit Provision after National Wildlife Federation v Cleveland Cliffs,* 2005 Mich St L R 1297 (2005).
25. *Michigan Citizens for Water Conservation v Nestle Waters North America Inc.*, 479 Mich 280 (2007).
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PRACTICING WELLNESS

The next right thing: How to function when you feel frozen

BY THOMAS GRDEN

When Disney released a sequel to the movie "Frozen" — creatively titled "Frozen II" — in 2019, I was one of the millions of people worldwide who enjoyed watching it. Not so much that I planned to watch it again, but as the Yiddish proverb goes, "We plan, God laughs."

In 2022, my wife and I welcomed a daughter into the world and, in 2023, she discovered "Frozen." As I'm sure many dads with daughters can attest, it's really hard to tell your baby girl "no." That said, I am also a staunch advocate of boundaries and limit-setting, so naturally, when she wants to watch "Frozen II," we watch "Frozen II." Lately, that's been pretty often, and through these repeated viewings, I finally found a scene that I can dubiously shoehorn into an article about mental health and wellness.

Immediately before the final musical number begins, we watch the protagonist, Anna, get trapped in a cave, then experience ambiguous supernatural phenomena which she interprets to mean her sister, Elsa, has died. Wet, cold, and alone, she chooses not to ruminate on her suffering, instead breaking into song (this is Disney after all.) It's not an earworm in the same fashion as "Let It Go" from the first movie, but "The Next Right Thing" does contain an important message. With lyrics seemingly lifted straight from the Alcoholics Anonymous Big Book, Anna takes the idea of "one step at a time" quite literally as she makes her way out of the cave. The task awaiting her outside the cave is monumental, but she sings:

I won't look too far ahead
It's too much for me to take
But break it down to this next breath
This next step
This next choice is one that I can make.

Not surprisingly, this sentiment extends into American culture far beyond Disney. Songs like "One Step at a Time" and aphorisms like "Rome wasn't built in a day" evoke themes of large goals being broken down into smaller and more manageable ones. Research demonstrating the efficacy of subgoaling has been around for more than 50 years, though psychologist Carl Jung intuited it long before that, in 1933.[1] The idea would go on to make its way to the ears of Bill Wilson, a.k.a. Bill W., one of two founders of Alcoholics Anonymous.[2] "One day at a time" is more than an aphorism; it's a way of thinking that is useful to more than just those in recovery.[3]

As a licensed therapist, when a client uses words like "frozen," "stuck," "lost," or anything similar, my mind goes to a few places. Anxiety might be the culprit, or perhaps grief or depression or even trauma. That isn't an exhaustive list by any means, but, sadly, they are the most common reasons for impairment of that type. They also require the attention of a mental health professional. Still, there are actions to take that can act as emotional first aid during periods of high distress. These are steps to take in conjunction with — and *not* in lieu of — seeking outside help:

- **Calendar everything.** Don't set aside a large chunk of time and label it "write brief." Break it down into smaller units until each piece feels manageable to you.

- **Set a boundary during your workday.** Most discussions surrounding healthy boundaries involve banal tips like not checking your email after a certain hour. Yet, how often during the workday is your flow disturbed by something trivial? For those who struggle with inaction, these trivial interruptions can feel

"Practicing Wellness" is a regular column of the Michigan Bar Journal presented by the State Bar of Michigan Lawyers and Judges Assistance Program. If you'd like to contribute a guest column, please email contactljap@michbar.org

like a train leaving the tracks and are especially devastating when it takes an immense effort just to get the train moving.

- **Stick to a routine as much as possible.** Tasks that become familiar require less of our cognitive processing power — most people understand that intuitively.[4] But the inverse is also true in that unfamiliarity fosters higher levels of uncertainty, which depletes cognitive resources.[5] If your body is using significant resources to emotionally regulate itself before the work even begins, then, naturally, there are fewer resources to devote to the work itself.[6]

- **Acknowledge your distress and think dialectically.** Anna sings *You are lost / Hope is gone / But you must go on / And do the next right thing.* It's important for us to remember that "hope is lost" and "I can go on" are not mutually exclusive.

- **Show yourself some compassion.** Feeling overwhelmed is uncomfortable, a remnant of our ancestors' survival mechanisms. Of course, they had the luxury of all three responses (fight, flight, and freeze) whereas fighting and running away are generally frowned upon in the modern American work culture (unless, of course, you're a member of Congress.) Admonishing yourself for feeling overwhelmed compounds the problem.

If, during the course of reading, you've found yourself thinking about how overwhelmed you are, there are a couple actionable steps you can take today. First, call the State Bar of Michigan Lawyers and Judges Assistance Program and let us connect you with a licensed mental health professional. If you'd like to hear from other lawyers about how they tackle feelings of anxiety, depression, and stress, I invite you to check out the LJAP virtual support group, facilitated by yours truly, and hosted via Zoom on Wednesday evenings from 6-7 p.m. The group is completely confidential, and it's a great way to hear from other professionals who have experienced similar problems. Call (800) 996-5522 or email contactLJAP@michbar.org for more information.

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LAW PRACTICE SOLUTIONS

Reducing attrition and increasing productivity by tapping into employee discretionary effort: Part II

BY VICTORIA VULETICH AND JUNE KENNY

Last month, we started our look at the workplace dynamics accompanying the newest generation's entry into the multi-generational legal profession and how successful law firms will need the skills to minimize turnover and increase productivity to create a healthy work culture. The discussion continues this month.

The good news is that leaders have other motivators that positively impact almost all employees. Psychologists refers to them as the three "almost" universal motivators.[1] They are:

- **To know and be known:** This motivator speaks to personal identity and not being a nameless face in the crowd. (See last month's Michigan Bar Journal for the skills needed to implement this motivator.)
- **To be a part of something bigger than oneself:** This is not a new concept. Just look at the multibillion-dollar sports merchandise industry that promotes team identity, team loyalty, and team pride. How can you encourage your employees to see themselves as a member of your team?
- **To make a positive difference for someone or something:** Most people want their time, effort, and talent to be used to achieve something positive, believing their life and work have significance above and beyond getting a paycheck.

BEING PART OF SOMETHING BIGGER THAN ONESELF

Creating high-performing teams is both an art and a science. The following are a few practical strategies (among many others) for building high-functioning teams in law firms.

Be familiar with the time and psychological dynamics involved in team building

Dr. Larry Richard, a lawyer and psychologist, and Julia Hayhoe, a lawyer and consultant, say that building high-functioning teams is a four-stage process which, on average, takes a minimum of six months.[2] If teams do not meet face-to-face regularly with all members present, the process is slower.

Further, there are dynamics unique to building law firm teams which can thwart success. Many lawyers do not naturally work in teams as both our personality traits and training reinforce individuality and autonomy. Also, our comfort with the adversarial process can cause law firm teams to get stuck at an earlier stage in the team-building process, never becoming cohesive.[3]

Eat together

Encourage and create opportunities for team members to eat together, interact with one another, and get to know each other. Teams that do so perform better.[4] Designate a specific lunch or break room to facilitate team meals.

Anonymous idea generating

Organizational psychologist and management consultant Adam Grant suggests an approach that transforms the typical group brainstorming exercise into a powerful, egalitarian process for obtaining the best ideas from your team.[5] Instead of gathering the team in person to discuss ideas for addressing challenges:

- Start by asking everyone to generate ideas separately.
- Pool the ideas and share them anonymously among the group. Have each member evaluate the suggestions on their own.

Law Practice Solutions is a regular column from the State Bar of Michigan Practice Management Resource Center (PMRC) featuring articles on practice, technology, and risk management for lawyers and staff. For more resources, visit the PMRC website at www.michbar.org/pmrc/content or call our Helpline at (800) 341-9715 to speak with a practice management advisor.

- Bring the team together to select and refine the most promising options.[6]

This approach helps eliminate the perceived pressures for some employees to align with the boss or other allies that are common in these sessions.

Building high-functioning teams is a four-stage process which, on average, takes a minimum of six months. If teams do not meet face-to-face regularly with all members present, the process is slower.

Create meaningful collaboration through cross-functional relationships

Create pairs or small teams of cross-functional employees to tackle projects and/or solve problems. The more you know about each team member's purpose for doing what they do, the more you can create a sense of belonging and positive work relationships.[7]

MAKING A POSITIVE DIFFERENCE

Most employees desire a sense of purpose and meaning in their work.[8] "People who find meaning in their work don't hoard their energy and dedication. They give them freely, defying conventional economic assumptions about self-interest ... [t]hey do more — and they do it better."[8]

Here are a few ideas for generating a sense of purpose and meaning among your employees.

Communicate your purpose, mission, and values

Ralph Waldo Emerson wrote, "Nothing great was ever achieved without enthusiasm."[9] Capture your employees' enthusiasm by communicating your firm's purpose, mission, and values in emotionally evocative language.

Many years ago, reporters toured the Texas Heart Institute founded by Dr. Denton Cooley, a heart surgeon credited with lowering the mortality rate from 70% to 8%.[10] One reporter, seeing a hospital employee mopping the floor, asked, "What do you do here?" The employee's response: "We fix hearts here!" This is an example of an employee who knew his value and how his role supported the purpose of the organization!

Consider the following vision and mission statements — which are more motivating?

"We are the premier business firm in the metro area."

- or -

"We help people build successful businesses."

"We are the best at criminal defense."

- or -

"We fight to prevent people from being prosecuted or jailed unfairly."

"The area's leading divorce and family law firm."

- or -

"We build strong families while helping people leave broken marriages."

Communicate your mission, vision, and values consistently to employees. Make your purpose your guiding principles for every decision and every problem.

Examine the purpose that drives excellence

Look for self-motivated, high-performance employees. Learn what drives them. Ask if they are willing to share their story and motivations. This can be very powerful, and doing so also recognizes your employees as people with unique valued experiences.[11]

Act with integrity

"When a company promotes its purpose and values, but those words don't apply to the behavior of senior leadership, they ring hollow. Everyone recognizes the hypocrisy and employees become more cynical. The process does harm."[12]

CONCLUSION

In summary, when you have successfully implemented the three almost universal motivators, you'll want every employee in your firm to be able to say:

- My managing partner knows me. I know if I am doing a good job. (To know and be known.)

- I am part of a team that supports one another and takes pride in what we do (To be part of something bigger than oneself.)

- I know why my job matters. (To make a positive difference for someone or something.)

And, not surprisingly, you will find that discretionary effort and productivity will have increased exponentially.

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Since 1998, **June Kenny** has worked with corporate and community organizations across the country to improve leadership skills, strengthen teamwork, and increase volunteer impact through her leadership training programs. Based in Livonia, she is the author of "Lead Strategically: Tools for Success in your Ministry or Mission."

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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 600.6013and 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 January 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 4.392% was the average high yield paid at auctions of five-year U.S. Treasury notes during the six months preceding Jan. 1, 2024.

TIME PERIOD	INTEREST RATE	TIME PERIOD	INTEREST RATE
1/1/2024	4.392%	7/1/2005	3.845%
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%		

PUBLIC POLICY REPORT

AT THE CAPITOL

HB 4738 (Breen) **Criminal procedure: witnesses; Criminal procedure: discovery; Crimes: other;** Criminal procedure: witnesses; confidentiality of certain information of a witness; require prosecuting attorney to maintain and provide for disclosure in certain circumstances. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 40b to ch. VII.

POSITION: Oppose. (Position adopted by roll-call vote. Commissioners voting in support: Bennett, Bryant, Burrell, Christenson, Clay, Cripps-Serra, Detzler, Easterly, Evans, Gant, Howlett, Larsen, Lerner, Low, Mansoor, Mantese, Mason, McGill, Newman, Nyamfukudza, Ohanesian, Perkins, Quick, Simpson, Washington. Commissioners voting in opposition: Hamameh, Murray, Reiser, Walton.)

HB 4739 (Mentzer) **Crime victims: rights; Criminal procedure: discovery;** Crime victims: rights; practice of redacting victim's contact information; codify. Amends 1985 PA 87 (MCL 780.751 - 780.834) by adding sec. 8a.

POSITION: Oppose. (Position adopted by roll-call vote. Commissioners voting in support: Bennett, Bryant, Burrell, Christenson, Clay, Cripps-Serra, Detzler, Easterly, Evans, Gant, Howlett, Larsen, Lerner, Low, Mansoor, Mantese, Mason, McGill, Newman, Nyamfukudza, Ohanesian, Perkins, Quick, Simpson, Washington. Commissioners voting in opposition: Hamameh, Murray, Reiser, Walton.)

HB 5236 (Rheingans) **Housing: landlord and tenants;** Housing: landlord and tenants; form containing summary of tenant's rights; require state court administrative office to provide. Amends 1978 PA 454 (MCL 554.631 - 554.641) by adding sec. 4a.

POSITION: Support HB 5236 with the following amendments:

(1) amend Section (1)(c) to read: "Contact information for the statewide self-help website, the statewide legal aid hotline, and the 2-1-1 system telephone number."; and

(2) require landlords to serve the form on tenants with summons and complaint in eviction cases and provide enforcement remedies to tenants if landlords do not comply.

HB 5237 (Dievendorf) **Civil procedure: defenses; Housing: landlord and tenants;** Civil procedure: defenses; tenants right to counsel; provide for. Creates new act.

POSITION: Support HB 5237 with the following amendments:

(1) the program should be structured as a statewide program administered by MSHDA and the Michigan State Bar Foundation and coordinated with the current legal services delivery system;

(2) the program should provide informational and educational materials for both landlords and tenants but the program should not otherwise provide representation for landlords; and

(3) the program should include outreach and education to tenants and tenant-led community groups.

(Position adopted by roll-call vote. Commissioners voting in support: Bennett, Bryant, Burrell, Christenson, Clay, Cripps-Serra, Detzler, Easterly, Gant, Hamameh, Howlett, Larsen, Lerner, Low, Mansoor, Mantese, Mason, McGill, Murray, Newman, Nyamfukudza, Ohanesian, Perkins, Quick, Reiser, Simpson, Walton, Washington. Commissioners voting in opposition: Evans.)

HB 5326 (Aragona) **Courts: district court; Courts: employees;** Courts: district court; magistrate jurisdiction and duties; modify. Amends secs. 5735 & 8511 of 1961 PA 236 (MCL 600.5735 & 600.8511).

POSITION: Support.

IN THE HALL OF JUSTICE

Proposed Amendments of Rules 702 and 804 of the Michigan Rules of Evidence (ADM File No. 2022-30) – Testimony by Expert Witnesses; Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a Witness (See Michigan Bar Journal December 2023, p 58).

STATUS: Comment Period Expires 02/01/24; Public Hearing to be Scheduled.

POSITION: Support.

Proposed Amendments of Rule 9.131 of the Michigan Court Rules (ADM File No. 2022-45) – Investigation of Member or Employee of Board or Commission, or Relative of Member or Employee of Board of Commission; Investigation of Attorney Representing Respondent or Witness; Representation by Member or Employee of Board or Commission (See Michigan Bar Journal December 2023, p 59).

STATUS: Comment Period Expires 02/01/24; Public Hearing to be Scheduled.

POSITION: Support.

LEGAL NOTICE

NOTICE OF APPOINTMENT OF INTERIM ADMINISTRATOR

The 20th Circuit Court has ordered that:

The State Bar of Michigan
Attorney **April Alleman,** P81156
306 Townsend Street
Lansing, MI 48933
517.346.6392

is hereby appointed Interim Administrator to serve on behalf of:

Attorney **James J. Kiebel**, P75914
64900 Maria Drive
Hudsonville, MI 49426
989.295.9626

Ordered by 20th Circuit Court on January 24, 2024. Case no. 2024-7630-PZ.

ORDERS OF DISCIPLINE & DISABILITY

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

Julie D. Anderson, P62517, Ferndale, by the Attorney Discipline Board Tri-County Hearing Panel #53. Interim suspension, effective Dec. 26, 2023.

The respondent failed to appear for the Dec. 12, 2023, hearing and satisfactory proofs were entered into the record that she possessed actual notice of the proceedings. As a result, the hearing panel issued an Order of Suspension Pursuant to MCR 9.115(H)(1) [Failure to Appear] effective Dec. 26, 2023, and until further order of the panel or the board.

AUTOMATIC INTERIM SUSPENSION

W. Dane Carey, P79898, Grayling, effective May 12, 2023.

On May 12, 2023, the respondent was convicted by guilty plea of Controlled Substance — Possession of Methamphetamine/Ecstasy in violation of MCL 333.74032B1 and Computers — Internet — Communicating with Another to Commit Crime in violation of MCL 750.145D2D, both felony offenses, in a matter titled *People of the State of Michigan v. William Dane Carey,* 86th District Court for the County of Grand Traverse, Case No. 23-9019-FY-1.[1] In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on the date of his felony convictions.

This matter was 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).

1. The respondent pleaded guilty to two added felony counts, as referenced above, with the understanding that upon the successful completion of one year of the court's drug court program, both offenses would be reduced to Use of an Analogue in violation of MCL 3337404(2)(b) and Use of a Computer to Commit Misdemeanor in violation of MCL 752.797(3)(a), both misdemeanor offenses.

AUTOMATIC INTERIM SUSPENSION

Glenn Phillip Franklin III, P68263, Southfield, effective Nov. 1, 2023.

On Nov. 1, 2023, the respondent was convicted by guilty verdict of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 in a matter titled *United States of America v. John Angelo and Glenn Phillip Franklin,* U.S. District Court, Eastern District of Michigan, Southern Division, Case No. 4:20-CR-20599. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on the date of his felony conviction.

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

DISBARMENT AND RESTITUTION

George D. Gostias, P73774, Livonia, by the Attorney Discipline Board Tri-County Hearing Panel #10. Disbarment, effective Dec. 12, 2023.[1]

After proceedings conducted pursuant to MCR 9.115, the panel found by default that the respondent committed professional misconduct as alleged in three-count formal complaint. Specifically, with regard to count 1, the panel found that the respondent accepted legal fees to represent a client in a criminal matter pending before Wayne County Circuit Court although his license to practice law in Michigan was suspended for 180 days, effective May 27, 2022, in a separate, unrelated disciplinary matter. The panel further found that the respondent never notified his client of his suspension; advised his client that he would attend court hearings scheduled in his matter but did not, in fact, attend any of the hearings; and abandoned the representation.

With regard to count 2, the panel found that the respondent failed to answer a Request for Investigation served on him by the

grievance administrator on Dec. 16, 2022. Finally, with regard to count 3, the panel found that the respondent failed to provide notice of his 180-day suspension, effective May 27, 2022, to his clients and all tribunals and parties in every matter in which he was representing a client in litigation; failed to file an affidavit of compliance as required by MCR 9.119(C) with the grievance administrator and the Attorney Discipline Board; and held himself out as authorized to practice law on his Facebook and Twitter social media accounts.

Based on respondent's default and the evidence presented by the grievance administrator, the panel found that the respondent committed misconduct as alleged in the formal complaint in its entirety. Specifically, the panel found that the respondent neglected a legal matter in violation of MRPC 1.1(c) (count 1); failed to seek the lawful objectives of the 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 the client reasonably informed about the status of the matter and comply with reasonable requests for information 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 representation in violation of MRPC 1.4(b) (count 1); failed to timely refund an unearned fee in violation of MRPC 1.16(d) (count 1); failed to expedite litigation in violation of MRPC 3.2 (count 1); practiced law while not licensed to do so in violation of MRPC 5.5(a) (count 1); kept a public social media site holding himself out as an attorney after being suspended pursuant to Order(s) of Discipline in violation of MRPC 7.1(a) (count 3); knowingly failed to respond to or cooperate with a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2) (counts 2-3); engaged in conduct involving dishonesty fraud, deceit, or misrepresentation where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of MRPC 8.4(b) (count 1); engaged in conduct that

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

violates the Rules of Professional Conduct in violation of MRPC 8.4(a) and MCR 9.104(4) (counts 1-2); engaged in conduct that is prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(1) (counts 1-2); 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 1-3); engaged in conduct that is contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3) (counts 1-2); failed to answer a Request for Investigation in violation of MCR 9.104(7), MCR 9.113(A), and (B)(2) (count 2); engaged in conduct in violation of an Order(s) of Discipline in violation of MCR 9.104(9); failed to notify his client of his suspension from the practice of law in violation of MCR 9.119(A) (counts 1 and 3); failed to file with the tribunal and all parties a notice of the attorney's disqualification from the practice of law in violation of MCR 9.119(B) (count 3); failed to file affidavits of compliance with the grievance administrator and the Attorney Discipline within 14 days of the Order(s) of Suspension in violation of MCR 9.119(C) (count 3); engaged in the practice of law in violation of MCR 9.119(E)(1) (count 1); had contact with clients in violation of MCR 9.119(E)(2) (count 1); and held himself out as an attorney in violation of MCR 9.119(E)(4) (count 1).

The panel ordered that the respondent be disbarred and pay restitution in the total amount of $11,950. Costs were assessed in the amount of $1,715.08.

1. The respondent has been continuously suspended from the practice of law in Michigan since May 27, 2022. See Notice of Suspension and Restitution, issued May 27, 2022, in *Grievance Administrator v George D. Gostias*, 22-7-GA.

SUSPENSION WITH CONDITIONS (BY CONSENT)

Suzanna Kostovski, P39535, Detroit, by the Attorney Discipline Board Tri-County Hearing Panel #5. Suspension, 90 days, effective Dec. 14, 2023.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Discipline pursuant to MCR 9.115(F)(5) which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admissions to all factual allegations and the respondent's plea of no contest to all allegations of professional misconduct set forth in the four-count formal complaint.

Specifically, the panel found in count 1 that while acting as appointed counsel in post-conviction proceedings, the respondent communicated sporadically with her client and failed to file pleadings as instructed by the court. In count 2, the panel found that while acting as appointed appellate counsel, the respondent had minimal communication with her client and filed a delayed application for leave to appeal brief that was nonconforming in that it failed to contain citations to the trial court record as required.

The panel found in count 3 that while acting as substitute appellate counsel, the respondent failed to file a supplemental brief provided to her by her client in July 2019 until April 2020, at which time the respondent had to also file a motion to file a late brief. The motion was denied by the Court of Appeals in part because it did not provide any explanation for the delay and did not cite any law. The panel found in count 4 that while acting as appointed counsel in post-conviction proceedings, the respondent failed to communicate with her client, failed to take any action on his behalf for 14 months, and eventually had to be replaced by the State Appellate Defender's Office.

Based on the respondent's admissions, plea of no contest, and the stipulation of the parties, the panel found that the respondent handled a legal matter without preparation adequate in the circumstances in violation of MRPC 1.1(b) (counts 2-3); neglected a legal matter entrusted to the lawyer in violation of MRPC 1.1(c) (counts 1 and 4); failed to seek the lawful objectives of a client through reasonably available means permitted by law in violation of MRPC 1.2(a) (counts 1-4); failed to act with reasonable diligence and promptness in violation of MRPC 1.3 (counts 1-4); failed to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information in violation of MRPC 1.4(a) (counts 1-4); 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) (counts 1-4); violated or attempted to violate the Rules of Professional Conduct in violation of MRPC 8.4(a) (counts 1-4); engaged in conduct prejudicial to the administration of justice in violation of MCR 9.104(1) and MRPC 8.4(c) (counts 1-4); 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 1-4); and engaged in conduct contrary to justice, ethics, honesty, or good morals in violation of MCR 9.104(3) (counts 1-4).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 90 days and that she be subject to conditions relevant to the established misconduct, effective Dec. 1, 2023. The respondent subsequently filed a motion requesting that the order of suspension be amended to extend the effective date to Dec. 14, 2023. The grievance administrator

had no objection. The panel granted the respondent's motion in an order issued Dec. 1, 2023. Total costs were assessed in the amount of $1,047.96.

REPRIMAND (BY CONSENT)

Gregory J. Rohl, P39185, West Bloomfield, by the Attorney Discipline Board Tri-County Hearing Panel #61. Reprimand, effective Dec. 27, 2023.

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

The stipulation contained the respondent's admission to all factual allegations and allegations of misconduct set forth in the entire formal complaint. Specifically, the respondent admitted that he failed to properly supervise employees in his office, which resulted in a five-year delay in providing a client with settlement funds she was entitled to receive. Although the funds were maintained in the respondent's IOLTA since they were originally deposited, the client was not provided her funds until she filed a request for investigation against the respondent.

Based on the respondent's admission and the parties' stipulation, the panel found that the respondent committed professional misconduct when he failed to properly supervise employees in his office in violation of MRPC 5.1(b) and engaged in conduct prejudicial to the administration of justice in violation of MCR 9.104(1) and MRPC 8.4(c).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded. Costs were assessed in the amount of $760.21.

REINSTATEMENT

On Nov. 13, 2023, Berrien County Hearing Panel #1 entered an Order of Suspension (By Consent) suspending the respondent from the practice law in Michigan for 30 days, effective Dec. 2, 2023. On Jan. 2, 2024, the respondent filed an affidavit pursuant to MCR 9.123(A) attesting that he has fully complied with all requirements of the panel's order and will continue to comply with the order until and unless reinstated. The board was advised that the grievance administrator has no objection to the affidavit, and the board being otherwise advised;

NOW THEREFORE,

IT IS ORDERED that the respondent, **Ernest J. Walker,** is **REINSTATED** to the practice of law in Michigan, effective Jan. 3, 2024.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2024. Comments may be sent in writing to Samuel R. Smith, 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 amending jury instructions M Crim JI 20.2 (Criminal Sexual Conduct in the Second Degree [MCL 750.520c]) and M Crim JI 20.13 (Criminal Sexual Conduct in the Fourth Degree [MCL 750.520e]) to add definitional "sexual contact" language from MCL 750.520a(q). Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 20.2
Criminal Sexual Conduct in the Second Degree

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

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

(3) Second, that ~~this touching was done~~ the defendant touched [*name complainant*] for any of these reasons: (1) for sexual arousal or gratification, (2) in a sexual manner for revenge, humiliation, or out of anger, or (3) for a sexual purposes or what could reasonably be construed as having been done for a sexual purposes.

(4) [*Follow this instruction with one or more of the 13 alternatives, M Crim JI 20.3-20.11d, as warranted by the charges and evidence.*]

[AMENDED] M Crim JI 20.13
Criminal Sexual Conduct in the Fourth Degree

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

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

(3) Second, that ~~this touching was done~~ the defendant touched (*name complainant*) for any of these reasons: (1) for sexual arousal or gratification, (2) in a sexual manner for revenge, humiliation, or out of anger, or (3) for a sexual purposes or what could reasonably be construed as having been done for a sexual purposes.

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

Use Note

Use this instruction where the facts describe an offensive touching not included under criminal sexual conduct in the second degree.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2024. Comments may be sent in writing to Samuel R. Smith, 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 two jury instructions, M Crim JI 40.7 (loitering where prostitution is practiced) and M Crim JI 40.7a (loitering where an illegal occupation or business is practiced or conducted) for the "loitering" crimes found in the Disorderly Person statute at MCL 750.167(i) and (j). The instructions are entirely new.

[NEW] M Crim JI 40.7
Loitering Where Prostitution Is Practiced

(1) The defendant is charged with the crime of loitering where acts of prostitution were taking place. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that acts of prostitution were allowed or being committed at [*provide location where prostitution was being performed*].

> An act of prostitution is sexual conduct with another person for a fee or something of value.

(3) Second, that the defendant was present at that location and knew or learned that prostitution was allowed or being committed there.

(4) Third, that the defendant remained at [*provide location of illegal conduct*] without a lawful purpose[1] knowing that prostitution was allowed or being committed there.

Use Note

1. Lawful purposes could include, among other things, gathering information to report illegal conduct to the police or attempting to dissuade persons engaging in illegal conduct from continuing their illegal activity.

[NEW] M Crim JI 40.7a
Loitering Where an Illegal Occupation or Business Is Practiced or Conducted

(1) The defendant is charged with the crime of loitering where an illegal occupation or business was being practiced or conducted. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*identify illegal occupation or business*][1] was being practiced or conducted at [*provide location*].

(3) Second, that the defendant was present at that location and the defendant knew or learned that [*illegal occupation or business*] was being practiced or conducted.

(4) Third, that the defendant remained at [*location of illegal conduct*] without a lawful purpose[2] knowing that [*illegal occupation or business*] was being practiced or conducted there.

Use Notes

1. Whether an *occupation or business* is illegal appears to be a question that is decided by the court. Whether that *occupation or business* was occurring at the location alleged is a question of fact for the jury.

2. Lawful purposes could include, among other things, gathering information to report an illegal business to the police or attempting to dissuade persons engaging in an illegal occupation from continuing their illegal activity.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2024. Comments may be sent in writing to Samuel R. Smith, 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 three jury instructions, M Crim JI 41.3 (placing eavesdropping devices), 41.3a (placing eavesdropping devices for a lewd or lascivious purpose), and 41.3b (disseminating images obtained by eavesdropping devices) for the crimes found in an eavesdropping and surveillance statute: MCL 750.539d. These instructions are entirely new.

[NEW] M Crim JI 41.3
Placing Eavesdropping or Surveillance Devices

(1) The defendant is charged with the crime of placing an eavesdropping or surveillance device. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [installed/placed/used] a device for observing, recording, transmitting, photographing, or eavesdropping on the sounds or events[1] of others[2] at or in a private place.[3]

> A private place is one where a person could reasonably expect to be safe from casual or unwanted intrusion or surveillance. It does not include a place where the public or a substantial group of the public has access.

(3) Second, that the defendant did not have the permission or consent of [(*identify complainant(s) if possible*)/the person or persons entitled to privacy at (*provide location of device*)] to be observed, recorded, transmitted, photographed, or eavesdropped on.[3]

Use Notes

Use M Crim JI 41.3a in cases where the defendant is the owner or principal occupant of the premises where an eavesdropping device was alleged to have been placed. Questions regarding whether a defendant has status as an "owner or principal occupant" appear to be legal questions decided by the court.

1. MCL 750.539d(1)(a).

2. The Committee on Model Criminal Jury Instructions believes that the statute does not encompass recording conversations or events under MCL 750.539a(2) where the person recording them is a participant because Michigan appears to be a one-party consent state. *See Sullivan v Gray,* 117 Mich App 476; 324 NW2d 58 (1982), cited in *Lewis v LeGrow,* 258 Mich App 175; 670 NW2d 675 (2003), and *Fisher v Perron,* 30 F4th 289 (6th Cir 2022).

3. *Private place* is defined in MCL 750.539a(1).

[NEW] M Crim JI 41.3a
Placing Eavesdropping or Surveillance Devices for a Lewd or Lascivious Purpose

(1) The defendant is charged with the crime of placing an eavesdropping or surveillance device for a lewd or lascivious purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [installed/placed/used] a device for observing, recording, transmitting, photographing, or eavesdropping on the sounds or events in a residence.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS (CONTINUED)

(3) Second, that the location that the device could observe, record, photograph, or eavesdrop was a private place in or around the residence.[1]

> A private place is one where a person could reasonably expect to be safe from casual or unwanted intrusion or surveillance.

(4) Third, that the defendant did not have the permission or consent of [(*identify complainant(s) if possible*)/the person or persons entitled to privacy at (*provide location of device*)] to be observed, recorded, photographed, or eavesdropped on.

(5) Fourth, that the defendant installed, placed, or used the device for a lewd or lascivious purpose.

> A lewd or lascivious purpose means that the device was placed to observe or record [(identify complainant)/a person] under indecent or sexually provocative circumstances.

Use Note

This instruction should only be given when the defendant is the owner or principal occupant of the residence where an eavesdropping device was alleged to have been placed. Questions regarding whether a defendant has status as an "owner or principal occupant" appear to be legal questions decided by the court.

1. *Private place* is defined in MCL 750.539a(1).

[NEW] M Crim JI 41.3b
Transmitting Images or Recordings Obtained by Surveillance or Eavesdropping Devices

(1) The defendant is charged with the crime of transmitting images or recordings obtained by surveillance or eavesdropping devices. To prove this charge, the prosecutor must prove both of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally distributed, disseminated, or transmitted a recording, photograph, or visual image of [*identify person or complainant*] so that the recording or visual image could be accessed by other persons.

(3) Second, that the defendant knew or had reason to know the recording or visual image of [*identify person or complainant*] that [he/she] transmitted was obtained using a device for eavesdropping[1] that had been placed or used where a person would have a reasonable expectation of privacy that was safe from casual or unwanted intrusion or surveillance.[2]

Use Notes

1. MCL 750.539d(1)(a) describes these devices as "any device for observing, recording, transmitting, photographing, or eavesdropping upon the sounds or events in that place."

2. *Private place* and *surveillance* are defined in MCL 750.539a(1) and (3).

The Committee has adopted a new jury instruction, M Crim JI 25.8 (Dumping Refuse) for the trespassing offense found at MCL 750.552a. The instruction is effective Feb. 1, 2024.

[NEW] M Crim JI 25. 8
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 defense, and this paragraph should only be read when there is evidence to support the defense.

The Committee has adopted a new jury instruction, M Crim JI 25.9 (trespassing at a correctional facility) for the trespassing offense found at MCL 750.552b. The instruction is effective Feb. 1, 2024.

[NEW] M Crim JI 25.9
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.

The Committee has adopted a new jury instruction, M Crim JI 35.13b (Using a Computer to Commit a Crime) for the offense found in the Fraudulent Access to Computers chapter at MCL 750.796. The instruction is effective Feb. 1, 2024.

[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 solicit 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."

FROM THE MICHIGAN SUPREME COURT

ADM File No. 2022-42
Proposed Amendments of Rules 2.508 and 4.002 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 2.508 and 4.002 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 2.508 Jury Trial of Right

(A) [Unchanged.]

(B) Demand for Jury.

(1)-(2) [Unchanged.]

(3)(a) [Unchanged.]

(b) If part of a case is removed from circuit court to district court, or part of a case is removed or transferred from district court to circuit court, but a portion of the case remains in the court from which the case is removed or transferred, then a demand for a trial by jury in the court from which the case is removed or transferred is not effective in the court to which the case is removed or transferred. A party who seeks a trial by jury in the court to which the case is partially removed or transferred must file a written demand for a trial by jury and pay the applicable jury fee~~within 21 days of the removal or transfer order, and must pay the jury fee provided by law~~, even if the jury fee was paid in the court from which the case is removed or transferred, within 28 days after the filing fee is paid in the receiving court, but no later than 56 days after the date of the removal or transfer order.

(c) The absence of a timely demand for a trial by jury in the court from which a case is entirely or partially removed or transferred does not preclude filing a demand for a trial by jury in the court to which the case is removed or transferred. A party who seeks a trial by jury in the court to which the case is removed or transferred must file a written demand for a trial by jury and pay the applicable jury fee within 28 days after the filing fee is paid in that court, but no later than 56 days after the date of the removal or transfer order~~within 21 days of the removal or transfer order, and must pay the jury fee provided by law~~.

(d) [Unchanged.]

(C)-(D) [Unchanged.]

Rule 4.002 Transfer of Actions From District Court to Circuit Court

(A)-(C) [Unchanged.]

(D) Payment of Filing and Jury Fees After Transfer; Payment of Costs.

(1) [Unchanged.]

(2) If the jury fee has been paid, the clerk of the district court must forward it to the clerk of the circuit court to which the action is transferred as soon as possible after the case records have been transferred. If the amount paid to the district court for the jury fee is less than the circuit court jury fee, then the party requesting the jury shall pay the difference to the circuit court within 28 days after the filing fee is paid under subrule (D)(1).

(3) [Unchanged.]

Staff Comment (ADM File No. 2022-42): The proposed amendments of MCR 2.508(B)(3)(b)-(c) and 4.002(D)(2) would make the rules consistent with MCR 2.227 regarding the timing of payment of the jury fee in cases that are removed or transferred.

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

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may

be submitted by April 1, 2024, by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-42. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2022-54
Proposed Amendment of Canon 7 of the Michigan Code of Judicial Conduct

On order of the Court, this is to advise that the Court is considering an amendment of Canon 7 of the Michigan Code of Judicial Conduct. 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.]

Canon 7. A Judge or a Candidate for Judicial Office Should Refrain From Political Activity Inappropriate to Judicial Office.

A.-B. [Unchanged.]

C. Wind up of law practice.

(1) A successful elected candidate who was not an incumbent has until midnight Dec. 31 following the election to wind up the candidate's law practice and has until June 30 following the election to resign from organizations and activities and divest interests that do not qualify under Canon 4. If a successful elected candidate has remaining funds in a trust account after June 30 following the election and the funds remain unclaimed, the candidate must promptly transfer control of the funds to the elected candidate's interim administrator in accordance with subchapter 9.300 of the Michigan Court Rules and Rule 21 of the Rules Concerning the State Bar of Michigan. The interim administrator must make reasonable efforts to locate the owner of the property and continue to hold said funds in a trust account for the required statutory period in accordance with the Uniform Unclaimed Property Act, MCL 567.221 *et seq.* This transfer of control to the interim administrator does not create a client-lawyer relationship.

(2) Upon notice of appointment to judicial office, a candidate shall wind up the candidate's law practice prior to taking office and has six months from the date of taking office to resign from organizations and activities and divest interests that do not qualify under Canon 4. If an appointee has remaining funds in a trust account six months after taking office and the funds remain unclaimed, the appointee must promptly transfer control of the funds to the appointed candidate's interim administrator in accordance with subchapter 9.300 of the Michigan Court Rules and Rule 21 of the Rules Concerning the State Bar of Michigan. The interim administrator must make reasonable efforts to locate the owner of the property and continue to hold said funds in a trust account for the required statutory period in accordance with the Uniform Unclaimed Property Act, MCL 567.221 *et seq.* This transfer of control to the interim administrator does not create a client-lawyer relationship.

Staff Comment (ADM File No. 2022-54): The proposed amendment of Canon 7 would provide a procedure for handling remaining funds in an attorney's trust account if the attorney is elected or appointed to a judicial office.

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

A copy of this order will be given to the secretary of the State Bar and to the state court administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by April 1, 2024, by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-54. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ADM File No. 2023-20
Amendment of Administrative Order No. 2023-1

On order of the Court, the following amendment of Administrative Order 2023-1 is adopted, effective immediately.

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

Administrative Order No. 2023-1 — Creation of the Commission on Well-Being in the Law

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

[Introduction paragraph unchanged.]

I.-III. [Unchanged.]

IV. Commission Membership

A. Membership shall be comprised of 354 members from the following individuals and groups:

1.-4. [Unchanged.]

5. Subject to appointment as provided in Section IV.B, one individual representing each of the following, as recommended by the following:

a.-f. [Unchanged.]
g. Western Michigan University Cooley Law School;
h.-k [Unchanged.]
l. the Michigan Judicial Tenure Commission;~~.~~
m. the Board of Law Examiners.

6. [Unchanged.]

B.-D. [Unchanged.]

V.-VIII. [Unchanged.]

ADM File No. 2023-32 Independent Audit of the Judicial Tenure Commission

On June 13, 2023, the Judicial Tenure Commission announced its intention to undergo an "independent review of the racial composition of the judges about whom the Commission receives complaints, and the Commission's dispositions of those complaints, for the period 2008 through 2022." The Commission's press release stated:

> Though the Commission believes its case dispositions show no actual or deliberate racial disparity, the Commission recognizes that this is a very important issue and that the public will have more faith in the fairness of its decisions if their racial composition is reviewed by an independent auditor. Of course, if an independent auditor identifies an actual racial disparity in the Commission's actions that we have overlooked and that is not explained by the choices made by the judges under investigation, the Commission certainly wants to know about that and understand the reasons for it.

However, under MCR 9.261, the files of the Judicial Tenure Commission are confidential and absolutely privileged from disclosure, effectively preventing an independent audit. Nonetheless, Const 1963, art 6, § 30 establishes the Judicial Tenure Commission and provides this Court with the authority to make rules to implement this constitutional provision and provide for confidentiality and privilege of its proceedings.

The Commission has requested that this Court authorize disclosure of otherwise confidential and privileged information to facilitate the independent audit.

Accordingly, to facilitate the independent audit that the Judicial Tenure Commission has committed to undertaking, this Court authorizes the Commission to disclose otherwise confidential and privileged information in its files only as necessary to complete the independent audit and subject to the following conditions:

1) Within four (4) months of the date of this order, the Judicial Tenure Commission must enter into a contract with an independent auditor to conduct a review of all requests for investigation filed between 2008 and 2022. The contract is subject to the State Court Administrator's approval for compliance with the requirements of this order.

a. For purposes of this order, the term "independent" is defined as an entity that does not currently have active contracts or engagements with the Judicial Tenure Commission and does not receive the majority of its funding from the Judicial Tenure Commission, Michigan Supreme Court, State Court Administrative Office, or the State of Michigan.

b. For purposes of this order, the term "review" is defined as a quantitative and, if warranted, qualitative assessment of every point in the Judicial Tenure Commission's decision-making process.

2) If feasible, the auditor must have experience conducting audits related to perceived racial disparities. If no such auditor is available, the Judicial Tenure Commission must engage a consultant who can assist an auditor without such experience.

3) The Judicial Tenure Commission must enter into a binding nondisclosure and confidentiality agreement with the selected independent auditor and any consultant engaged under paragraph 2, to ensure the confidentiality and privilege of the Commission's records are preserved.

4) The Judicial Tenure Commission must share the results of the independent auditor's review with the Michigan Supreme Court no later than one year from the date of this order.

ADM File No. 2023-01
Appointments to the Commission on Well-Being in the Law

On order of the Court, pursuant to Administrative Order No. 2023-1, the following individuals are appointed to the Commission on Well-Being in the Law, effective immediately.

For terms ending on Dec. 31, 2024:

- James Brennan (on behalf of the Michigan Association of District Court Magistrates)
- Hon. Kathleen G. Galen (on behalf of the Michigan District Judges Association)
- Ieisha Humphrey (on behalf of University of Detroit Mercy Law School)
- Hon. Michael L. Jaconette (on behalf of the Michigan Probate Judges Association)
- Marla McCowan (on behalf of the Michigan Indigent Defense Commission)
- Steven Meerschaert (law student)
- Wendy Neeley (on behalf of the Attorney Discipline Board)
- Cindy Rude (on behalf of the Michigan Probate and Juvenile Registers' Association)
- Hon. Brock A. Swartzle (on behalf of the Michigan Court of Appeals)
- Tish Vincent (licensed mental health professional)
- Karissa Wallace (attorney, mid-size firm)

For terms ending on Dec. 31, 2025:

- Cynthia Bullington (on behalf of the Attorney Grievance Commission)
- Nicole Clay (attorney, large firm)
- Jeff Getting (on behalf of the Prosecuting Attorneys Association of Michigan)
- Hon. Andrew G. Griffin (on behalf of the Michigan Judges Association)
- Tierney Hoffman (on behalf of Wayne State University Law School)
- Hon. Lisa Martin (on behalf of the Association of Black Judges of Michigan)
- Marissa Navarro (law student)
- Katharine Smith (attorney, practicing less than five years)
- Abijah Taylor (on behalf of Michigan State University College of Law)
- Tanya Todd (on behalf of the Michigan Court Administration Association)

For terms ending on Dec. 31, 2026:

- Hon. Monte J. Burmeister (on behalf of the Michigan Judicial Tenure Commission)
- Hon. Matthew L.M. Fletcher (on behalf of the Michigan Tribal State-Federal Judicial Form)
- Maribeth Graff (on behalf of the Board of Law Examiners)
- Kathy Griffin (on behalf of the Michigan Association of Circuit Court Administrators)
- Lisa Hamameh (on behalf of the State Bar of Michigan Board of Commissioners)
- Linda Harrison (on behalf of the Referees Association of Michigan)
- Ramji Kaul (on behalf of the University of Michigan Law School)
- Sarah Kuchon (licensed mental health professional)
- Arvin Pearlman (attorney, solo practitioner)
- Amy Timmer (on behalf of Cooley Law School)

Pursuant to Administrative Order No 2023-1, the following individuals, or their designees, will serve by virtue of their role within their organization.

- Supreme Court Justice Megan K. Cavanagh
- State Court Administrator Thomas Boyd
- State Bar of Michigan Executive Director Peter Cunningham
- State Bar of Michigan Lawyers and Judges Assistance Program Director Molly Ranns

ADM File No. 2023-01
Appointments to the Committee on Model Civil Jury Instructions

On order of the Court, pursuant to Administrative Order No. 2001-6, the following members are reappointed to the Committee on Model Civil Jury Instructions for terms beginning on Jan. 1, 2024, and ending on Dec. 31, 2026:

- Hon. Michael L. Jaconette (Probate Court Judge)
- Hon. Stephen L. Borrello (Court of Appeals Judge)
- Jennifer Salvatore (Attorney — Plaintiff)
- Matthew Boettcher (Attorney — Defense)
- Stefanie Reagan (Attorney — Commercial Litigator)

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

ADM File No. 2023-01
Appointments to the Committee on Model Criminal Jury Instructions

On order of the Court, pursuant to Administrative Order No. 2013-13, the following members are reappointed to the Committee on Model Criminal Jury Instructions for terms beginning on Jan. 1, 2024, and ending on Dec. 31, 2026.

- Hon. K. Edward Black (Circuit Court Judge)
- Imran Syed (Defense Attorney)
- Michael A. Tesner (Prosecutor)
- Michael G. Frezza (Assistant Attorney General)
- Stephanie E. Farkas (Defense Attorney)

Additionally, the Court appoints the following members for terms beginning on Jan. 1, 2024, and ending on Dec. 31, 2026.

- Hon. Paul E. Stutesman (Circuit Court Judge)
- Brenda Taylor (Prosecutor)
- Thomas Rombach (Defense Attorney)
- Elizabeth Allen (Prosecutor)
- Karl Numinen (Defense Attorney)

ADM File No. 2023-01
Appointments to the Foreign Language Board of Review

On order of the Court, pursuant to MCR 8.127(A), the following members are reappointed to the Foreign Language Board of Review for terms beginning on Jan. 1, 2024, and ending on Dec. 31, 2026.

- Hon. Cylenthia LaToye Miller (circuit court judge)
- Patricia Ceresa (prosecuting attorney)
- Angeles Meneses (criminal defense attorney)

ADM File No. 2023-01
Appointments to the Justice For All Commission

On order of the Court, pursuant to Administrative Order No. 2021-1, the following members are reappointed to the Justice for All Commission for first full terms beginning on Jan. 1, 2024, and ending on Dec. 31, 2026:

- Hon. Margaret Zuzich-Bakker (on behalf of Michigan Judges Association)
- Hon. Mabel J. Mayfield (on behalf of Michigan Probate Judges Association)
- Magistrate Carol Jackson (tribal court member)

In addition, Hon. Lisa Martin (on behalf of Michigan District Judges Association) is appointed for a term beginning on Jan. 1, 2024, and ending on Dec. 31, 2026; and Daniel Quick (State Bar of Michigan President) is appointed for a term beginning on Jan. 1, 2024, and ending on Dec. 31, 2024.

Justice Brian K. Zahra is reappointed to serve as chair and Angela Tripp is reappointed to serve as vice-chair for the two-year term beginning on Jan. 1, 2024, and ending on Dec. 31, 2025.

Pursuant to Administrative Order No 2021-1, the following individuals, or their designees, will serve by virtue of their role within their organization.

- Supreme Court Justice Brian K. Zahra
- State Court Administrator Thomas Boyd
- State Bar of Michigan Executive Director Peter Cunningham
- Michigan State Bar Foundation Executive Director Jennifer Bentley
- Michigan Legal Help Director Angela Tripp
- Michigan Indigent Defense Commission Director Kristen Staley

ADM File No. 2023-01
Appointments to the Michigan Judicial Council

On order of the Court, pursuant to MCR 8.128, the following members are reappointed to the Michigan Judicial Council for first full terms beginning on Jan. 1, 2024, and ending on Dec. 31, 2026:

- Hon. Martha D. Anderson (on behalf of the Michigan Judges Association)
- Hon. Michael L. Jaconette (on behalf of the Michigan Probate Judges Association)
- Hon. Michelle Friedman Appel (on behalf of the Michigan District Judges Association)
- Hon. Herman Marable Jr. (on behalf of the Association of Black Judges of Michigan)
- Hon. Mary B. Barglind (at-large judge)
- Lindsay Oswald (county clerk)

- Marilena David (attorney)
- Tamara Brubaker-Salcedo (member of the public)

Additionally, Tanya Todd (court administrator) is appointed to the Michigan Judicial Council for a term beginning on Jan. 1, 2024, and ending on Dec. 31, 2026.

Pursuant to MCR 8.128, the following individuals will serve by virtue of their role within their organization for as long as they hold their respective roles.

- Supreme Court Chief Justice Elizabeth T. Clement
- State Court Administrator Thomas Boyd
- Court of Appeals Chief Judge Michael F. Gadola (or designee)

ADM File No. 2023-01
Assignment of Judges to the Court of Claims and Appointment of Chief Judge

On order of the Court, effective Jan. 15, 2024, Court of Appeals Judge Christopher P. Yates is assigned to sit as a judge of the Court of Claims for the remainder of a term expiring on May 1, 2025; and effective Feb. 1, 2024, Court of Appeals Judge Sima G. Patel is assigned to sit as a judge of the Court of Claims for the remainder of a term expiring on May 1, 2025.

On further order of the Court, effective immediately, Hon. Brock A. Swartzle is appointed as chief judge of the Court of Claims for a term ending on May 1, 2025.

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