

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SHIAWASSEE

**KARL W. MANKE and KARL
MANKE MAIN ST. BARBER &
BEAUTY SHOP**

Respondents/Appellants,

-vs-

**MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY
AFFAIRS, BUREAU OF PRO-
FESSIONAL LICENSING, BOARD
OF BARBER EXAMINERS,**

Petitioners/Appellees.

**PETITION FOR REVIEW/CLAIM OF
APPEAL AND PROOF OF SERVICE**

FILE NO: 21- _____-AA

LARA Case No: 17-20-001179

LARA Case No: 17-20-001181

HON. MATTHEW J. STEWART

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Karl W. Manke and Karl Manke Main St. Barber & Beauty Shop hereby claim an appeal from the final order and decision of the Michigan Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, Board of Barber Examiners (LARA), entered on March 29, 2021, issuing fines in the amount of \$9,000.00 against their occupational licenses. This case involves constitutional and statutory interpretation challenges.

NOW COME the petitioners/appellants, KARL W. MANKE AND KARL MANKE MAIN ST. BARBER & BEAUTY SHOP, by and through their attorneys, Kallman Legal Group, PLLC, pursuant to MCR 7.119, MCL 24.301 et. seq., and Article VI, Section 28, of the Michigan Constitution of 1963, and hereby petition this Honorable Court for review and appeal of the Final

KALLMAN LEGAL GROUP, PLLC

Order entered March 29, 2021 (Exhibit A), by LARA, Michael Draminski, Manager, and based upon the Hearing Report by ALJ Stephen B. Goldstein, issued March 1, 2021 (Exhibit B), and in support thereof states as follows:

1. This matter is an appeal from a contested case where the legal issue is whether Mr. Manke's barber and barbershop licenses should be fined because of alleged violations of the Barber Code as set forth by the ALJ in the Hearing Report.

2. Karl W. Manke is a licensed barber in Shiawassee County, Michigan (License Number 17-01-009405) who operates Karl Manke Main St. Barber & Beauty Shop (License Number 17-02-055705).

3. He has operated his barber business for 60 years without any complaints or adverse action against his licenses.

4. LARA and the Board of Barber Examiners (hereinafter "Agency") are charged with the oversight and licensing of all barbers and barbershops in Michigan. They are acting pursuant to MCL 24.201 et. seq. and MCL 339.101 et. seq.

5. Appellate review is authorized pursuant to MCL 24.301 and 303, and MCR 7.119.

6. MCL 24.303(1) permits this Petition for Review/Claim of Appeal to be filed in Mr. Manke's county of residence. Therefore, jurisdiction and venue are appropriate in this court.

7. Governor Whitmer issued numerous Executive Orders (EO) in 2020 requiring certain unfavored businesses to shut down and for individuals to stay at home.

8. Governor Whitmer's EOs allowed certain favored businesses to remain open while denying Mr. Manke the opportunity to operate his business under the same safety protocols as the businesses that were permitted to remain open.

9. The Governor's EOs issued after April 30, 2020, were declared illegal, unlawful, and unenforceable by the Michigan Supreme Court on October 2, 2020.

10. LARA's actions against Mr. Manke all arose because of alleged violations of Governor Whitmer's EOs.

11. The Agency improperly found that Mr. Manke had sanitary violations and his protest at the Michigan Capitol in May, 2020, violated the law.

12. Both the United States and Michigan Constitutions protect Mr. Manke's free speech rights (U.S. Const., Am. I; Const. 1963, art. I, §5) and right to due process under the law (U.S. Const., Am. XIV; Const. 1963, art. I, § 17).

13. Mr. Manke has a protected liberty interest in his right to live without arbitrary governmental interference with his liberty interests.

14. LARA's conduct deprives Mr. Manke of his Constitutional rights as outlined herein.

15. Pursuant to MCR 7.119(H), for all the reasons stated above, the Agency decision was incorrect for the following reasons:

- a. The agency acted beyond the scope of its authority and/or jurisdiction;
- b. The agency violated constitutional and statutory requirements;
- c. The agency issued its decision which was not supported by competent, material, and substantial evidence on the whole record;
- d. The agency acted in an arbitrary and capricious manner and it was clearly an abuse or unwarranted exercise of discretion; and
- e. The agency affected Respondent through other substantial and material errors of law.

16. Pursuant to MCR 7.119(H), for all the reasons stated above, the Agency violated both the U.S. and Michigan Constitutions, many of its own standards, procedures, policies, and

state statutes in not carrying out a proper investigation and making its determination, all of which constitutes an unlawful procedure which materially prejudiced Mr. Manke's rights.

17. Respondent/Appellant requests the opportunity to fully brief these issues and have oral argument pursuant to MCL 24.304(3).

WHEREFORE, Mr. Manke respectfully requests that this Honorable Court:

- A. Reverse and rescind LARA's final order issuing fines against both of his licenses;
- B. Find that the fines violate Mr. Manke's constitutional and statutory rights as set forth above;
- C. Grant them oral argument in this matter;
- D. Order respondent to pay Mr. Manke's costs, expenses and attorney fees so wrongfully incurred; and
- E. Grant such other and further relief as appropriate.

Dated: April 6, 2021.

/s/ David A. Kallman
David A. Kallman
Attorney for Mr. Manke & his Barbershop

PROOF OF SERVICE

David A. Kallman hereby states and affirms that on the 6th day of April, 2021, he did serve a courtesy copy of the foregoing Petition for Review/Claim of Appeal, and attached Exhibits, upon the Assistant Attorney General at her address as listed above in the caption by e-mail.

Dated: April 6, 2021.

/s/ David A. Kallman
David A. Kallman
Attorney for Mr. Manke & his Barbershop

From: [David Kallman](#)
To: [MOAHR-GA](#); [Stephen Kallman](#); [Waskiewicz, Katie \(AG\)](#); [Brya, Michelle \(AG\)](#); [Leary, Patricia \(LARA\)](#); [Anderson, Marcie \(LARA\)](#); [Erickson, Timothy \(AG\)](#); [Goldstein, Steve \(LARA\)](#)
Subject: Certified Record and Transcript Request, 20-008989 / 20-008990 BPL v Manke
Date: Tuesday, April 6, 2021 10:16:00 AM

Good Morning,

I am writing to request that the certified record in the Manke cases (20-008989 / 20-008990) be prepared and sent to the Shiawassee Circuit Court. I am also requesting that transcripts for all hearings in this matter be prepared. If you have any questions or require anything further, please let me know.

Thank you,

David A. Kallman
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Attorney at Law

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