

**STATE BAR OF MICHIGAN**  
**MEETING OF THE COUNCIL OF THE BUSINESS LAW SECTION**

**Thursday, March 9, 2023 at 3:00 p.m.**  
**State Bar of Michigan, 306 Townsend Street, Lansing**  
**Dial In 866-906-0123/Pass code: 5942092**

**AGENDA**

1. Call to order and determination of quorum
2. Approval of Minutes of December 1, 2022 Meeting of the Council and December 19, 2022 Special Meeting of the Counsel
3. Treasurer's Report
4. Chair's Report
5. Committee/Directorship Reports
  - A. Standing Committees:
    - i. Business Courts
    - ii. Commercial Litigation
    - iii. Corporate Law
    - iv. Debtor/Creditor Rights
      - a. Proposed New Rule MCR 2.421
    - v. Financial Institutions
    - vi. In-House Counsel
    - vii. Law Schools
    - viii. LLC & Partnerships
    - ix. Nonprofit Corporations
    - x. Privately Held Businesses Forum
    - xi. Regulation of Securities
    - xii. Uniform Commercial Code
  - B. Ad Hoc Committees:
    - i. Strategic Plan
    - ii. *Soaring Pine Capital v Park Street Group* Amicus
  - C. Directorships:
    - i. Communication & Development
    - ii. Diversity & Inclusion
    - iii. Legislative Review
    - iv. Nominating
    - v. Programs
      - a. ICLE Liaison
    - vi. Publications
6. Other Business and Announcements
7. Announcement of Thursday, June 8, 2023 at 3 p.m. Council Meeting at Dickinson Wright in Troy
8. Meeting Adjournment

Dinner Immediately Following at Lucky's Steakhouse, 3554 Okemos Rd, Okemos

## STATE BAR OF MICHIGAN - BUSINESS LAW SECTION

### COUNCIL MINUTES

This meeting of the Council of the Business Law Section of the State Bar of Michigan was held via Zoom on December 1, 2022 pursuant to notice duly given. Council members present were, Amber Beebe, Brendan Cahill, Bruce Haffey, Mark Kellogg, Carrie Leahy, Michael Molitor, Ryan Opel, Scott Timmer, Victoria Valentine, and Christopher Yates. Committee Chairs and Directors present were Celeste Arduino, Kevin Block, Judy Calton, Kimberly Clayson, Marguerite Donahue, Dee Fuller, Loukas Kalliantasis, Justin Klimko, Gerard Mantese, Mark Peters, John Schuring, and Douglas Toering. Others present were Jennifer Consiglio, Talia Dahbour, Alexis Lupo, Max Mathies, and Terri Shoop.

1. Call to Order and Determination of Quorum. Section Chair, Mark Kellogg, called the meeting to order at approximately 3:00 p.m. and determined that a quorum was present.

2. Approval of Minutes of October 7, 2022 and October 8, 2022 Council Meetings. A motion to approve the Minutes of the October 7, 2022 and October 8, 2022 Council meetings was made, seconded, and passed unanimously, 10-0-0.

3. Treasurer's Report. A written report was provided by the Treasurer. Mr. Kellogg reported that we have had an increase in the fund balance, possibly due to increased membership.

4. Chair's Report.

5. Committee/Directorship Reports.

A. Standing Committees.

(i) Business Courts Committee. Written reports have been provided by the Business Courts Committee.

(ii) Commercial Litigation Committee. Written reports have been provided by the Commercial Litigation Committee. Mr. Toering reported that the Committee is continuing to look into Business Litigation Boot Camp. Mr. Toering will be discussing the possibility of a joint Business Boot Camp/Business Litigation Boot Camp program with Dan Minkus.

(iii) Corporate Laws Committee. Written reports have been provided by the Corporate Laws Committee.

(iv) Debtor/Creditor Rights Committee. A written report has been provided by the Debtor/Creditor Rights Committee.

(v) Financial Institutions Committee. No report.

(vi) In-House Counsel Committee. No report.

(vii) Law Schools Committee. Written reports have been provided by the Law Schools Committee. Mr. Kellogg reported that a recent event was held with MSU Law School. In addition, he has been contacted by students at WSU Law School. They would like to have some kind of event with the Section in 2023. If you'd like to serve as a law school liaison, please contact Mr. Kellogg.

(viii) LLC & Partnership Committee. Written reports have been provided by the LLC & Partnership Committee. Mr. Kalliantasis reported that Mr. Mantese has an interest in becoming co-chair of the Committee. A motion was made to appoint Gerard Mantese as Co-Chair of the LLC & Partnership Committee. The motion was seconded and passed unanimously, 10-0-0.

(ix) Nonprofit Corporations Committee. Written reports have been provided by the Nonprofit Corporations Committee.

(x) Regulation of Securities Committee. No report.

(xi) Privately Held Businesses Forum. Written reports have been provided by the Privately Held Businesses Forum.

(xii) Uniform Commercial Code Committee. A written report has been provided by the Uniform Commercial Code Committee.

B. Ad Hoc Committees:

(i) Strategic Plan. Mr. Schuring reported that the Committee is ongoing. The timeline has been reset.

(ii) Soaring Pine Capital v Park Street Group Amicus. The Committee continues to work on Brief in this matter.

B. Directorships.

(i) Communication & Development Directorship. Written reports have been provided by the Communication & Development Directorship. Mr. Schuring will be chairing the Directorship. The Directorship is working to identify social media/public relations assistance.

(ii) Diversity & Inclusion Directorship. A written report has been provided by the Diversity & Inclusion Directorship. Ms. Beebe proposed that the Directorship use funds on Constant Contact as a way to improve communication with the group. A motion was made use Constant Contact as a method of communication and collaboration amongst committee members and would-be members. The motion was seconded and pass unanimously, 10-0-0.

(iii) Legislative Review Directorship. A written report has been provided by the Legislative Review Director.

(iv) Nominating Directorship. A written report has been provided by the Nominating Director. Ms. Fuller is resigning as Nominating Director effective immediately.

(v) Programs Directorship. Written reports have been provided by the Programs Directorship.

a. ICLE Liaison. Written reports have been provided by the ICLE Liaison. Ms. Donahue reported on various on-demand webinars that ICLE is requesting Section co-sponsorship. There is no cost to the Section for this co-sponsorship. A motion was made to approve Section co-sponsorship of the following ICLE on demand webinars that are intended to be recorded in early 2023:

Corporate Transparency Update;

Representations and Warranties Insurance in M&A Transactions;

Litigating in Business Court – Tips and Tricks; and

Business Entity Update 2023.

The motion was seconded and passed unanimously, 10-0-0.

(vi) Publications Directorship. A written report was provided by the Publications Director.

6. Other Business and Announcements. None.

7. Announcement Council Meeting - March 9, 2023 at 3 p.m.. The next meeting of the Business Law Section Council will be held on March 9, 2023 in Lansing.

8. Meeting Adjournment. There being no further business to come before the Council of the Business Law Section, upon motion duly made and seconded, the motion passed unanimously, 10-0-0. The meeting was adjourned at 4 p.m.

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Michael Molitor  
Secretary

**STATE BAR OF MICHIGAN – BUSINESS LAW SECTION**  
**MINUTES OF SPECIAL COUNCIL MEETING**

**December 19, 2022**

Pursuant to notice duly given, and pursuant to Article VI, Section 10 of the Bylaws of the Business Law Section of the State Bar of Michigan, a special meeting of the Council of the Business Law Section was held on December 19, 2022 by Zoom. Council members present were Amber Beebe, Patrick Haddad, Bruce Haffey, Laura Johnson, Mark Kellogg, Michael Molitor, Ryan Opel, J. Scott Timmer, and Christopher Yates. In addition, Committee Chairs, Directors, and Liaisons present were David Barton, Judy Calton, Kimberly Clayson, Justin Klimko, Judith Miller, and Douglas Toering. Others present were Fawzieh Daher and Terri Shoop.

1. Call to order and determination of quorum. Section Chair Mark Kellogg called the meeting to order at approximately 4:00 p.m. and determined that a quorum was present.

2. Waiver of Required Notice of Special Meeting Under Section 10 of Article VI of the Bylaws. A motion was made to waive the required notice of a special meeting of the Council pursuant to Section 10 Article VI of the Bylaws. The motion was seconded and passed unanimously, 9-0-0.

3. Purpose of Meeting : Review and approval of the following regarding *Soaring Pine Capital Real Estate v Park Street Group Realty, et al.* (a) Motion to File a Brief Amicus Curiae, and (b) Draft SBM BLS Amicus Brief. Ms. Miller reported on the *Soaring Pine* matter set for hearing on January 10 or 11. She discussed the history of bringing the matter to Council at the June meeting believing the matter of significant import to business law and the business community. Council approved forming an Ad Hoc Committee to review the matter. It is critical that the brief be filed no later than December 21 to allow the Supreme Court Justices adequate time for review prior to the hearing. The Ad Hoc Committee is supportive of the Motion and Brief in their current form. Ms. Calton opened the floor to questions and comments and a discussion ensued regarding the various issues. A motion was made to approve the Motion and Brief as written with authority to make any non-substantive changes needed and to fill in the appropriate blanks and file the documents. A public policy vote was taken with the Council members present:

Amber Beebe -	Yes
Patrick Haddad -	Yes
Bruce Haffey -	Yes
Laura Johnson -	Yes
Mark Kellogg -	Yes
Michael Molitor -	Yes

Ryan Opel - Yes

Scott Timmer - Yes

Christopher Yates - Yes

The motion passed unanimously, 9-0-0. Ms. Daher will revise the documents to fill in the blanks and file them by December 21.

4. Meeting Adjournment. There being no further business to come before the Council of the Business Law Section, upon motion duly made, seconded, and unanimously approved, the meeting was adjourned at 4:30 p.m.

Respectfully submitted,

By \_\_\_\_\_

Michael Molitor  
Secretary

**TREASURER'S REPORT FOR THE  
MEETING OF THE BUSINESS LAW SECTION  
March 9, 2023**

The Business Law Section of the State Bar of Michigan operates on a fiscal year that runs from October 1 through September 30. The most recent financial information available for our section is as follows:

- A. The Income Statement for the period beginning October 1, 2022 and ending on January 31, 2023 (attached as Exhibit A); and
- B. The detailed trial balance for the period beginning October 1, 2022 and ending on January 31, 2023 (attached as Exhibit B).

As of the date of this Treasurer's Report, the Business Law Section remains in a very healthy financial position, with an ending fund balance of \$282,713.64. While this amount is significantly below the ending fund balance of \$359,042.59 recorded as of January 31, 2022, the difference is due to some changes in Section activity and invoice timing based on the prior year, and the primary reasons for this are as follows:

- A. The Business Law Section held an in-person Business Law Institute at the beginning of October 2022 for the first time since 2019, which resulted in an expense of \$31,717.95. This is somewhat offset by \$9,000 of revenue associated with the BLI received after October 1, 2022.
- B. The Privately Held Business Forum (previously the Small Business Forum) held an event at the end of January 2022 that generated \$35,250.00 in revenue as of January 31, 2022, at which point many expenses associated with the event had not yet been approved and paid by the Business Law Section. The Forum's 2023 event occurred in February 2023, and the majority of income and expenses associated with the event will be reflected on the next Income Statement and Trial Balance.
- C. The Business Law Section approved one-time contributions to the National Association of Women Judges (\$2,500.00) and to the Alan Schenk Endowed Chair for Business and Taxation at Wayne Law School (\$10,000.00) after the beginning of the fiscal year, which added \$12,500.00 to the Section's typical charitable contributions as of the end of January.
- D. The invoicing for the Business Law Journal expenses for this fiscal year have been timed such that the Section has paid \$30,612.54 in related expenses thus far, whereas at the same point in 2022, the Section had only paid \$15,947.00.

Ian Williamson, Treasurer  
March 2, 2023

**EXHIBIT A**

**INCOME STATEMENT FOR 2022-2023 FISCAL YEAR  
FROM OCTOBER 1, 2022 THROUGH JANUARY 31, 2023**



2/9/2023

State Bar of Michigan  
Business Law Section  
For the Four Months Ending Tuesday, January 31, 2023

	Current Activity January 2023	Year To Date January 2023	Year to Date January 2022
<b>Revenue:</b>			
1-7-99-325-1050 Business Law Section Dues	3,150.00	108,605.00	107,695.00
1-7-99-325-1055 Business Law Student/Affil Dues		140.00	105.00
1-7-99-325-1135 Business Law Institute		9,000.00	
1-7-99-325-1411 Cmt - Small Business Forum	4,135.00	4,135.00	35,250.00
<b>Total Revenue</b>	<b>7,285.00</b>	<b>121,880.00</b>	<b>143,050.00</b>
<b>Expenses:</b>			
1-9-99-325-1111 Administrative	2,190.00	2,190.00	1,939.99
1-9-99-325-1283 General Interest Seminars	200.00	300.00	1,066.35
1-9-99-325-1284 Business Law Institute	31,717.95	31,717.95	
1-9-99-325-1339 Sponsorships		2,500.00	
1-9-99-325-1346 Access to Justice and Charities		17,500.00	5,000.00
1-9-99-325-1493 Travel		777.95	
1-9-99-325-1528 Telephone - Administration	396.93	971.43	304.00
1-9-99-325-1749 Awards		2,975.00	1,117.00
1-9-99-325-1833 Newsletter		100.00	
1-9-99-325-1854 Business Law Journal	14,347.04	30,612.54	15,947.00
1-9-99-325-1868 Postage		52.86	39.44
1-9-99-325-1411 Cmt - Small Business Forum			1,861.75
<b>Total Expenses</b>	<b>48,851.92</b>	<b>89,697.73</b>	<b>27,275.53</b>
<b>Net Income</b>	<b>(41,566.92)</b>	<b>32,182.27</b>	<b>115,774.47</b>
<b>Beginning Fund Balance:</b>			
1-5-00-325-0001 Fund Bal-Business Law Section		250,531.37	243,268.12
<b>Total Beginning Fund Balance</b>		<b>250,531.37</b>	<b>243,268.12</b>
<b>Ending Fund Balance</b>		<b>282,713.64</b>	<b>359,042.59</b>

**EXHIBIT B**

**DETAILED TRIAL BALANCE**

**10/1/2022 - 1/31/2023**

**DETAILED TRIAL BALANCE FOR 2023**  
 State Bar of Michigan  
 General Ledger

From:	To:	Include:	Posting	Beginning Balance:	
Date:	1/31/2023	No Subtotals			
Account:	Sorted By:	Segment1			
<b>Account: 1-9-99-325-1111 Description: Administrative</b>					
Trx Date	Jrnl No>Description	Orig. Master Number	Orig. Master ID	Orig. Master Name	Debit
1/12/2023	172,074 Purchases	OCT 2022-DEC 2022	SHOOP, TERRI	Shoop, Terri	\$2,190.00
<b>Totals:</b>				<b>Ending Balance</b>	<b>\$2,190.00</b>
<b>Account: 1-9-99-325-1111</b>					<b>\$0.00</b>
<b>Account: 1-9-99-325-1283 Description: General Interest Seminars</b>					
Trx Date	Jrnl No>Description	Reference	Orig. Master Number	Orig. Master ID	Orig. Master Name
11/30/2022	171,403	November 2022 E Blast Expense			\$100.00
1/31/2023	172,400	January 2023 E Blast Expense			\$200.00
<b>Totals:</b>				<b>Ending Balance</b>	<b>\$300.00</b>
<b>Account: 1-9-99-325-1283</b>					<b>\$0.00</b>
<b>Account: 1-9-99-325-1284 Description: Business Law Institute</b>					
Trx Date	Jrnl No>Description	Reference	Orig. Master Number	Orig. Master ID	Orig. Master Name
1/4/2023	171,904 Purchases	BLS 10/7/2022	787683	ICLE	\$31,717.95
<b>Totals:</b>				<b>Ending Balance</b>	<b>\$31,717.95</b>
<b>Account: 1-9-99-325-1284</b>					<b>\$0.00</b>
<b>Account: 1-9-99-325-1339 Description: Sponsorships</b>					
Trx Date	Jrnl No>Description	Reference	Orig. Master Number	Orig. Master ID	Orig. Master Name
10/1/2022	170,404	Natl Assn of Women Judges			\$2,500.00
<b>Totals:</b>				<b>Ending Balance</b>	<b>\$2,500.00</b>
<b>Account: 1-9-99-325-1339</b>					<b>\$0.00</b>
<b>Account: 1-9-99-325-1346 Description: Access to Justice and Charities</b>					
Trx Date	Jrnl No>Description	Reference	Orig. Master Number	Orig. Master ID	Orig. Master Name
10/20/2022	169,879 Purchases	10/14/2022 donation	ACCESS TO JUSTI	Access to Justice Fund	\$7,500.00
11/2/2022	170,619 Purchases	10/14/2022 donation	WAYNE STATE UNI	Wayne State University	\$10,000.00
<b>Totals:</b>				<b>Ending Balance</b>	<b>\$17,500.00</b>
<b>Account: 1-9-99-325-1346</b>					<b>\$0.00</b>
<b>Account: 1-9-99-325-1493 Description: Travel</b>					
Trx Date	Jrnl No>Description	Reference	Orig. Master Number	Orig. Master ID	Orig. Master Name
10/20/2022	169,915 Purchases	10/8/2022 travel	SHOOP, TERRI	Shoop, Terri	\$777.95
<b>Totals:</b>				<b>Ending Balance</b>	<b>\$777.95</b>
<b>Account: 1-9-99-325-1493</b>					<b>\$0.00</b>
<b>Account: 1-9-99-325-1528 Description: Telephone - Administration</b>					
Trx Date	Jrnl No>Description	Reference	Orig. Master Number	Orig. Master ID	Orig. Master Name
11/2/2022	170,617 Purchases	Sept-Oct 2022 phone	SHOOP, TERRI	Shoop, Terri	\$83.51
11/9/2022	170,774 Purchases	October 2022 BLS AT10059744	USINV/2210213040	NTT CLOUD COMMINTT Cloud Communications U	\$260.99
12/7/2022	171,558 Purchases	November 2022 BLS AT10059744	USINV/2211214679	NTT CLOUD COMMINTT Cloud Communications U	\$230.00
1/4/2023	171,918 Purchases	December 2022 BLS AT10059744	USINV/2212216233	NTT CLOUD COMMINTT Cloud Communications U	\$230.00
1/12/2023	172,075 Purchases	phone	SHOOP, TERRI	Shoop, Terri	\$83.51
1/18/2023	172,171 Purchases	phone	SHOOP, TERRI	Shoop, Terri	\$83.42
<b>Totals:</b>				<b>Ending Balance</b>	<b>\$971.43</b>
<b>Account: 1-9-99-325-1528</b>					<b>\$0.00</b>

**DETAILED TRIAL BALANCE FOR 2023**  
 State Bar of Michigan

Account:	Jrnl No.	Description	Reference	Description:	Orig. Master Number	Orig. Master ID	Orig. Master Name	Beginning Balance:	Debit	Credit
Account: 1-9-99-325-1749				Awards				\$0.00		
10/4/2022	169,353	BLS Schulman Award Adv			AWARDS 10/7/2022	JOHN MEIU	John Meiu/Photographer		\$1,000.00	
10/20/2022	169,901	Purchases			10/11/22 BLS SERVIC	SCOTT, MICHAELA	Scott, Michael A.		\$400.00	
10/20/2022	169,908	Purchases							\$1,575.00	
					<b>Net Change</b>		<b>Ending Balance</b>			
							\$2,975.00		\$2,975.00	\$0.00
<b>Totals:</b>										

Account:	Jrnl No.	Description	Reference	Description:	Orig. Master Number	Orig. Master ID	Orig. Master Name	Beginning Balance:	Debit	Credit
Account: 1-9-99-325-1833				Newsletter				\$0.00		
11/30/2022	171,403	November 2022 E Blast Expense							\$100.00	
					<b>Net Change</b>		<b>Ending Balance</b>			
							\$100.00		\$100.00	\$0.00
<b>Totals:</b>										

Account:	Jrnl No.	Description	Reference	Description:	Orig. Master Number	Orig. Master ID	Orig. Master Name	Beginning Balance:	Debit	Credit
Account: 1-9-99-325-1854				Business Law Journal				\$0.00		
11/2/2022	170,595	Purchases			785720	ICLE	ICLE		\$16,265.50	
1/12/2023	172,048	Purchases			607074	F.P. HORAK COMP	F.P. Horak		\$14,347.04	
					<b>Net Change</b>		<b>Ending Balance</b>			
							\$30,612.54		\$30,612.54	\$0.00
<b>Totals:</b>										

Account:	Jrnl No.	Description	Reference	Description:	Orig. Master Number	Orig. Master ID	Orig. Master Name	Beginning Balance:	Debit	Credit
Account: 1-9-99-325-1868				Postage				\$0.00		
10/20/2022	169,916	Purchases			10/11/2022 MAILING	SHOOP, TERRI	Shoop, Terr		\$52.86	
					<b>Net Change</b>		<b>Ending Balance</b>			
							\$52.86		\$52.86	\$0.00
<b>Totals:</b>										

Accounts	11	Beginning Balance	Net Change	Ending Balance	Debit	Credit
<b>Grand Totals:</b>		\$0.00	\$89,697.73	\$89,697.73	\$89,697.73	\$0.00

# Women Lawyers Association of Michigan

February 28, 2023



*President*  
*Erin Klug*

*President Elect*  
*Susie Chalgian*

*Vice President*  
*Nicole Smithson*

*Treasurer*  
*Tanya Grillo*

*Secretary*  
*Kirsten Silwanowicz*

*Immediate Past President*  
*Ryan Kelly*

*Association Manager*  
*Hillary Walilko*

Business Law Section-State Bar of Michigan  
John T. Schuring  
c/o 200 Ottawa Ave NW Ste 900  
Grand Rapids, MI 49503

Dear John:

I am writing to invite you sponsor the Women Lawyers Association of Michigan's 105<sup>th</sup> Annual Meeting, which will be held on June 2, 2023, at the Graduate Hotel in East Lansing.

The theme of this year's Annual Meeting will be **Shaping Connections**, highlighting the unique ability of our association to bring together attorneys from across all practice areas to find support and friendship in one another.

Our organization has a sustained commitment to the advancement of women lawyers, in addition to promoting equality and social justice for all people. We trust that you share that same commitment and ask for your continued partnership in furthering the advancement of women lawyers, employment equality, and the strengthening of our justice system as a whole by sponsoring this year's program.

For the 2023 Annual Meeting, we are excited to announce that we will be hosting an afternoon gathering for discussion followed by a cocktail event with dinner at the new luxury hotel in East Lansing, The Graduate.

The meeting will include:

- Networking and group discussion opportunities;
- Recognition of the WLAM Foundation Scholarship recipients;
- The swearing in of the new board;
- Awards that highlight prominent members of the organization and legal community who further our mission; and
- Food, entertainment, and cocktails!

Please take a moment to review the sponsorship levels noted on the enclosed Sponsor Opportunities form. We look forward to hearing from you.

Sincerely,

*Susie Chalgian, President Elect*  
*Women Lawyers Association of Michigan*



# SHAPING CONNECTIONS

Women Lawyers Association of Michigan

**2023 ANNUAL MEETING**

**JUNE 2, 2023**

THE GRADUATE HOTEL  
EAST LANSING

## SPONSORSHIP OPPORTUNITIES

### Platinum Sponsor: \$7,500

- 10 tickets
- Photobooth or Entertainment Sponsor
- Full page ad in meeting program (inside front cover)
- Recognition displayed at event – most prominent name displayed
- Exclusive recognition on social media before and after event
- Logo placement on WLAM website event page
- Swag bag donation opportunity

### Gold Sponsor: \$5,000

- 8 tickets
- Recognition displayed at event
- Full page ad in meeting program
- Exclusive recognition on social media before and after event
- Logo placement on WLAM website event page
- Swag bag donation opportunity

### Silver Sponsor: \$2,500

- 5 tickets
- Half page ad in meeting program
- Recognition displayed at event
- Logo placement on WLAM website event page
- Swag bag donation opportunity

### Bronze Sponsor: \$1,000

- 2 tickets
- Quarter page ad in meeting program
- Recognition displayed at event
- Logo placement on WLAM website event page
- Swag bag donation opportunity

### Ruby Sponsor: \$500

- 1 ticket
- Recognition displayed at event
- Logo placement on WLAM website event page
- Swag bag donation opportunity

### Sapphire Sponsor: \$150

- Recognition displayed at event
- Logo placement on WLAM website event page
- Swag bag donation opportunity

### GRAPHIC AND AD SPECS

- Graphics for social media should be sized to 1080 x 1080 pixels and sent in either .jpg or .png format
- Ad artwork is due **May 15th**; sizes below
  - Full Page (8.625" x 11.125", Full Bleed)
  - Half Page (7.5" x 4")
  - Quarter Page (3" x 4")
- Swag bag items are due to our office by **May 15th**

REGISTER ONLINE AT  
[WWW.WOMENLAWYERS.ORG](http://WWW.WOMENLAWYERS.ORG)

**WOMEN LAWYERS ASSOCIATION OF MICHIGAN**  
**105<sup>TH</sup> ANNUAL MEETING**  
**JUNE 2, 2023**  
**EAST LANSING, MICHIGAN**

**SPONSORSHIP CONTRACT**

**SPONSORSHIP OPPORTUNITIES** Please select from the options below.

- |   |   |
|---|---|
| <input type="checkbox"/> Platinum \$7,500 | <input type="checkbox"/> Bronze \$1,000 |
| <input type="checkbox"/> Gold \$5,000     | <input type="checkbox"/> Ruby \$500     |
| <input type="checkbox"/> Silver \$2,500   | <input type="checkbox"/> Sapphire \$150 |

*Ad Artwork and Bag Inserts are due May 15, 2023*

**To ensure full recognition, please return your signed contract and payment by May 1, 2023**

Company: \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Tel: \_\_\_\_\_ Fax: \_\_\_\_\_  
Website Address: \_\_\_\_\_  
Signature: \_\_\_\_\_

**PAYMENT METHOD**

- Bill my Credit Card       Check enclosed Payable to:  
 Visa    Master Card    Discover    Amex      Women Lawyers Association of Michigan

_____	_____		
Cardholder Name	Email (to confirm receipt)		
_____	_____	_____	_____
Card Number	Expiration	Security Code	Billing Zip Code
_____	_____		
Cardholder Signature	Date		

**BUSINESS COURTS COMMITTEE**  
**REPORT PREPARED FOR THE MARCH 9, 2023 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee.**

No meeting of the Committee is currently scheduled.

**2. Council Approval.**

No matters require Council approval.

**3. Membership.**

The membership of the Committee is intentionally small. The members are Judge James M. Alexander (retired Oakland), Judge David J. Allen (Wayne), Judge Victoria A. Valentine (Oakland), Judge Kathryn A. Viviano (Macomb), Judge Christopher P. Yates (Court of Appeals), Bruce Courtade, Jennifer Grieco, Brian Wassom, and yours truly.

**4. Accomplishments Toward Committee Objectives.**

The Committee's objectives are to serve as a liaison between the Business Court Judges and the Business Law Section, to serve as a resource for the Business Court Judges, and to assist the Business Court Judges in whatever ways they and the Business Law Section deem appropriate.

**5. Meetings and Programs.**

The Committee has not met since the last Council meeting.

**6. Publications.**

The Committee has published no articles. The Michigan Business Law Journal includes a regular column on the Michigan Business Courts.

**7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action.**

The Committee monitors proposed changes in the business court statute and Michigan Court Rules that deal with the Michigan Business Courts.

**8. Miscellaneous.**



Douglas L. Toering, Committee Chair  
Mantese Honigman, PC  
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Troy, MI 48083  
(248) 457-9200  
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Date of Report: March 1, 2023

**COMMERCIAL LITIGATION COMMITTEE**  
**REPORT PREPARED FOR THE MARCH 9, 2023 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee.**

No meeting of the Committee is currently scheduled.

**2. Council Approval.**

No matters require Council approval.

**3. Membership.**

The Committee comprises approximately 100 commercial litigators.

**4. Accomplishments Toward Committee Objectives.**

The Committee Chair is exploring how the proposed Business Litigation Bootcamp might interrelate with the Business Boot Camp.

The Committee expects to hold a program in second or third quarter of 2023 to celebrate the tenth anniversary of the business court legislation and to discuss best practices of the business courts.

**5. Meetings and Programs.**

No meetings or programs have been held since the last Council meeting.

**6. Publications.**

The Committee has published no articles.

**7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action.**

The Commercial Litigation Committee typically receives notices of proposed legislation or changes to the Michigan Court Rules. When the Committee is informed of potential changes to the Michigan Court Rules or proposed legislation that may impact the practice of Committee members, the Committee engages in an e-mail or in-person discussion of such proposed changes or legislation.

**8. Miscellaneous.**

Douglas L. Toering, Committee Chair

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Date of Report: March 1, 2023

**CORPORATE LAWS COMMITTEE  
REPORT PREPARED FOR THE MARCH 9, 2023 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee.**

The Committee most recently met on January 25 to discuss development of amendments to the Michigan Business Corporation in addition to the proposed benefit corporation legislation that it has developed as described in previous committee reports. The Committee's next meeting has not yet been scheduled, pending circulation of draft language for proposed amendments.

**2. Council Approval.**

We do not request council approval of any matters at this meeting.

**3. Membership.**

The Committee remains open to participation by any interested parties. The Committee has approximately 75 members on its active roster, though many fewer who actively participate.

**4. Accomplishments Toward Committee Objectives.**

The activity of the Committee is directly related to the Strategic Plan mission of promoting improved legislation and regulation for business and the goal of reviewing Michigan laws affecting business formation, capital raising, corporate governance and related legal matters. The Committee attempts to keep Michigan corporate law current with national trends and competitive with the business law environments of other jurisdictions.

The Committee continues to monitor legislation that could affect Michigan corporation law. We are assembling material for the next round of amendments to the Michigan Business Corporation Act. IN 2022, we determined to bifurcate that effort and to first focus on preparing proposed draft benefit corporation legislation, which we prepared in the hope to move the bill prior to the end of the legislative session. That did not happen, but we are pursuing that initiative in the new legislative session. Legislative adoption of the additional amendments, once developed, will also be pursued in the new session.

In the past the Committee has taken the lead in preparing amicus briefs on behalf of the Business Law Section, at the request of both the Michigan Court of Appeals and the request of the Michigan Supreme Court. Justin Klimko participated in the development of the Section's most recent amicus brief filed with the Michigan Supreme Court in the case of Soaring Pine Capital v. Park Street Group Realty Services. That brief addressed the Supreme Court's question as to whether usury savings clauses in loan arrangements violate Michigan public policy and argued that such clauses should not be found to violate public policy.

**5. Meetings and Programs.**

No programs are currently scheduled. However, members of the Committee have participated in various programs, including the February 16 Business Law Symposium.

**6. Publications.**

The Committee was responsible for the Fall 2020 edition of the Business Law Journal. Members of the Committee's oppression study group contributed a number of articles for this issue related to the topics considered by the study group. The Committee will be responsible for the Fall 2023 issue and is developing articles from Committee members and their organizations.

**7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action.**

The Committee monitors bills that would affect corporation statutes that are introduced without its input and considers these together with the Corporations Division of the Bureau of Commercial Services of the Department of Licensing and Regulatory Affairs. The Committee interacts with the Division and the Bureau frequently on matters of legislative interpretation and administrative practice. The Committee also consults with the Division regarding efforts to further streamline corporate filings and information dissemination.

The Committee reviews judicial decisions affecting matters of Michigan corporate law. From time to time the Committee proposes statutory amendments that are intended to address the effects of specific case law. Additionally, the Committee has prepared and filed amicus curiae briefs at the invitation of the Michigan Supreme Court.

The Committee monitors developments and changes in the corporate laws of other states such as Delaware and developments and changes in the Model Business Corporation Act.

**8. Miscellaneous.**

The Committee will continue to accept ideas for technical and other amendments to the Business Corporation Act. Suggestions in this regard may be addressed to either committee co-chair.

Any questions regarding this report may be directed to Justin Klimko or Mike Molitor.

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February 20, 2023

**DEBTOR-CREDITOR RIGHTS COMMITTEE  
QUARTERLY REPORT *PREPARED FOR THE*  
*MARCH 9, 2023 BUSINESS COUNCIL MEETING***

**1. Next Scheduled Meeting of the Committee/Directorship.**

Next scheduled meeting of the Committee/Directorship will be in the Spring of 2023. Leadership endeavors to meet on a monthly basis.

**2. Council Approval.**

The Committee seeks approval from the Council to submit a letter to the Michigan Supreme Court about proposed revisions to new Michigan Court Rule 2.421 that requires the giving of notice to a state court in a pending matter when one of the parties files a bankruptcy (the “Letter”). The rule, as originally proposed, was broader than what the Committee thought was appropriate and caused the Committee concerns that, upon the filing of a notice, a state court might stay the pending matters not only with respect to the debtor, but also as to non-debtor affiliated parties (such as directors and officers), beyond what the Bankruptcy Code provides as relates to the reach of the automatic stay.

While notice has generally been given in the past to the state court when a party subject to pending litigation files or becomes subject to a bankruptcy petition, no formal rule previously existed. While we support the adoption of a rule to formalize the giving of notice, the rule must be tailored to be consistent with the requisites of the Bankruptcy Code and not create unintended consequences.

Several comments have been sent to the Supreme Court by Trent Collier, Paul Hage, Michael Leib and David Findling, all of which agree that the proposed rule, as drafted, is overbroad.

The Board of Commissioners has endorsed Trent Collier’s comments, while not identical to the mark-up of the rule submitted by Paul Hage and endorsed by Michael Leib, are quite similar and seem to generally address the Committee’s concerns.

While the formal comment period for commenting on the proposed rule expired on February 1<sup>st</sup>, nevertheless, the Committee believes that it is important that the Committee take a position on the proposed rule based on the experience and knowledge of the members of the Committee and the importance of this rule to bankruptcy practitioners and litigators.

The Committee is seeking approval of the Letter (previously forwarded to Mark Kellogg and noticed out to the members of the Council as part of this

meeting). If the Council approves the Letter, the Committee requests that the Council seek authorization from the State Bar, consistent with the public policy requirements of the State Bar, to transmit the letter to the Supreme Court.

A public administrative hearing to consider the proposed rule has been scheduled by the Supreme Court for March 22<sup>nd</sup> at 9:30 a.m. The notice of the public hearing requires parties that wish to speak at the hearing to reserve a place on the agenda by notifying the Office of Administrative Counsel by e-mail at [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov) no later than Friday, March 17, 2023. Thus, we request that expedited authority from the State Bar for the Letter and appearance by representatives of the Committee at the public hearing be sought at the conclusion of the Council meeting so that we can get the Letter transmitted to the Supreme Court in advance of the hearing and register to reserve a place on the agenda at the hearing to articulate our position to the Supreme Court.

Judy Miller will be attending the Council meeting to present the Letter to the Council and to respond to any questions that members of the Council may have.

### **3. Membership.**

Committee leadership is currently as follows:

Marc N. Swanson, Co-Chair  
Judith Greenstone Miller, Co-Chair  
Paul R. Hage, Co-Vice Chair  
Elliot G. Crowder, Co-Vice Chair  
Judy B. Calton, Emeritus Chair

The Committee regularly submits its quarterly and annual reports to the Council and communicates with members regarding important issues.

The Committee recently reached out to the membership to solicit their opinions on proposed new MCR 2.421. In response to the email, the Committee received several comments from members of the Committee, all supporting the changes to the new proposed rule, as set forth in the Letter. See Response to Question 2.

In addition, the Committee has advised its members about the status of the Business Section's amicus brief in *Soaring Pine Capital Real Estate and Debt Fund II, LLC v. Park Street Group Realty Services, LLC, Park Street Group, LLC, and Dean J. Groulx* (Supreme Court Case No. 163320), presently pending before the Michigan Supreme Court. See Response to Question 6.

Finally, the Committee is reaching out to its members to solicit articles for the March 2024 edition of the Business Law Journal. See Response to Question 5.

**4. Accomplishments Toward Committee/Directorship Objectives.**

See Responses to Questions 1-3, and 5-7.

**5. Meetings and Programs.**

The Committee holds meetings regularly throughout the year, at approximate two-month intervals and regularly submits reports to the Council. The Committee endeavors to include virtual attendance options for all meetings so as to ensure a large geographic reach for membership.

The Committee held a meeting on February 14, 2023 by Zoom for membership where topics included proposed amendments to the Michigan Court Rules, recent amendments to the Local Rules for the United States District Court for the Eastern District of Michigan, new guidance from the United States Department of Education regarding discharging student loans in bankruptcy, and a case law update. The Committee also solicited authors and editors for articles to be submitted for the March 2024 Business Law Journal. The Committee also suggested doing an educational program as part of its next meeting.

In addition, at the February 14<sup>th</sup> meeting, the Committee requested support from the members in attendance to take the position set forth in the Letter. See Response to Question 2. At the meeting, all members in attendance, as listed below, approved the Committee taking the position in the Letter and delegated the preparation and approval of the Letter to the leadership of the Committee. All of the signatories to this Report approved the letter.

The following members attended the February 14<sup>th</sup> meeting and approved taking the position in the Letter:

- Elliot Crowder
- Mike Fleming
- Lisa Hall
- Brendan Best
- Clay Ottoni
- Craig Schoenherr
- Rozanne Giunta
- Paul Hage
- Hank Knier



- Joe Brown
- Judy Calton
- Judy Miller
- David Lerner
- Marc Bakst
- Michael Leib
- Richardo Kilpatrick
- Scott Wolfson
- Richard Sundquist
- Marc Swanson
- Thomas Richardson
- Andrew Worrall

No one in attendance at the February 14<sup>th</sup> meeting opposed the action proposed to be taken by the Committee.

## **6. Publications.**

Two of the leaders of the Committee – Judith Greenstone Miller and Judy B. Calton – are currently co-chairing an Amicus Briefing Committee for the Council in connection with preparing and submitting an amicus brief to the Michigan Supreme Court in the matter of *Soaring Pine Capital Real Estate and Debt Fund II, LLC v. Park Street Group Realty Services, LLC, Park Street Group, LLC, and Dean J. Groulx* (Supreme Court Case No. 163320). The brief generally addresses whether a usury saving clause is void as a matter of public policy. The amicus brief was prepared, approved by the Council and filed with the Supreme Court in December 2022.

A hearing on the appeal was held on January 12, 2023. Fawzeith H. Daher, a member of the appellate practice at Bodman, who worked on the amicus brief, reported as follows about the hearing:

Turning to the argument today, most of the argument (on both sides) concerned the usury-savings clause issue and what approach the Court should take.

From the outset, Justice Welch peppered counsel for Park Street with questions regarding the sophistication of the borrower, the fact that excess payments would reduce principal, the concern with variable-rate notes, and the issue raised in our brief regarding enforceability opinions. Counsel for Park Street argued that the parties' sophistication should not affect the Court's decision because the Legislature did not make such a distinction and, instead, the statute focuses on the lender's obligations. Counsel argued that if the Court was not inclined to enforce a bright-line

rule, then usury-savings clauses should only be enforceable in situations where a loan's stated rate does not exceed the legal maximum, but long-term contingencies render the loan usurious. In other words, only where the loan is pegged to an interest rate or federal rate that is truly outside the parties control. She argued that was not the case here.

Counsel for Soaring Pine argued that the Court should adopt a case-by-case approach as other states have, where usury-savings clauses can be relied upon when a note is not usurious on its face. Justice Welch thought this was reasonable. Counsel also argued that usury law is very large and complicated, and the parties should be able to rely on these clauses for assurance that they have complied with usury law.

Overall, one factor the Justices were interested in was how parties' sophistication status affected the use of usury-savings clauses. Justice Welch was concerned with the fact that the party's sophistication is not something addressed or contemplated in the statute. Justice Clement asked where the line should be drawn in determining whether a party is 'sophisticated' or not.

After oral arguments were completed, the Court took the matter under advisement. If anyone is interested in watching the argument in full, the Court usually posts recordings on its YouTube page a day or so after the hearing. For now, the only thing left is to await the Court's order. We will let you know when we receive it.

The Committee has begun the process of soliciting articles and editors for the March 2023 edition of the Business Law Journal of the State Bar of Michigan for which the Committee is responsible. Emeritus Chair Judy B. Calton is leading this process.

## **7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action**

The Committee regularly reviews proposed amendments to the Bankruptcy Code, Rules of Federal Bankruptcy Procedure and state rules and laws germane to the interests of the Committee. The Committee has been actively involved in the development of the Michigan Receivership Act and the Michigan Uniform Assignment of Rents Act and has been asked to provide comment on potential amendments to the Michigan exemption and fair debt collection statutes.

The Committee has reviewed and provided comments to the Michigan Supreme Court regarding Proposed New Michigan Court Rule 2.421,

which proposes to require that notice be provided to state courts when a party filed a bankruptcy. The Committee's comments also included suggested revisions to the proposed Court Rule and provided separate communications from membership regarding the proposed Court Rule. See Response to Question 2.

The Committee has also created a sub-committee to review the present Michigan Court Rules regarding receiverships (MCR 2.622, *et al.*) to assess and to ascertain whether amendments are necessitated in light of the Michigan Receivership Act and amendments thereto. Michael Leib is going to chair the Subcommittee created by the Committee to review the receivership rules and to report to the Committee on if amendments are needed.

**8. Miscellaneous.**

N/A

Respectfully submitted;

Marc N. Swanson, Co-Chair  
Judith Greenstone Miller, Co-Chair  
Paul R. Hage, Co-Vice Chair  
Elliot G. Crowder, Co-Vice Chair  
Judy B. Calton, Emeritus Chair

**Subject:** FW: Agenda Item for Upcoming Meeting of the Business Council on March 9th  
**Attachments:** 2021-50\_2023-02-01\_commentfromdavidfindling.pdf; Comment to Proposed Notice of Bankruptcy Rule.pdf; 2021-50\_2022-12-16\_commentfromtrentcollier.pdf; 2021-50\_2023-01-31\_commentfromsbm-boc 2.421.pdf; Hage Letter to Supreme Court Regarding Proposed Court Rule - 4880-2120-7886.v1.pdf; Letter to the Supreme Court on Proposed Notice Rule - 4892-1712-8272.v2.docx; Word Notice of Bankruptcy proposed 2.421.docx; Notice of Bankruptcy 2021-50\_2022-10-26\_formor\_propaddmcr2.421.docx

**Importance:** High

**From:** Miller, Judith <[jgmiller@taftlaw.com](mailto:jgmiller@taftlaw.com)>  
**Sent:** Tuesday, February 14, 2023 2:47 PM  
**To:** Mark Kellogg <[mkellogg@fraserlawfirm.com](mailto:mkellogg@fraserlawfirm.com)>  
**Cc:** Miller, Judith <[jgmiller@taftlaw.com](mailto:jgmiller@taftlaw.com)>; Hage, Paul <[phage@taftlaw.com](mailto:phage@taftlaw.com)>; Swanson, Marc N. <[swansonm@millercanfield.com](mailto:swansonm@millercanfield.com)>; Elliot Crowder <[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com)>; [judy.b.calton@gmail.com](mailto:judy.b.calton@gmail.com); [michael@leibadr.com](mailto:michael@leibadr.com)  
**Subject:** Agenda Item for Upcoming Meeting of the Business Council on March 9th  
**Importance:** High

Mark:

Thank you for taking the time to chat with me about the above referenced matter this morning.

As I indicated to you, the Supreme Court has proposed a new rule – MCR 2.421 – that would require the giving of notice to a state court in a pending matter when one of the parties files a bankruptcy. The rule, as originally proposed, was broader than what we thought was appropriate and caused us concerns that the upon the filing of the notice a state court might stay the pending matters not only with respect to the debtor, but also as to non-debtor affiliated parties (such as directors and officers), beyond what the Bankruptcy Code provides as relates to the reach of the automatic stay. A copy of the original proposed rule is attached to this email. Accordingly, Paul Hage, Co-Vice Chair of the Committee, Michael Leib, a member of the Committee, and I reviewed and marked up the rule to address these concerns, a copy of which mark-up is attached hereto.

Since the rule was proposed, Trent Collier, Paul Hage, David Findling and Michael Leib commented on the proposed rule, copies of which comments are attached hereto. The Board of Commissioners has endorsed Trent Collier's comments and proposed changes to the rule, a copy of which endorsement is attached hereto. Trent's comments, while not identical to our mark-up, are quite similar and seem to generally address our concerns.

While the formal comment period for commenting on the proposed rule expired on February 1<sup>st</sup>, nevertheless, we thought it import that the Debtor-Creditor Rights Committee ("Committee") take a position on the proposed rule based as the experience and knowledge of the members of the Committee. Moreover, this is an important issue for bankruptcy practitioners and litigators.

On February 1<sup>st</sup>, we reached out to the members of the Committee to assess their position on the proposed rule. We received a number of comments from the members, all supporting that the rule, as proposed, be revised. In addition, the Committee held a meeting today at 12:00 p.m. at which time, all members in attendance at the meeting, who are identified below, supported the Committee taking a position to support the comments advanced by Paul Hage, Michael Leib and Trent Collier.

The members of the Committee in attendance at the meeting today that supported taking a position were as follows:

- Elliot Crowder
- Mike Fleming
- Lisa Hall
- Brendan Best
- Clay Ottoni
- Craig Schoenherr
- Rozanne Giunta
- Paul Hage
- Hank Knier
- Joe Brown
- Judy Calton
- Judy Miller
- David Lerner
- Marc Bakst
- Michael Leib
- Richardo Kilpatrick
- Scott Wolfson
- Richard Sundquist
- Marc Swanson
- Thomas Richardson
- Andrew Worrall

The members also delegated the writing and approval of the proposed letter to be submitted to the Business Council to the leadership of the Committee.

Attached is the proposed letter to be sent to the Supreme Court that we are seeking approval of from the Business Council at its March 9<sup>th</sup> meeting. Assuming the Business Council approves the letter, we would request under the public policy dictates of the State Bar that you seek authority from the State Bar for the Business Council and the Committee to take the position set forth in the letter. I will plan to attend the March 9<sup>th</sup> meeting of the Business Council to present the issues and to respond to any questions that the Business Council may have regarding the proposed letter and the positions taken therein.

We understand that an administrative hearing to consider the proposed rule is scheduled for March 22<sup>nd</sup>. Accordingly, it is important that the approvals to send the letter are obtained expeditiously. Assuming the requisite approvals are obtained, we would also like authority to have a representative of the Committee testify at the administrative hearing in support of the position taken in the letter.

Thank you for your attention to this email. If you have any questions or need additional information, please contact me.

All my best,

Judy

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A FAMILY OF LAWYERS<sup>SM</sup>

Writer's e-mail: [david@findlinglaw.com](mailto:david@findlinglaw.com)

February 1, 2023

**BY E-MAIL ONLY**

Michigan Supreme Court  
[ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov)

Re: Proposed Adoption of MCR 2.421

Dear Sir or Madam:

I am writing to offer my comments to the proposed draft of MCR 2.421. I believe there are deficiencies in the proposed rule. It fails to consider salient bankruptcy issues both in its drafting and its application. Some of my proposed changes were made to accommodate pro se litigants, or those less knowledgeable about bankruptcy and the Court Rules:

- a. The use of the term state court action is inconsistent with MCR 2.101(A):



RULE 2.101 FORM AND COMMENCEMENT OF ACTION

(A) Form of Action. There is one form of action known as a "civil action."

There are many administrative agencies and tribunals which are not state courts. The Michigan Court Rules apply to those agencies and tribunals. e.g. the Michigan Attorney Grievance Commission and the Michigan Tax Tribunal. The rule appears to unnecessarily uses the term "state court action." In my edits to the proposed rule, I have changed the term: ...a pending legal proceeding under state law ("Legal Proceeding.");

- b. I have changed the word "*shall*" to the more commonly used term "*must*";
- c. I have reduced the volume of words used in the draft to make it more concise;
- d. There may interested parties who are not a "*party*.";
- e. I have defined Notice as a term of art to reduce redundancy;
- f. I required notice to the interested parties to the Legal Proceeding who may not be a "*party*.";
- g. The rule says a notice has to be filed but the instruction doesn't adequately describe what should be filed. Presumably, an appropriate form will be drafted by SCAO;

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- h. I changed the default operation of the Notice to *must* administratively close. In the past, I represented a family judge who ordered a chapter 13 debtor to pay a sum certain due to non-support. He was held in contempt and incarcerated by the state court judge due to his failure to pay the amount ordered.

For a chapter 13 debtor, the definition of property of the estate is different than a chapter 7 debtor. See §§1303 and 541. In a chapter 7, the debtor would have been permitted to pay the amount ordered from his post-petition wages. However, for a chapter 13 debtor, post-petition income *is* property of the estate. The debtor could not comply with the order without the use of property of the estate. As a result, the judge and the ex-wife were sued in the bankruptcy court for violating the automatic stay. For the first and only time in my career, I was able to obtain an order which retroactively modified the automatic stay.

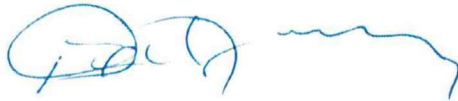
A state court judge does have authority to determine the application of the automatic stay. However, bankruptcy filings and stay notices ordinarily occur before a consequential hearing.

The rule should stay the proceedings first and ask questions later. Interpretation and application of the bankruptcy automatic stay (11 USC § 362) to the Legal Proceeding can be considered at a promptly scheduled status conference.

- i. The rule required the name and info for the bankruptcy attorney. However, there are many pro se litigants who file and are unrepresented. Therefore, I changed the language of subsection (D)(1) to: "if represented by counsel."
- j. I divided subsection (G)(formerly (F)). The first part of (G) addresses the Effect of Notice. Subsection (H) provides the later authority to seek modification.

Due to time constraints, my edits may fail to properly address certain issues. Due to the number of substantive and drafting issues, I recommend that the Supreme Court deny approval of the rule as drafted. If given the opportunity, I am certain there are many in the bankruptcy community who could provide a more appropriate draft for consideration.

Sincerely,



David Findling

DF/df

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# Order

## Michigan Supreme Court Lansing, Michigan

October 26, 2022

Bridget M. McCormack,  
Chief Justice

ADM File No. 2021-50

Proposed Addition of Rule  
2.421 of the Michigan  
Court Rules

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

On order of the Court, this is to advise that the Court is considering an addition of Rule 2.421 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

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

[NEW] Rule 2.421 Notice of Bankruptcy Proceedings

(A) ~~Applicability. This rule applies to all pending legal state court actions proceedings under State law (hereafter a "Legal Proceeding") in which an interested party is either:~~

~~(1) a named debtor in a bankruptcy proceeding;~~

~~(2) an officer, director, or majority equity holder of a named debtor in a bankruptcy proceeding.~~

(B) Interested Party Subject to Bankruptcy Proceeding. Any named interested party in a pending state court action-Legal Proceeding who is a debtor in or becomes subject to a bankruptcy proceeding, or who may be subject to the automatic stay, 11 USC § 362 shall as provided in subrule (A) must file notice of the bankruptcy proceeding in the pending Legal Proceeding state court action no later than seven (7) days after becoming subject to such bankruptcy proceedings and (ii) serve such notice on all other interested named parties in the Legal Proceeding. in the pending state court proceeding.

(C) Other Parties. If an interested party to a pending Legal Proceeding state court action learns that another party in such proceeding is a named debtor in of a bankruptcy proceeding described in subrule (A) and the notice of the bankruptcy proceeding contemplated required by in subsection (B) has not previously been filed and served provided by the debtor, then such interested party that learned of the

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~~bankruptcy proceeding shall may be permitted to file asuch notice of the bankruptcy proceeding in the pending state court action and serve it pursuant to MCR 2.107such notice on all other named parties in the pending state court proceeding.~~

- (D) Notice Contents. Notice of a bankruptcy proceeding filed under this rule must, at a minimum, include all of the following:

~~(1)~~ (1) name(s) of the party-debtor(s) described in subrule (A) and his or her designation as the named debtor, officer, director, or major equity holder of a named debtor;

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(2)(1) the court name and case number(s) of the bankruptcy proceeding(s); and, if available,

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(3)(2) the name, telephone number, physical address, and email address for the debtor's attorney in the bankruptcy proceeding(s).

(E) Service of Notice. Notice of a bankruptcy proceeding filed under this rule must be served on all parties to the pending state court action as provided in MCR 2.107.

(F) Effect of Notice. If a notice is filed under this rule, the court may shall, on the motion of a party or on its own initiative, administratively close the Legal Proceeding. Further, the court shall, on Motion of an interested party or on the court's own initiative, schedule a status conference to consider modifying the the order the administrative closure of of all or a portion of the state court Legal pProceeding, action or set the matter for a status conference to determine if the case is subject to an automatic stay. To the extent that all or a portion of If the state court action has been administratively closed under this subrule or otherwise, By motion of an interested party it may be reopened if, on the motion of a party or on the court's on its own initiative, the court may modify or terminate the administrative closure, should it, the court determines that the automatic bankruptcy stay has been lifted, removed, or otherwise is no longer in effect, no longer impairs adjudication of all or a portion of the state court proceeding.

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Staff Comment (ADM File No. 2021-50): The proposed addition of MCR 2.421 would address notice of a bankruptcy proceeding that affects a pending state court action.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by February 1, 2023 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2021-50. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 26, 2022

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk



January 29, 2023

Sent by email only to [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov)

Re: ADM file No. 2021 ; proposed new rule MCR 2.421

Dear Justices:

I provide this comment on my own behalf and not on behalf of any organization.

I thank the Court for proposing this court rule. A rule requiring notice that a litigation party is a debtor in bankruptcy is long overdue. However, I believe the proposed court rule goes too far and requires the notice and disclosure of additional information that is confusing and not relevant to the purpose of ensuring an efficient court process.

There is little doubt the court and parties should be notified as soon as possible that a litigation party is a debtor in bankruptcy. Such notice directly affects the administration of the case before the state court trial judge. If a party is a debtor in bankruptcy, the parties and the court should quickly determine if all or a portion of the case should be stayed, so as not to run afoul of the automatic stay authorized by the United States Bankruptcy Code (“Code”). Such notice is identified in proposed 2.421 (B).

However, the additional information that is proposed to be disclosed in 2.421 (A) and (B) is confusing at best. There does not appear to be an *administrative* reason for disclosure by a party of whether it is an officer, director, or majority equity holder of a named debtor in a bankruptcy proceeding. Rather such information would be of interest as a matter of *strategy*. Unless a litigation party is a named debtor or specifically authorized by the Bankruptcy Court to claim the benefit of the automatic stay (11 U.S.C. Sec. 362), there is no administrative benefit for such disclosure. Moreover, it is the type of information that arguably belongs in post-judgment discovery. The relevance and practical nature of such disclosure should be carefully considered.

To be sure, there is often information regarding a litigation party’s prior bankruptcy status that would be of great interest to litigants. For example, it is of significant interest if a plaintiff previously filed a bankruptcy and perhaps failed to list the claim (asserted in state court) in its bankruptcy schedules. Such information would not immediately affect the administration of the state court case absent further investigation. There is much information a party would find important and is a part of a litigator’s due diligence. The specific relevance of the additional disclosures here do not appear to advance the efficient administration of the case.

I also suggest that the notice of bankruptcy period be reduced from 7 days to 3 days as stated in 2.421(B). Potential violation of the automatic stay is a serious offense and should be brought to the attention of the court and parties as soon as possible.

As proposed in 2.421 (F), an administrative closing of a case *before* a hearing may cause more problems than it solves. The parties should be heard as to whether a closing of the entire case is necessary. There may be parts of the case that should continue. The proposed court rule authorizes the court on its own motion to administratively close the case. There may be good reason to keep the case open as to some parties. Therefore, a hearing should be held *before* a case is administratively closed in whole or part.

I am grateful to the court for proposing the rule.

Thank you.

Respectfully Submitted,

Michael S. Leib  
LeibADR LLC  
(248) 563-2500

**COLLINS EINHORN**

Trent B. Collier

Collins Einhorn Farrell PC

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Direct Dial: 248-351-5441

December 16, 2022

Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909  
[ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov)

RE: Administrative File No. 2021-50 and bankruptcy reporting

**To the Chief Justice and the Justices of the Michigan Supreme Court:**

The Court is presently considering Administrative File No. 2021-50, which proposes a new Rule 2.421. This rule creates a procedure for reporting relevant bankruptcies in Michigan's courts. The proposed rule has two problems. First, it uses vague language, which makes it unclear which parties have a duty to report a bankruptcy. Second (and assuming this duty applies only to debtors), the rule may expose creditors to possible liability and sanctions under bankruptcy law. The Court can fix these problems with minor amendments

**The "subject to" problem**

First, the rule is ambiguous. It imposes a duty to report bankruptcies on "[a]ny party in a pending state court action who is or becomes subject to a bankruptcy proceeding ..." Proposed Rule 2.421(B). It's unclear whether the "subject to" language refers only to a debtor or whether it includes other parties whose claims become subject to a bankruptcy proceeding. After all, both debtors and creditors are "subject to" a bankruptcy proceeding.

This clause's reference to Rule 2.421(A) ("... as provided in subrule (A)") might be read as limiting the "subject to a bankruptcy language." Even so, the rule remains ambiguous. Section (B) refers to reporting requirements for those who are "subject to a *bankruptcy proceeding as provided in subrule (A)*." The italicized language seems to refer to all parties



in a bankruptcy proceeding—debtor and creditor alike. Again, both debtors and creditors may be subject to a bankruptcy proceeding. (Only debtors are subjects of bankruptcy proceedings, though.) Consequently, this rule does not clarify which parties have a duty to report bankruptcies.

It would be helpful, therefore, to list the parties who actually have reporting duties. If the Court intends to impose this duty only on debtors, it could state “... who is or becomes a *debtor* in a bankruptcy proceeding ...” And if the Court intended to include creditors, it could revise the rule to state, “... who is or becomes a *debtor, creditor, or interested party* in a bankruptcy proceeding.” Either way, Michigan attorneys would benefit from language that is more specific.

### **The optional reporting problem**

The second problem arises if the first rule’s reporting obligation refers only to debtors. Proposed Rule 2.421(C) states that other parties have the option to report relevant bankruptcy proceedings: “If a party to a pending state court action learns of a bankruptcy proceeding described in subrule (A) and notice of the bankruptcy proceeding has not previously been filed and served, the party that learned of the bankruptcy proceeding *may* file notice of the bankruptcy proceeding in the pending state court action.” That language—and especially the italicized *may*—could pose a trap for creditors.

Bankruptcy law often requires creditors to report bankruptcies to state courts. See *In re Webb*, 472 BR 665, \*14 (CA 6, BAP 2012) (“...[I]f a creditor has an affirmative duty to halt a pending state court action, failure to do so can result in a willful violation of the stay.”). See also *In re Banks*, 253 BR 25, 30 (Bankr ED Mich 2000) (“Under similar circumstances in cases involving garnishments, courts widely agree that a creditor has an affirmative duty to dismiss a prepetition garnishment upon learning of the bankruptcy filing.”). In other words, reporting is mandatory in some cases.





Two scenarios demonstrate the kind of facts that may require a creditor to report another party's bankruptcy to a state court.

1. A creditor files a state action against a borrower. The borrower subsequently files for bankruptcy without alerting the state court. The creditor knows about the bankruptcy, too—but it never reports the action to the state court, believing that reporting is optional under MCR 2.421(C). The parties complete discovery and hold a trial, where the creditor obtains a judgment.

In this scenario, a borrower may argue that the creditor violated the automatic stay under 11 U.S.C. § 362 by litigating and obtaining a judgment on its claims against the borrower. That judgment will be void under federal law—which means the state court's time was wasted. Worse, the creditor may face liability in bankruptcy court. See, e.g., *Clayton v King (In re Clayton)*, 235 BR 801, 808 (MD NC, 1998) ("To prove a willful violation of the stay, it is not necessary to show that the creditor had the specific intent to violate the stay. ... It is sufficient to show that the party knew of the existence of the bankruptcy case and that the creditor's actions were intentional."). To avoid liability, the creditor should have alerted the state court as soon as it knew of the bankruptcy. See, e.g., *In re Webb*, 472 BR 665, \*14 (CA 6, BAP 2012) ("In instances in which a foreclosure sale has been put in motion pre-petition, creditors have an affirmative duty to stop the sale from continuing once they receive actual notice of a debtor's bankruptcy.").

The reporting obligation may continue after a case is ostensibly over. For example:

2. An attorney obtains a post-judgment bench warrant against a debtor who refused to show up for creditor's exams. The debtor then obtains a full discharge in bankruptcy. The creditor gives up on collections—but never notifies the state court of the bankruptcy or the debtor's discharge. When the debtor is pulled over for a bad tail light later that year, authorities see



the outstanding bench warrant and jail the debtor—all based on a debt that was discharged in bankruptcy.

In this scenario, an attorney could find himself or herself facing sanctions and punitive damages for violating the discharge injunction. See 11 USC 524.

These examples show that it is in a creditor's interest to inform a state court whenever they learn of a relevant bankruptcy. That is the only way to ensure that the parties honor the automatic stay—and that they waste no time on state procedures that are ultimately void.

At the very least, the Court should avoid enacting a rule that omits any reference to a creditor's potential duties under federal law.

### **Proposed Solutions**

To address these concerns, the Court might consider two revisions.

First, it could clarify that the mandatory-reporting obligation in MCR 2.421(A) applies to debtors, creditors, and interested parties that are subject to a bankruptcy proceeding. That way, creditors will know that they should report relevant bankruptcies, thereby avoiding liability under federal law:

(B) Party Subject to Bankruptcy Proceeding.  
Any party in a pending state court action who is or becomes a *debtor, creditor, or interested party* in a bankruptcy proceeding as provided in subrule (A) must file notice of the bankruptcy proceeding in the pending state court action no later than 7 days after becoming subject to bankruptcy proceedings.

Alternatively, the Court could clarify that subsection (B) applies only to debtors and add a sentence to subsection (C) reminding creditors to review their obligations under federal law. This second option may look like this:



(B) Party Subject to Bankruptcy Proceeding. Any party in a pending state court action who is or becomes *a debtor in a* bankruptcy proceeding as provided in subrule (A) must file notice of the bankruptcy proceeding in the pending state court action no later than 7 days after becoming subject to bankruptcy proceedings.

(C) Other Parties. If a party to a pending state court action learns of a bankruptcy proceeding described in subrule (A) and notice of the bankruptcy proceeding has not previously been filed and served, the party that learned of the bankruptcy proceeding may file notice of the bankruptcy proceeding in the pending state court action. *Federal law may impose additional reporting obligations, and litigants should consult that law to determine whether there is a duty to report.*

Adopting one of these proposals may mitigate the ambiguity and risk in the proposed rule's language. Thank you for the opportunity to submit these proposals.

Very truly yours,

A handwritten signature in black ink that reads "Trent B. Collier". The signature is written in a cursive, slightly slanted style.

Trent B. Collier

January 31, 2023

Larry S. Royster  
Clerk of the Court  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

**RE: ADM File No. 2021-50 – Proposed Addition of Rule 2.421 of the Michigan Court Rules**

Dear Clerk Royster:

At its January 20, 2023 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-50. In its review, the Board considered a recommendation from the Bar's Civil Procedure & Courts Committee. The Board voted unanimously to support the proposed addition of Rule 2.421 to the Michigan Court Rules and to further recommend that the Court give consideration to amendments proposed by attorney Trent Collier in his December 16, 2022 letter.

Thank you for the opportunity to comment on this proposal.

Sincerely,



Peter Cunningham  
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court  
James W. Heath, President





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February 1, 2023

**VIA ELECTRONIC MAIL**

Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909  
[ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov)

**Re: ADM file No. 2021; Proposed New Michigan Court Rule 2.421**

Justices of the Michigan Supreme Court,

I write to provide my comments with respect to the proposed new Michigan Court Rule 2.421, which is aimed at providing notice to courts and litigants of a bankruptcy proceeding that affects a pending state court action.

I serve as the co-chair of the Bankruptcy & Restructuring Group at Taft, Stettinius & Hollister, LLP (formerly Jaffe Raitt Heuer & Weiss, P.C.). Substantially all of my practice consists of representing debtors, lenders, creditors' committees, unsecured creditors and fiduciaries in bankruptcy and other insolvency proceedings. In this capacity, I am frequently confronted with questions about the scope of the automatic stay. Indeed, I am regularly approached by my commercial litigation colleagues with questions about how a bankruptcy filing by a debtor impacts pending state court litigation involving the debtor's affiliates, insiders and/or guarantors.

Based on these discussions, I would like to make two observations. First, it is clear that there is, quite understandably, a great deal of confusion and uncertainty amongst non-bankruptcy attorneys regarding the scope of the automatic stay. Second, the bankruptcy filing by a debtor is all too frequently used improperly by non-debtors (*e.g.*, affiliates, insiders and/or guarantors) seeking to derail or delay litigation claims against them. It is from this perspective that I provide these comments.

I applaud the Court for proposing a rule that requires that notice be provided to the state court and litigants involved in a pending state court action when a party to that action commences a bankruptcy case. While such a requirement has informally existed for years, it is useful to expressly require that a debtor (and, if the debtor fails to do so, a non-debtor) provide notice of a bankruptcy filing to the court and litigants. This will help ensure that claims that should be stayed

due to a bankruptcy filing are, in fact, promptly stayed. It will also help ensure that issues with respect to the scope of the automatic stay are promptly identified and addressed.

Nevertheless, I write to join in the concerns raised by Michael Leib in his January 29, 2023 comments to the Court. I will not restate all of those concerns here. Rather, I will simply focus on what I believe is the primary issue with respect to the proposed court rule.

The proposed court rule, as currently drafted, is too broad. Instead of providing clarity about the scope of the automatic stay, it will only increase the confusion that already exists with respect to the impact of a bankruptcy filing on non-debtor entities. This confusion stems from the requirement in the proposed rule that a notice of bankruptcy filing must be filed when a party in a pending state court action is “an officer, director, or majority equity holder of a named debtor in a bankruptcy proceeding.” See Proposed MCR 2.421(A)(1)-(2).

The United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, provides both individual and corporate debtors with certain rights upon the filing of a bankruptcy petition. Chief among the rights afforded is the automatic stay, which is set forth in section 362. Section 362 provides debtors with protection against acts by creditors against the debtor itself, and the debtor’s estate. The automatic stay is by nature a broad protection for the debtor, covering substantially all judicial actions against a debtor that were or could have been brought before commencement of a bankruptcy case. The purpose of the automatic stay is to give the debtor a breathing spell from its creditors.

While the automatic stay is broad, its breadth is limited. *It applies only to debtors.* Case law has been absolutely clear on this point for decades. Indeed, the Sixth Circuit Court of Appeals stated forty years ago that: “It is universally acknowledged that an automatic stay of proceeding accorded by § 362 may not be invoked by entities such as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the Chapter 11 debtor.” *Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1196 (6th Cir. 1983). Limiting the benefits of the automatic stay to debtors is appropriate. To obtain such benefits, debtors are required to disclose their assets and liabilities and subject themselves to a rigorous and transparent process dictated by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

Despite the clarity of the above-referenced caselaw, there continues to be significant confusion about the scope of the automatic stay, particularly when the pending state court litigation includes claims against a debtor and its affiliates, insiders and/or guarantors. The bankruptcy filing by a debtor is all too frequently used improperly by such non-debtor entities as a tool to derail or delay litigation claims against them.

I fear that the language in proposed MCR 2.421(A)(2) that provides that the court rule would apply in “all pending state court actions in which a party is ... an officer, director, or majority equity holder of a named debtor in a bankruptcy proceeding” will cause courts and litigants to improperly conclude, upon the filing of such a notice, that claims involving such parties are stayed by a debtor’s bankruptcy filing. As noted, section 362 of the Bankruptcy Code does not impact such claims. In most cases, litigation claims against non-debtor entities can and should proceed, notwithstanding the automatic stay of claims against an affiliated debtor.