

# MICHIGAN SUPREME COURT

## PUBLIC HEARING

January 20, 2021

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**CHIEF JUSTICE BRIDGET MCCORMACK:** Good morning, everyone. Welcome to our administrative public hearing. We have speakers on a number of items. The first one is item number 2 on our agenda, which is proposed amendment of Rule 16 and the proposed addition of Rule 20 of the Rules Concerning the State Bar of Michigan that would clarify the process of investigation of the unauthorized practice of law claims and outline procedures for the client protection fund. We have one speaker who has been authorized on this item and it is attorney Alecia Chandler on behalf of the State Bar of Michigan. Miss Chandler you will have three minutes. You can see your timer there and we might have questions for you. Thank you for being here. You may proceed

**MS. ALECIA CHANDLER:** Thank you. Good morning, Chief Justice and Justices of the Supreme Court. My name is Alecia Chandler. I am the professional responsibility programs director for the State Bar of Michigan. One of my responsibilities for the State Bar is leading the client protection fund and managing its investigations. So I'd like to comment today on the subpoena power and immunity provisions in our proposal concerning State Bar Rules 16 and 20. Regarding subpoena power to effectively protect the public, the State Bar of Michigan's unauthorized practice of law and client protection fund need the ability to issue subpoenas to support our investigation of claims. Without this authority, the unauthorized practice of law staff is forced to rely upon cooperation from witnesses and parties to obtain any documents to corroborate allegations or defenses. This becomes an issue when investigating businesses with employees engaged in the unauthorized practice of law. Almost universally the business alleges the non-licensed attorney—or non-licensed individual is not an employee but is an independent contractor and the business has no knowledge that the individual isn't licensed. In this situation, staff is forced to rely upon the cooperation of the business or the individual suspected of engaging in UPL to provide relevant agreements that will help determine those relationships between the employer and the employee. So in circumstances like these where people with relevant documents have absolutely no interest in cooperating with the investigation, the State Bar needs to have the power to subpoena the documents to adequately investigate the claims and determine if the business really is a proper defendant in that matter. Similarly, in the client protection fund world, in our investigations, in many cases, we have to rely on the Attorney Grievance Commission to obtain any documents that we may need because we don't have the authority to do that. But oftentimes their investigation is limited and we need records outside of that time frame. For example, in a recent case one attorney was disbarred for a federal conviction completely unrelated to the misappropriation and so the AGC's investigation was limited to that conviction, did not include all of the records that we could have used. And those records would have supported payments to the attorney which would allow appropriate reimbursement to the claimant. In another situation, the attorney had long-term widespread

theft but the Attorney Grievance Commission only had to investigate a short time frame. So we didn't have records from before or after when they were investigating those claims. Additionally, when the attorney accused of misappropriating the funds is deceased the Attorney Grievance [Commission] has no authority unless a receivership is established to investigate the respondent. So we have no ability to obtain those vital records to fully investigate our claims.

**CHIEF JUSTICE MCCORMACK:** Thank you, Miss Chandler. Let me see if anybody has any questions for you. If any Justice has a question you can just unmute and ask. I'm not going to go one-by-one. I don't see any so thank you very much for being here. We appreciate your contributions.

**MS. CHANDLER:** Thank you.

**CHIEF JUSTICE MCCORMACK:** We had a speaker endorsed for item number 5 but I do not see Mr. Lawrence in the Zoom room so I am going to move to item number 6, which is the proposed amendment to MCR 2.108 that would provide a time frame for a responsive pleading when a motion for a more definite statement is denied. And we have attorney Garret Haddon endorsed to speak on this item. Mr. Haddon, good morning. You may proceed.

**MR. GARRET HADDON:** Good morning. Good morning, Justice McCormack and the other Justices of the Court. When I read this proposed amendment, I was very happy to see this change and for two main reasons. First—My name is Garret Haddon. I currently practice in transactional work as a business attorney at Bodman PLC in private practice but previously I have some litigation experience and when I was working in litigation I actually had an instance where MCR 2.108 came into play. And I asked a partner-shareholder whether or not this particular rule applied to MCR 2.115 because it did not explicitly mention it but it did explicitly mention 2.116. And so my response from him was, it did have a degree of ambiguity. And basically the amendment here clarifies the rule and it allows for attorneys that do practice in this area to be able to have a definite well-stated rule that they can rely upon when looking for these types of procedural matters. Right? So that's one point. But the other is a very much more pragmatic thing that I've seen where—I've had individuals approach me with instances where a lot of domestic legal matters are taking place, where maybe one individual is given appointed legal counsel and the other is not. And so another reason why this amendment is a step in the right direction for the Michigan Court Rules is because it makes it easier to navigate the courtrooms for someone who may not have appointed counsel. And of course it's best if someone has an attorney to represent them. But if they do not then having the Michigan Court Rules easier to navigate serves the underlying purpose of judicial efficiency. And so a lot of times we see timing coming into play in the pleadings where an individual may be served with pleadings they receive paper in mail and now they have a hearing in seven days or 14 days. And so while they're going through those pleadings if they want to ask for a more definitive statement, this amendment would make it clear and explicit the time frame that they would then have if that request was denied before they would have to in turn respond with their initial response to the pleadings.

**CHIEF JUSTICE MCCORMACK:** Thank you, Mr. Haddon. Let me see if anybody has any questions for you. Any Justice who has one can just unmute and ask. Okay. Thank you very much for being here and for your contributions. We appreciate it.

**MR. HADDON:** Thank you.

**CHIEF JUSTICE MCCORMACK:** I believe we have one more person who is entering from the waiting room and I think is here by phone, and is it attorney Frank Lawrence?

**ZOOM MODERATOR:** That person is now gone so he's no longer in the waiting room.

**CHIEF JUSTICE MCCORMACK:** Okay. So we are then concluded. This was a quick administrative public hearing. We want to thank our speakers and we are adjourned for today.

**ZOOM MODERATOR:** Chief—I'm sorry, Chief Justice, I do see he is in now. I will need to unmute him.

**CHIEF JUSTICE MCCORMACK:** Okay. Let's do that and see if it's Mr. Lawrence.

**ZOOM MODERATOR:** I have asked to unmute him. He has to mute himself, though.

**CHIEF JUSTICE MCCORMACK:** There we go. Is this Mr. Lawrence on the phone?  
[Pause] The person who's just been admitted to the public hearing, can you please identify yourself?

**COURT OF APPEALS CHIEF JUDGE CHRISTOPHER MURRAY:** Oh, Chief Justice, it's Chris Murray. I'm just here, in case there was any questions, with Mary Beth.

**CHIEF JUSTICE MCCORMACK:** Thank you, Chief Judge Murray. We didn't—we thought you might be our missing speaker because we had no identification but because we don't have a speaker on item number 5, we appreciate you and Mary Beth both being here. But we will adjourn for today. We know where to find you so we know how to questions anytime we want. So thank you.

**CHIEF JUDGE MURRAY:** All right. Have a great day.

**CHIEF JUSTICE MCCORMACK:** Okay. Take care everyone. We are now formally adjourned.