

MJI Webinar

On-Demand

What Judges Need to Know About the SBM's Interim Administrator Program

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MICHIGAN JUDICIAL INSTITUTE TRAINING MODULE ONE

A RESOURCE FOR JUDGES: SBM INTERIM ADMINISTRATOR PROGRAM

PRESENTED BY THE STATE BAR OF MICHIGAN



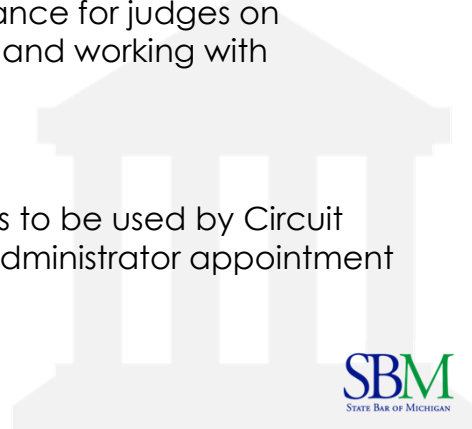
ABOUT THESE PRESENTATIONS

Module One

- Reviews the requirements of new additions State Bar Rule 21 and MCR Subchapter 9.300 and offers guidance for judges on handling cases with affected attorneys and working with appointed interim administrators.

Module Two

- Discusses the processes and procedures to be used by Circuit Court judges when making an interim administrator appointment



MANDATORY INTERIM ADMINISTRATOR PLANNING

Amended State Bar Rule 2 and new State Bar Rule 21

- SBR 2(B) adds an additional requirement for private practice attorneys to designate an interim administrator as required by SBR 21.
- SBR 21 details that new requirements for attorneys and the State Bar of Michigan. Private practice attorneys must designate an interim administrator and a person with knowledge.

MCR subchapter 9.300 Interim Administrator

- The court rules detail the appointment process, duties of interim administrators, reporting requirements, and compensation.



MANDATORY INTERIM ADMINISTRATOR PLANNING

Requirements for Private Practice Attorneys

Designate an interim administrator

- Individual attorney or Law Firm that meets requirements
- Participate in the State Bar of Michigan Interim Administrator Program

Identify a person with knowledge

- Someone who knows where the actual and virtual keys are located. Does not have to be an attorney



DETERMINING IF INTERIM ADMINISTRATOR MAY BE REQUIRED

MCR 9.301(A) “Affected attorneys” are temporarily or permanently unable to practice law

- Resigned
- Abandoned the practice
- Disbarred or suspended
- Disabled or incapacitated
- Disappeared
- Transferred to disability inactive status
- Imprisoned
- Died

A proceeding must commence for the appointment of an interim administrator. Judicial officers may not appoint an Interim Administrator *sua sponte*.

A triggering event does not necessarily mean that an interim



GUIDANCE FOR JUDGES

Prior to Appointment of an Interim Administrator

- Adjourn dates
- Allow time for client to secure subsequent counsel. Do not require another attorney to “step in” if the hearing is important to the adjudication of the case to prevent injustice
- Consider interim orders that may be appropriate
- Contact the State Bar of Michigan Interim Administrator Program
 - Limited confidentiality
 - SBM will notify interim administrator



GUIDANCE FOR JUDGES

Duty to Report Unprofessional Conduct

- Contacting the State Bar of Michigan is not the same as reporting disciplinary action. If an attorney has engaged in unprofessional conduct, a judge's duty under Canon 3(B)(3) IS NOT MET by contacting the State Bar of Michigan Interim Administrator Program.

Canon 3(B)(3)

"A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."



RESOURCES FOR ATTORNEYS

Lawyers & Judges Assistance Program

- Offers services to law students, bar applicants, lawyers, and judges facing a mental health or substance use concern as well as those looking to maximize their overall well-being. Helpline: **(800) 996-5522**

SOLACE

- Helps members of the legal community (and their immediate families) in critical need because of a sudden catastrophic illness, injury, or event. **michbar.org/SOLACE**

Client Protection Fund

- Reimburses clients who have been victimized by lawyers who violate the profession's ethical standards and misappropriate funds entrusted to them. **michbar.org/client**

APPOINTMENT OF AN INTERIM ADMINISTRATOR

Petition for Appointment of an Interim Administrator

A petition must be filed in the county where the affected attorney lives or maintains a law office and it must set forth facts proving:

- The attorney for whom an interim administrator is being requested is an affected attorney
- The appointment of an interim administrator is necessary to protect the interests of clients or the affected attorney
- The proposed interim administrator is qualified

See **Module Two** for details on appointment and administration
MCR 9.305



APPOINTMENT OF AN INTERIM ADMINISTRATOR

Special Scenario for Law Firm Attorneys

Circuit court appointment is NOT NEEDED if the affected attorney is part of a law firm and:

- The law firm is the designated interim administrator
- The law firm has at least one other active MI Attorney in good standing that is able to competently represent clients
- Each client gives their express written consent to represent

Judges may continue cases with the consent of clients. Judges may choose to remind clients that they control who represents them prior to proceeding.

MCR 9.303



GUIDANCE FOR JUDGES

Cases with Appointed Interim Administrators

- Adjourn dates with a written order to protect clients' interests
- When allowed, consider allowing amendments to pleadings or setting aside orders against clients for actions that may have been the fault of their incapacitated attorneys
- Communicate with the interim administrator, especially regarding scheduling issues. However, Canon 3(A)(4) applies, and ex parte communication should be avoided
- Encourage counsel to be gracious, despite animosity — neither asked to be in this scenario



ABOUT INTERIM ADMINISTRATORS

Duties and Powers of the Interim Administrator

- Take custody of files and records
- Take control of accounts, including IOLTA and law firm operating accounts
- Identify pending matters
- Notify clients, courts, and counsel of interim administrator's appointment
- Deliver all files, funds, and other property pursuant to clients' directions
- Protect the interests of the clients, the public, and, to the extent possible, the affected attorney

MCR 9.307



ABOUT INTERIM ADMINISTRATORS

Interim administrators are NOT automatically the attorney of record for clients

- Interim administrators may appear on behalf of clients to protect their interests in non-substantive matters, e.g. securing adjournments
- To represent clients in pending matters, the interim administrator MUST receive informed written consent from clients
- Informed written consent MUST include an acknowledgement that the client is not obligated to retain the interim administrator
- Judges may remind clients that they are not required to be represented by the interim administrator or the interim administrator's recommendation

MCR 9.317

ABOUT INTERIM ADMINISTRATORS

Protection of Client Information and Privilege

- Attorney client privilege exists, even though "[t]he appointment of the Interim Administrator does not automatically create an attorney and client relationship between the Interim Administrator and any of the Affected Attorney's Clients."

MCR 9.309



RULE 21 RESOURCES



Online Member Area: michbar.org/MemberArea

- Private practice attorneys fulfill the requirements here. Includes step-by-step instructions



Rule 21 website: michbar.org/Rule 21

- Learn more about Rule 21. Includes link to the Supreme Court order, answers to Frequently Asked Questions, and additional succession planning tools.



Contact Us: IAP@michbar.org or (517) 346-6355

- State Bar of Michigan staff is available to assist

MICHIGAN JUDICIAL INSTITUTE TRAINING MODULE TWO

PROCESS AND PROCEDURE: SBM INTERIM ADMINISTRATOR PROGRAM

PRESENTED BY THE STATE BAR OF MICHIGAN



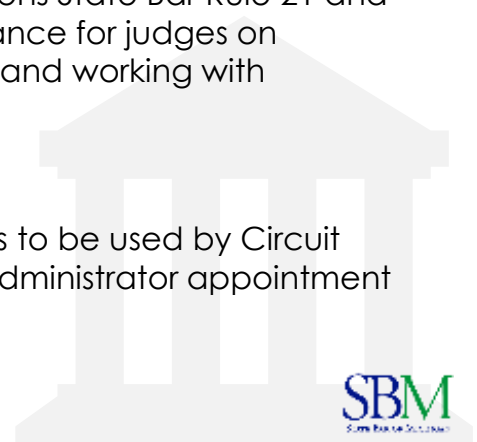
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Module One

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Module Two

- Discusses the processes and procedures to be used by Circuit Court judges when making an interim administrator appointment



COMMENCEMENT OF PROCEEDINGS FOR APPOINTMENT

Ex Parte Petition required for appointment of an interim administrator and must set forth facts proving:

- The attorney for whom an interim administrator is being named must be an affected attorney
- The appointment of an interim administrator must be necessary to protect the interests of clients or the affected attorney
- The proposed interim administrator must be qualified. An interim administrator is required to obtain and retain professional liability insurance that covers conduct performed as interim administrator. MCR 9.315 is not a requirement for private practitioners to obtain legal malpractice insurance

MCR 9.305



COMMENCEMENT cont.

Ex Parte Petition: SCAO Form CC529 *all listed SCAO forms are optional*

- Filed by the interim administrator, which can be an attorney, a law firm, or the State Bar of Michigan

- 2 ☐ _____ was designated by the Affected Attorney to manage their practice as a Designated Interim Administrator if the attorney were to become unexpectedly unable to practice law as set forth in MCR 9.301.
- ☐ _____ is listed in the State Bar of Michigan's list of attorneys willing to serve as Interim Administrators and has been matched to serve as an Interim Administrator on behalf of the Affected Attorney.
- ☐ The State Bar of Michigan's staff has been identified to serve as Interim Administrator under attorney supervision on behalf of the Affected Attorney.

- Must have a verification of facts or be accompanied by an affidavit of a person having personal knowledge of the facts

MCR 9.305



COMMENCEMENT cont.

Proper Venue

- The county where the affected attorney lives/last lived or where they maintain/last maintained a law office

MCR 9.305



STARTING APPOINTMENT PROCEEDINGS

Service of the Petition

Petition and supporting documents must be served on:

- Alleged affected attorney if their whereabouts are known or the affected attorney's estate, if applicable
- Any fiduciary for the affected attorney, if one has been appointed
- **IF** the petition was filed by the designated interim administrator, then also to the State Bar of Michigan at IAP@michbar.org,

MCR 9.305(A)(3)



APPOINTING AN INTERIM ADMINISTRATOR

Special Scenario for Law Firm Attorneys

Circuit court appointment is NOT NEEDED if the affected attorney is part of a law firm and:

- The law firm is the designated interim administrator
- The law firm has at least one other active MI Attorney in good standing that is able to competently represent clients
- Each client gives their express written consent to represent

Judges may continue cases with the consent of clients. Judges may choose to remind clients that they control who represents them prior to proceeding.

MCR 9.303



APPOINTING AN INTERIM ADMINISTRATOR

Required Findings for Entry of Order

Petitioner set forth the required facts proving by a preponderance of the evidence that

- The attorney for whom an interim administrator is an affected attorney
- The appointment of an interim administrator is necessary to protect the interests of clients or the affected attorney
- The designated interim administrator is qualified

NOTE: The court must appoint the designated interim administrator unless good cause exists to appoint a different interim administrator (or co-interim administrators).

MCR 9.305(B)



APPOINTING AN INTERIM ADMINISTRATOR

Order of Appointment: SCAO Form CC530

Order has immediate effect upon entry unless the court deems otherwise and authorizes the interim administrator to all the following:

- Take custody of and act as signatory on any bank or investment accounts, safe deposit boxes, and other depositories maintained by the Affected Attorney in connection with the Law Firm, including all lawyer trust accounts, escrow accounts, payroll accounts, operating accounts, and special accounts
- Disburse funds to clients of the Affected Attorney or others entitled thereto
- Take all appropriate actions with respect to the accounts

Orders tailored to fit affected attorney's needs or powers granted under prior agreement with interim administrator and affected attorney may be approved using judicial discretion



APPOINTING AN INTERIM ADMINISTRATOR

Notice of Appointment: SCAO Form CC531

- Must include affected attorney's name and address as well as the interim administrator's name, business address, phone number, email, and P#

Service of the Notice

- Notice must be sent to affected attorney (or affected attorney's estate) and the affected attorney's fiduciary, if applicable
- **IF** petitioner is designated interim administrator, notice must be sent to the State Bar of Michigan (notice shall be published in the *Michigan Bar Journal* and on the SBM Website)
- **IF** SBM is the petitioner, notice must be sent to designated interim administrator



MCR 9.305(C)

APPOINTING AN INTERIM ADMINISTRATOR

Objections to Appointment: **SCAO Form CC532**

- Any objections must be filed within 14 days from the date the notice of appointment was served.
- Any interested person may file an objection
- An objection *does not* automatically stay the order appointing an interim administrator; however, the court may order that the appointment be stayed pending resolution of any objection(s)

MCR 9.305(D)



SERVING AS INTERIM ADMINISTRATOR

Duties and Powers of the Interim Administrator

- Take custody of files and records
- Take control of accounts, including IOLTA and law firm operating accounts
- Identify pending matters
- Notify clients, courts, and counsel of interim administrator's appointment
- Deliver all files, funds, and other property pursuant to clients' directions
- Protect the interests of the clients, the public, and, to the extent possible, the affected attorney

MCR 9.307



SERVING AS INTERIM ADMINISTRATOR

Interim administrators are NOT automatically the attorney of record for clients

- Interim administrators may appear on behalf of clients to protect their interests in non-substantive matters, e.g. securing adjournments
- To represent clients in pending matters, the interim administrator MUST receive informed written consent from clients
- Informed written consent MUST include an acknowledgement that the client is not obligated to retain the interim administrator
- The interim administrator may purchase the law firm only upon the circuit court's approval of the sale

MCR 9.317 and 9.307(F)

SERVING AS INTERIM ADMINISTRATOR

Protection of Client Information and Privilege

- Attorney client privilege exists, even though “[t]he appointment of the Interim Administrator does not automatically create an attorney and client relationship between the Interim Administrator and any of the Affected Attorney's Clients.”

MCR 9.309



SERVING AS INTERIM ADMINISTRATOR

Reporting Requirements SCAO Form CC533

- The interim administrator *shall* file an inventory of the affected attorney's interest-bearing trust accounts within 35 days of entry of the order of appointment
- The interim administrator *may* file an inventory of all assets under their control
- A final written report and final accounting of the administration *shall* be filed with the court prior to closure and served on the State Bar of Michigan (No SCAO form available)
- The State Bar of Michigan may petition for an accounting if it has reason to believe the affected attorney's affairs are being mismanaged

MCR 9.307(C)

SERVING AS INTERIM ADMINISTRATOR

Conflicts of Interest

If the interim administrator determines that there is a conflict of interest between the interim administrator and an affected attorney's client, the interim administrator must

- Notify the client, the State Bar of Michigan, and the circuit court that made the appointment
- Take all appropriate action under the Michigan Rules of Professional Conduct

MCR 9.307(D)



SERVING AS INTERIM ADMINISTRATOR

Compensation for Interim Administrators

Compensation and reimbursement is available, except as otherwise provided by agreement between affected attorney and interim administrator.

Interim administrators may be entitled to reasonable compensation as well as reimbursement for actual and reasonable costs incurred, including but not limited to:

- Cost to maintain staff, office, and operation of the law firm
- Employment of attorneys, accountants, or others retained by the interim administrator to carry out the interim administrator's duties

MCR 9.313



SERVING AS INTERIM ADMINISTRATOR

Requests for Compensation: **SCAO Form CC534**

Except as otherwise provided by agreement between the interim administrator and the affected attorney or the affected attorney's estate:

- Interim administrators may file a motion with the circuit court to request compensation and/or reimbursement — which will be paid by the law firm. If funds are not available, the interim administrator may make a claim against the estate in probate court
- Claims must include an accounting of all receipts, disbursements, and distributions of money and property of the law firm.
- Interim administrators acting on behalf of the State Bar of Michigan's IAP may seek compensation and/or reimbursement from the SBM **only** as a last resort

MCR 9.313

CIRCUIT COURT JURISDICTION

Award of Compensation: SCAO Form CC535

- The court may enter a judgment awarding compensation and/or reimbursement of expenses to the interim administrator against the law firm, the affected attorney, or any other available source as the court may direct
- Judgment will be a lien upon all property of any applicable law firm or affected attorney, retroactive to the date of filing the petition for appointment

MCR 9.313(C)



CIRCUIT COURT JURISDICTION

Client Files and Property

- The circuit court has jurisdiction over all the affected attorney's client files, records, and property
- The circuit court may make any appropriate orders to protect the interests of the clients of the affected attorney
- To the extent possible and not inconsistent with the protection of clients, the circuit court may make any appropriate orders to protect the interests of the affected attorney — including, but not limited to, orders relating to the delivery, storage, or destruction of client files

MCR 9.311



CIRCUIT COURT JURISDICTION

Interim administrator purchasing the affected attorney's law firm

- The interim administrator may purchase the Law Firm *only* upon the circuit court's approval of the sale.
- If interim administrator plans to purchase the law firm, representation of affected attorney's clients shall not occur, other than to temporarily protect the interests of the client, until the interim administrator has concluded the purchase.

MCR 9.307(F) and MCR 9.317



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