

# Commentator

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Although “pandemic fatigue” is a creeping reality for many, staying current on the CDC recommendations and OSHA regulations is crucial for business owners and families alike. In this issue, Ron Nixon, highlights many important parts of two general orders entered by the MDHHS after the Michigan Supreme Court decision overturned Governor Whitmer’s executive orders.

As the pandemic drags on, we are battling Coronavirus burnout by staying focused on the positive and celebrating our wins. In this manner, we are pleased to congratulate Robert Zawideh on his recent client success defending a widow’s inheritance. We also celebrate many of our colleagues for their inclusion on the 2021 Best Lawyers list and for being among Michigan’s 2020 Super Lawyers.

Best Wishes,

## MDHHS Issues "Epidemic Orders" After Executive Orders Overturned

RONALD S. NIXON



On October 2, 2020, the Michigan Supreme Court rendered an opinion that overturned Governor Whitmer’s numerous executive orders issued

in response to the pandemic. Despite the ruling, employers and businesses operating during the pandemic should not assume that this decision eliminated all restrictions on their operations. For instance, the opinion had no effect on CDC recommendations or state and federal OSHA regulations, the latter of which still have the force of law and are very similar to the

executive orders. Moreover, state and local health departments have authority to impose restrictions to control spread of COVID-19 and have issued orders to fill in the void that some believe the court created.

In the week following the decision, Robert Gordon, the Director of the Michigan Department Health and Human Services, issued several orders under seemingly broad authority granted by the Public Health Code to prohibit gatherings to control epidemics. Two of these orders, one issued on October 5 the other on October 9, 2020, apply generally and have the following effects that closely resemble the previous executive orders:

### **Face Coverings Are Still Required.**

Businesses, government offices, schools, childcare organizations, and other operations must not allow indoor gatherings unless they require individuals to wear a face covering. A “gathering” is defined as “any occurrence where two or more persons from more than one household are present in a shared space.” Business owners are still required to post signs informing customers of their obligation to wear a mask and not to enter if they have recently been sick. A business owner may accept a verbal representation that one of the exceptions to mask wearing exists (e.g., cannot medically

tolerate it) but may not assume an exception exists because someone enters their establishment without a mask.

### Attendance Limitations.

Attendance at indoor and outdoor gatherings is limited as follows:

- **Indoor Gatherings:** Indoor gatherings of up to 10 people are permitted. Masks are strongly recommended in residential settings and required in non-residential settings. Indoor gatherings of more than 10 and up to 500 people are permitted at non-residential venues if each person wears a mask and attendance is limited to 20 percent of fixed seating capacity (25 percent in Region 6) or 20 persons per 1,000 square feet of floor space (25 in region 6).
- **Outdoor Gatherings.** Outdoor gatherings of up to 100 people are permitted. Masks are strongly recommended in residential settings and required in non-residential settings. Outdoor gatherings of more than 100 and up to 1,000 people are permitted at non-residential settings if each person wears a mask and attendance is limited to 30 percent of fixed seating capacity or 30 persons per 1,000 square feet of floor space.
- **Recreational Sports and Exercise Facilities,** such as gyms, recreation centers, bowling alleys, roller and ice rinks, and trampoline parks, may not exceed 25% of total occupancy limits. Gatherings are not allowed if it is not possible to maintain a distance of six feet between workout stations.
- **Professional Sports and Entertainment Facilities,** such as arenas, cinemas, concert halls, performance and sporting venues, stadiums and theaters, can have gatherings only if the venue can ensure there is six feet of distance between patrons not of the same household.
- **Pools.** Outdoor pools must not exceed 50% of capacity limits and indoor pools must not exceed 25% of capacity limits.
- **Casinos (non-tribal).** Non-tribal casinos may not exceed 15% of total occupancy limits.

**Capacity Limitations.** In addition to attendance limitations, gatherings at various types of facilities have the following capacity restrictions:

- **Public Facilities,** such as retail stores, libraries, and museums, may not exceed 50% total occupancy limits.
- **Food Service Establishments,** such as restaurants and bars, are limited to 50% of normal seating

capacity, must maintain six feet between each party, must close indoor common areas where people congregate (dance floors, pool tables, and the like), and may not serve alcohol onsite except where parties are seated and separated from one another by at least six feet and do not intermingle.

- **Recreational Sports and Exercise Facilities,** such as gyms, recreation centers, bowling alleys, roller and ice rinks, and trampoline parks, may not exceed 25% of total occupancy limits. Gatherings are not allowed if it is not possible to maintain a distance of six feet between workout stations.
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- **Casinos (non-tribal).** Non-tribal casinos may not exceed 15% of total occupancy limits.

**Workplaces.** The new orders adopt similar employee protections in the workplace:

- Workplace gatherings are prohibited if they are not necessary to perform job duties, if employees without face coverings cannot maintain six feet of distance from others, if employees without face coverings occupy the same shared space, or if they include

any person who is subject to a CDC recommendation or an order of a health professional to isolate or quarantine or who is awaiting test results after experiencing symptoms of COVID-19.

- All businesses that require their employees to gather with other persons must conduct a daily entry self-screening for all employees or contractors entering the workplace, including a questionnaire covering symptoms of COVID-19 and suspected or confirmed exposure to the virus.
- Employees who experience COVID-19 symptoms may not return to work unless they are cleared to do so by their health care professional, or the following conditions are met:
  - 24 hours have passed since the resolution of fever without medication, and
  - 10 days have passed since their symptoms first appeared or since they were administered a positive COVID-19 test, and
  - Other symptoms have improved.

The safest recommendation for all employers and businesses open to the public is to continue to maintain procedures already put in place under the executive orders for protecting employees and customers while making modest adjustments that are permitted or required by the new orders being issued. While these orders are different in some respects, they are not very different.

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# Client Success Story

## Zawideh Defends Widow's Inheritance



Petitioner, Mr. Zawideh's client, married her late husband ("the decedent") in November 2002, after a two-year engagement during which they lived in different states. Two days before their wedding in Michigan, her then fiancé picked up the Petitioner from the airport and told her for the first time that his aunt, the matriarch of his family, who employed decedent and controlled his finances, wanted decedent and petitioner to sign a prenuptial agreement that would leave Petitioner with nothing in the event of the decedent's death. The alternative was that the aunt would not allow them to get married. This demand put Mr. Zawideh's client under tremendous pressure to sign the agreement. To get Petitioner to sign the prenup, decedent assured her that it was merely a formality and that it was just something to please his aunt. Given the stress of the moment, Petitioner relied on decedent's word and signed the prenup after meeting with decedent and an attorney who represented both the decedent and his aunt. To complicate matters, decedent and petitioner signed a postnuptial agreement one year later that also left Petitioner with nothing in the event of either divorce or decedent's death.

The aunt passed away 12 years later, leaving everything to the decedent. After the aunt's death, decedent and Petitioner agreed that neither the prenuptial nor the postnuptial agreements would be honored or enforced. But before they took action on that agreement, decedent's health began to dramatically deteriorate. By December of 2016, decedent was diagnosed with kidney failure and was on dialysis three times per week. In August of 2017, decedent instructed his attorney that he "wanted to take care of" both petitioner and his nephew. Unfortunately, the attorney took no action on decedent's instructions until December of 2017, after decedent was gravely ill and admitted to the hospital. The attorney then spoke to his law partner and advised him that decedent wanted to update his estate plan and advised him about the prenuptial agreement. The partner waited until decedent was well enough to have the discussion, which he did on December 28, 2017 in decedent's hospital room. Unfortunately, the partner did not get into specifics because the Petitioner and the nephew were present. Although he did mail to decedent at his home an estate planning template for decedent to fill out, the decedent died within the week and never made it home.

Immediately after his death, several family members, many of whom had not spoken to or seen the decedent in years came forward to – as one of them testified – "enforce [decedent]'s wishes." Robert Zawideh aggressively attacked the circumstances of the signing of the two agreements and sought to prove that, regardless of those circumstances, the decedent and the petitioner verbally agreed to dispense with them. Significantly, there existed an approximately 15 year old deposition transcript where decedent testified to ownership of a large asset not disclosed in the prenuptial agreement. After two years of litigation, 11 depositions, extensive discovery and multiple cross motions for summary disposition, the parties agreed that, instead of receiving nothing, Petitioner will receive approximately 1/3 of her late husband's \$3.1 million dollar estate.

## Seminars

### Attorney Martella Presenting at Legus International Fall Meeting

Kemp Klein attorney Christopher Martella and Damian Cavaleri of Hoguet Newman Regal & Kenney, LLP will be speaking at the Legus International Fall Meeting on the effects of COVID-19 on the practice of law. The presentation is titled *"Zooming" through COVID-19: Pandemic Parodies, Processes, Privacy and Best Practices from the Trenches*. This year's meeting will be held via Zoom on Tuesday, November 10 and can be attended by Legus Members.

### Jenney and Ringler Presenting Webinar for Lorman Education Services

Brian Jenney and Kate Ringler will be presenting a live webinar titled *Basics of Advanced Medical Directives in Estate Planning* for attorneys and estate planners on January 21, 2021 at 1:00pm. The webinar is hosted by Lorman Education Services and will cover the basics of drafting Advanced Medical Directives and supporting documents for clients.



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## Firm News

### Schut Selected Vice President of the Detroit Bar Association Barristers Section

Attorney Morgan Schut was recently selected to fill the role of Vice President of the Barristers' E-Board for the Detroit Bar Association for 2020-2021. The Barristers Section focuses on community service and historically, is the most active section of the Detroit Bar Association. Ms. Schut has been a Barristers Section board member since 2018.

## Recent Recognition

### Kemp Klein Attorneys Among Best Lawyers in America

Kemp Klein Law Firm celebrates William B. Acker, C. Leslie Banas, Richard D. Bisio, Cynthia E. Brazzil, Joseph P. Buttiglieri, Ralph A. Castelli, Jr., Mark R. Filipp, George W. Gregory, Brian R. Jenney, Christopher R. Martella, Alan A. May, Norman D. Orr, Thomas C. Rauch, Brian H. Rolfe, Stuart Sinai, Amy A. Stawski, Thomas V. Trainer, Michael D. Umphrey, and Robert S. Zawideh for being selected by their peers for inclusion in The Best Lawyers in America®2021 (Copyright 2020 by Woodward/White, Inc., of Aiken, SC). In addition, Kate L. Ringler was included in the inaugural edition of the Best Lawyers: Ones to Watch.

### Kemp Klein Attorneys Among Michigan's Super Lawyers

Kemp Klein congratulates William B. Acker, C. Leslie Banas, Joseph P. Buttiglieri, Ralph A. Castelli, Jr., Mark R. Filipp, George W. Gregory, Brian R. Jenney, Alan A. May, Brian H. Rolfe, Amy A. Stawski, and Thomas V. Trainer as 2020 Super Lawyers (among the top 5% of attorneys in Michigan).