



Board of Commissioners

Agenda and Materials

January 21, 2022

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS
FRIDAY, JANUARY 21, 2022
VIRTUAL MEETING
9:30 A.M.
AGENDA**

State Bar of Michigan Statement of Purpose

“...The State Bar of Michigan shall aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state.”

Rule 1 of the Supreme Court Rules Concerning the State Bar of Michigan

I. Call to Order.....Dana M. Warnez President

CONSENT AGENDA

II. **Minutes**

- A. November 19, 2021, Board of Commissioners meeting*
- B. November 9, 2021, Executive Committee meeting*
- C. December 7, 2021, Executive Committee meeting*

III. **President’s Activities**.....Dana M. Warnez, President

- A. Recent Activities*

IV. **Executive Director’s Activities**.....Janet K. Welch, Executive Director

- A. Recent Activities*

V. **Finance**..... Lisa J. Hamameh, Chairperson

- A. Financial Reports through November 2021*

VI. **Public Policy**.....James W. Heath, Chairperson

- A. Model Jury Instructions*

VII. **Section By-law Amendments**.....Darin Day, Program Director, Outreach

- A. Criminal Law Section*

VIII. **Closed Session**.....Dana M. Warnez, President

- A. Executive Director Search Workgroup Report

IX. **FY 2021 Audit Update and Report from Andrews Hooper Pavlik PLC**..... Lisa J. Hamameh

LEADERSHIP REPORTS

- X. **President's and Executive Director's Report** Dana M. Warnez, President
Janet K. Welch, Executive Director
 - A. Work Group Reports
 - 1) Governance
 - 2) Sections
 - B. Michigan Supreme Court - Proposed Fee Increase
 - C. Attorney Wellness Commission
 - D. SOLACE Program
 - E. DEI Commission
- XI. **Representative Assembly Report** Nicholas Ohanesian, Chairperson
- XII. **Young Lawyers Section Report** Kristina Bilowus, Chairperson

COMMISSIONER COMMITTEES

- XIII. **Public Policy** James W. Heath, Chairperson
 - A. Court Rules**
 - B. Legislation**
- XIV. **Finance** Lisa J. Hamameh, Chairperson
 - A. FY 2022 Financial Report
- XV. **Audit** Lisa J. Hamameh, Chairperson
 - A. Audit Selection and Rotation Policy
- XVI. **Professional Standards** Joseph P. McGill, Chairperson
 - A. Proposed Pro Hac Vice Amendments*
 - B. Amicus Brief*
- XVII. **Communications and Member Services** Daniel D. Quick, Chairperson

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

- XVIII. **Comments or questions from Commissioners**
- XIX. **Comments or questions from the public**
- XX. **Adjournment**

*Materials included with agenda.

**Materials delivered or to be delivered under separate cover or handed out.

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES**

President Warnez called the meeting to order at 9:30 a.m. on Friday, November 19, 2021, via videoconference.

Commissioners present:

Danielle Mason Anderson
David C. Anderson
Yolanda Bennett
Kristina A. Bilowus
Aaron V. Burrell
Erika L. Bryant
Hon. B. Chris Christenson
Thomas P. Clement
Sherrree Detzler
Robert A. Easterly
Hon. Kameshia D. Gant
Lisa J. Hamameh, Treasurer
James W. Heath, President-Elect
Thomas H. Howlett
Sarah E. Kuchon
Suzanne C. Larsen
James W. Low

E. Thomas McCarthy Jr.
Joseph P. McGill, Secretary
Valerie R. Newman
Takura N. Nyamfukudza
Nicholas M. Ohanesian
Samantha J. Orvis
Hon. David A. Perkins
Colemon Potts
Daniel D. Quick, Vice President
Hon. Kristen D. Simmons
Delphia T. Simpson
Thomas G. Sinas
Danielle Walton
Dana M. Warnez, President
Hon. Erane C. Washington
Mark A. Wisniewski

Commissioners absent:

Gerrow D. "Gerry" Mason

State Bar staff present:

Janet Welch, Executive Director
Margaret Bossenbery, Executive Coordinator
Nancy Brown, Assistant Executive Director
Gregory Conyers, Program Director, Diversity Development Program
Peter Cunningham, Director, Governmental Relations and Assistant Executive Director
Darin Day, Program Director, Outreach
Michelle Erskine, Research Assistant & Event Specialist
Katherine Gardner, UPL Counsel
Tatiana Goodkin, Chief Financial Officer
Kathryn Hennessey, General Counsel and Assistant Executive Director
Robert Mathis, Pro Bono Services & Justice Initiatives Counsel
Molly Ranns, Director, Lawyers & Judges Assistance Program
Carrie Sharlow, Administrative Assistant
Janna Sheppard, Administrative Assistant
Kari Thrush, Program Director, Lawyer Services
Nathan Triplett, Public Policy Counsel
Anne Vrooman, Program Director, Research & Development
Shaquita Williams, Operations Support Specialist

Consent Agenda:

The Board received the minutes from both September 17, 2021, Board meetings.
The Board received the minutes from the September 8 and October 5, 2021, Executive Committee meetings.

The Board received the recent activities of the president.

The Board received the recent activities of the executive director.

The Board received the FY 2021 draft financial reports through September 30, 2021.

The Board received the Financial Safety Margin Calculations.

The Board received the District Character and Fitness Committee appointments.

The Board received the Client Protection Fund claims.

The Board received the Unauthorized Practice of Law claims.

The Board received Model Criminal Jury Instructions.

Ms. Warnez asked the Board if any items needed to be removed from the consent agenda. There were none.

A motion was offered and supported to approve the consent agenda. The motion was approved.

The Board received a presentation from Ms. Amy Byrd, of the State Court Administrative Office, regarding the proposed amendments of MCR Rule 1.109

LEADERSHIP REPORTS

President and Executive Director's Report: Dana M. Warnez, President and Janet K. Welch, Executive Director

Ms. Warnez welcomed the new 2021-2022 commissioners.

Ms. Warnez asked the chairs of the following work groups to provide an update to the Board.

Work Group Reports

Executive Director Search

Ms. Warnez provided the Board with an overview of the work the Executive Director Search work group has accomplished since it was first convened. The work group is ready to conduct second interviews with the final four candidates for the position of executive director. She stated that the work group anticipates finalizing the process before the end of the calendar year.

Governance

Ms. Warnez stated that she and Mr. Ohanesian are cochairing this work group and are developing a wider group of participants to further develop the work of the governance work group chaired by Mr. Quick during the last bar year.

Sections

Ms. Bryant reported that the work group met twice since it was established. She stated that two major questions have emerged: first, whether changes should be made to the sections' role in providing content

for the themed issues of the *Bar Journal*, and the second relates to the sections and the Board's oversight authority and responsibilities.

Ms. Bryant said that the work group reviewed the Bar's policies about sections and how the *Bar Journal* currently functions. The work group has a meeting scheduled in early December with an ad hoc committee of the Bar Journal Committee. After that meeting, she expects the work group will engage with the Communications and Member Services and Strategic Planning Committees and have a recommendation for the Executive Committee and then the Board.

Michigan Supreme Court — Proposed Fee Increase

The Supreme Court discussed the fee increase proposal submitted by the Representative Assembly last year at an administrative conference, after which meeting, SBM received a number of questions from the Court regarding the proposal. Ms. Welch reported that the response to those questions is being drafted and will be submitted by the end of the month.

Introduction of New SBM Staff

Ms. Welch asked Mr. Cunningham to introduce the new members of his staff. Mr. Cunningham introduced Mr. Nathan Triplett, public policy counsel, and Ms. Shaquita Williams, operations support specialist, to the Board.

Representative Assembly (RA) Report: Nicholas M. Ohanesian, Chairperson

In Mr. Ohanesian's absence, Ms. Bennett, clerk of the RA, reported that the RA committees have been populated and that chairs have been identified.

Young Lawyers Section (YLS) Report: Kristina Bilowus, Chairperson

Ms. Bilowus provided the Board with an update on the activities of the Young Lawyers Section.

COMMISSIONER COMMITTEES

Finance: Lisa J. Hamameh, Chairperson

Ms. Hamameh reviewed the FY 2020 financial results through September 30, 2021. She asked Ms. Goodkin and Mr. Cunningham to provide the Board with a PowerPoint presentation about the financial results and trends of FY 2021. They responded to questions after the presentation.

Audit: Lisa J. Hamameh, Chairperson

Ms. Hamameh reported the audit is in process and that the committee is meeting on December 8 to review the auditor's report. The auditors will be present at the January Board meeting to report their findings to the Board members. The Audit Committee is reviewing the SBM Audit and Rotation Policy regarding the need to request a waiver to use the same auditors each year and will bring the proposed changes to the Board for their consideration at a future meeting.

Professional Standards: Joseph P. McGill, Chairperson

Mr. McGill stated that the committee met on Tuesday and was briefed on the responsibilities of the committee. The pro hac vice rules, which is listed on today's agenda, were tabled by the committee to afford the new members more time to read and review the materials.

Communications and Member Services (CAMS): Daniel D. Quick, Chairperson

Mr. Quick reported that the committee met and reviewed a long list of action items they hope to address this year, including the Rule of Law Initiative, a new social media policy, new member benefits, ongoing efforts of sections, and the June BLF and UMLI. The committee received an update on LJAP and SOLACE programs.

Public Policy: James W. Heath, Chairperson

Court Rules

ADM File No. 2021-34: Proposed Amendment of MCR 5.125

The proposed amendment of MCR 5.125 would add the Community Mental Health program as an interested person to be served a copy of the Court's order when assisted outpatient treatment is ordered.

A motion was offered to support the proposed amendment to MCR 5.125. The motion was seconded and approved.

ADM File No. 2018-26: Proposed Amendment of MCR 6.502

The proposed amendment of MCR 6.502 would make the rule consistent with the Court's ruling in *People v Washington*, ___Mich___(2021) by allowing a defendant to file a second or subsequent motion for relief from judgment based on a claim of a jurisdictional defect in the trial court when the judgment was entered. Although the Court's analysis in *Washington* related specifically to subject matter jurisdiction, reference to "jurisdictional defect" is consistent with MCR 6.508(D).

A motion was offered to support the proposed amendment of MCR 6.502. The motion was seconded and approved.

ADM File No. 2021-33: Proposed Amendment of Administrative Order No. 1997-10

The proposed amendment of Administrative Order No. 1997-10 would clarify which information about jobs within the judiciary would be available to the public and the manner in which it will be made available.

A motion was offered to support the proposed amendment of Administrative Order No. 1997-10. The motion was seconded and approved.

Legislation

HB 5309 (LaFave) Occupations: attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify.

A motion was offered that this legislation is *Keller* permissible. The motion was seconded and approved.

A motion was offered and seconded to support the legislation. A roll call vote was taken, and the motion failed, 21 to 8 (23 votes required)

Commissioners voting in support – Burrell, Bryant, Christenson, Detzler, Easterly, Gant, Heath, Kuchon, Larsen, McCarthy, Newman, Nyamfukudza, Orvis, Perkins, Potts, Simpson, Sinas, Walton, Warnez, Washington, Wisniewski.

Commissioners voting in opposition – Anderson, David; Bilowus; Clement; Hamameh; Howlett; Low; McGill; Quick.

Commissioners absent – Anderson, Danielle; Bennett; Mason; Ohanesian; Simmons.

Ms. Bilowus offered a motion for reconsideration because the Board may not have adequately considered the issue with the members who are absent. The motion was seconded and approved.

Mr. Sinas re-stated his original motion to support HB 5309. **A roll call vote was taken, and the motion failed, 22 to 7 (23 votes required)**

Commissioners voting in support – Bilowus, Bryant, Burrell, Christenson, Detzler, Easterly, Gant, Heath, Kuchon, Larsen, McCarthy, Nyamfukudza, Orvis, Perkins, Potts, Simmons, Simpson, Sinas, Walton, Warnez, Washington, Wisniewski.

Commissioners voting in opposition – Anderson, David; Clement; Hamameh; Howlett, Low; McGill; Quick.

Commissioners absent – Anderson, Danielle; Bennett; Mason; Ohanesian, Newman

Ms. Bryant gave notice of her intent to move to rescind the vote on this legislation at the next Board meeting.

Bail Bonds Legislation

HB 5436 (Fink) Criminal procedure: bail; procedure for pretrial release determinations, criteria a court must consider for pretrial release determination, and reporting of data on pretrial release decisions; provide for. Amends sec. 6 & 6a, ch. V of 1927 PA 175 (MCL 765.6 & 765.6a) & adds sec. 6g, ch. V.

HB 5437 (Yancey) Criminal procedure: bail; criteria a court must consider before imposing certain conditions of release and due process hearing related to pretrial detention; provide for. Amends sec. 6b, ch. V of 1927 PA 175 (MCL 765.6b) & adds sec. 6f, ch. V.

HB 5438 (VanWoerkom) Criminal procedure: other; certain definitions in the code of criminal procedure and time period required for disposition of criminal charges; provide for. Amends sec. 1, ch. I & sec. 1, ch. VIII of 1927 PA 175 (MCL 761.1 & 768.1).

HB 5439 (Young) Criminal procedure: bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).

HB 5440 (LaGrand) Criminal procedure: bail; requirements for the use of a pretrial risk assessment tool by a court making bail decision; create. Amends 1927 PA 175 (MCL 760.1 - 7677.69) by adding sec. 6f, ch. V.

HB 5441 (Johnson) Criminal procedure: bail; act that provides bail for traffic offenses or misdemeanors; repeal. Repeals 1966 PA 257 (MCL 780.61 - 780.73).

HB 5442 (Meerman) Traffic control: driver license; reference to surrendering license as condition of pretrial release and certain other references; amend to reflect changes in code of criminal procedure. Amends secs. 311 & 727 of 1949 PA 300 (MCL 257.311 & 257.727) & repeals sec. 311a of 1949 PA 300 (MCL 257.311a).

HB 5443 (Brann) Criminal procedure: bail; setting of bond related to spousal or child support arrearage; modify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).

A motion was offered that this legislation is *Keller* permissible. The motion was seconded and approved.

A motion was offered to support the bail/bond legislation that aligns with the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration—namely, HB 5436-HB 5439 and HB 5441-

HB 5443—and to oppose HB 5440, as it was not based upon any Task Force recommendation and to authorize the sections and committees to advocate their positions. The motion was seconded.

A motion was offered to conduct the vote on the initial motion via electronic roll call vote and a request was made to send additional materials on the Task Force recommendations to the commissioners.

A voice vote was taken, and the motion was approved. (25 Board members on the call at that time.)

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

There were none.

Comments or questions from the public

There were none.

Adjournment

The meeting was adjourned at 12:30 p.m.

**State Bar of Michigan
Executive Committee Virtual Meeting
Tuesday, November 9, 2021
4:00 p.m.**

Call to Order: President Warnez called the meeting to order at 4:02 p.m.

Members Present: President Dana M. Warnez; President-Elect James W. Heath; Vice President Daniel D. Quick; Secretary Joseph P. McGill; Treasurer Lisa J. Hamameh; Representative Assembly Chair Nicholas M. Ohanesian; and Commissioners Erika L. Butler, Suzanne C. Larsen, and Hon. David A. Perkins

Members Absent: Representative Assembly Vice Chair Gerrow D. Mason

State Bar Staff Present: Janet Welch, Executive Director; Margaret Bossenbery, Executive Coordinator; Nancy Brown, Assistant Executive Director; Peter Cunningham, Assistant Executive Director; and Kathryn Hennessey, General Counsel and Assistant Executive Director

Minutes from the October 5, 2021, Executive Committee Meeting

A motion was offered to approve the minutes from the October 5, 2021, Executive Committee meeting. The motion was seconded and approved.

President and Executive Director's Report

Ms. Warnez asked each of the workgroups to give a report to the committee.

Workgroup on Sections

Ms. Butler stated that the workgroup has met twice and the plan going forward is to meet with the Bar Journal Committee. She stated that the goal is to chart a way forward relative to how to manage theme issues and make a recommendation to the Executive Committee and then the full Board before the end of next spring.

Governance Workgroup

Ms. Warnez stated that she and Mr. Ohanesian are working on identifying the members of the Governance Workgroup. Once their participation is confirmed, a meeting will be scheduled, hopefully in December. The workgroup will be tasked with developing a strategy for moving the proposed recommended changes to SBM governance identified by the Operation, Structure & Governance Special Committee that Mr. Quick chaired last year. Ms. Warnez indicated this item would not be on the November agenda of the Board.

Executive Director Search Workgroup

Ms. Warnez stated that the workgroup continues to meet, most recently to conduct initial interviews. She said that the workgroup will meet this Thursday to talk about those interviews and identify the candidates who will be invited back for a second interview. Once those interviews are completed and the workgroup meets afterwards, a recommendation will be made to the Executive Committee and then the full Board.

Questions were raised about what the Executive Committee or Board members' engagement should be in the process going forward. Ms. Warnez suggested that aside from the comments made during the meeting, if any member had additional comments or suggestions, they could contact her or the consultant, and that the entire ED Search Workgroup would consider those suggestions or comments when they meet on Thursday.

Ms. Warnez stated that the process will include staff input with the opportunity to submit questions.

MSC Consideration of Fee Increase Proposal

Ms. Welch stated that the Supreme Court discussed the fee increase proposal during its last administrative conference. She said that after that meeting, she received a letter from Anne Boomer, administrative counsel for the Supreme Court, that included questions from the Court regarding the proposal. Ms. Welch stated that responses are being drafted and will be sent to the Court soon.

There was a short discussion about the value of including in the communications with the Court SBM's efforts to modernize our governance and operations and eliminate any redundancy.

Representative Assembly (RA)

Ms. Ohanesian reported that the RA committee members and chairs have been appointed.

Mr. Ohanesian mentioned that former RA chair Ed Haroutunian called him to remind him that the 50th anniversary of the RA is in 2022.

November 19, 2021, Board Meeting Agenda

A motion was offered to approve the agenda for the November 19, 2021, board meeting. The motion was seconded and approved.

Adjournment

The meeting was adjourned at 4:57 p.m.

**State Bar of Michigan
Executive Committee Virtual Meeting
Tuesday, December 7, 2021
4:00 p.m.**

Call to Order: President Warnez called the meeting to order at 4:02 p.m.

Members Present: President Dana M. Warnez; President-Elect James W. Heath; Vice President Daniel D. Quick; Secretary Joseph P. McGill; Treasurer Lisa J. Hamameh; Representative Assembly Chair Nicholas M. Ohanesian; Representative Assembly Vice Chair Gerrow D. Mason; and Commissioners Erika L. Butler, Suzanne C. Larsen, and Hon. David A. Perkins

Members Absent:

State Bar Staff Present: Janet Welch, Executive Director; Margaret Bossenbery, Executive Coordinator; Nancy Brown, Assistant Executive Director; and Peter Cunningham, Assistant Executive Director

Minutes from the November 9, 2021, Executive Committee Meeting

A motion was offered to approve the minutes from the November 9, 2021, Executive Committee meeting. The motion was seconded and approved.

President and Executive Director's Report

Taylor v Buchanan

Ms. Welch reported that our reply brief has been filed.

Fee Increase Proposal

Ms. Welch stated there is nothing new to report on the fee increase proposal since the last executive committee meeting.

Ms. Warnez asked each of the workgroups to report to the committee.

Governance Workgroup

Ms. Warnez advised that an expanded RA/BOC team is being created that would meet in January to strategize on how to move forward in response to the proposed recommendations from the Governance Workgroup chaired by Mr. Quick.

Workgroup on Sections

Ms. Butler advised that the workgroup had a very productive meeting with a subcommittee of the Bar Journal Committee. She said that the subcommittee provided some history and context on theme issues and their take on the religious liberty issue. The plan is to meet with the Workgroup on Sections to share thoughts about the conversation and hammer out a recommendation initially to this committee and then to the entire Board at a future meeting.

There was discussion among committee members on theme issues, the purpose of sections, what oversight the Board should have, and the importance of having uniform policies and procedures in place to ensure that all section issues are handled the same way.

Representative Assembly (RA)

Mr. Ohanesian reported that an initial letter was sent to RA members regarding the April RA meeting asking for award recommendations and proposals for consideration.

Executive Director Search Workgroup

Ms. Warnez stated that the workgroup completed the second round of interviews with the four candidates. She said staff interviews of the finalists had taken place and the consultant is compiling that input. Ms. Warnez reported that the workgroup is scheduled to meet on December 13 at which time it is anticipated that it will reach a consensus and bring the recommendation before this committee and then the full Board for action.

Other

Mr. Mason shared that Ms. Warnez participated in a swearing-in ceremony for a new member in his county.

Adjournment

The meeting was adjourned at 4:57 p.m.

President Dana M. Warnez
President's Activities
November 19, 2021 through January 21, 2022

Date	Event	Location
November 22 & 23	Executive Director Search Committee – 2 nd Interviews	Virtual
November 29	Meeting with RA Chair, Nick Ohanesian, ED Janet Welch, and Assistant ED Peter Cunningham	Virtual
December 2	Subcommittee of Bar Journal Committee and BOC Sections Workgroup meeting	Virtual
December 2	Macomb County Bar Association Holiday Gathering	Clinton Twp.
December 2	Oakland County Bar Association Holiday Gathering	Birmingham
December 7	Macomb County Probate Association Holiday Gathering	Sterling Heights
December 7	Executive Committee meeting	Virtual
December 8	Macomb County Women Lawyers Holiday Luncheon	Macomb Township
December 9	Face of Justice Program – Mentor	Virtual
December 9	Incorporated Association of Irish American Lawyers Holiday Gathering	Detroit
December 13	Executive Director Search Workgroup meeting	Virtual
December 14	Statewide Admission Ceremony	Virtual
December 20	Meeting with SBM Board officer and ED Janet Welch	Virtual
January 6	Meeting with RA Chair Nick Ohanesian and ED Janet Welch	Virtual
January 7	Governance Workgroup meeting	Virtual
January 7	Meeting with RA Chair Nick Ohanesian, Chelsea Rebeck and Marge Bossenbery	Virtual
January 13	Lapeer County Bar Association Luncheon	Virtual

Date	Event	Location
January 11	Executive Committee meeting	Virtual
January 10	Meeting with Molly Ranns	Virtual
January 21	Board of Commissioners meeting	Virtual

Executive Director Janet K. Welch
Executive Director Activities
November 19, 2021 through January 21, 2022

Date	Event
November 23	Meeting with Vice President Dan Quick and Mark Armitage, Executive Director Attorney Discipline Board
November 29	Indiana State Bar Leadership Academy
November 29	Meeting with President Dana Warnez, RA Chair Nick Ohanesian, and Assistant ED Peter Cunningham
November 30	JFAC - Regulatory – Nontraditional Business Models and Professional Ethics Subcommittee meeting
November 30	Meeting with Kenneth Mogill
December 2-3	National ATJ meeting 2021
December 2	JFAC Regulatory - Activities by Nonlawyers Subcommittee meeting
December 2	BOC Sections Workgroup meeting with Bar Journal committee members
December 2	JFAC Regulatory - Advertising and Marketing Subcommittee meeting
December 3	JFA Executive Team meeting
December 7	Executive Committee meeting
December 7	ABA Center for Innovation meeting
December 8	International Working Group - Transition after Pandemic Restrictions
December 8	Audit Committee meeting
December 9	Face of Justice Program
December 9	JFA Executive Team meeting
December 10	Judicial Council meeting
December 10	MPJA meeting
December 13	Executive Director Search Workgroup meeting
December 13	JFA Commission meeting
December 14	Meeting with Justice Brian Zahra and Zack DeMeola, Director of Legal Education and the Legal Profession at (IAALS)
December 14	Statewide Admission Ceremony
December 15	JFA Financial meeting
December 15	ABA Select Committee meeting
December 15	ATJC Monthly Staff calls

Date	Event
December 20	All Staff meeting
December 20	Meeting with Justice Brian Zahra
December 20	Meeting with SBM Board Officers
December 21	ABA Day Planning Committee meeting
December 23	JFA Executive Committee meeting
January 5	International Working Group - Transition after Pandemic Restrictions
January 6	Cloudlaw meeting
January 6	Meeting with President Dana Warnez and RA Chair Nick Ohanesian
January 7	Governance Workgroup meeting
January 11	ABA Day Planning Committee meeting
January 11	Executive Committee meeting
January 12	Cloudlaw meeting
January 12	Stanford Law 807H Policy Lab meeting - JFA Regulatory
January 14	JFA Executive Committee meeting
January 14	JFA Delivery Committee meeting
January 14	Diversity, Equity, and Inclusion Commission meeting
January 18	Professional Standards Committee meeting
January 19	Strategic Planning Committee meeting
January 19	Finance Committee meeting
January 20	Audit Committee meeting
January 20	Public Policy Committee meeting
January 20	JFA Executive Committee
January 20	JFA Workgroup Chairs Committee meeting
January 21	Board of Commissioners meeting

State Bar of Michigan Financial Results Summary

For the Two Months Ended November 30, 2021

Fiscal Year 2022

Administrative Fund - Summary of Results as of November 30, 2021

Operating Revenue	\$1,553,236
Operating Expense	<u>\$1,694,392</u>
Operating Loss	(\$141,156)
Non-Operating Income	<u>\$13,836</u>
Change in Net Position	<u><u>\$(127,320)</u></u>
Net Position, October 1, 2021	\$11,773,220
Net Position, November 30, 2021	<u><u>\$11,645,900</u></u>

As of November 30, 2021, Net Position excluding Retiree Healthcare Trust was \$8,280,388, a decrease of \$142,624 since the beginning of the year. However, the decrease was **favorable** to budget by **\$174,391**.

YTD Operating Revenue variance - \$37,519 favorable to budget 2.5%:

Operating revenue was higher primarily due to higher License Fees, Dues, and Related revenue (\$539 favorable to budget). Other Operating Revenues were higher (\$36,980 or 13.9% favorable to budget) primarily due to higher revenue in E Journal and LRS, net lower revenue in Character & Fitness some due to timing.

YTD Operating Expense variance - \$134,500 favorable to budget (7.4%):

Salaries and Employee Benefits/ Payroll Taxes – \$18,372, favorable (1.6%)

- Under budget in salaries and benefits due to vacancies and health care.

Non-Labor Operating Expenses - \$116,128, favorable (17.3%)

- Legal - \$14,298, favorable (43.3%) – Under budget mainly due to lower expenses for C&F and external counsel.
- Public and Bar Services - \$34,734 (24.7%), favorable – Under budget primarily in IT and Outreach primarily due to timing.
- Operations and Policy - \$67,096, favorable (13.5%) – Under budget primarily in Finance due to depreciation expense and Facilities, some due to timing.

YTD Non-Operating Revenue Budget Variance - \$8,336 favorable to budget:

- Operating investment income is favorable to budget by \$2,372 (43.1%).
- Retiree Health Care Trust net investment income is favorable by \$5,964 due to investment gain (this amount is not budgeted).

Cash and Investment Balance

As of November 30, 2021, the cash and investment balance in the State Bar Admin Fund (net of “due to Sections, Client Protection Fund, and Retiree Health Care Trust”) was \$11,121,152, an increase of \$3,449,268 from the beginning of the year due to collection of FY 2022 license fees.

SBM Retiree Health Care Trust

As of November 30, 2021, the SBM Retiree Health Care Trust investments were \$4,746,217, an increase of \$15,303 since the beginning of the year and consisted of trust income of \$5,748, and SBM contributions of \$9,555.

Capital Budget

As of November 30, 2021, YTD capital expenditures totaled \$34,800 which is under the annual capital budget by \$287,000 due to timing of projects.

Client Protection Fund

The Net Position of the Client Protection Fund as of November 30, 2021, totaled \$1,744,725, a decrease of \$89,394 from the beginning of the year. Claims expenses totaled \$176,690. There were \$265,357 approved claims awaiting signed subrogation agreements.

SBM Membership

As of November 30, 2021, the active, inactive, and emeritus membership in good standing totaled 46,664 attorneys, a net increase of 141 attorneys since the beginning of the year; the number of paying attorneys increased by 19. A total of 210 new attorneys have joined the SBM since the beginning of the year.

**STATE BAR OF MICHIGAN
ADMINISTRATIVE FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
November 30, 2021**

FY 2022

Note: License fee revenue is recognized and budgeted as earned each month throughout the year.

State Bar of Michigan
Statement of Net Position
Administrative Fund
For the Two Months Ending November 30, 2021

	10/31/2021	11/30/2021	Increase (Decrease)	%	Beginning of FY 2022 10/1/21
ASSETS AND DEFERRED OUTFLOWS					
Cash	\$6,933,738	\$9,213,059	\$2,279,321	32.9%	\$4,696,954
Investments	5,979,540	5,976,913	(2,628)	(0.0%)	5,979,540
Accounts Receivable	69,380	38,537	(30,843)	(44.5%)	73,941
Due from (to) CPF	(57,217)	(85,752)	(28,534)	49.9%	(21,276)
Due to Sections	(3,658,902)	(3,983,068)	(324,166)	8.9%	(2,983,335)
Prepaid Expenses	250,838	285,755	34,917	13.9%	466,629
Capital Assets	3,360,987	3,303,488	(57,500)	(1.7%)	3,343,587
SBM Retiree Health Care Trust	4,890,213	4,746,217	(143,996)	(2.9%)	4,730,914
Total Assets	\$17,768,577	\$19,495,149	\$1,726,571	9.7%	\$16,286,954
Deferred outflows of resources related to pensions	38,551	38,551	-	0.0%	38,551
Deferred outflows of resources related to OPEB	779,487	779,487	-	0.0%	779,487
Total Deferred outflows of resources	818,038	818,038	-	0.0%	818,038
Total Assets and Deferred Outflows of Resources	18,586,615	20,313,186	1,726,571	9.3%	17,104,992
LIABILITIES, DERERRED INFLOWS AND NET POSITION					
Liabilities					
Accounts Payable	\$79,802	\$45,107	(\$34,695)	(43.5%)	\$299,588
Accrued Expenses	660,720	702,511	41,791	6.3%	629,109
Deferred Revenue	3,341,076	5,357,009	2,015,934	60.3%	1,840,416
Net Pension Liability	402,467	402,467	-	0.0%	402,467
Net OPEB Liability	1,381,131	1,381,131	-	0.0%	1,381,131
Total Liabilities	5,865,196	7,888,225	2,023,029	34.5%	4,552,710
Deferred Inflows of resources related to OPEB	779,062	779,062	-	0.0%	779,062
Total Deferred inflows of resources	779,062	779,062	-	0.0%	779,062
Total Liabilities and Deferred Inflows	6,644,258	8,667,287	2,023,029	30.4%	5,331,772
Net Assets					
Invested in Capital Assets, Net of Related Debt	3,360,987	3,303,488	(57,500)	(1.7%)	3,343,587
Restricted for Retiree Health Care Trust	3,509,507	3,365,511	(143,996)	(4.1%)	3,350,208
Unrestricted	5,071,863	4,976,901	(94,963)	(1.9%)	5,079,425
Total Net Position	11,942,357	11,645,899	(296,458)	(2.5%)	11,773,220
Total Liabilities, Deferred Inflows and Net Position	\$18,586,615	\$20,313,186	\$1,726,571	9.3%	\$17,104,992
Net Position excluding the impacts of retiree health care	\$8,432,850	\$8,280,388	(\$152,462)	(1.8%)	\$8,423,012

Note: Cash and investments actually available to the State Bar Administrative Fund, after deduction of the "Due to Sections" and "Due to CPF" and not including the "Retiree Health Care Trust" is \$11,121,152 (see below)

CASH AND INVESTMENT BALANCES

Cash (including CD's and Money Market)	\$6,933,738	\$9,213,059	\$2,279,321	32.9%	\$4,696,954
Investments	5,979,540	5,976,913	(2,628)	(0.0%)	5,979,540
Total Available Cash and Investments	12,913,278	15,189,972	2,276,693	17.6%	10,676,495
Less:					
Due to Sections	3,658,902	3,983,068	324,166	8.9%	2,983,335
Due to CPF	57,217	85,752	28,534	49.9%	21,276
Due to Sections and CPF	3,716,119	4,068,820	352,701	9.5%	3,004,611
Net Administrative Fund Cash and Investment Balance	9,197,159	11,121,152	1,923,993	20.9%	7,671,884

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
For the Two Months Ending November 30, 2021

YTD FY 2022 Increase (Decrease) in Net Position Summary

	Actual YTD	Budget YTD	Variance	Percentage	Prior Year Actual YTD	Variance	Percentage
Operating Revenue							
- License Fees, Dues & Related	1,250,931	1,250,392	539	0.0%	1,211,446	39,485	3.3%
- All Other Op Revenue	302,305	265,325	36,980	13.9%	263,337	38,968	14.8%
Total Operating Revenue	<u>1,553,236</u>	<u>1,515,717</u>	<u>37,519</u>	<u>2.5%</u>	<u>1,474,783</u>	<u>78,453</u>	<u>5.3%</u>
Operating Expenses							
- Labor-related Operating Expenses							
Salaries	820,556	828,791	(8,235)	(1.0%)	767,706	52,850	6.9%
Benefits and PR Taxes	317,616	327,753	(10,137)	(3.1%)	328,667	(11,051)	(3.4%)
Total Labor-related Operating Expenses	<u>1,138,172</u>	<u>1,156,544</u>	<u>(18,372)</u>	<u>(1.6%)</u>	<u>1,096,373</u>	<u>41,799</u>	<u>3.8%</u>
- Non-labor Operating Expenses							
Legal	18,734	33,032	(14,298)	(43.3%)	14,861	3,873	26.1%
Public and Bar Services	106,018	140,752	(34,734)	(24.7%)	82,921	23,097	27.9%
Operations and Policy	431,468	498,564	(67,096)	(13.5%)	425,569	5,899	1.4%
Total Non-labor Operating Expenses	<u>556,220</u>	<u>672,348</u>	<u>(116,128)</u>	<u>(17.3%)</u>	<u>523,351</u>	<u>32,869</u>	<u>6.3%</u>
Total Operating Expenses	<u>1,694,392</u>	<u>1,828,892</u>	<u>(134,500)</u>	<u>(7.4%)</u>	<u>1,619,724</u>	<u>74,668</u>	<u>4.6%</u>
Operating Income (Loss)	<u>(141,156)</u>	<u>(313,175)</u>	172,019	(54.9%)	(144,941)	3,785	(2.6%)
Non-operating Revenue (Expenses)							
Investment Income	7,872	5,500	2,372	43.1%	16,582	(8,710)	(52.5%)
Investment Income - Ret HC Trust	5,964	-	5,964	N/A	318,948	(312,984)	N/A
Loss on Disposal of Capital Asset	-	-	0	N/A	(17,570)	17,570	(100.0%)
Net Non-operating Revenue (Expenses)	<u>13,836</u>	<u>5,500</u>	<u>8,336</u>	<u>152%</u>	<u>317,960</u>	<u>(304,124)</u>	<u>(96%)</u>
Increase (Decrease) in Net Position	<u>(127,320)</u>	<u>(307,675)</u>	<u>180,355</u>	<u>N/A</u>	<u>173,019</u>	<u>(300,339)</u>	<u>N/A</u>
Net Position - Beginning the Year	<u>11,773,220</u>	<u>11,773,220</u>	-	0.0%	<u>11,571,907</u>	<u>201,313</u>	1.7%
Net Position - Year-to-Date	<u>11,645,900</u>	<u>11,465,545</u>	<u>180,355</u>	<u>1.6%</u>	<u>11,744,926</u>	<u>(99,026)</u>	<u>(0.8%)</u>
Increase (Decrease) in Net Position Excluding Ret HC Trust Inv. Income	<u>(133,284)</u>	<u>(307,675)</u>	<u>174,391</u>	<u>(56.7%)</u>	<u>(145,929)</u>	<u>12,645</u>	<u>(8.7%)</u>

State Bar of Michigan
Statement of Revenue, Expense, and Net Assets
Administrative Fund
For the Two Months Ending November 30, 2021

	Actual YTD	Budget YTD	Variance	Percentage	Prior Year YTD	Variance	Percentage
Revenue							
Legal							
Ethics	\$225	\$1,950	(\$1,725)	(88.46%)	\$4,100	(\$3,875)	(94.51%)
Character & Fitness	32,275	42,958	(10,683)	(24.87%)	41,640	(9,365)	(22.49%)
Legal Total	32,500	44,908	(12,408)	(27.63%)	45,740	(13,240)	(28.95%)
Public and Bar Services							
Lawyer Services	25,841	28,250	(2,409)	(8.53%)	25,622	219	0.85%
Practice Management Resource Center	-	583	(583)	(100.00%)	-	-	0.00%
Lawyer Referral Service	76,092	25,000	51,092	204.37%	23,881	52,211	218.63%
LJAP	7,675	10,000	(2,325)	(23.25%)	9,105	(1,430)	(15.71%)
Public and Bar Services Total	109,608	63,833	45,775	71.71%	58,608	51,000	87.02%
Operations and Policy							
License Fees	1,250,931	1,250,392	539	0.04%	1,211,446	39,485	3.26%
Other Revenue	60,647	61,467	(820)	(1.33%)	67,316	(6,669)	(9.91%)
Bar Journal Directory	-	-	-	0.00%	2,832	(2,832)	(100.00%)
Bar Journal	68,044	67,367	677	1.00%	63,207	4,837	7.65%
Print and Design	6,838	6,167	671	10.88%	5,227	1,611	30.82%
e-Journal	18,368	13,500	4,868	36.06%	14,639	3,729	25.47%
Digital	6,300	8,083	(1,783)	(22.06%)	5,768	532	9.22%
Operations and Policy Total	1,411,128	1,406,976	4,152	0.30%	1,370,435	40,693	2.97%
Non-Operating Revenue							
Investment Income - SBM Operations	7,872	5,500	2,372	43.13%	16,582	(8,710)	(52.53%)
Investment Income - Ret HC Trust	5,964	-	5,964	0.00%	336,173	(330,209)	(98.23%)
Total Non-Operating Revenue	13,836	5,500	8,336	151.56%	352,755	(338,919)	(96.08%)
Total Revenue	1,567,072	1,521,217	45,855	3.01%	1,827,538	(260,466)	(14.25%)

State Bar of Michigan
Statement of Revenue, Expense and Net Assets
Administrative Fund
For the Two Months Ending November 30, 2021

	Actual YTD	Budget YTD	Variance	Percentage	Prior Year YTD	Variance	Percentage
Expense							
Legal							
Ethics	\$1,968	\$2,045	(\$77)	(3.77%)	\$1,415	\$553	39.08%
Client Protection Fund Dept	621	1,177	(556)	(47.24%)	530	91	17.17%
Character & Fitness	3,007	9,083	(6,076)	(66.89%)	3,625	(618)	(17.05%)
UPL	1,281	1,925	(644)	(33.45%)	668	613	91.77%
General Counsel	2,507	9,350	(6,843)	(73.19%)	340	2,167	637.35%
Human Resources	326,966	337,205	(10,239)	(3.04%)	336,950	(9,984)	(2.96%)
Salaries	176,336	192,356	(16,020)	(8.33%)	171,356	4,980	2.91%
Legal Total	512,686	553,141	(40,455)	(7.31%)	514,884	(2,198)	(0.43%)
Public and Bar Services							
Annual Meeting	-	-	-	0.00%	525	(525)	(100.00%)
Lawyer Services	4,500	6,488	(1,988)	(30.64%)	4,319	181	4.19%
UMLI	-	-	-	0.00%	15	(15)	(100.00%)
50 Yr. Golden Celebration	-	-	-	0.00%	39	(39)	(100.00%)
Practice Management Resource Center	462	2,455	(1,993)	(81.18%)	462	-	0.00%
Lawyer Referral Service	911	833	78	9.36%	5,444	(4,533)	(83.27%)
Outreach	3,871	17,332	(13,461)	(77.67%)	701	3,170	452.21%
Diversity	225	1,200	(975)	(81.25%)	(9,481)	9,706	(102.37%)
LJAP	335	3,017	(2,682)	(88.90%)	1,934	(1,599)	(82.68%)
Technical Services	95,714	109,427	(13,713)	(12.53%)	78,963	16,751	21.21%
Salaries	297,643	294,642	3,001	1.02%	258,059	39,584	15.34%
Total Public and Bar Services	403,661	435,394	(31,733)	(7.29%)	340,980	62,681	18.38%
Operations and Policy							
Administration	36,367	33,883	2,484	7.33%	32,966	3,401	10.32%
Financial Services	222,649	247,323	(24,674)	(9.98%)	240,655	(18,006)	(7.48%)
Bar Journal Directory	-	-	-	0.00%	1,032	(1,032)	(100.00%)
Bar Journal	50,332	56,254	(5,922)	(10.53%)	40,046	10,286	25.69%
Print and Design	4,693	8,333	(3,640)	(43.68%)	4,587	106	2.31%
Digital	53,665	56,183	(2,518)	(4.48%)	20,985	32,680	155.73%
e-Journal	2,293	2,500	(207)	(8.28%)	18,528	(16,235)	(87.62%)
General Communications	454	1,850	(1,396)	(75.46%)	5,107	(4,653)	(91.11%)
Executive Office	3,944	9,408	(5,464)	(58.08%)	7,388	(3,444)	(46.62%)
Board of Commissioners	4,579	7,817	(3,238)	(41.42%)	138	4,441	3,218.12%
Governmental Relations	9,328	10,890	(1,562)	(14.34%)	9,358	(30)	(0.32%)
Research and Development	197	1,008	(811)	(80.46%)	175	22	12.57%
Facilities Services	42,512	62,133	(19,621)	(31.58%)	44,149	(1,637)	(3.71%)
Justice Initiatives	455	982	(527)	(53.67%)	455	-	0.00%
Salaries	346,577	341,793	4,784	1.40%	338,291	8,286	2.45%
Operations and Policy Total	778,045	840,357	(62,312)	(7.41%)	763,860	14,185	1.86%
Total Expense	1,694,392	1,828,892	(134,500)	(7.35%)	1,619,724	74,668	4.61%
Increase (Decrease) in Net Assets	(\$127,320)	(\$307,675)	\$180,355	(58.62%)	\$207,813	(\$335,133)	(161.27%)
Human Resources Detail							
Payroll Taxes	59,295	62,991	(3,696)	(5.87%)	54,759	4,536	8.28%
Benefits	258,321	264,762	(6,441)	(2.43%)	273,908	(15,587)	(5.69%)
Other Expenses	9,350	9,452	(102)	(1.08%)	8,283	1,067	12.88%
Total Human Resources	326,966	337,205	(10,239)	(3.04%)	336,950	(9,984)	(2.96%)

	Actual YTD	Budget YTD	Variance	Percentage	Prior Year YTD	Variance	Percentage
Financial Services Detail							
Depreciation	74,900	93,333	(18,433)	(19.75%)	102,004	(27,104)	(26.57%)
Other Expenses	147,749	153,990	(6,241)	(4.05%)	138,651	9,098	6.56%
Total Financial Services	222,649	247,323	(24,674)	(9.98%)	240,655	(18,006)	(7.48%)
Salaries							
Legal	176,336	192,356	(16,020)	(8.33%)	171,356	4,980	2.91%
Public and Bar Services	297,643	294,642	3,001	1.02%	258,059	39,584	15.34%
Operations and Policy	346,577	341,793	4,784	1.40%	338,291	8,286	2.45%
Total Salaries Expense	820,556	828,791	(8,235)	(0.99%)	767,706	52,850	6.88%
Non-Labor Expense Summary							
Legal	18,734	33,032	(14,298)	(43.29%)	14,861	3,873	26.06%
Public and Bar Services	106,018	140,752	(34,734)	(24.68%)	82,921	23,097	27.85%
Operations and Policy	431,468	498,564	(67,096)	(13.46%)	425,569	5,899	1.39%
Total Non-Labor Expense	556,220	672,348	(116,128)	(17.27%)	523,351	32,869	6.28%

State Bar of Michigan
Administrative Fund
FY 2022 Capital Expenditures vs Budget
For the Two Months Ending November 30, 2021

	YTD Actual	YTD Budget	YTD Variance	Notes and Variance Explanations	Total Approved FY 2022 Budget	FY 2022 Year-End Forecast	Projected Year-end Variance
FACILITIES, FURNITURE & OFFICE EQUIPMENT							
Meeting room upgrades for virtual capabilities	-	-	-	In process, obtaining bids.	20,000	20,000	-
Replacement of Floor Copiers/Scanners	-	-	-		35,000	35,000	-
Total Facilities, Furniture & Office Equipment:	-	-	-		55,000	55,000	-
INFORMATION TECHNOLOGY							
<u>IT Infrastructure:</u>							
Replacement of ethernet switches for rooms 2, 3, 4 and garden level	-	-	-	In process	\$58,000	\$58,000	-
<u>Application Software Development:</u>							
Receivership /Interim Administrator Program data portal	-	-	-	Pending MI Supreme Court program approval	35,000	40,000	(5,000)
E-commerce Store	19,500	15,000	4,500		15,000	35,000	(20,000)
E-commerce License Fee Updates	8,500	-	8,500	Not budgeted, offset by other projects	-	40,000	(40,000)
Firm Administration Application	-	-	-		15,000	-	15,000
e-Services Application to Court e-Filing (mi-File)	-	-	-		-	28,800	(28,800)
Firm Billing/Invoices for License Fees	-	-	-		15,000	30,000	(15,000)
Unauthorized Practice of Law Portal	-	-	-		20,000	-	20,000
Client Protection Fund Portal	-	-	-		20,000	-	20,000
Website Functionality Enhancements	6,800	6,800	-		28,800	25,000	3,800
Volunteer Application Portal	-	-	-		2,500	5,000	(2,500)
BLE Portal	-	-	-		12,000	-	12,000
Character & Fitness Hearings Module	-	-	-		35,500	-	35,500
Consumer Portal (LRS)	-	-	-		10,000	5,000	5,000
Total Information Technology:	\$34,800	\$21,800	13,000		\$266,800	\$266,800	287,000
Total Capital Budget:	34,800	21,800	13,000		321,800	321,800	-

**STATE BAR OF MICHIGAN
CLIENT PROTECTION FUND**

Unaudited and For Internal Use Only

**FINANCIAL REPORTS
November 30, 2021**

FY 2022

Note: License fee revenue is recognized and budgeted as earned each month throughout the year.

Client Protection Fund
Statement of Revenue, Expenses, and Changes in Net Assets
For the Two Months Ending November 30, 2021

	2022 YTD	2021 YTD
Income:		
3-7-00-000-0005 Contributions Received	1,916	195
3-7-00-000-0050 License Fees Assessment	106,724	106,985
3-7-00-000-0051 Pro Hac Vice Fees	1,755	2,835
3-7-00-000-0890 Claims Recovery ¹⁾	5,342	37,165
3-7-00-000-0891 Claims Income	-	100
Total Income	115,737	147,280
 Expenses:		
3-9-00-000-0200 Claims Payment	176,690	203,018
3-9-00-000-0910 Administrative Fee	28,750	27,528
3-9-00-000-0994 Bank Service Charges	70	70
Total Expenses	205,510	230,616
 3-7-00-000-0920 Interest and Dividends	 379	 557
 Increase/Decrease in Net Position	 (89,394)	 (82,779)
 Net Position, Beginning of Year	 1,834,119	 1,785,690
 Net Position - End of Period	 1,744,725	 1,702,911

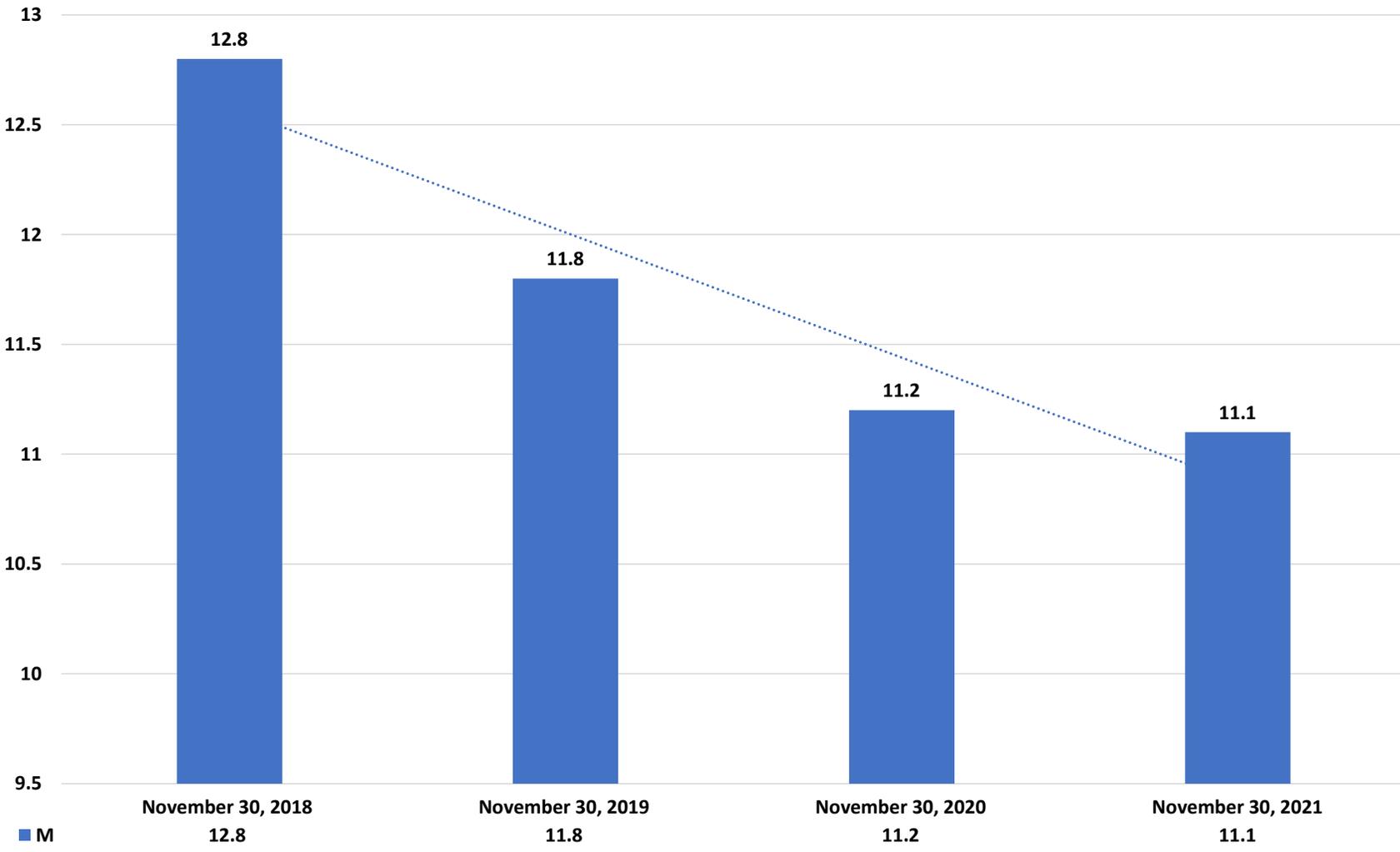
¹⁾ CPF is recording claim recoveries on cash basis.

State Bar Of Michigan
Client Protection Fund
Comparative Statement of Net Assets
For the Two Months Ending November 30, 2021

	10/31/2021	11/30/2021	Increase (Decrease)	%	Beginning of FY 2022 10/1/21
Assets					
Cash-Checking	\$42,003	\$76,151	\$34,148	81.3%	\$51,336
Savings	2,309,816	2,313,751	3,936	0.2%	2,134,669
Due From SBM	57,217	85,752	28,534	49.9%	21,276
Total Assets	\$2,409,036	\$2,475,654	\$66,618	2.8%	\$2,207,281
Liabilities					
Accounts Payable	\$240,237	\$265,357	\$25,121	10.5%	\$241,237
Deferred Revenue	292,561	465,571	173,011	59.1%	131,925
Total Liabilities	532,797	730,928	198,131	37.2%	373,162
Fund Balance					
Fund Balance at Beginning of Year	1,834,119	1,834,119	-	0.0%	1,635,719
Net Income (Expense) Year to Date	42,120	(89,394)	(131,513)	(312.2%)	198,400
Total Fund Balance	1,876,239	1,744,725	(131,513)	(7.0%)	1,834,119
Total Liabilities and Fund Balance	\$2,409,036	\$2,475,654	\$66,618	2.8%	\$2,207,281

¹⁾ CPF is recording claim expenses when claims are approved. As of November 30, 2021, CPF had \$256,357 claims that were approved and were awaiting signed subrogation agreements.

State Bar of Michigan Cash & Investments
Excluding Sections, Client Protection Fund and Retiree Health Care Trust
For the Two Months Ending November 30, 2021
\$11.1M



Note: The State Bar of Michigan has no bank debt outstanding

Summary of Cash and Investment Balances by Financial Institution

11/30/2021

Assets	Bank Rating	Financial Institution Summary	Interest Rates	Fund Summary
		SBM Chase Checking \$ 834,281.39		Client Protection Fund \$ 2,389,902
		SBM Chase Credit Card \$ 1,014,608.50		State Bar Admin Fund \$ 15,189,972
		SBM Chase E Checking \$ 100,525.00		(including Sections)
		SBM Chase Payroll \$ (1,171.19)		Attorney Discipline System \$ 6,700,205
		SBM Chase Savings \$ 200,401.48	0.05%	SBM Retiree Health Care Trust \$ 4,746,217
		ADS Chase Checking \$ 9,511.62		ADB Retiree Health Care Trust \$ 1,441,673
		ADS Chase Petty Cash \$ 4,985.00		AGC Retiree Health Care Trust \$ 4,623,049
		CPF Chase Checking \$ 76,150.61		
		CPF Chase Savings \$ 2,555.87	0.05%	
\$3.8 Trillion	5 stars	** Chase Total \$ 2,241,848.28		Total \$ 35,091,018
		SBM Horizon Bank Money Market \$ 10,029.48	0.15%	
\$7.5 Billion	5 stars	Horizon Bank Total \$ 10,029.48		
		ADS Bank of America Petty Cash \$ 3,196.00	0.00%	
\$3.1 Trillion	5 stars	Bank of America Total \$ 3,196.00		
		SBM Fifth Third Commercial Now \$ 39,301.58	0.10% *	
\$208 Billion	5 stars	Fifth Third Total \$ 39,301.58		
		Grand River Bank Money Market \$ 10,029.50	0.20%	
\$497 Million	5 stars	Grand River Bank Total w/CD \$ 999,168.65		
		Sterling Bank \$ 355.89	0.10%	
\$3.1 Billion	3.5 stars	Sterling Bank Money Market \$ 10,045.75	0.10%	
		Sterling Bank Total \$ 10,401.64		
		Citizens Bank Checking \$ 9,965.00	0.00%	
\$187 Billion	5 stars	Citizens Bank Total \$ 9,965.00		
		MSUCU Savings \$ 56.09	0.00%	
		MSUCU Checking \$ 6,284.84	0.00%	
		MSU Credit Union Total \$ 6,340.93		
\$6.6 Billion	5 stars	MSU Credit Union Total w/CD \$ 1,998,464.85		
		LAFCU Savings \$ 5.00		
\$950 Million	5 stars	LAFCU Total w/CD \$ 999,995.00		
		CASE Cr Un \$ 6.00		
		CASE Cr Un Total w/CD \$ 1,000,006.00		
		SBM Flagstar ICS Checking \$ 5,153,884.74	0.10%	
		ADS Flagstar ICS Checking Account \$ 5,506,631.18	0.10%	
		CPF Flagstar ICS Checking \$ 2,311,195.51	0.10%	
		Flagstar Bank FDIC Insured \$ 12,971,711.43		

State Bar Admin Fund Summary		
Cash and Investments	\$	15,189,972
Less:		
Due (to)/from Sections	\$	(3,983,068)
Due (to)/from CPF	\$	(85,752)
Due to Sections and CPF	\$	(4,068,820)
Net Administrative Fund	\$	11,121,152

SBM Average Weighted Yield:	0.29%
ADS Average Weighted Yield:	0.09%
CPF Average Weighted Yield:	0.10%

Notes:

- Average weighted yields exclude retiree health care trusts
- All amounts are based on reconciled book balance and interest rates as of 11/30/21
- CDARS when used are invested in multiple banks up to the FDIC limit for each bank
- Funds held in bank accounts are FDIC insured up to \$250,000 per bank
- The SBM funds held with Charles Schwab in the Retiree Health Care Trusts are invested in 76% equity securities, 22% in bonds and 2% in money market funds
- As of 11/30/21, the funds held by SBM attributable to ADS were \$1,175,881.53
- Bank Star rating from Bauer Financial.
- Lockbox fees are offset by 0.10% (annual rate) on average monthly balance (*)
- Actual unreconciled Chase balance per statements was \$1,379,059.84 (**)

Assets	Bank Rating	Financial Institution Summary	Interest Rates	Maturity	
\$31.1 Billion	5 stars	SBM Flagstar Savings	\$ 3,000,331.37	0.15%	n/a
			\$ 3,000,331.37		
					05/11/22
\$497 Million	5 stars	SBM - Grand River Bank	\$ 253,527.69	0.55%	04/18/22
		SBM - Grand River Bank	\$ 245,611.46	0.50%	09/29/22
		SBM - Grand River Bank	\$ 245,000.00	0.60%	09/29/22
		SBM - Grand River Bank	\$ 245,000.00	0.60%	10/12/22
\$2.6 Billion	3.5 stars	SBM-CD First National Bank of America	\$ 245,659.68	0.65%	10/16/22
		SBM-CD First National Bank of America	\$ 250,000.00	0.65%	10/16/22
		SBM-CD First National Bank of America	\$ 250,000.00	0.65%	10/16/22
		SBM-CD First National Bank of America	\$ 250,000.00	0.65%	10/28/22
\$6.6 Billion	5 stars	SBM-CD MSU Credit Union	\$ 250,530.98	0.60%	10/28/22
		SBM-CD MSU Credit Union	\$ 250,530.98	0.60%	10/28/22
		SBM-CD MSU Credit Union	\$ 250,530.98	0.60%	10/28/22
		SBM-CD MSU Credit Union	\$ 250,530.98	0.60%	11/21/22
		SBM-CD MSU Credit Union	\$ 250,000.00	0.60%	11/21/22
		SBM-CD MSU Credit Union	\$ 250,000.00	0.60%	11/21/22
		SBM-CD MSU Credit Union	\$ 250,000.00	0.60%	11/21/22
		SBM-CD MSU Credit Union	\$ 240,000.00	0.50%	04/23/22
\$950 Million	5 stars	SBM - CD LAFUCU	\$ 250,000.00	0.70%	04/23/22
		SBM - CD LAFUCU	\$ 250,000.00	0.70%	05/07/22
		SBM - CD LAFUCU	\$ 250,000.00	0.70%	05/07/22
		SBM - CD LAFUCU	\$ 249,990.00	0.70%	07/01/22
\$384 Million	5 stars	SBM - Case Credit Union	\$ 250,000.00	0.40%	07/01/22
		SBM - Case Credit Union	\$ 250,000.00	0.40%	07/01/22
		SBM - Case Credit Union	\$ 250,000.00	0.40%	07/01/22
		SBM - Case Credit Union	\$ 250,000.00	0.40%	
		Bank CD Totals	\$ 5,976,912.75		
Total Cash & Investments (excluding Schwab)			\$ 24,280,078.96		
		SBM - Charles Schwab (Ret HC Trust)	\$ 4,746,217.33		Mutual Funds
		ADB - Charles Schwab (Ret HC Trust)	\$ 1,441,672.65		Mutual Funds
		AGC - Charles Schwab (Ret HC Trust)	\$ 4,623,049.00		Mutual Funds
		Charles Schwab Totals	\$ 10,810,938.98		
Grand Total (including Schwab)			\$ 35,091,017.94		
Total amount of cash and investments (excluding Schwab) not FDIC insured			\$ 9,485,473.83	39.07%	

Monthly SBM Attorney and Affiliate Report - November 30, 2021

FY 2022

Attorneys and Affiliates In Good Standing	September 30 2014	September 30 2015	September 30 2016	September 30 2017	September 30 2018	September 30 2019	September 30 2020	September 30 2021	November 30 2021	FY Increase (Decrease)
Active	41,093	41,608	41,921	42,100	42,342	42,506	42,401	42,393	42,358	(35)
Less than 50 yrs serv	40,036	40,490	40,725	40,833	40,973	41,036	40,559	40,504	40,515	11
50 yrs or greater	1,057	1,118	1,196	1,267	1,369	1,470	1,842	1,889	1,843	(46)
Voluntary Inactive	1,211	1,218	1,250	1,243	1,169	1,139	1,192	1,097	1,110	13
Less than 50 yrs serv	1,184	1,195	1,230	1,217	1,142	1,105	1,149	1,055	1,063	8
50 yrs or greater	27	23	20	26	27	34	43	42	47	5
Emeritus	1,552	1,678	1,841	1,973	2,204	2,447	2,727	3,033	3,196	163
Total Attorneys in Good Standing	43,856	44,504	45,012	45,316	45,715	46,092	46,320	46,523	46,664	141
Fees paying Attorneys (Active & Inactive less than 50 yrs of Serv)	41,220	41,685	41,955	42,050	42,115	42,141	41,708	41,559	41,578	19
Affiliates										
Legal Administrators	14	13	13	13	10	10	8	5	5	0
Legal Assistants	413	425	405	400	401	393	317	219	233	14
Total Affiliates in Good Standing	427	438	418	413	411	403	325	224	238	14
Total Attorneys and Former Attorneys in the Database										
State Bar of Michigan Attorney and Affiliate Type	September 30 2014	September 30 2015	September 30 2016	September 30 2017	September 30 2018	September 30 2019	September 30 2020	September 30 2021	November 2021	FY Increase (Decrease)
Attorneys in Good Standing:										
ATA (Active)	41,093	41,608	41,921	42,100	42,342	42,506	42,401	42,393	42,358	(35)
ATVI (Voluntary Inactive)	1,211	1,218	1,250	1,243	1,169	1,139	1,192	1,097	1,110	13
ATE (Emeritus)	1,552	1,678	1,841	1,973	2,204	2,447	2,727	3,033	3,196	163
Total Attorneys in Good Standing	43,856	44,504	45,012	45,316	45,715	46,092	46,320	46,523	46,664	141
Attorneys Not in Good Standing:										
ATN (Suspended for Non-Payment of Dues)	5,427	5,578	5,743	5,888	6,072	6,246	6,416	6,472	6,449	(23)
ATDS (Discipline Suspension - Active)	407	415	418	430	439	440	445	449	454	5
ATDI (Discipline Suspension - Inactive)	12	11	18	19	19	24	25	25	25	0
ATDC (Discipline Suspension - Non-Payment of Court Costs)	1	3	3	16	15	16	16	14	14	0
ATNS (Discipline Suspension - Non-Payment of Other Costs)	83	92	99	94	95	98	100	102	104	2
ATS (Attorney Suspension - Other)*	1	1	1	0	1	1	2	0	0	0
ATR (Revoked)	521	517	534	562	583	596	613	623	625	2
ATU (Status Unknown - Last known status was inactive)**	2,088	2,076	2,074	2,070	2,070	2,070	2,070	2,070	2,070	0
Total Attorneys Not in Good Standing	8,540	8,693	8,890	9,079	9,294	9,491	9,687	9,755	9,741	(14)
Other:										
ATSC (Former special certificate)	136	140	145	152	155	157	158	164	163	(1)
ATW (Resigned)	1,429	1,483	1,539	1,612	1,689	1,798	1,907	2,036	2,088	52
ATX (Deceased)	8,127	8,445	8,720	9,042	9,287	9,524	9,793	10,260	10,292	32
Total Other	9,692	10,068	10,404	10,806	11,131	11,479	11,858	12,460	12,543	83
Total Attorneys in Database	62,088	63,265	64,306	65,201	66,140	67,062	67,865	68,738	68,948	210

* ATS is a new status added effective August 2012 - suspended by a court, administrative agency, or similar authority

** ATU is a new status added in 2010 to account for approximately 2,600 attorneys who were found not to be accounted for in the iMIS database
The last known status was inactive and many are likely deceased. We are researching these attorneys to determine a final disposition.

N/R - not reported

Notes: Through November 30, 2021 a total of 210 new attorneys joined SBM.



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. 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 to amend M Crim JI 3.13 [Penalty] to remove any possible implication that the jury should find the defendant guilty so that the court could perform its duty of imposing a penalty. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 3.13 Penalty

Possible penalty should not influence your decision. If you find the defendant guilty, ~~it~~ is the duty of the judge to fix the penalty within the limits provided by law.

**Public Policy Position
M Crim JI 3.13**

Support

Explanation:

The Committee voted unanimously to support the amendment to Model Criminal Jury Instruction 3.13 as drafted. The proposed amendment provides further clarity to the jury about its duty should it “find the defendant guilty.”

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 3

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org

**Public Policy Position
M Crim JI 3.13**

Support

Position Vote:

Voted for position: 16

Voted against position: 0

Abstained from vote: 1

Did not vote (absent): 0

Keller Permissibility Explanation:

The improvement of the functioning of the courts

Contact Person: Sofia Nelson

Email: snelson@sado.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. 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 to amend M Crim JI 20.11 [Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person] to eliminate the element requiring that the defendant know of the complainant’s mental impairment because the applicable statute, MCL 750.520b(1)(h), does not require proof of such knowledge. Deletions are in strike-through, and new language is underlined.

**[AMENDED] M Crim JI 20.11 Sexual Act with Mentally Incapable,
Mentally Disabled, Mentally
Incapacitated, or Physically Helpless
Person**

(1) [Second / Third], that [*name complainant*] was [mentally incapable / mentally disabled / mentally incapacitated / physically helpless] at the time of the alleged act.

[Choose one or more of (2), (3), (4), or (5):]

(2) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(3) Mentally disabled means that [*name complainant*] has a mental illness, is intellectually disabled, or has a developmental disability. “Mental illness” is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary demands of

life. “Intellectual disability” means significantly subaverage intellectual functioning that appeared before [name complainant] was 18 years old and impaired two or more of [his / her] adaptive skills.¹ “Developmental disability” means an impairment of general thinking or behavior that originated before the age of eighteen, has continued since it started or can be expected to continue indefinitely, is a substantial burden to [name complainant]’s ability to function in society, and is caused by [intellectual disability as described / cerebral palsy / epilepsy / autism / an impairing condition requiring treatment and services similar to those required for intellectual disability].

(4) Mentally incapacitated means that [name complainant] was [temporarily] unable to understand or control what [he / she] was doing because of [drugs, alcohol or another substance given to (him / her) / something done to (him / her)] without [his / her] consent.

(5) Physically helpless means that [name complainant] was unconscious, asleep, or physical incapable to communicate that take part in the alleged act.

~~(6) [Third / Fourth], that the defendant knew or should have known that [name complainant] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.~~

[Choose the appropriate option according to the charge and the evidence:]

(6) [~~Fourth / Fifth~~ Third / Fourth], that the defendant and [name complainant] were related to each other, either by blood or marriage, as [state relationship, e.g., first cousins].

(6) [~~Fourth / Fifth~~ Third / Fourth], that at the time of the alleged act the defendant was in a position of authority over [name complainant], and used this authority to coerce [name complainant] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

**Public Policy Position
M Crim JI 20.11**

Support

Explanation:

The Committee voted to support the amendments to Model Criminal Jury Instruction 20.11, removing the requirement that the defendant be aware of the complainant's mental impairment in order to be charged with "criminal sexual conduct in the first degree." MCL 750.520b(1) makes no such requirement of knowledge.

Position Vote:

Voted For position: 19

Voted against position: 2

Abstained from vote: 0

Did not vote (absence): 3

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. 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 to amend M Crim JI 24.1 [Unlawfully Driving Away an Automobile] to correct the fourth element currently addressing “intent” to be in accord with the statutory language of MCL 750.413 and *People v Crosby* 82 Mich App 1 (1978). Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 24.1 Unlawfully Driving Away an Automobile

(1) The defendant is charged with the crime of unlawfully driving away a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the vehicle belonged to someone else.

(3) Second, that the defendant took possession of the vehicle and [drove / took] it away.

(4) Third, that these acts were both done [without authority / without the owner’s permission].

(5) Fourth, that ~~the defendant intended to take possession of the vehicle and [drive / take] it away.~~ when the defendant took possession of the vehicle and drove or took it away, [he / she] did so knowing that [he / she] did not have authority to do so. It does not matter whether the defendant intended to keep the vehicle.*

[(6) Anyone who assists in taking possession of a vehicle or assists in driving or taking away a vehicle knowing that the vehicle was unlawfully possessed is also

guilty of this crime if the assistance was given with the intention of helping another commit this crime.]

Use Note

To distinguish unlawfully taking and using from UDAA, see M Crim JI 24.4.

~~*This is a specific intent crime.~~

**Public Policy Position
M Crim JI 24.1**

Support

Explanation:

The Committee voted to support the amendment to Model Criminal Jury Instruction 24.1 as drafted.

Position Vote:

Voted For position: 18

Voted against position: 2

Abstained from vote: 1

Did not vote (absence): 3

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org

**Public Policy Position
M Crim JI 24.1**

Oppose

Explanation:

Concern that the changes do not track the statute.

Position Vote:

Voted for position: 12

Voted against position: 3

Abstained from vote: 2

Did not vote (absent): 0

Keller Permissibility Explanation:

The improvement of the functioning of the courts

Contact Person: Sofia Nelson

Email: snelson@sado.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. 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 a new instruction, M Crim JI 34.6 [Food Stamp Fraud], for crimes charged under MCL 750.300a.

[NEW] M Crim JI 34.6 Food Stamp Fraud

- (1) The defendant is charged with food stamp fraud. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] food stamps, coupons, or access devices. *Food stamps* or *coupons* means the coupons issued pursuant to the food stamp program established under the Food Stamp Act. An *access device* means any card, plate, code, account number, or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value or that can be used to initiate a transfer of funds pursuant to the food stamp program.
- (3) Second, that the defendant [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] food stamps, coupons, or access devices by [*specify alleged wrongful conduct*].
- (4) Third, that the defendant knew that [he / she] had [*specify alleged wrongful conduct*] when [he / she] [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] the food stamps, coupons, or access devices.

[Use the following where the aggregate value of food stamps allegedly exceeded \$250:]

(5) Fourth, that the aggregate value of the food stamps, coupons, or access devices was [more than \$250.00 but less than \$1,000 / \$1,000 or more]. The aggregate value is the total face value of any food stamps or coupons resulting from the alleged [*specify alleged wrongful conduct*] plus the total value of any access devices. The value of an access device is the total value of the payments, allotments, benefits, money, goods, or other things of value that could be obtained, or the total value of funds that could be transferred, by use of the access device at the time of the violation. You may add together the various values of the food stamps, coupons, or access devices [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] by the defendant over a period of 12 months when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.

**Public Policy Position
M Crim JI 34.6**

Support

Explanation:

The Committee voted unanimously to support the proposed new instruction Model Criminal Jury Instruction 34.6 as drafted.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 3

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org

**Public Policy Position
M Crim JI 34.6**

Support

Position Vote:

Voted for position: 13

Voted against position: 0

Abstained from vote: 4

Did not vote (absent): 0

Keller Permissibility Explanation:

The improvement of the functioning of the courts

Contact Person: Sofia Nelson

Email: snelson@sado.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. 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 a new instruction, M Crim JI 35.12 [Cyberbullying / Aggravated Cyberbullying], for crimes charged under MCL 750.411x.

[NEW] M Crim JI 35.12 Cyberbullying / Aggravated Cyberbullying

(1) The defendant is charged with [cyberbullying / aggravated cyberbullying]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant posted a message or statement about or to any other person in a public media forum used to convey information to others, such as the Internet.

(3) Second, that the message expressed an intent to commit violence against any other person and was intended to place any person in fear of bodily harm or death.

(4) Third, that the defendant intended to communicate a threat with the message or [he / she] knew that the message would be viewed as a threat.

[Use the following only where an aggravating element has been charged:]

(5) Fourth, that the defendant committed two or more separate non-continuous acts of harassing or intimidating behavior on different occasions.

(6) Fourth/Fifth, that the defendant's actions in this case caused [(name complainant or other person)] to suffer permanent, serious disfigurement, serious

impairment of health, or serious impairment of a bodily function / the death of
(*decedent's name*)].

**Public Policy Position
M Crim JI 35.12**

Support

Explanation:

The Committee voted unanimously to support the proposed new Model Criminal Jury Instruction 35.12 as drafted.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 3

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org



MEMORANDUM

To: SBM Board of Commissioners
From: Darin Day, Director of Outreach
Date: January 12, 2022
Re: Proposed Bylaws Amendments: **Criminal Law Section**

Rule 12, Section 2 of the Supreme Court Rules Concerning the State Bar of Michigan requires each SBM section to maintain bylaws “not inconsistent with these Rules or the bylaws of the State Bar of Michigan” and further that “[s]ection bylaws or amendments thereof shall become effective when approved by the Board of Commissioners.”

Upon review of documents submitted by the section, staff confirms that the section has followed all steps necessary to propose bylaws changes in accordance with the procedures set forth in the section’s current bylaws. The only remaining step is for this body to approve the section’s proposed amendments. Please see the attached excerpts from the section’s current bylaws, redlined to highlight the proposed changes.

No proposed amendment is inconsistent with Supreme Court Rules or the State Bar of Michigan bylaws. Thus, staff recommends the proposal be APPROVED.

ARTICLE I
NAME AND PURPOSES

SECTION 1. This Section shall be known as the Criminal Law Section of the State Bar of Michigan. **SECTION 2.** The purposes of this Section shall be:

- A. to study the criminal law and procedure of the State of Michigan, making recommendations to the State Bar of Michigan, the Executive, Legislative, and Judicial branches of Michigan government and the general public of this State concerning alterations, innovations, and improvements therein so as to promote justice and the efficient administration of justice, **diversity of the profession**, and to protect the public and the rights of each individual;
- B. to promote means of reducing the volume of crime in the State of Michigan; and
- C. to promote, in cooperation with other Sections or Committees of the State Bar of Michigan, the effective institutional and non-institutional correction and rehabilitation of individuals convicted of violating criminal laws of the State.

The Criminal Law Section of the State Bar of Michigan proposes to accomplish the above by promoting research projects, sponsoring meetings, institutes, and conferences of educational value, supporting publication of legal writings, and adopting positions on issues of public concern in the field of criminal law.

ARTICLE II
MEMBERSHIP

SECTION 1. Any member of the State Bar of Michigan, including active, inactive, and emeritus, affiliate, legal administrators, and/or law students upon request to the State Bar of Michigan and upon payment of dues for the current year shall be enrolled as a member of this Section. Annual dues in the amount of Twenty Five Dollars (\$25.00) shall be paid by each member in advance each year. **Law Students may join this Section for free.** The amount of dues may be modified annually by a 2/3 majority vote of the Criminal Law Council. Members so enrolled and whose dues are so paid shall constitute the membership of this Section.

ARTICLE VI
DUTIES AND POWERS OF THE COUNCIL

SECTION 1. The Council shall have general supervision and control of the affairs of the Section, subject to the Supreme Court Rules concerning the State Bar of Michigan, the Bylaws of the State Bar of Michigan and the Bylaws of the Section. It shall expressly authorize all commitments or contracts which shall entail the payment of money, and shall authorize the expenditure of all monies appropriated by the Council for **the use, benefit, or purposes** of the Section.

TO: Board of Commissioners and the Professional Standards Committee
FROM: Kathryn Hennessey and Katherine Gardner
DATE: November 4, 2021
RE: *Pro Hac Vice* Rule Amendments

The State Bar of Michigan (SBM) assists courts with the administration of *pro hac vice* (PHV) applications. SBM began looking into proposed amendments to MCR 8.126 to streamline and clarify the process for PHV admission based on many questions raised by attorneys applying for PHV admission.

When reviewing the rules, SBM staff noted a more substantive problem with the current language of MCR 8.126. MCR 8.126 currently provides:

Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice **in a specific case in a court, before an administrative tribunal or agency, or in a specific arbitration proceeding** in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case.

When processing PHV applications, SBM has interpreted the term “case” narrowly, as to mean the specific proceeding within a particular court, meaning that out-of-state attorneys would have to reapply for PHV admission if they continue to represent their clients at the Court of Appeals and then reapply a third time if they continue to represent their clients at the Michigan Supreme Court. This was the interpretation that the Attorney Grievance Commission had previously used before SBM took over PHV processing. An alternative reading of the term “case” could mean that the attorney would continue to be admitted PHV as the specific case moves through appellate process.

To obtain feedback on this issue and the other proposed amendments to MCR 8.126, SBM circulated draft amendments to several stakeholders, including the Michigan Judges Association, Appellate Practice Section, Michigan Association for Justice, Michigan Defense Trial Counsel, Litigation Section, Insurance and Indemnity Section, Civil Procedure & Courts Committee, and Access to Justice Policy Committee. SBM specifically offered the following four options for stakeholders to consider:

- **Option 1:** Keep the status quo and require out-of-state attorneys to reapply if their case goes on appeal.
- **Option 2:** Define case more broadly to encompass the entire proceeding as it moves from trial court through appeals. This would streamline the process for out-of-state attorneys, but it could lessen judicial discretion for appellate courts to the extent that such discretion is being utilized.

- **Option 3:** Hybrid: Define case broadly as set forth in Option 2 but require attorneys to affirmatively provide appellate courts and trial courts on remand an updated certificate of good standing.
- **Option 4:** Hybrid: Define case broadly as set forth in Option 2 but impose an affirmative duty on the out-of-state attorney and sponsoring attorney to inform court if there has been a change to their good standing status in any out-of-state jurisdiction.

The stakeholders that responded all supported Option 4.¹ Stakeholder comments are included in these materials.

After reviewing the SBM staff proposed revisions, the Appellate Practice Section offered significant revisions² to MCR 8.126. The Civil Procedure & Courts and Access to Justice Policy committees had the opportunity to compare the Appellate Practice Section and the original staff proposal; both committees agreed that the Appellate Practice Section’s proposal was preferable.

The Civil Procedure & Courts Committee recommends the following amendments to the Appellate Practice Section’s proposal:

- Remove the special treatment of government attorneys set forth in MCR 8.126(A)(2) and (B)(1);
- Clarify the language in the duty to notify the court when no longer in good standing set forth in paragraph (C)(5); and
- Non-substantive changes to the language of paragraph (C)(3) to make the language consistent with the language generally used in the court rules.

The full details of the Civil Procedure & Courts Committee’s position are attached to this memo.³

The Access to Justice Policy Committee offered the following suggestions for improvement to the Appellate Practice Section’s proposal:

- Inclusion of Tribal Courts in MCR 8.126(A);
- Remove the special treatment of government attorneys set forth in MCR 8.126(A)(2) and (B)(1);

¹ SBM staff also reached out to Clerk Larry Royster at the Michigan Supreme Court for feedback who also supported Option 4.

² As you will see from the blackline of MRC 8.126 that is attached the Appellate Practice essentially rewrote the sections (A)-(G). The Section did not provide revisions on the Waiver section dealing with attorneys appearing to participate in child protective proceedings under the Michigan Indian Family Preservation Act, and staff has proposed non-substantive revisions to that section to make the language consistent.

³ In addition, one member of the Civil Procedure & Courts Committee questioned whether PHV admission is required to participate in facilitation, mediation, and arbitration. When an attorney is engaged in alternative dispute resolution, that attorney is providing legal advice and using legal skills and discretion, which is the definition of the unauthorized practice of law. Each year, the UPL department receives complaints about out of state attorney participating in these proceedings. By including arbitration and mediation in the rule, we are clarifying the rules to make clear that attorneys need to seek PHV admission, which ultimately protects the out of state attorney from UPL claims

- Create a special provision for out-of-state attorneys employed by Michigan legal aid providers while their application for admission is pending; and
- Clarify the language in the duty to notify the court when no longer in good standing set forth in MCR 8.126(C)(5).

The full details of ATJ Policy Committee's position are attached to this memo.

Based on further review, SBM staff also recommends the following amendments to the Appellate Practice Section's proposal:

- Incorporate current MCR 8.126(A)(1)(d) which provides that “[b]y seeking permission to appear under this rule, a foreign attorney consents to the jurisdiction of Michigan’s attorney disciplinary system.”
- Incorporate an additional requirement that attorneys admitted PHV notify the tribunal and the State Bar of Michigan when they have a change of address.
- Authorize State Bar staff to make non-substantive changes to the current MCR 8.126(B) for consistency with the language that is ultimately adopted by the Board of Commissioners to replace the current MCR 8.126(A).

These recommendations have been inserted into a blackline of the Appellate Practice Section proposal. In addition, staff has included a blackline of MCR 8.126 which incorporates all proposed amendments.

REVISIONS TO THE APPELLATE PRACTICE PROPOSAL BASED ON FEEDBACK

RULE 8.126(A)-(G): TEMPORARY ADMISSION TO THE BAR

(A) Definitions. For purposes of this rule:

(1) a foreign attorney is an attorney who is licensed to practice law in another state or territory of the United States of America, in the District of Columbia, **in a Tribal court**, or in a foreign country; who is not a member of the Bar; who is not disbarred or suspended in any jurisdiction.

~~(2) a government attorney is an attorney representing the United States, the armed forces of the United States, or an agency of the United States, and who is not a member of the Bar.~~

~~(3)~~**(2)** A sponsoring attorney is an attorney who is a member of the Bar.

~~(4)~~**(3)** a tribunal is a court, administrative agency, facilitator, mediator, or arbitrator.

~~(5)~~**(4)** the Bar is the State Bar of Michigan.

(B) Temporary Admission.

~~(1) A government attorney is granted automatic temporary admission to practice before any tribunal in this state.~~

~~(2)~~**(1)** A foreign attorney may request temporary admission to practice before tribunals in this state through local counsel. **Except as provided in (B)(2), a** foreign attorney may not appear in more than five cases in any 365-day period.

(2) For a foreign attorney employed by a legal services program that is a grantee of the federal Legal Services Corporation or the Michigan State Bar Foundation, or employed by a law school clinic that provides services on the basis of indigence, for the time period in which the foreign attorney's application to be licensed in Michigan is submitted and pending before the Board of Law Examiners, the foreign attorney:

(a) Shall pay the fee for temporary admission with the first application for temporary admission;

(b) Shall have fees waived for all subsequent applications for

admission after the fee is paid for the first application for temporary admission; and

(c) Shall not be subject to any limitation on the number of cases in which the foreign attorney may be eligible for temporary admission.

(C) Procedure for Foreign Attorneys.

- (1) The sponsoring attorney must appear as counsel of record and file a motion asking the tribunal to grant the foreign attorney temporary admission to practice. The motion must be supported with:
 - (a) a certificate of good standing for the foreign attorney issued within the last 30 days by a jurisdiction where the foreign attorney is licensed and eligible to practice;
 - (b) an affidavit signed by the foreign attorney that verifies:
 - (i) the jurisdiction(s) in which the foreign attorney is or has been licensed, or has sought licensure;
 - (ii) the jurisdiction(s) in which the foreign attorney is presently admitted and eligible to practice and is in good standing in all jurisdictions where licensed;
 - (iii) that the foreign attorney is not disbarred or suspended from the practice of law, or the subject of any pending disciplinary action, in any jurisdiction; and
 - (iv) that the foreign attorney is familiar with the Michigan Rules of Professional Conduct, the Michigan Rules of Evidence, and these court rules;
 - (c) a copy of any disciplinary dispositions concerning the foreign attorney;
 - (d) a statement by the sponsoring attorney that he or she:
 - (i) has read the foreign attorney's affidavit and any disciplinary dispositions concerning the foreign attorney;
 - (ii) believes the foreign attorney's representations to be true; and
 - (iii) will ensure that the procedures of this rule are followed.

- (2) **Prior to filing the motion with the tribunal, the motion and supporting materials** A copy of the motion must also be filed with the Bar together with a fee equal to the discipline and client-protection portions of a Bar member's annual dues. Within seven days thereafter, the Bar must report to the tribunal, the sponsoring attorney, and the foreign attorney:
- (a) that the fee has been paid to the Bar; and
 - (b) the number of times that the foreign attorney has been granted temporary admission to practice within the past 365 days.
- (3) If, after receiving the Bar's report, the tribunal finds that the requirements of this rule have been met, it may issue an order granting the foreign attorney temporary admission to practice in this state. The tribunal **shall not** enter such an order until after it receives the Bar's report.
- (4) If a tribunal issues an order granting the foreign attorney temporary admission to practice in this state, the foreign attorney must file a copy of the order with the Bar within seven days.
- (5) **The foreign attorney must notify the Bar if the case is dismissed or closed prior to the tribunal granting or denying temporary admission.**
- (6) The foreign attorney must notify the tribunal and the Bar if he or she ceases to be in good standing with any jurisdiction where licensed **or temporarily admitted to practice** while temporarily admitted to practice under this rule.
- (7) **By seeking permission to appear under this rule, the foreign attorney consents to the jurisdiction of Michigan's attorney disciplinary system.**
- (D) **Duration and Scope of Temporary Admission.**
- (1) If the tribunal granting temporary admission to practice is a court or administrative agency, then the temporary admission continues for the entire case, including through all appeals, any remands, and any facilitation, mediation, or arbitration that may be ordered by a court or administrative agency. A foreign attorney is not required to reapply for temporary admission each time the case moves to or from an administrative agency or between courts.

- (2) If the tribunal granting temporary admission to practice is a facilitator, mediator, or arbitrator, the facilitator, mediator, or arbitrator only may grant a foreign attorney temporary admission to practice for the limited purpose of representing a party in the facilitation, mediation, or arbitration. If the facilitation, mediation, or arbitration results in a case or other proceeding before a court or administrative agency, then the foreign attorney must apply for temporary admission before the court or administrative agency.
- (E) Revocation. The tribunal before whom a ~~government attorney~~ or a foreign attorney is practicing may revoke the attorney's temporary admission at any time for misconduct.
- (F) Local Counsel.
- (1) If a tribunal allows a sponsoring attorney to withdraw, another member of the Bar must appear as local counsel with the foreign attorney. Local counsel must have the authority to conduct the case or proceeding if the foreign attorney does not or is unable to do so for any reason.
- (2) A tribunal may waive the requirement for a foreign attorney to have local counsel.
- (G) Distribution of SBM Fee. If a request for investigation is filed with the grievance administrator against a foreign attorney temporarily admitted to practice under this rule, the entire amount of the fee(s) paid to the Bar for the case(s) in which the allegations of misconduct arose must be transferred to the disciplinary system.

BLACKLINE OF RULE 8.126

RULE 8.126 TEMPORARY ADMISSION TO THE BAR

(A) Definitions. For purposes of this rule:

- (1) a foreign attorney is an attorney who is licensed to practice law in another state or territory of the United States of America, in the District of Columbia, in a Tribal court, or in a foreign country; who is not a member of the Bar; who is not disbarred or suspended in any jurisdiction.**
- (2) a sponsoring attorney is an attorney who is a member of the Bar.**
- (3) a tribunal is a court, administrative agency, facilitator, mediator, or arbitrator.**
- (4) the Bar is the State Bar of Michigan.**

(B) Temporary Admission.

- (1) A foreign attorney may request temporary admission to practice before tribunals in this state through local counsel. Except as provided in (B)(2), a foreign attorney may not appear in more than five cases in any 365-day period.**
- (2) For a foreign attorney employed by a legal services program that is a grantee of the federal Legal Services Corporation or the Michigan State Bar Foundation, or employed by a law school clinic that provides services on the basis of indigence, for the time period in which the foreign attorney's application to be licensed in Michigan is submitted and pending before the Board of Law Examiners, the foreign attorney:**
 - (a) Shall pay the fee for temporary admission with the first application for temporary admission;**
 - (b) Shall have fees waived for all subsequent applications for admission after the fee is paid for the first application for temporary admission; and**
 - (c) Shall not be subject to any limitation on the number of cases in which the foreign attorney may be eligible for temporary admission.**

~~Except as otherwise provided in this rule, an out of state attorney may seek temporary admission as determined by this subsection. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out of state attorney may be temporarily admitted to practice under this rule in no more than five cases in a 365-day period. Permission to appear and practice is within the discretion of the court, administrative tribunal or agency, or arbitrator and may be revoked at any time for misconduct. For purposes of this rule, an out of state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in a foreign country and who is not a member of the State Bar of Michigan.~~

(B) Procedure for Foreign Attorneys.

~~Motion. An attorney seeking temporary admission must be associated with a Michigan attorney. The Michigan attorney with whom the out of state attorney is associated shall file with the court or administrative tribunal or agency, or arbitrator an appearance and a motion that seeks permission for the temporary admission of the out of state attorney. The motion shall be supported by a current certificate of good standing issued by a jurisdiction where the out of state attorney is licensed and eligible to practice, the document supplied by the State Bar of Michigan showing that the required fee has been paid and an affidavit of the out of state attorney seeking temporary admission, which affidavit shall verify~~

(1) The sponsoring attorney must appear as counsel of record and file a motion asking the tribunal to grant the foreign attorney temporary admission to practice. The motion must be supported with:

(a) a certificate of good standing for the foreign attorney issued within the last 30 days by a jurisdiction where the foreign attorney is licensed and eligible to practice;

(b) an affidavit signed by the foreign attorney that verifies:

- (i)** the jurisdiction(s) in which the **foreign** attorney is or has been licensed or has sought licensure;
- (ii)** the jurisdiction(s) where the attorney is presently eligible

to practice and is in good standing in all jurisdictions where licensed;

(iii) that the foreign attorney is not disbarred, or suspended from the practice of law, or in any jurisdiction, and is not the subject of any pending disciplinary action, ~~and that the attorney is licensed and is in good standing in all~~ any jurisdictions ~~where licensed~~; and

(iv) that the foreign attorney ~~he or she~~ is familiar with the Michigan Rules of Professional Conduct, ~~Michigan Court Rules~~, and the Michigan Rules of Evidence, and these court rules.

(c) a copy of any disciplinary dispositions concerning the foreign attorney;

~~The out of state attorney must attach to the affidavit copies of any disciplinary dispositions. The motion shall include an attestation of the Michigan attorney that the attorney has read the out of state attorney's affidavit, has made a reasonable inquiry concerning the averments made therein, believes the out of state attorney's representations are true, and agrees to ensure that the procedures of this rule are followed. The motion shall also include the addresses and email addresses of both attorneys.~~

(d) a statement by the sponsoring attorney that he or she:

(i) has read the foreign attorney's affidavit and any disciplinary dispositions concerning the foreign attorney;

(ii) believes the foreign attorney's representations to be true; and

(iii) will ensure that the procedures of this rule are followed.

(2) Prior to filing the motion with the tribunal, the motion and supporting materials must be filed with the Bar together with a fee equal to the discipline and client-protection portions of a Bar member's annual dues. Within seven days thereafter, the Bar must report to the tribunal, the sponsoring attorney, and the foreign attorney:

(a) that the fee has been paid to the Bar; and

- (b) the number of times that the foreign attorney has been granted temporary admission to practice within the past 365 days.**
- (3) If, after receiving the Bar's report, the tribunal finds that the requirements of this rule have been met, it may issue an order granting the foreign attorney temporary admission to practice in this state. The tribunal shall not enter such an order until after it receives the Bar's report.**
- (4) If a tribunal issues an order granting the foreign attorney temporary admission to practice in this state, the foreign attorney must file a copy of the order with the Bar within seven days.**
- (5) The foreign attorney must notify the Bar if the case is dismissed or closed prior to the tribunal granting or denying temporary admission.**
- (6) The foreign attorney must notify the tribunal and the Bar if he or she ceases to be in good standing with any jurisdiction where licensed or temporarily admitted to practice while temporarily admitted to practice under this rule.**
- (7) By seeking permission to appear under this rule, the foreign attorney consents to the jurisdiction of Michigan's attorney disciplinary system.**

~~(b) Fee. In each case in which an out-of-state attorney seeks temporary admission in Michigan, the out-of-state attorney must pay a fee equal to the discipline and client protection portions of a bar member's annual dues. The fee must be paid electronically to the State Bar of Michigan, in conjunction with submission of an electronic copy of the motion, the certificate of good standing and the affidavit to the State Bar of Michigan, pursuant to procedures established by the State Bar of Michigan. Upon receipt of the fee remitted electronically, confirmation of payment will issue electronically to the out-of-state attorney through the State Bar of Michigan's automated process.~~

~~Within seven days after receipt of the copy of the motion and fee, the State Bar of Michigan must notify the court, administrative tribunal or agency, or arbitrator and both attorneys whether the out-of-state attorney has been granted permission to appear temporarily in Michigan within the past 365 days, and, if so, the number of such appearances. The notification will be issued electronically, pursuant to the procedures established by the State Bar of Michigan. No order or other writing granting permission to appear in~~

~~a case shall be entered by a court, administrative tribunal or agency, or arbitrator until the notification is received from the State Bar of Michigan.~~

(C) Duration and Scope of Temporary Admission.

(1) If the tribunal granting temporary admission to practice is a court or administrative agency, then the temporary admission continues for the entire case, including through all appeals, any remands, and any facilitation, mediation, or arbitration that may be ordered by a court or administrative agency. A foreign attorney is not required to reapply for temporary admission each time the case moves to or from an administrative agency or between courts.

(2) If the tribunal granting temporary admission to practice is a facilitator, mediator, or arbitrator, the facilitator, mediator, or arbitrator only may grant a foreign attorney temporary admission to practice for the limited purpose of representing a party in the facilitation, mediation, or arbitration. If the facilitation, mediation, or arbitration results in a case or other proceeding before a court or administrative agency, then the foreign attorney must apply for temporary admission before the court or administrative agency.

(D) Revocation. The tribunal before whom a foreign attorney is practicing may revoke the attorney's temporary admission at any time for misconduct.

(E) Local Counsel.

(1) If a tribunal allows a sponsoring attorney to withdraw, another member of the Bar must appear as local counsel with the foreign attorney. Local counsel must have the authority to conduct the case or proceeding if the foreign attorney does not or is unable to do so for any reason.

(2) A tribunal may waive the requirement for a foreign attorney to have local counsel.

(F) Distribution of SBM Fee. If a request for investigation is filed with the grievance administrator against a foreign attorney temporarily admitted to practice under this rule, the entire amount of the fee(s) paid to the Bar for the case(s) in which the allegations of misconduct arose must be transferred to the disciplinary system.

~~The State Bar of Michigan shall retain the discipline portion of the fee for administration of the request for temporary admission and disciplinary~~

~~oversight and allocate the client protection portion to the Client Protection Fund. If a request for investigation is filed with the grievance administrator against an attorney while temporarily admitted to practice in Michigan, the entire amount of the administration fee paid by that attorney for the case in which the allegations of misconduct arose would be transferred to the disciplinary system.~~

~~(c) Order. Following notification by the State Bar of Michigan, if the out-of-state attorney has been granted permission to appear temporarily in fewer than 5 cases within the past 365 days, the court, administrative tribunal or agency, or arbitrator may enter an order granting permission to the out-of-state attorney to appear temporarily in a case. If an order or other writing granting permission is entered, The Michigan attorney shall submit an electronic copy of the order or writing to the State Bar of Michigan within seven days.~~

~~(d) By seeking permission to appear under this rule, an out-of-state attorney consents to the jurisdiction of Michigan's attorney disciplinary system.~~

~~(B)(H)~~ Waiver. An applicant **foreign attorney** is not required to associate with local counsel **a sponsoring attorney**, limited to the number of appearances to practice, or required to pay the fee to the State Bar of Michigan, if the applicant **foreign attorney** establishes to the satisfaction of the court **tribunal** in which the **foreign attorney** seeks to appear that:

- (1) the applicant **foreign attorney** appears for the limited purpose of participating in a child custody proceeding as defined by MCL 712B.3(b) in a Michigan court pursuant to the Michigan Indian Family Preservation Act, MCL 712B.1 *et seq*; and
- (2) the applicant **foreign attorney** represents an Indian tribe as defined by MCL 712B.3; and
- (3) the applicant **foreign attorney** presents an affidavit from the Indian child's tribe asserting the tribe's intent to intervene and participate in the state court proceeding, and averring the child's membership or eligibility for membership under tribal law; and
- (4) the applicant **foreign attorney** presents an affidavit that verifies:
 - (a) the jurisdiction(s) in which the foreign attorney is or has been licensed or has sought licensure;
 - (b) the jurisdiction(s) in which the foreign attorney is presently admitted and eligible to practice **and is in good standing in all jurisdictions where licensed;**

- (c) that the **foreign** attorney is not disbarred or suspended from the practice of law, or the subject of any pending disciplinary action, in any jurisdiction; and
 - (d) that **the foreign attorney** ~~he or she~~ is familiar with the Michigan Rules of Professional Conduct, ~~Michigan Court Rules,~~ and the Michigan Rules of Evidence, **and these rules.**
- (5) If the court in which the **foreign** attorney seeks to appear is satisfied that the ~~out of state~~ **foreign** attorney has met the requirements in this subrule, the court shall enter an order authorizing the ~~out of state~~ **foreign** attorney's temporary admission.



APPELLATE PRACTICE SECTION

OFFICERS

CHAIR

Anne L. Argioff
30300 Northwestern Hwy Ste 135
Farmington Hills MI 48334-3295

CHAIR-ELECT

Stephanie Simon Morita
Farmington Hills

SECRETARY

Ann M. Sherman
Lansing

TREASURER

Joseph E. Richotte
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Troy

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Bloomfield Hills

EX OFFICIO

Joanne Geha Swanson
Detroit

Bridget Brown Powers
Petoskey

Bradley R. Hall

State Bar of Michigan
Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2012

Attn: Kathryn Loncarich Hennessey, General Counsel

Re: *Pro Hac Vice*: Proposed Amendments to MCR 8.126

Date: March 1, 2021

Dear Ms. Hennessey,

Attached please find a proposed draft of an amended MCR 8.126. The Appellate Practice Section Rules Committee reviewed the draft sent by the Bar, and submits this proposal, which incorporates “Option 4.” This draft is a suggested framework for the Bar as it decides how it wants to proceed with any proposed amendments to the Supreme Court.

Please let me know if you need the attachment in a different format (i.e. Word, Word Perfect).

Thank you.

Sincerely,

Anne Argioff, Chair, APS

RULE 8.126 TEMPORARY ADMISSION TO THE BAR

(A) Definitions. For purposes of this rule:

- (1) a foreign attorney is an attorney who is licensed to practice law in another state or territory of the United States of America, in the District of Columbia, or in a foreign country; who is not a member of the Bar; who is not disbarred or suspended in any jurisdiction.
- (2) a government attorney is an attorney representing the United States, the armed forces of the United States, or an agency of the United States, and who is not a member of the Bar.
- (3) A sponsoring attorney is an attorney who is a member of the Bar.
- (4) a tribunal is a court, administrative agency, facilitator, mediator, or arbitrator.
- (5) the Bar is the State Bar of Michigan.

(B) Temporary Admission.

- (1) A government attorney is granted automatic temporary admission to practice before any tribunal in this state.
- (2) A foreign attorney may request temporary admission to practice before tribunals in this state through local counsel. A foreign attorney may not appear in more than five cases in any 365 day period.

(C) Procedure for Foreign Attorneys.

- (1) The sponsoring attorney must appear as counsel of record and file a motion asking the tribunal to grant the foreign attorney temporary admission to practice. The motion must be supported with:
 - (a) a certificate of good standing for the foreign attorney issued within the last 30 days by a jurisdiction where the foreign attorney is licensed and eligible to practice;
 - (b) an affidavit signed by the foreign attorney that verifies:
 - (i) the jurisdiction(s) in which the foreign attorney is or has been licensed, or has sought licensure;
 - (ii) the jurisdiction(s) in which the foreign attorney is presently admitted and eligible to practice and is in good standing in all jurisdictions where licensed;

- (iii) that he or she is not disbarred or suspended from the practice of law, or the subject of any pending disciplinary action, in any jurisdiction; and
 - (iv) that he or she is familiar with the Michigan Rules of Professional Conduct, the Michigan Rules of Evidence, and these court rules;
 - (c) a copy of any disciplinary dispositions concerning the foreign attorney;
 - (d) a statement by the sponsoring attorney that he or she:
 - (i) has read the foreign attorney's affidavit and any disciplinary dispositions concerning the foreign attorney;
 - (ii) believes the foreign attorney's representations to be true; and
 - (iii) will ensure that the procedures of this rule are followed.
 - (2) A copy of the motion must also be filed with the Bar together with a fee equal to the discipline and client-protection portions of a Bar member's annual dues. Within seven days thereafter, the Bar must report to the tribunal, the sponsoring attorney, and the foreign attorney:
 - (a) that the fee has been paid to the Bar; and
 - (b) the number of times that the foreign attorney has been granted temporary admission to practice within the past 365 days.
 - (3) If, after receiving the Bar's report, the tribunal finds that the requirements of this rule have been met, it may issue an order granting the foreign attorney temporary admission to practice in this state. The tribunal cannot enter such an order until after it receives the Bar's report.
 - (4) If a tribunal issues an order granting the foreign attorney temporary admission to practice in this state, the foreign attorney must file a copy of the order with the Bar within seven days.
 - (5) The foreign attorney must notify the tribunal and the Bar if he or she ceases to be in good standing with any jurisdiction where licensed while temporarily admitted to practice under this rule.
- (D) Duration and Scope of Temporary Admission.
- (1) If the tribunal granting temporary admission to practice is a court or administrative agency, then the temporary admission continues for the entire case, including through all appeals, any remands, and any facilitation, mediation, or arbitration that may be ordered by a court or administrative

agency. A foreign attorney is not required to reapply for temporary admission each time the case moves to or from an administrative agency or between courts.

- (2) If the tribunal granting temporary admission to practice is a facilitator, mediator, or arbitrator, the facilitator, mediator, or arbitrator only may grant a foreign attorney temporary admission to practice for the limited purpose of representing a party in the facilitation, mediation, or arbitration. If the facilitation, mediation, or arbitration results in a case or other proceeding before a court or administrative agency, then the foreign attorney must apply for temporary admission before the court or administrative agency.
- (E) Revocation. The tribunal before whom a government attorney or a foreign attorney is practicing may revoke the attorney's temporary admission at any time for misconduct.
- (F) Local Counsel.
- (1) If a tribunal allows a sponsoring attorney to withdraw, another member of the Bar must appear as local counsel with the foreign attorney. Local counsel must have the authority to conduct the case or proceeding if the foreign attorney does not or is unable to do so for any reason.
 - (2) A tribunal may waive the requirement for a foreign attorney to have local counsel.
- (G) Distribution of SBM Fee. If a request for investigation is filed with the grievance administrator against a foreign attorney temporarily admitted to practice under this rule, the entire amount of the fee(s) paid to the Bar for the case(s) in which the allegations of misconduct arose must be transferred to the disciplinary system.

From: [McNabb, Deborah](#)
To: [Kathryn Hennessey](#)
Cc: [Hegarty, Charles S. \(Charles.Hegarty@3rdcc.org\)](#); [Martha Anderson](#)
Subject: MJA: Pro Hac Vice: SBM Draft Proposed Amendments to MCR 8.126
Date: Friday, February 19, 2021 4:35:12 PM
Attachments: [image001.gif](#)
[image002.png](#)

Good Afternoon, Katie,

I solicited feedback from our rules committee, and perhaps more importantly, from our judges on the Court of Appeals. The response received was overwhelmingly in favor of:

- **Option 4:** Hybrid: Define case broadly as set forth in Option 2, but impose affirmative duty on the out-of-state attorney and sponsoring attorney to inform court if there has been a change to their good standing status in any out-of-state jurisdiction.

Thanks for reaching out to MJA regarding your work on this. I hope this feedback is helpful to you as you move forward.

Deborah L. McNabb

Presiding Judge, Family Division

17th Circuit Court, Kent County

180 Ottawa Avenue NW, Suite 6200A

Grand Rapids, MI 49503

Fax 616-632-5105

Judicial Clerk (Domestic), *Dort Maurice*, dolores.maurice@kentcountymi.gov, 616-632-5153

Judicial Clerk (Juvenile), *Lisa Gibson*, lisa.gibson@kentcountymi.gov, 616-632-5219



From: [Durkin, Terence P.](#)
To: [Kathryn Hennessey](#)
Cc: [Madelyne Lawry \(info@mdtc.org\)](#)
Subject: RE: MDTC: Pro Hac Vice: SBM Draft Proposed Amendments to MCR 8.126
Date: Thursday, February 25, 2021 1:38:07 PM
Attachments: [image001.jpg](#)

Ms. Hennessey-

The MDTC is in agreement with the proposed amendments to MCR 8.126 and Option 4 as the definition of "case".

If I may be of any further assistance, please contact me.

Regards,

Terry



www.kitch.com

Terence P. Durkin
KITCH DRUTCHAS WAGNER VALITUTTI & SHERBROOK
One Woodward Ave, Ste 2400
Detroit, MI 48226
Direct Line: (313) 965-6971
Cell Phone: (248) 797-8362
Fax: (313) 965-7403
terence.durkin@kitch.com

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Public Policy Position Pro Hac Vice Proposed Amendments

Support Option 4 and Appellate Practice Section Proposal with Amendments

Explanation

The Committee supports option 4 to define case broadly to encompass the entire proceeding as it moves from trial court through appeals and impose an affirmative duty on the out-of-state and sponsoring attorney to inform the court if there has been a change to the out-of-state attorney's good standing status in any jurisdiction. The Committee also supports the language proposed by the Appellate Practice Section with the following amendments:

1. Remove the government attorney carve out in paragraphs (A)(2) and (B)(1).
2. Amend paragraph (C)(5) to clarify that an attorney has a duty to inform a court if an out-of-state attorney is no longer in good standing in a jurisdiction where temporarily admitted, as follows:

The foreign attorney must notify the tribunal and the Bar if he or she ceases to be in good standing with any jurisdiction where ~~licensed~~ **admitted (including pro hac vice)** while temporarily admitted to practice under this rule.

3. Amend paragraph (C)(3) to ensure that language is consistent through the court rules as follows:

If, after receiving the Bar's report, the tribunal finds that the requirements of this rule have been met, it may issue an order granting the foreign attorney temporary admission to practice in this state. The tribunal ~~cannot~~ **shall not** enter such an order until after it receives the Bar's report.

Contact Person: Randy J. Wallace

Email: rwallace@olsmanlaw.com

Public Policy Position
Proposed Amendments to MCR 8.126 – Pro Hac Vice

Support with Amendments

Explanation

The committee votes unanimously (20) to support the following recommendations:

Inclusion of Tribal Courts: Paragraph (A) should include attorneys licensed to practice law tribal courts, as follows:

(A) Temporary Admission. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, **in a Tribal Court**, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out-of-state attorney may be temporarily admitted to practice under this rule in no more than five cases in a 365-day period. Permission to appear and practice is within the discretion of the court, administrative tribunal or agency, or arbitrator and may be revoked at any time for misconduct. For purposes of this rule, an out-of-state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, **in a Tribal Court**, or in a foreign country and who is not a member of the State Bar of Michigan.

Government Attorneys: Paragraphs (A)(2) and (B)(1) should be amended. Remove special treatment for government attorneys and have them go through the same process as other attorneys.

Legal Aid Attorneys: Legal Aid providers have had numerous problems waiting for employees to get licensed in Michigan. Even for attorneys who are admitted without taking the bar examination, it takes six or more months for them to get licensed. To address this problem, the subcommittee recommends that a special provision is created for attorneys awaiting their admission to the bar as follows:

During the time period in which their application to be licensed in Michigan is submitted and pending before the BLE, legal aid attorneys employed by legal aid providers in Michigan (1) pay the first fee when requesting PHV admission; (2) have all subsequent pro hac vice fees waived; and (3) are not limited in the number of times they may be admitted pro hac vice.

Duty to Notify in No Longer in Good Standing: Paragraph (C)(5) should be amended as follows to ensure that attorneys are required to notify court or tribunal if they cease to be in good standing in any jurisdiction where licensed or temporarily admitted: “any jurisdiction where licensed **or admitted pro hac vice** while temporarily admitted to practice under this rule.”

Contact Persons:

Lorray S.C. Brown lorryb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

TO: Board of Commissioners; Professional Standards Committee
FROM: Alecia Chandler and Robinjit Eagleson, Liaisons for Professional Ethics Committee
DATE: January 11, 2021
RE: **Potential Amicus Brief on Ethical Limitations related to Treble Damages**

The Michigan Supreme Court has ordered a Mini Oral Argument on the Application (MOAA) in a case that involves potential conversion of a lien which secured a debt for unpaid attorney's fees. In its order, the Court has asked the parties for additional briefing on, *inter alia*, whether "any ethical limitations apply to bar the collection of treble damages for an attorney fee." *Alisa A Peskin-Shepherd PLLC v Nicole Blume*, No. 162375 (order [dated Oct 22, 2021](#)).

Issue for Board Determination

Whether to authorize the filing of an amicus brief in *Alisa A Peskin-Shepherd PLLC v. Nicole Blume* limited to the ethical issue of whether "any ethical limitations apply to bar the collection of treble damages of an attorney fee."

Amicus Brief Policy

Pursuant to the State Bar of Michigan's Amicus Brief Policy, the Board of Commissioners may authorize the filing of an amicus brief:

When the brief would constitute a significant contribution to the determination of the issue or issues involved and only when the position thought to be advanced is:

- a. consistent with previously adopted State Bar policy; or
- b. a matter of compelling public interest in which the Board then adopts as policy;
or
- c. of specific significance to lawyers or the legal profession; and
- d. is consistent with Administrative Order 93-5.¹

Based on a request by a Michigan attorney, the Professional Ethics Committee has reviewed this matter and recommends that the State Bar of Michigan file an amicus brief in this case focusing solely on the issue of whether any ethical limitations would bar collections of treble damages on an attorney fee.

¹ Administrative Order 93-5 has been replaced by Administrative Order 2004-1.

Keller Permissibility

This issue is *Keller*-permissible because it directly relates to the Michigan Rules of Professional Conduct. The issue that would be addressed in the amicus brief involves a question of the Michigan Rules of Professional Conduct and whether those rules would prohibit a court from ordered treble damages for a conversion claim centered on unpaid attorney fees.

Pursuant to *Keller v State Bar of California*, 496 US 1 (1990), an integrated bar may engage in public policy related to the regulation of the legal profession and improving the quality of legal services. Through Administrative Order 2004-01, the Michigan Supreme Court has interpreted *Keller* to mean that the State Bar may engage in public policy reasonably related to:

- (A) the regulation and discipline of attorneys;
- (B) the improvement of the functioning of the courts;
- (C) the availability of legal services to society;
- (D) the regulation of attorney trust accounts; and
- (E) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Because the issue proposed in the amicus brief directly relates to ethics, specifically what, if any, limits the Michigan Rules of Professional Conduct ordering treble damages due to conversion of property secured for a lien based upon an underlying debt of unpaid legal fees, this would fall within permissible category (E), the regulation of the legal profession including . . . the ethics.” Therefore, authorizing an amicus brief would be permitted by *Keller*.

Amicus Brief Overview

Question Presented for Amicus Brief

Are there any ethical limitations that bar the collection of treble damages for statutory conversion as allowed under MCL [600.2919a](#) of property secured by a lien arising from unpaid attorney fees?²

Short Answer

No. While MRPC 1.5 prohibits attorneys from charging excessive fees as part of the attorney-client relationship, once that relationship ends, attorneys may act as any creditor in collecting a debts owed to them.

Facts

Based on the [Court of Appeals Unpublished Opinion](#)³

Client hired an attorney to represent her in her divorce. They signed a retainer agreement which set forth the attorney’s hourly rate of \$300/hour and required client to pay all fees charged. If client was more than 30 days late on payment, then the attorney was permitted to charge 7% interest on the delinquent debt. After a year of contentious litigation, the parties settled and a consent judgment was

² Note: The State Bar of Michigan is only addressing the legal ethical question at issue and takes no position as to other factual or legal issues in this case.

³ The facts are included for the Board of Commissioners’ understanding of the issues in this case and would not be included – or highly truncated – in any amicus brief. The focus of the amicus brief is on the ethical issue, not the factual issues.

entered in the divorce proceeding, in which the client explicitly agreed to pay all the attorney's legal fees (except for a small amount that the client's ex-husband was responsible for paying) and to give the attorney a lien on all of the client's marital assets to secure the debt, including real property located in Escanaba, Michigan.

The client owed the attorney a significant amount of legal fees. While the parties initially agreed to a payment plan, the client stopped making payments two years in. The client later sold the Escanaba property without informing the attorney. The client then transferred ownership of her house in Rochester Hills to herself and her new husband as tenants by the entirety; the new husband paid less than \$100 in consideration.

The attorney sued, claiming, *inter alia*, common law and statutory conversion related to the Escanaba property and actual and constructive fraudulent conveyance related to the Rochester Hills property.

Procedural History⁴

The trial court granted the attorney summary disposition on her common law and statutory conversion claims based on the client destroying the attorney's lien by selling the collateral and ordered a bench trial to determine whether treble damages were warranted. After a three-day hearing, the court awarded treble damages for conversion of the lien.

On appeal, the client challenged the trial court's determination of summary disposition in favor of the plaintiff on the statutory conversion claim and the treble damages on the basis of miscalculation. In a split decision, the Court of Appeals held, *inter alia*, that the trial court did not err in granting the attorney summary disposition on the statutory conversion claim and the court did not err in calculating the amount of treble damages, as they were properly based on the value of lien, not the value of the Escanaba property when sold. Judge Gleicher dissented, in part, questioning whether the tort of conversion applied to the sale of the Escanaba property under current caselaw because the attorney's interest in the property was an intangible property interest. Judge Gleicher also argued that the trial court erred in calculating damages, which should be based on the amount the client sold the Escanaba property for; not the total amount the client owed the attorney.

The client filed an application for leave to appeal to the Michigan Supreme Court. The Court issued an order granting a MOAA and requested that the parties submit additional briefing:

addressing whether (1) an attorney's lien and/or the proceeds obtained from the sale of a property subject to an attorney's lien is a property interest capable of being converted; (2) the trial court correctly calculated the treble damages under MCL 600.2919a(1); and (3) ***any ethical limitations apply to bar the collection of treble damages for an attorney fee.*** [Emphasis added.]

A State Bar amicus brief would focus on the analysis of any ethical limitation barring the collection of treble damages for an attorney fee.

⁴ The procedural history is included for the Board of Commissioners' understanding and would not be included in any amicus brief.

Rules and Statutes Involved

MRPC 1.5(a) provides in relevant part:

MRPC 1.5. Fees. (a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.

MCL 600.2919a provides:

(1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

(a) Another person's stealing or embezzling property or converting property to the other person's own use.

(b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

(2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise

Ethical Analysis

MRPC 1.5(a) prohibits a lawyer from collecting an illegal or clearly excessive fee. This includes all charges incurred by the lawyer in representing a client. Once the attorney-client relationship ends, however, if the lawyer files a suit for unpaid attorney fees against the former client, "the client and the lawyer are [considered] opposing parties" and "the lawyer is exercising rights of a creditor and citizen." Ethics Opinion [RI-277](#), which is included as Attachment A.

In this appeal, the Court has raised the question whether "any ethical limitations apply to bar the collection of treble damages for an attorney fee" in which a former client is alleged to have destroyed the attorney's lien by selling the collateral. Treble damages are punitive in nature and "reflect a worthy public policy consideration of punishing dishonest defendants and setting an example for similar wrongdoers." *Alken-Ziegler, Inc v Hague*, 283 Mich App 99, 104 (2009). The fact that the lien arose due to debt owed based on unpaid legal fees does not change the analysis or availability of treble damages in any way. To find otherwise would place attorneys in a different position than other creditors, which is contrary to the guidance provided in Ethics Opinion RI-277.

SBM

STATE BAR OF MICHIGAN

MICHAEL FRANCK BUILDING
306 TOWNSEND STREET
LANSING, MI 48933-2012

www.michbar.org