

Order

Michigan Supreme Court
Lansing, Michigan

January 20, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2019-36

Amendment of Rule 16
and Addition of Rule 20
of the Rules Concerning the
State Bar of Michigan

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

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 16 and addition of Rule 20 of the Rules Concerning the State Bar of Michigan are adopted, effective May 1, 2021.

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

Rule 16 Unauthorized Practice of the Law

Sec. 1. The State Bar of Michigan is hereby authorized and empowered to investigate matters pertaining to the unauthorized practice of law and, with the authority of its Board of Commissioners, to file and prosecute actions and proceedings with regard to such matters.

Sec. 2. The State Bar of Michigan has the power to issue subpoenas to require the appearance of a witness or the production of documents or other tangible things concerning its investigation of an unauthorized practice of law complaint. Subpoenas may be prepared by the investigative staff of the State Bar of Michigan and served after approval by the Chairperson of the Standing Committee on Unauthorized Practice of Law. The subpoena may be served by certified mail, return receipt requested, and delivery restricted to the addressee or via hand delivery. The subpoena may also be served by e-mail, if the person to be served agrees.

A person who without just cause, after being commanded by a subpoena, fails or refuses to appear or produce documents or tangible things after being ordered to do so is in contempt. The State Bar of Michigan may initiate a contempt proceeding under MCR 3.606 in the circuit court for the county where the act or refusal to act occurred.

A subpoena issued pursuant to this rule shall be sufficient authorization for seeking the production of documents or other tangible things outside the State of Michigan. If the

deponent or the person possessing the subpoenaed information will not comply voluntarily, the proponent of the subpoena may utilize MCR 2.305(C) or any similar provision in a statute or court rule of Michigan or of the state, territory, or country where the deponent or possessor resides or is present.

Sec. 3. A complainant or witness is absolutely immune from suit for statements and communications transmitted solely to State Bar staff and their agents, the Standing Committee on the Unauthorized Practice of Law or the State Bar of Michigan Board of Commissioners or given in the course of an investigation of an unauthorized practice of law complaint. State Bar staff and their agents, the Standing Committee on the Unauthorized Practice of Law, and the State Bar of Michigan Board of Commissioners are absolutely immune from suit for conduct arising out of the performance of their duties concerning unauthorized practice of law complaints.

Sec. 4. Notwithstanding the confidentiality provisions of SBR 19, the State Bar of Michigan may disclose information concerning an unauthorized practice of law complaint and information obtained during the investigation of an unauthorized practice of law complaint to persons and entities authorized and empowered to investigate and prosecute unauthorized practice of law complaints in other states.

[NEW] Rule 20 Client Protection Fund

Sec. 1. The State Bar of Michigan, through its Board of Commissioners, is authorized and empowered to administer and investigate Client Protection Fund claims and to supervise the Client Protection Fund, which shall include, but not be limited to, receiving, holding, managing, disbursing monies from, and recouping monies paid by the Client Protection Fund.

The Client Protection Fund is a program established to reimburse clients who have been victimized by lawyers who violate the profession's ethical standards and misappropriate funds entrusted to them.

Sec 2. All members are bound by the Client Protection Fund Rules.

Sec. 3. The State Bar of Michigan has the power to issue subpoenas to require the appearance of a witness or the production of documents or other tangible things concerning its administration and investigation of Client Protection Fund claims. The subpoena may be served by certified mail, return receipt requested, and delivery restricted to the addressee or via hand delivery. The subpoena may also be served by e-mail or other electronic form, if the person to be served agrees.

A person who without just cause, after being commanded by a subpoena, fails or refuses to appear or produce documents or tangible things, after being ordered to do so is in contempt. The State Bar of Michigan may initiate a contempt proceeding under MCR 3.606 in the circuit court for the county where the act or refusal to act occurred.

A subpoena issued pursuant to this rule shall be sufficient authorization for seeking the production of documents or other tangible things outside the State of Michigan. If the deponent or the person possessing the subpoenaed information will not comply voluntarily, the proponent of the subpoena may utilize MCR 2.305(C) or any similar provision in a statute or court rule of Michigan or of the state, territory, or country where the deponent or possessor resides or is present.

Sec. 4. A complainant or witness is absolutely immune from suit for statements and communications transmitted solely to State Bar staff and their agents, the Standing Committee on the Client Protection Fund or the State Bar of Michigan Board of Commissioners or given in the course of an investigation of a Client Protection Fund claim. State Bar staff and their agents, the Standing Committee on the Client Protection Fund, and the State Bar of Michigan Board of Commissioners are absolutely immune from suit for conduct arising out of the performance of their duties and responsibilities regarding the Client Protection Fund.

Sec. 5. Notwithstanding the confidentiality provisions of SBR 19, the State Bar of Michigan may disclose information concerning Client Protection Fund claims and information obtained during the investigation of Client Protection Fund claims to persons and entities authorized and empowered to investigate and administer Client Protection Fund claims in other states.

Staff Comment: The amendment of Rule 16 and addition of Rule 20 of the Rules Concerning the State Bar of Michigan clarify the process of investigation of unauthorized practice of law claims, and codifies procedures for the Client Protection Fund. These amendments were requested by the State Bar of Michigan.

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



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.

January 20, 2021

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

Clerk