

# Inter Alia

*Among Other Things*

Spring 2010

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### Join us for the 3<sup>rd</sup> Annual Summit!

What a wonderful time of year in Michigan! We are well into spring, and the temperatures are starting to soar. Memorial Day is behind us, and it's finally time for the 3rd Annual Young Lawyers Section Summit. The Summit is June 4-6, 2010 at the glorious Grand Traverse Resort & Spa in Acme, Michigan. The list of presenters is our best yet. Chief Justice Marilyn J. Kelly is our lunch keynote speaker on Saturday. At our dinner dance Saturday evening we will present the Regeana Myrick Outstanding Young Lawyer award to David Campbell. We received more nominations this year than in the past several years combined! Young lawyers around the state are doing great work and giving back to their communities and our profession like never before. You can find more information on the Summit on the State Bar's website. If you have not attended any section events in the past, now is your chance! There are numerous events built into the Summit to mix, mingle, and network with other young lawyers around the state. It is an event not to be missed. If you cannot make it to the Summit, you will have chances throughout the summer to become or stay involved in our section. Most of our events are publicized on our website and via the email list compiled by the State Bar. Check it out! If you have any questions or just want to find out what we are all about, just give me a call! Wishing you a safe and happy summer,

Regards,

*Danielle*

## 2010 Regeana Myrick Outstanding Young Lawyer Award Recipient—David L. Campbell

By Carlos A. Escurel

In 1997, the State Bar of Michigan Young Lawyers Section (SBM-YLS) renamed their “Outstanding Young Lawyer Award” in honor of Regeana Myrick, who was an executive council member of the YLS. Regeana, a dedicated member of many bar associations and member of the YLS executive council, passed away in August of that year. Regeana was a graduate of Cranbrook Schools, the University of Michigan, and Detroit College of Law, and her dedication to public service spanned many years, while balancing her studies and the practice of law. She is remembered by her family, friends, and colleagues as a bright and charitable woman with many talents who was always mindful of those less fortunate than herself.

At the SBM-YLS 3rd Annual Young Lawyers Summit on Saturday, June 5, 2010, we will be presenting the Regeana Myrick Outstanding Young Lawyer Award to this year’s recipient that embodies Regeana’s selfless and scholarly legacy. On behalf of the SBM-YLS executive council, Mrs. Rebbie Myrick (Regeana’s mother) and Judge Denise Langford Morris, Oakland County Circuit Court, we are proud to present this year’s award to David L. Campbell.

David has achieved and accomplished more in his five-plus years of practice than most lawyers achieve in their lifetime. It is because of these achievements and accomplishments that David has been chosen as this year’s winner. David is an associate at Bowman and Brooke, LLP, in Troy, and he was chosen as this year’s recipient from a

large group of well-qualified nominees. As you will see, David truly embodies the spirit of the award named for an outstanding young lawyer in her own right, Regeana Myrick.

David exhibits the spirit, excellence, and dedication that the Regeana Myrick Outstanding Young Lawyer Award embodies and embraces. He is passionate about helping people and donates his time to helping those less fortunate through the Legal Aid and Defender Association. He also volunteers as legal counsel to his small town’s chamber of commerce, and has also served as a member of the Lakeshore Police Services board, which was tasked with providing civilian oversight and governance for his local police department. David is also an associate director of the Harrow and Colchester South Agricultural Society, which sponsors the Harrow Fair, a regional agricultural fair focused on educating urban residents on country life and farming. A prolific grant writer, David has helped raise more than \$100,000 to renovate a local veteran hall, build handicapped accessible playground equipment, and support development efforts for a regional agricultural fair focused on educating urban residents on country life and farming.

David continues to be active with his alma mater, University of Detroit Mercy School of Law (UDM), where he served on the Moot Court Board of Directors, is involved with UDM’s Mock Interview Program, and is a guest lecturer. He is currently chair of the Michigan Defense Trial Counsel’s (MTDC) Young Lawyer

Section, and also chaired and presented at the MDTC’s 2008 Civil Defense Basic Training. He is a volunteer at the Wayne Mediation Center, which primarily relies on pro bono mediators and provides low cost and court-referred mediation services to Michigan residents facing legal disputes. He also served as a judicial intern for the Michigan Supreme Court, and as a law clerk for the Michigan Attorney Grievance Commission, where he honed his litigation skills and complemented them with a strong understanding of appellate practice and professional ethics.

When not engaged in community or legal work, David enjoys traveling with his wife, Esther, a veterinarian, and recently spent two weeks touring China. David and Esther are expecting their first child in August, and they reside on a four-acre hobby farm with dogs, cats, chickens, and more than a dozen goats.

David was recognized by *Michigan Super Lawyers* magazine as a 2009 Rising Star for his work in the area of products liability defense. He is also licensed to practice law in Canada and has a strong desire to educate Michigan lawyers about the similarities and differences between American and Canadian law; his cross-border practice has been featured in both the *Detroit Legal News* and *Oakland County Legal News*. David has also published extensively on the issues of interest to Americans concerning Canadian law and practice, and he provides regular guest lectures at UDM on cross-border products liability law.

Past winners of the Regeana Myrick Outstanding Young Lawyer Award include the following individuals:

2009: Jade Edwards 2008: Jonathan N. Jilek 2007: Bridgette Sparkman 2006: Marla A. Linderman  
2005: Erika S. Julien 2004: Richard Bernstein 2003: Erika Butler-Akinyemi

# 3rd Annual Summit Grand Traverse Resort & Spa Acme, MI • June 4-6, 2010

Cost: \$55 after May 14

Register: [Online](#) or by [Mail/Fax Form](#)

Don't miss this opportunity to enjoy a weekend at the Grand Traverse Resort, network, and attend valuable and timely presentations.

Chief Justice Marilyn J. Kelly, Michigan Supreme Court, will deliver the keynote address during Saturday's lunch and Judge Langford Morris, Oakland County Circuit Court, will present the Regeana Myrick Outstanding Young Lawyer Award on Saturday evening.

Three lucky preregistered attendees will receive one free night's stay at the Grand Traverse Resort during the Summit. Names will be drawn during Saturday's dinner.

[View Agenda](#)

## Presenters

- Judge Stephen Borrello, Michigan Court of Appeals
- Thomas Cranmer, Miller Canfield Paddock & Stone (Opening/Closing Arguments)
- Judge Philip Rodgers, Jr., 13th Circuit Court (Sentencing Guidelines)
- Steven Kaplan, Macomb County Prosecutor's Office (Primary Exams)
- Referee John Kennedy, Macomb County (Abuse/Neglect and Delinquency Matters)
- Ashley Lowe, Thomas M. Cooley Law School (Overview of the Divorce Process)
- Brian Henry, State Bar of Michigan Real Property Law Section (Foreclosure Modification)
- David Berry, Director, graduate program in intellectual property law, Thomas M. Cooley Law School (Avoiding IP Pitfalls)
- Dawn Evans, State Bar of Michigan (TAON/Rule Changes)
- Joann Hathaway, State Bar of Michigan (Technology Tips)
- Jeffrey Ammon, Miller Johnson (Business Formation)

**Accommodations:** Book accommodations at the Grand Traverse Resort [Online](#) or by calling (800) 968-7352.

**Questions:** Contact Felicia Johnson at [fjohnson@co.wayne.mi.us](mailto:fjohnson@co.wayne.mi.us) or (313) 224-6459.

## Sponsors

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## “Introduction to Practicing Law in Washtenaw County” Seminar

The State Bar of Michigan Young Lawyers Section, in conjunction with the Washtenaw County Bar Association New Lawyers Section, conducted a seminar on Friday, April 16, 2010, at the 22nd Circuit Court in Ann Arbor. The seminar, “Introduction to Practicing Law in Washtenaw County,” served to introduce local and state attorneys to the practice of law in Washtenaw County, regardless of the number of years of legal experience. The seminar resulted from numerous requests for an “insider’s guide” into the various court divisions in Washtenaw County, as well from requests to learn techniques and best practices for establishing and maintaining a solo or small practice within Washtenaw County.

At the seminar:

- Judge John Corbett O’Meara discussed civility and proper decorum at the U.S. District Court for the Eastern District of Michigan in Ann Arbor;
- Magistrate Judge Colleen Currie of the 15th District Court in Ann Arbor, Probate Register and Referee Cynthia Bostwick of the Probate Court of Washtenaw County, and Judah Garber of the 22nd Circuit Court Friend of the Court each provided helpful tips for practicing at each specific court division;
- Attendees toured the Washtenaw County Courthouse in Ann Arbor;
- Attendees listened to a panel of local attorneys discussing issues involved with establishing and successfully operating a solo or small practice in Washtenaw County. The panel included local practitioners Guy Conti, Robert Dawid, Rosemary Frenza, and Erika Julien; and
- Attendees gathered for a postseminar networking reception at Vinology on Main Street.

The event was spearheaded by Lisa Hagan and Suzanne Wahl of Miller Canfield; Mark Jane of Butzel Long; and Bonnie Shaw of Brinks, Hofer, Gilson & Lione. Part of the proceeds from the seminar were donated to Legal Services of South Central Michigan. Our special thanks to everyone who participated at this well-attended event!



Cynthia Bostwick of the Washtenaw County probate court, giving the attendees a roadmap for practicing in the probate court.



Magistrate Judge Currie addressing the attendees with helpful tips for practicing before the 15<sup>th</sup> District Court.



The panelists (left to right) spoke to the attendees about establishing and operating a legal practice: Erika Julien, Rosemary Frenza, Robert Dawid, and Guy Conti.

All photos by Frank Weir, *Washtenaw County Legal News*

# Michigan Youth Leadership Summit

By Jennifer Harvey

On April 17, 2010, the Young Lawyers Section (YLS) presented the Michigan Youth Leadership Summit (MYLS), a program to inspire high school students to become leaders in their communities and make Michigan a better place for us all. MYLS featured Michigan leaders in national, state and local leadership roles including government, military and professional athletics. The event featured video appearances from leaders including Governor Jennifer Granholm, Detroit Mayor Dave Bing, and Oakland County Executive L. Brooks Patterson. Live appearances included Jiri Fischer of the Detroit Red Wings and U.S. Congressman Thaddeus McCotter. Other speakers included Assistant Wayne County Prosecuting Attorney Opolla Brown, Attorney Ray Cassar, future U.S. Marshall Bryant George, and Jericho Ministry Solutions Founder and Michigan Air National Guard Staff Sergeant Bryon D. Harvey. Students also enjoyed a live drummer, audience participation and Detroit Tigers and Red Wings giveaways.

The event was inspired by the American Bar Association's theme of "They Had a Dream, Too," which honors the young leaders of the civil rights movement. These brave young leaders stood for what was right, fought racial discrimination, and helped win. Similarly, the youth in Michigan are facing the adversity of a bad economy and must fight to make Michigan a better place. YLS stepped up to help give them tools they need to not only fight but win.

The event was sponsored by the Detroit Metropolitan Bar Association Barristers, Oakland Community College, Law Offices of Raymond Cassar, Harvey Legal Group and D. Augustus Straker Bar Association.

Bryant George



All photos by  
www.stopwatchimages.com



Joe Killian

Opolla Brown



Jiri Fischer



## CALLed to Lead



Bryon D. Harvey is a Staff Segreant in the Michigan Air National Guard and the Founder and Lead Ministry Consultant of Jericho Ministry Solutions. He is working on the dissertation of his PhD. [www.BryonHarvey.com](http://www.BryonHarvey.com)

Lawyers are leaders. Whether you spend your time in an office drafting contracts or in a courtroom advocating for your client, you are a leader. As a lawyer, you daily affect the fabric of our society. Lawyers chart the course of our nation through representing clients, interpreting and applying the laws of our country. The question, therefore, is not “Will you lead?” but, “How will you lead?” Will you choose to be an effective leader?

We have all seen many leaders throughout our lifetimes. Whether in business, government, arts or athletics, we have all seen some great leaders and some really poor leaders. I have had the opportunity to lead in a lot of different environments, including military, business management, and non-profits including churches. I have admittedly been a both good leader and a poor leader.

There are four essential characteristics to effective leadership. The great thing about these four characteristics is that they are not based on talent, genetics, or background. These four characteristics are qualities that you can choose to develop. The qualities are (1) Care relentlessly, (2) Act graciously, (3) Lead courageously, and (4) Learn continuously. This is your CALL to leadership.

### Care relentlessly.

A leader cares about the people being led. Lawyers have the opportunity to lead their clients and law practice subordinates. Although each practice has a focus and a mission, it cannot be just about goals and profit margins. As leaders, we must care about those we are leading. Otherwise, we are not leading; rather, we are manipulating.

Throughout history, people have tried to define leadership. Most never differentiate between strong leadership and manipulation. This is the difference: if you are just using people to accomplish a vision (no matter how noble) and you don't care about them as individuals, you are not a leader; rather, you are a manipulator.

This is not easy all the time. E. Christopher Johnson, Director of Cooley Law School's LL.M. program in Corporate Law and Finance, is a friend who often reminds me that ethics are the

cornerstone of the legal profession. Of course, lawyers consistently have the opportunity to use their influence to build a fair and just society or to exploit and hurt others. The key to acting ethically is caring about people. To ensure that we all have a just and fair society where the law works equally for all people, lawyers must genuinely care about people.

Great leaders care.

### Act graciously.

Several years ago I was part of a team that ran a major function for an inspection exercise in the Air Force. Our team truly was outstanding. Without a doubt, we were the best team that the inspectors saw that year. There were many people incredibly excited about the job the team had done – except for our team. The officer in charge took credit for the entire effort and never acknowledged the work of our team. Our morale went from an all-time high to an all-time low, as did our respect for this leader. Because he failed to act graciously, he also failed as a leader. Have you ever experienced anything like this?

Jiri Fischer, Director of Player Development for the Detroit Red Wings, noted the humility of former team captain Steve Yzerman. Yzerman spent his entire hockey career in Detroit and never put the spotlight on himself. He continuously emphasized the good of the team and the hard work of the team above and beyond his own efforts.

Leaders are often described by pop culture as “the man” or “the woman.” Leaders cannot be “the man” or “the woman.” By definition, a leader requires a team to implement the mission. If you are “the man” or “the woman” and do not require a team to accomplish the mission, you are not a leader. You may be a very talented individual, but if you are doing it alone you are not leading; you are just doing it all yourself. Nothing truly great has ever been accomplished by one person. Great things require great teams, which require great leaders who act graciously.

### Lead courageously.

Leadership can be a lonely experience. As leaders we feel like we live in a fishbowl. Everyone is waiting to see if we will swim or start float-

ing belly-up. It is tempting to stop leading courageously and start placating the people around us.

Earlier this year, I met with a church leadership team that experienced the negative impact of a former senior pastor who failed to lead courageously. While leading this church, the pastor was afraid of losing attendees for any reason. Therefore, he worked hard to placate the people and keep them comfortable. It got so bad that when anyone complained about an aspect of the church constitution the pastor would delete that portion. Ultimately, the failure to lead courageously led to an ugly church split and a church without a viable constitution or a pastor. Great leaders must lead courageously.

Lawyers must daily step up for the rights of their clients, but also know their loyalty first is as an officer of the court who must do what is right no matter the circumstances. Assistant Wayne County Prosecutor Opolla Brown worked on a case where charges were brought against a young man for home invasion. Although she could have bound the case over, she saw that the complaining witness twisted the circumstances and insisted on the prosecution in order seek revenge against the young man, who had consensual sex with her 19-year-old daughter. Ms. Brown did not know how this would impact her career, but she brought the appropriate information to the judge and had the case dismissed. Ms. Brown was commended by her superior, who also agreed. Lead courageously – so much rides on your decisions.

#### Learn Continuously.

Leaders are learners. Our American history books are filled with romanticized folklore of presidents who continuously learn, including Abraham Lincoln, Teddy Roosevelt and George Washington. When you stop learning, you should stop leading because you are no longer equipped to lead.

There are two aspects of learning that are vital to leadership. The first is personal effort. Bill Hybels, who leads a church of 20,000 in Chicago, notes, “Leaders are readers.” He encourages leaders to have a book with them at all times and continuously invest in themselves by reading. When leaders stop learning, they stop being effective in their leadership for a number of reasons. They get bound to the way things used to be. They start implementing new ideas with old systems that were effective then but are irrelevant now. As a leader you need to develop a learning plan, and I recommend that start with reading about the life of Abraham Lincoln.

The second aspect of learning requires you learning from your team. These people may be your supervisors, colleagues or subordinates. Regardless, everyone can bring something to the table, even if it is learning from each other’s mistakes.

There are four essential characteristics of effective leadership. Care Relentlessly, Act Graciously, Lead Courageously, and Learn Continuously. You have a choice now. As a lawyer you are a leader. The Young Lawyers Section saw a need for Michigan to rise from this economic crisis and chose to make a positive impact on the youth of Michigan with the Michigan Youth Leadership Summit. The Young Lawyers Section continuously offers programs to help other lawyers and the community.

How about you as a leader? Do you choose to be effective or ineffective? I’m calling you out today.

Heed this CALL to effective leadership. May you Care Relentlessly, Act Graciously, Lead Courageously, and Learn Continuously. And may you be the leaders that Michigan, America, and our world needs.

## 2010 State Bar of Michigan Election Information

It is time to vote in the 2010 State Bar of Michigan elections. This year, elections are being held for positions on the Board of Commissioners, Representative Assembly, Young Lawyers Executive Council, and the Judicial Tenure Commission.

All active members are eligible to vote in the Judicial Tenure Commission election. Eligibility to vote in the other contested elections is dependent upon your address of record. Your ballot will reflect the elections for which you are eligible to vote.

The primary means of voting in this year’s election is electronic. This process will allow all active members to vote securely online at the State Bar of Michigan website. The new process saves money, is more environmentally conscious, and will be more convenient for members.

SBM members who currently have e-mail addresses on file will receive an e-mail with internet voting instructions. SBM members who do not have an e-mail address on file will receive a paper ballot in the mail.

Paper ballots must be postmarked by June 15, 2010. Electronic voting ends at 12 midnight EST on June 15, 2010. Results of the elections will be posted on the State Bar of Michigan website in July.

If you know your member area login information, you can [vote now](#).

If you need assistance accessing the member area, follow these [simple instructions](#).

# A Judges' Brief for Effective Legal Writing: Good Advice for All Practitioners

By Nancy Caine Harbour

Nancy Caine Harbour, a former journalist, has been a Michigan trial attorney for over 25 years. She serves as a resource to help law firms design in-house professional development programs such as advocacy skills training. She also conducts legal writing seminars and does individual legal writing coaching. She can be reached at (734) 487-1161 or [nharbour@emich.edu](mailto:nharbour@emich.edu).

Lawyers are professional writers. As such, we must remember that there is a big difference between “thinking like a lawyer” and writing like one. As Floyd Abrams, New York trial attorney and a law and journalism professor, put it: “The *difficult task, after one learns how to think like a lawyer, is relearning how to write like a human being.*”

Legal writing calls into play the discipline of communication. As advocates, we must convince our audience through clear and concise writing. Our reader is not supposed to have to “translate” our writing attempt and plain English should not be a second language! “Simple,” you say? Not so. According to my informal (and admittedly unscientific) survey of some judges, many lawyers suffer from “a failure to communicate.”

As we analyze the law, construct our arguments, and employ our legal writing styles, here’s what the judges said we need to do:

- Be brief, concise and to the point. (Lawyers tend to put way too much in their briefs.)
- Avoid repetition.
- Cite accurately to the record and the case law.
- Format a brief with subheads so that it is easy to read.
- In other words, communicate effectively!

Of interest is that, independently, each judge identified these identical issues about the legal writing they see. Many of us may be tempted to assure ourselves that “This is old news. I know these writing concepts.” Yet, the members of the bench are reminding us that problems remain. We need to apply our writing tools more effectively as we simultaneously cope with the daily

deadlines of our practice and keep in mind that good legal writing is a “process.” It takes time and effort.

In encouraging clear and concise writing, the Hon. Damon J. Keith, United States Sixth Circuit Judge, notes that the most problematic legal writing error is the blurring of arguments in a brief. “Too often the muddle is a result of careless drafting or a failure to understand the legal issues. Another common error is improper citation, not just in terms of the Blue Book, but also to the wrong case. The concept of precedent is often misunderstood or altogether ignored; this is a fatal mistake.” Judge Keith suggests that lawyers *draft an outline* that follows the logical flow of the arguments *and stick to it*. “Following an outline will also reduce the likelihood that an argument is overlooked,” the Judge said.

Wayne County Circuit Court Judge Robert J. Colombo, Jr. reminds us that our legal writing has long-term effects. “You are trying to establish your credibility with the judge. You establish a judge’s confidence by citing accurately to the record,” he said.

The judges advise us to *avoid*:

- Attaching an entire transcript to any motion. Attach only the necessary pages of the record *and highlight* the pertinent quotations.
- Making the judge look up case law. Make sure the appropriate case law is cited.

“Nothing makes me more upset than to waste time reading an entire transcript. How am I supposed to know what portions you deem important?” said former Wayne County Circuit Edward M. Thomas. Wayne County Circuit Judge Wendy Baxter agrees. “Don’t make the Court



read a ‘bunch of junk,’” she cautions.

On any busy motion day, a judge must prepare for up to 50 motion hearings. That can involve reading as many as 100 briefs!

On the transactional side of legal practice, legal writing (e.g., drafting an opinion letter or contract) brings the identical legal writing rules into play. Good written communication is good written communication. The components of the product, be it a brief or an opinion letter, don’t change between litigation and transactional work.

For example, which of the following better communicates your message to your client?

Dear Client:

I thought you’d like to know about a new court decision that could affect how you record your shareholder minutes.

**-OR-**

Dear Client:

The United States Sixth Circuit Court of Appeals issued an opinion, on November 1, 2003, that discusses whether it is appropriate to use electronic video recording equipment, despite the fact that video recordings can be erased or doctored, at annual shareholder meetings, to keep the minutes of the meeting instead of more traditional ways like using court reporters or stenographers.

It is our job as advocates to grab our reader’s attention and then *communicate* our message using *plain English*.

Before starting to write, imagine yourself in a conversation with your intended audience. Assume that your client or the judge has only two

## Legal Writing Check List

11 TIPS FOR CLEAR, CONCISE, COHERENT WRITING

**PLAN**

1. **DEFINE YOUR OBJECTIVES.** Know your audience and communicate to it.
2. **WRITE AN OUTLINE.**
3. **GIVE YOUR READER A “ROADMAP.”** Divide your document into sections.

**WRITE**

4. **USE LOGICAL ORGANIZATION.** Put the most important points first.
5. **CHOOSE PRECISE WORDS.** Use PLAIN ENGLISH.
6. **CONTROL SENTENCE LENGTH.** Maximum 20 words is a good guide.
7. **STATE THE POSITIVE; STATE THE NEGATIVE POSITIVELY.**
8. **USE BASIC SENTENCE STRUCTURE:** subject, verb, object.
9. **USE THE ACTIVE VOICE.**

**EDIT**

10. **OMIT UNNECESSARY WORDS.** Use adjectives and adverbs sparingly.
11. **SIMPLIFY.** Eliminate “of” and wordy phrases.

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minutes to hear and understand your position — from the facts and argument to your stunning conclusion! Hopefully this imagined conversation forces a distillation of every aspect of the written communication and ensures that it is presented logically.

Another technique is to think of facing the jury for your opening statement. You don’t just stand there and blither, verbalizing your thoughts off the top of your head!

You organize your thoughts into a logical, understandable, and compelling presentation with a beginning, a middle, and an end. You do not want to bore the jury, so you use plain language to explain what you believe your evidence will show and to persuade the jury of your position. A written communication should be no different than an opening statement. Why would you want to smother our client or judge with verbiage presented unclearly or illogically? Instead, don’t lawyers want to grab their audience’s attention and then convince our reader, step by step, to follow our advice or position?

Clients have short attention spans *and* they are paying you for your analysis. A judge has limited time *and* is deciding your case. What more motivation do we need to be concise and effective?

## Faffing About

By Timothy D. Batdorf

Tim Batdorf is a lawyer, career coach, and the founder of Lawyer & Self™, which produces The Lawyer's Career Kit™—a self-coaching program for lawyers. For more information, visit [www.lawyerandself.com](http://www.lawyerandself.com).

Have you ever wasted time looking for a client file? Have you ever spent the better part of a day looking for a yellow sticky note that has a phone number you absolutely must have? Have you ever spent hours looking for notes from a client meeting that you know *should* be on the corner of your desk? The Brits have a wonderful saying for these moments. They call it *faffing about*.

If you answered “yes” to any of the prior questions, here’s some good news. You’re not alone. We all faff about, at least to some degree. But the difference between highly-productive attorneys and everyone else is the amount of time spent faffing. The more efficient you become, the less time you’ll waste.

The first step to becoming efficient is to clear up the clutter in your life. Clutter is anything that’s not where it’s supposed to be. Clutter is everywhere – on your desk or in your office, in your e-mail inbox, in your “to be filed” pile, etc. Believe it or not, most of your clutter is stored in your head. Consider all the things you think about everyday – on-going projects at the office and home, commitments you’ve made, communications, projects yet to be started, meetings, errands, health concerns, upcoming events and on and on.

To handle all the clutter, you need to get clear on what’s most important to you. To prioritize, you need to ask yourself: What’s important for me at work? With my significant other? With my family? With my friends? Financially? With my health? What else is important? Then ask, what are my priorities among those areas of my life?

For instance, if your two highest priorities are spending time with your family and billing hours at the office, it becomes much less important to spend an hour everyday gabbing at the office with a colleague down the hall. The free legal magazines you’ve saved (which you know

you’ll never read) become much less important to store. And there’s certainly no reason to waste time with needless e-mails and phone calls.

Once you have a good understanding of your priorities, you can now do two things that are essential to time management. The first is to start saying “no” to things that aren’t important. “No” is the most powerful weapon in the time management arsenal. You can say “no” directly or indirectly. Certain situations demand one approach or the other – and there are secrets to success for both.

The second is that you can sort through all the clutter. There are five possibilities for the clutter in your life:

1. trash it (literally or metaphorically);
2. file it for reference;
3. deal with it immediately;
4. deal with it later; or
5. delegate it.

If you decide to deal with it later, you’ll need to make sure that you have a system you trust to remind you what needs to be done. For most people, the basics of that system are a project list and calendar. If you choose to delegate, be sure to have a clear agreement with the person to whom you are delegating so you both know exactly what’s expected and by when.

So ask yourself right now: Are you doing your most important work? Do you even know what it is? Do you say “no” when you want to? Do you have a system you trust so that you can empty your head of all its clutter and think about what’s truly important to you? Start using these strategies. You’ll be gobsmacked by your success.

### Editor's Note:

This article originally appeared in the Summer 2004 issue of *Inter Alia*.

# Pocket Guide to the Michigan Trust Code

By Jennifer M. Harvey

The new Michigan Trust Code (MTC) found at MCL 700.7101 took effect on April 1, 2010. Some colleagues of mine snidely remarked that since the MTC began on April Fool's Day, we practitioners we undoubtedly in trouble. Actually, the MTC was drafted by the Michigan Trust Code Committee of the Probate and Estate Planning Section of the State Bar of Michigan working closely with the Michigan Bankers Association's Trust Counsel Committee. The drafting process took a thoughtful five years and was somewhat based upon the Uniform Trust Code, but also incorporated existing Michigan law to codify drafting and administration practices and address places where the law and usual practice standards were silent.

## Important areas for practitioners to note

It is essential that the estate planning practitioner become familiar with the MTC. This is the first time Trust law has been codified, and as such, practitioners must be aware of the new law and any adjustments that must be made to interviewing and advocating for their clients, Trust drafting and Trust administration. Some of the important areas for practitioners to note are that:

1. The MTC simply codified existing Michigan law and standard procedures in drafting and administration, with few exceptions.
2. Wills and Trusts are both treated as testamentary instruments, rather than past standards where only Wills treated as testamentary instruments and Trusts treated more like a contract.
3. Trustee intent often controls over wording (substance wins over form).
4. The MTC applies to all Trusts, regardless of when they were created.
5. The allocation of duties of Co-Trustees and acceptance and removal of Trustees are more specifically defined by the MTC.

6. The MTC creates the new standard of default rules applying to Trusts. Although the grantor can stray from some of these, the drafting attorney must be knowledgeable in this area to achieve the goals of the grantor.

## What does this mean to the trust lawyer's practice?

Practitioners differ on whether the MTC should have a significant impact on a lawyer's practice. Some argue that the new laws require a major overhaul to how a practitioner prepares trusts and accompanying estate planning documents; however, others insist that if a practitioner was meticulous in drafting prior to the MTC, then little would have to be modified. Practitioners working in the area of Trust administration must incorporate the MTC into their practice. Turning a blind eye can mean disaster for clients and their cases. Some practical things a lawyer must do in light of the MTC include:

1. Review thoroughly all definition, administrative, and Trustee duties/powers sections of Trusts to ensure that they comply with the MTC.
2. Update Trust language to ensure that any verbiage use complies with and quotes the MTC rather than relying on past terminology.
3. State specifically in the Trust whether it is modifiable or non-modifiable based on the MTC.
4. Comply with the MTC as to how to terminate or change a Trust, particularly if the Trust assets no longer meet a predetermined minimum threshold as defined by the grantor or otherwise.
5. Determine whether a trust protector has been established in a Trust pursuant to the MTC, whether intended by the drafter or not.



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6. Hone in on the intent of the grantor and his/her purposes in creating the Trust, and be clear in drafting based on these.
7. Know the standards for contested Trust settlement under MTC to potentially avoid judicial involvement in disputes.
8. Understand the rules of representation and using them to benefit your client.
9. Advise your co-trustee client of any new duties and responsibilities.

The MTC is no April Fool's Day prank; rather, it is now effective and here to stay. Frankly, it is a well-thought out statute designed to preserve Michigan law, codify existing standards, and clarify and complete any ambiguities in past practice standards. It will clearly tame and clarify most questions regarding trust drafting and administration, giving practitioners new tools and a codified standard for old tools to best represent their clients. Young lawyers in particular must have a keen awareness of the MTC should we want to pursue Trust drafting and administration in our respective practices. Only by immediately incorporating the MTC into our practices can we best serve our clients and their estate planning desires.

## **New Trust Account Overdraft Notice Rule (TAON) Takes Effect Sept. 15**

### **Trust Account Overdraft Notification**

On September 15, 2010, a new Michigan Rule of Professional Conduct—Rule 1.15A, known as the Trust Account Overdraft Notification (TAON) rule, will take effect. New Rule 1.15A, or TAON, serves to enhance enforcement of lawyers' ethical obligation to diligently safeguard client or third party funds as provided by MRPC 1.15—Safekeeping Property. Both lawyers and banks must perform implementation steps under TAON. Banks must sign a written agreement agreeing to comply with TAON. Lawyers must confirm that their bank is on the State Bar of Michigan-approved institution list and give written notice to their bank confirming each account that is a lawyer trust account, including both, IOLTA (Interest on Lawyers Trust Account) and non-IOLTA trust accounts as defined by MRPC 1.15. Further information, including standardized forms that may be used by banks and lawyers for the implementation steps, will be made available in the upcoming months. No steps need to be taken immediately by lawyers in anticipation of TAON.

[View MRPC 1.15A PDF](#)

## **New Opinion Approves Unbundling Legal Services**

The Professional Ethics Committee has determined in RI-347, issued April 24, 2010, that, so long as a Michigan lawyer complies with the Michigan Rules of Professional Conduct and other law, the lawyer may, without appearing in a proceeding or otherwise disclosing or ensuring the disclosure of the lawyer's assistance to the court or to other counsel and other parties, assist a pro se litigant by giving advice on the content and format of documents to be filed with the court, including pleadings, by drafting those documents for the litigant, by giving advice about what to do in court, or any combination of these.

[View RI-347 PDF](#)