

Disambiguational ode to grievance commission's proposal to amend MCR 9.106.

I.

Calling forfeiture restitution is dotty.
Worse than calling a golf cart a Maserati.
The same goes for the word *fine*--and *penalty*, too.
There is no seat for them in restitution's pew.

Restitution, a useful term of art legal,
should not be a snark that can elude an eagle.
Progeny of an old equitable action,
its misuse would be a Supreme's distraction.

II

Restitution for more than an actual loss
can't be given by the Supremes even as boss.
They said as much in *McKinley*¹ and *Garrison*²
The Restatement supports this apt comparison.³

III.

Judicial power to a lay board? Big mistake!
One that the Supremes should eternally forsake.
There's more to be said about the commission's pap,
but the morning has gone; it is time for my nap.⁴

July 27, 2014

Philip A. Gillis

-
- 1 People v. McKinley, 147391 (Mich. 6-26-2014). Footnote 6 cites federal statutory law that limits restitution to the actual loss.
- 2 People v Garrison,, 495 Mich. 362 (2014).
- 3 *Restatement of restitution and quasi-contracts*, § 1, comment e. American Law Institute (1936).
Restatement of restitution and unjust enrichment, 3d, ALI (2011). I can't cite sections. Now on my 90th trip around our sun, I no longer buy season tickets or update textbooks. However, Douglas Laycock, *Restoring restitution to the canon*, 110 Michigan law review 929 (April, 2012), covers it well.
- 4 Thoughts while dozing.
- The court may **impose** fines and costs but the legislature **sets** them. For example, MCL 600.1715 says: "Except as otherwise provided **by law**, punishment for contempt may be . . ."
 - *Quaere*, does an integrated bar change things? Where is Allan Falk when you need him; writing letters to the editor or, more likely, off playing in some bridge tournament?
 - The *Websters* all say that a fine is punishment and so is a penalty.
 - The proposal is incompatible with MCR 9.105, itself hardly a piece of art.
 - Leaving the Due Process of Law issues for others to address, I am going back to my nap.