MICHIGAN
BAR JOURNAL
SEPTEMBER 2026

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- Practicing in a Sovereign Space: Opportunity and Complexity in Tribal Transactions
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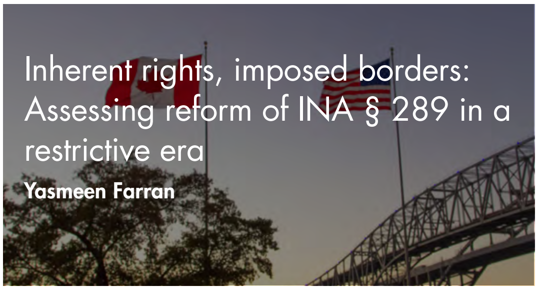

OF INTEREST

MICHIGAN
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SEPTEMBER 2026 • VOL. 105 • NO. 08

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COLUMNS

NOTICES

MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals in January and July of each year from when the complaint was filed as is compounded annually.

For a complaint filed after Dec. 31, 1986, the rate as of July 1, 2026, is 3.959%. This rate includes the statutory 1%.

A different rule applies for a complaint filed after June 30, 2002, that is based on a written instrument with its own specific interest rate. The rate is the lesser of:

13% per year, compounded annually; or

The specified rate, if it is fixed — or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see https://www.michigan.gov/taxes/interest-rates-for-money-judgments.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.

DUTY TO REPORT AN ATTORNEY'S CRIMINAL CONVICTION

All Michigan attorneys are reminded of the reporting requirements of **MCR.9120(A)** when a lawyer is convicted of a crime

WHAT TO REPORT:
A lawyer's conviction of any crime, including misdemeanors. A conviction occurs upon the return of a verdict of guilty or upon the acceptance of a plea of guilty or no contest.

WHO MUST REPORT:
Notice must be given by all of the following:
1. The lawyer who was convicted;
2. The defense attorney who represented the lawyer; and
3. The prosecutor or other authority

WHEN TO REPORT:
Notice must be given by the lawyer, defense attorney, and prosecutor within 14 days after the conviction.

WHERE TO REPORT:
Written notice of a lawyer's conviction must be given to **both**:

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PNC Center
755 W. Big Beaver Road, Suite 2100
Troy, MI 48084

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333 W. Fort St., Suite 1700
Detroit, MI 48226

SBM
State Bar of Michigan

BOARD OF COMMISSIONERS MEETING SCHEDULE

NOVEMBER 20, 2026, ACME
JANUARY 22, 2027
MARCH 5, 2027 (IF NEEDED)
APRIL 16, 2027
JULY 23, 2027
SEPTEMBER TBD

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MEMBER SUSPENSION FOR NONPAYMENT OF DUES

This list of active attorneys who are suspended for nonpayment of their State Bar of Michigan 2025-2026 dues is published on the State Bar's website at michbar.org/generalinfo/pdfs/suspension.pdf.

In accordance with Rule 4 of the Supreme Court's Rules Concerning the State Bar of Michigan, these attorneys are suspended from active membership effective Feb. 15, 2026, and are ineligible to practice law in the state.

For the most current status of each attorney, see our member directory at directory.michbar.org.

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$ 1,750,000 Macomb County premises liability jury verdict
$ 1,000,000 Motorcycle accident settlement

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April 2027

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Matthew R. Newburg

CIRCUIT 57
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NEWS & MOVES

ARRIVALS & PROMOTIONS

VERONICA SHAYKHET has joined Butzel as an associate in the firm's Troy office.

LEADERSHIP

ARTURO ALFARO, with Plunkett Cooney, was appointed to serve as a member of the Oakland County Bar Foundation's board of trustees.

JOHN MCWILLIAMS has been elected by the board of directors of The Model T Ford Club International to serve as general counsel.

MICHAEL B. STEWART, managing partner with Fishman Stewart PLLC, has been named to the Engineering Society of Detroit's College of Fellows.

PRESENTATIONS, PUBLICATIONS & EVENTS

MDTC will host a General Liability webinar on August 11, 2026.

MDTC will host its Annual Golf Outing on September 11, 2026

Have a milestone to announce? Send your information to News & Moves at newsandmoves@michbar.org.

IN MEMORIAM

STEPHEN F. ADAMINI, P10031, of Marquette, died April 29, 2026. He was born in 1945, graduated from University of Michigan Law School, and was admitted to the Bar in 1970.

NANCY L. BAGGOTT, P31598, of Murphysboro, Ill., died June 7, 2026. She was born in 1944 and was admitted to the Bar in 1980.

HON. ARCHIE C. BROWN, P30360, of Ann Arbor, died June 25, 2026. He was born in 1951, graduated from University of Detroit School of Law, and was admitted to the Bar in 1979.

DANIEL S. COOPER, P12201, of Bonita Springs, Fla., died July 9, 2026. He was born in 1930, graduated from Wayne State University Law School, and was admitted to the Bar in 1957.

ALAN G. DAVIS, P27830, of Canton, died May 27, 2026. He was born in 1951, graduated from Wayne State University Law School, and was admitted to the Bar in 1977.

JEFFREY P. DECOSTER, P53535, of Bloomfield Hills, died June 11, 2026. He was born in 1968, graduated from Detroit College of Law at Michigan State University, and was admitted to the Bar in 1995.

THOMAS G. HARDY, P14638, of Birmingham, died April 5, 2025. He was born in 1937, graduated from Detroit College of Law, and was admitted to the Bar in 1964.

HARVEY I. HAUER, P14749, of Bloomfield Hills, died May 27, 2026. He was born in 1940, graduated from Wayne State University Law School, and was admitted to the Bar in 1967.

KEVIN J. KRAUSHAAR, P33248, of Ocala, Fla., died May 10, 2026. He was born in 1955, graduated from University of Detroit School of Law, and was admitted to the Bar in 1981.

MARTIN BLASE MEAD, P38746, of Grand Rapids, died July 3, 2026. He was born in 1960, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1986.

ROBERT H. PATTERSON, P43277, of Coleman, Wis., died April 19, 2026. He was born in 1954, graduated from University of Wisconsin Law School, and was admitted to the Bar in 1990.

ALAN B. POSNER, P27981, of Santa Barbara, Calif., died April 29, 2026. He was born in 1951, graduated from UCLA School of Law, and was admitted to the Bar in 1977.

FREDERICK J. PROST, P19117, of Rochester Hills, died June 19, 2026. He was born in 1936, graduated from Detroit College of Law, and was admitted to the Bar in 1962.

HON. DIANE M. RAPPLEYE, P48973, of Jackson, died May 18, 2026. She was born in 1960, graduated from Thomas M. Cooley Law School, and was admitted to the Bar in 1993.

PAUL R. RENTENBACH, P19366, of Grosse Pointe Shores, died January 11, 2026. He was born in 1945, graduated from Harvard Law School, and was admitted to the Bar in 1972.

JOHN P. ROONEY, P25152, of East Lansing, died November 8, 2022. He was born in 1932 and graduated from Harvard Law School.

THOMAS A. STOTZ, P33290, of Mount Clemens, died June 18, 2026. He was born in 1956, graduated from Wayne State University Law School, and was admitted to the Bar in 1981.

DONALD D. UNWIN, P21680, of West Bloomfield, died May 23, 2026. He was born in 1935, graduated from Detroit College of Law, and was admitted to the Bar in 1963.

JOHN M. WRIGHT, P22571, of Swartz Creek, died May 5, 2017. He was born in 1923, graduated from University of Michigan Law School, and was admitted to the Bar in 1948.

In Memoriam information is published as soon as possible after it is received. To notify us of the passing of a loved one or colleague, please email barjournal@michbar.org.

FROM THE PRESIDENT

LISA J. HAMAMEH

Keep building

This spring, a pair of mourning doves built a nest at my house. I watched them build it, settle in and care for their young. I worried when crows and blue jays came too close and cheered when the young squabs left the nest.

I assumed that was the end of it. I even cleaned their abandoned nest out of the gutter and wondered if I would see them again next year.

Except, much to my surprise, they came back *this* year. In fact, they returned again and again to nest at my house, to raise their young, and, not much later, to begin again. Despite the challenges, despite even losing some of their young to predators, we watched as five broods came and went.

The female rarely left the nest, and the male was always nearby – watching and protecting. These mourning doves' resilience was inspiring — so was their persistence, devotion, and teamwork. (Did you know female *and* male mourning doves produce "crop milk" for their hatchlings?)

Perhaps my newfound fascination with backyard birds is simply a sign that, as a Gen Xer, I have reached that age when birdwatching suddenly becomes appealing. I tend to think, though, that my interest was also tied to the many lessons I've learned over this past year serving as your president of the State Bar of Michigan. Through this work, I learned so much about our profession, about the State Bar's many resources, and about our responsibility to one another.

I have been keenly aware throughout my term that these are challenging times for the legal profession and for the institutions lawyers have sworn to uphold. Judicial independence, public confidence in our institutions, and the rule of law cannot be taken for granted. Our Lawyer's Oath is not ceremonial: it represents a commitment each of us made to support the Constitution, maintain respect for courts of justice, and conduct ourselves with integrity.

Those commitments matter most when they are tested.

Resilience does not mean pretending that challenges do not exist. It means continuing to tend to the things that matter despite them. That is one reason I believe so deeply in the State Bar of Michigan.

Our members practice in different areas of law and different parts of the state. We come from different backgrounds and experiences. We hold different opinions and points of view. We will not always agree with one another — nor should we — but we are members of the same profession and bound by common responsibilities. There is power in that connection, particularly at a time when it can be easy to focus on the things that divide us.

I have had the privilege of speaking to hundreds of attorneys at the annual Probate Institute, receiving the Legacy Award from the National Arab American Bar Association, celebrating the New Year with members of the Michigan Asian Pacific American Bar Association, walking in a St. Patrick's Day parade with the Incorporated Society of Irish American Lawyers, watching future members in action as a volunteer at the statewide mock trial finals, and talking with attorneys in the Upper Peninsula about the shortage of lawyers available to meet their communities' needs.

I know now, better than ever before, how important it is for members of our profession to make connections with one another, to see beyond our differences, to work together, and to lift one another.

I also know firsthand what can happen when other people lift you.

My own path to the presidency began because a fellow commissioner encouraged me to take a step into leadership that I never would have considered on my own. Even after I was elected an officer of the State Bar, I worried about what lay ahead. Confidence came slowly.

It came from doing the work. It came from listening and learning. It came from working alongside other presidents, commissioners, and State Bar staff who were willing to invest in me, educate me, encourage me, and trust me with responsibility.

My appreciation for those gifts made me determined to do the same for those who will fill this role in the years ahead. Every few weeks throughout my term, I have emailed the other officers with details about where my duties have taken me, the events I have attended, remarks I have delivered, and lessons I have learned along the way. I wanted them to see what this job looks like and, hopefully, make the path a little easier for those who come next.

The mentorship I received also reminded me how much a few kind words can mean. We don't always know when someone is questioning themselves, struggling, or simply having a difficult day. Telling someone that we appreciate them costs us nothing; to them, it can mean everything.

That kind of support strengthens individual lawyers, but I believe it also strengthens our profession.

This year has convinced me that the rule of law, lawyer well-being, mentorship, professionalism, and service are not separate ideas. They depend on one another.

The rule of law depends on lawyers willing to stand up for it, and a strong legal profession depends on lawyers willing to support each other. It depends on our willingness to invest in those coming behind us — not by expecting them to follow in our steps, but by giving them the support and confidence to build their own path.

The strength of the State Bar of Michigan will never rest with one president, one Board of Commissioners, one Representative Assembly, or one generation of lawyers. It rests with the members of the State Bar of Michigan — more than 46,000 attorneys with different experiences, perspectives, practices, and ideas who nevertheless share responsibility for this profession and for the system of justice we serve.

There will be challenges. There will be times when institutions we value are tested, when the work feels particularly difficult, and when something we have worked hard to build feels less certain than it once did.

Our job is to keep building and looking after each other, just like those mourning doves did.

As my term as president of the State Bar of Michigan ends, I leave office with tremendous gratitude — for the people who invested in me, for the members I have had the privilege to meet, and for the opportunity to serve this profession.

I began this year thinking a great deal about what I hoped to accomplish as president. I end it thinking much more about what all of us can accomplish for one another.

Others did that for me. I hope I have done it for others. And I hope you will, too.

PRACTICING IN A SOVEREIGN SPACE

Photo credit: The Nottawaseppi Huron Band of the Potawatomi

Opportunity and complexity in tribal transactions

BY ANNA M. BRUTY AND PATRICK R. BERGIN

Transactions involving Indian tribes present both significant opportunity and distinct legal complexity. In Michigan, and across the country, tribal nations are engaged in a wide range of sophisticated economic development initiatives, including gaming and hospitality, renewable energy, infrastructure, real estate, and emerging industries. These projects often involve substantial capital investment and long-term collaboration with non-tribal partners.

Unlike conventional commercial transactions, however, agreements with tribal nations operate within a unique legal and governmental framework shaped by tribal sovereignty, federal law, and, in many cases, overlapping state and local interests. Issues such as sovereign immunity, jurisdiction, choice of law, and tribal regulatory authority are not peripheral considerations — they are often determinative of whether an agreement is enforceable and whether a business relationship can succeed over time.

In Michigan, these dynamics are particularly visible in the context of tribal-state gaming compacts, cannabis agreements, taxation arrangements, and broader economic development initiatives that intersect with surrounding municipalities. Practitioners who approach these transactions without a working understanding of this framework risk avoidable complications, including unenforceable agreements, jurisdictional disputes, and breakdowns in implementation.

This article highlights the recurring legal and practical issues that arise in transactions with tribal nations and offers high-level guidance for navigating them in a manner that respects tribal sovereignty while supporting effective durable commercial relationships.

ASSUMING UNIFORMITY ACROSS TRIBES

Given the diversity among the 575 federally recognized Indian tribes in the United States,[1] including 12 federally recognized Indian tribes and four state-recognized tribes in Michigan,[2] each tribal nation operates within its own distinct governmental, legal, and cultural framework that shapes how decisions are made, how authority is exercised, and how relationships are developed and sustained. These differences are not merely contextual; they directly impact negotiation style and the process by which contracts are evaluated and implemented from inception through performance and enforcement.

A common mistake is treating tribes as though they operate under a uniform legal or business framework. In reality, each tribe has its own constitution (or similar governing document), governing structure, laws, regulatory systems, and cultural considerations. Some tribes have a large number of members, while others have as few as 10 members. Some tribes are located in extremely remote areas, such as those tribes in Michigan's Upper Peninsula, while others are situated near urban areas like Grand Rapids.

Reusing agreements from prior tribal transactions without a careful review is a frequent misstep. Provisions that were acceptable or enforceable with one tribe may be inappropriate or ineffective with another. Beyond legal differences, this approach can undermine the potential opportunity at the outset of negotiations.

Successful engagements and enforceable agreements require a tribe-specific analysis, including a review of applicable tribal law, governance structure, and decision-making processes, as well as cultural considerations. When appropriate, visiting the tribe or its entities in person — preferably on tribal lands — can further demonstrate a commitment to understanding the tribe's unique attributes, its people, and its land.

TRIBAL SOVEREIGNTY

At the core of any discussion of transactions involving Indian tribes is an understanding of tribal sovereignty. Indian tribes are not simply another category of governmental or commercial actor. They are domestic sovereign nations that have exercised inherent powers of self-government since time immemorial, long before the formation of the United States.

Although the United States Constitution grants Congress plenary authority over Indian affairs, the United States Supreme Court has consistently recognized that tribes remain "separate sovereigns pre-existing the Constitution."[3] As such, tribes retain the authority to govern their internal affairs, enact and enforce their own laws, regulate economic activity within their jurisdiction, and determine the terms under which they engage with outside parties. Tribal sovereignty is not merely a negotiating point or a technical consideration; it reflects a tribe's inherent authority and its ongoing interest in self-determination — much like, but not completely analogous to a foreign nation.

Approaching tribal transactions with appropriate recognition of this status is essential. A failure to do so can lead not only to legal missteps but also to unnecessary friction in negotiations, breakdowns in implementation, and outcomes that are materially adverse for commercial parties and their counsel. Conversely, practitioners who understand and respect tribal sovereignty are better positioned to structure agreements that are both effective and consistent with the sovereign nature of tribal governance.

TRIBAL SOVEREIGNTY PROVIDES UNIQUE BUSINESS OPPORTUNITIES

Precisely because tribes are domestic sovereign nations, they possess regulatory autonomy that may create unique and mutually beneficial business opportunities. Tribal governments can, in some circumstances, offer more flexible local laws or streamlined approval processes compared to federal or state regulatory frameworks. Partnering with tribal entities may also provide access to economic incentives, such as federal and state tax credits, grants, and other funding mechanisms that support tribal economic development.

Additionally, unlike traditional commercial deals, partnerships with tribes or their economic arms can provide an opportunity to support the economic and cultural development of historically underserved communities while enhancing a company's corporate social responsibility profile.

That said, each tribe is unique, and so too are the opportunities associated with it. Any potential venture should be evaluated through a tribe-specific analysis, as the challenges and benefits can vary.

THE COMPLEXITY OF SOVEREIGN IMMUNITY

One common error practitioners make is failing to distinguish the concepts of sovereignty and sovereign immunity. The latter is one of the most significant legal risks in contracting with tribes or their corporate entities. As a general rule, tribes and many tribally affiliated entities are immune from lawsuits unless that immunity is waived clearly and is unequivocally expressed.[4] However, what constitutes a clear and unequivocal waiver can vary across jurisdictions, including between federal circuits. For non-tribal parties, this can present a substantial barrier to enforcement.

Even a carefully negotiated agreement may be effectively unenforceable absent a valid waiver of sovereign immunity. Practitioners frequently encounter issues after a dispute arises where a purported "waiver" is later found to be unenforceable due to deficiencies under tribal law or governing federal precedent. On the other hand, from the tribal perspective, sovereign immunity is a foundational aspect of self-governance and is not lightly waived.

Each tribe's approach to immunity waivers is unique and can change if new leadership is elected. Addressing sovereign immunity requires careful attention to several items. For instance, whether the tribe or a tribal corporation is party to the contract can greatly impact how a valid waiver is obtained. The tribe's laws applicable to such waivers, whether in the tribal constitution, a gaming ordinance, a tribal resolution, creation documents, or a corporation's code, can all greatly impact the manner in which a valid waiver can be provided because many jurisdictions hold that a clear and unequivocal waiver must be obtained in accordance with the tribe's laws. This includes which tribal representative has the right to waive such immunity.

Tribal counsel are not typically positioned to educate counterparties on these issues, making it critical that practitioners independently develop familiarity with the applicable tribe's legal framework. The major takeaway is that early and informed discussions on this issue can prevent breakdowns later in negotiations. Also knowing where and when to compromise on sovereign immunity issues is critical to moving forward with potential partnerships.

If a tribe is unwilling to provide a waiver of its immunity that is necessary to a non-tribal partner, a practitioner should try seeking alternative dispute resolutions, such as arbitration or mediation, request the tribe carry liability insurance, or analyze the tribal entity's legal status to determine whether or not it is entitled to immunity from suit. But these paths also remain complicated, as depending on the jurisdiction, a limited waiver of sovereign immunity may be required for arbitration, and often it is hard if not impossible to obtain the correct documents to be fully assured an entity is not entitled to immunity from suit.

TRIBAL BUSINESS STRUCTURES

Tribes may enter economic development transactions in a variety of ways, including as a direct party to an agreement or through one of its affiliated entities. The latter approach is common, as tribes generally avoid exposing their governmental funds to direct contractual risks with outside parties.

The structure of the tribal entity executing the agreement can significantly affect key issues, such as how to obtain a waiver of immunity, governance and decision-making authority, and assets subject to recovery. Tribal economic enterprises may be organized as federally chartered corporations, tribally chartered entities, or entities formed under tribal or state law.

At a minimum, practitioners should understand that determining whether an entity qualifies as an "arm of the tribe"[5] for immunity purposes is a fact-intensive analysis that varies by jurisdiction.[6] Courts frequently look to factors articulated in a Tenth Circuit case, though the precise framework is not uniform across jurisdictions.[7] The United States Court of Appeals for the Sixth Circuit and federal courts in Michigan have recognized that tribally affiliated entities may share in sovereign immunity but have not adopted a formal, multi-factor "arm-of-the-tribe" test. Instead, they apply a functional, fact-specific analysis and often look to persuasive authority from other circuits for guidance.[8]

Moreover, assumptions based on entity labels alone can be unreliable. For example, while entities organized under state law are not considered an "arm of the tribe" entitled to sovereign immunity, courts have recognized exceptions.[9] Conversely, some entities organized under tribal law have been found not to qualify for immunity following application of the "arm-of-the-tribe" analysis.[10]

Accordingly, this inquiry requires familiarity with relevant federal case law across multiple jurisdictions as well as an understanding of tribal and state legal frameworks and entity structures. With that foundation, practitioners are better positioned to assess risk and structure agreements that are more likely to be enforceable.

CHOICE OF LAW AND JURISDICTION

A frequent mistake made by practitioners inexperienced in Indian law is confusing the concepts of choice of law provisions with jurisdiction provisions and corresponding waivers of immunity. These concepts are frequently conflated, but they serve distinct legal functions.

Choice of law

A choice of law provision indicates which laws will govern the contract in the event of a dispute. Tribes will often prefer that their own tribal law governs the agreement, while the non-tribal entity will desire state law. Additionally, there may be federal laws that are automatically applicable. Depending on the robustness of the tribe's laws, allowing governing law of the tribe is not necessarily a bad outcome so long as the law has been shared, reviewed, and vetted by the non-tribal party. However, note that like any sovereign, a tribe's laws may change at any time, but unlike federal and state laws, these may not be accessible to the public online.

The most important thing to understand is that a governing law provision is not the same as choosing the jurisdiction in which a dispute will be adjudicated and is not a submission or waiver by the tribe. This mistake can be fatal to obtaining an enforceable agreement.

Jurisdiction

A jurisdictional clause in an agreement designates the jurisdiction that will decide disputes utilizing the chosen governing law. These provisions with tribes are often more complex than in standard commercial agreements. Like the choice of law provision, a tribe will frequently desire its own tribal court as the chosen jurisdiction. The non-tribal party will usually request a state jurisdiction. Additionally, there may be issues that require federal jurisdiction.

At times, the parties come to a compromise, and there are several variations of what that compromise can entail — the details are dependent on the tribe and the subject matter in dispute, among other things.

One key legal concept critical for practitioners to be knowledgeable about is the tribal court exhaustion doctrine. This legal doctrine may require the parties to exhaust all available remedies in the tribe's judicial system before pursuing litigation in the contractually agreed-upon jurisdiction.[11] This could even entail, but is not limited to, obtaining a ruling from the tribal court determining whether it has subject matter jurisdiction. This procedure could delay or fully prevent adjudication in the jurisdiction that was indicated in the agreement.

Fortunately, with the right contractual language waiving tribal remedies, implications of the tribal exhaustion doctrine may be avoided, but again, the specific language necessary varies depending on the tribe, the subject matter, and the dispute.

It is also prudent to remember that there are alternative dispute resolution mechanisms, including mediation or arbitration. While these options can be effective, they raise additional considerations, particularly regarding whether a waiver of sovereign immunity is required. In some jurisdictions, specific language submitting to arbitration is considered a clear and unequivocal waiver of immunity.[12]

Careful drafting of choice of law, jurisdiction, and waiver of tribal exhaustion doctrine, and dispute resolution provisions coupled with the corresponding appropriate immunity waiver, are essential to avoid uncertainty and delay.

TRIBAL REGULATORY COMPLIANCE

Tribes are sophisticated sovereign nations with sophisticated laws and regulations. A practitioner should be aware of whether the subject matter and activity of the partnership with a tribe will be subject to a tribe's laws. Applicable tribal laws or regulations may appear in a tribe's constitution, intergovernmental agreements, ordinances, codes, tribal court orders, government resolutions, federal law, or other places.

A tribe may have land use regulations, labor laws, gaming regulations, secured transactions codes, tax codes, civil procedure laws, criminal codes, and business ordinances, to name a few. Depending on the industry, the non-tribal party may be required to obtain tribal permits or licensing under those laws to carry out the obligations applicable under the contract. Those permits or licenses may be subject to a fee and renewal similar to state or local licensing and permitting.

For example, certain gaming on Indian lands is subject to the Indian Gaming Regulatory Act,[13] the state-tribal gaming compact, and the tribe's gaming regulations, resulting in vendors contracting with a tribal casino being required to obtain a license or permit. This is usually the case for those businesses providing services to tribes for cannabis, online lending, manufacturing, and several other areas. Additionally, employment laws, including but not limited to the Tribal Employment Rights Ordinance, may require businesses operating on the tribe's lands to give preference to qualified Indians in employment and contracting. Finally, a tribe may have taxation codes or agreements that result in taxes being imposed on the activity within its tribal lands.

Failure to account for these requirements at the contracting stage can lead to operational and legal complications as well as additional costs while performing under the agreement.

CONCLUSION

Transactions involving Indian tribes require more than the application of standard commercial contracting principles. They demand a deliberate and informed approach grounded in an understanding of tribal sovereignty, the legal doctrines that flow from it, and the institutional framework in which tribal governments operate.

Many of the challenges that arise in these transactions are not the product of adversarial positions, but of misalignment — where one party approaches the transaction through a conventional state-law lens that does not fully account for the sovereign status of the tribal counterparty. The result can be agreements that are difficult to implement, uncertain in enforcement, or ultimately ineffective.

Conversely, practitioners who take the time to understand tribe-specific governance structures, carefully address sovereign immunity, and thoughtfully draft provisions governing law, jurisdiction, and dispute resolution are better positioned to structure agreements that function as intended. Equally important, this approach fosters the trust and mutual understanding necessary for long-term partnerships.

As tribal nations continue to expand and diversify their economic activities, opportunities for collaboration will only increase. Practitioners who engage with this space with both legal rigor and cultural awareness will be best equipped to support successful transactions that benefit both tribal and non-tribal partners.

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ENDNOTES

1. *Tribes,* U.S. Department of Interior <https://perma.cc/AZ5S-HYRR> (all websites accessed Aug 12, 2026).
2. This article will only provide guidance related to working with federally recognized tribes. *Michigan Tribal Governments,* Michigan State University Native American Institute <https://perma.cc/6UFZ-MC76>.
3. *Michigan v Bay Mills Indian Community,* 572 US 782, 788; 134 S Ct 2024; 188 L ed 2d 1071 (2014).
4. *C & L Enterprises, Inc v Citizen Band Potawatomi Indian Tribe of Oklahoma,* 532 US 411; 121 S Ct 1589; 149 L Ed 2d 623 (2001); *Bay Mills Indian Community,* 572 US 782 (2014) (the United States Supreme Court reaffirmed tribal sovereign immunity, holding that it extends to off-reservation activities, including gaming operations.)
5. An "arm of the tribe" in simple terms, is a commercial or governmental entity created by a tribe that acts as an extension of the tribal government. Because it functions as an "alter ego" of the tribe, this type of entity is often legally entitled to the same privileges of the tribe, such as sovereign immunity. Addison, *Tribal Sovereign Immunity: What It Is and Why It Matters,* Addison Law Firm (July 12, 2026) <https://perma.cc/B77S-BMYT>.
6. *Breakthrough Mgt, Group, Inc v Chukchansi Gold Casino & Resort*, 629 F3d 1173, 1187 (CA 10, 2010).
7. *Id.*
8. See *Memphis Biofuels, LLC v Chickasaw Nation Indus, Inc,* 585 F3d 917, 921 (CA 6, 2009).
9. *McCoy v Salish Kootenai College, Inc,* unpublished memorandum of the United States Court of Appeals for the Ninth Circuit, issued Nov 20, 2019 (Case No. 18-35729).
10. *See e.g., American Prop Mgt Corp v Superior Ct,* 206 Cal App 4th 491; 141 Cal Rptr 3d 802 (2012) (California State Court of Appeal held that tribal hotel owner was not an arm of Indian tribe and thus was not entitled to sovereign immunity).
11. *Nat'l Farmers Union Ins Cos v Crow Tribe of Indians,* 471 US 845; 105 S Ct 2447; 85 L Ed 2d 818 (1985) (the United States Supreme Court ruled that before parties can challenge tribal court jurisdiction in federal court, they must first exhaust their remedies in tribal court); *Williams v Lee,* 358 US 217; 79 S Ct 269; 3 L Ed 2d 251 (1959) (the Supreme Court affirmed that tribal courts have exclusive jurisdiction over civil cases arising on reservations involving tribal members.); *Montana v United States,* 450 US 544; 101 S Ct 1245; 67 L Ed 2d 492 (1981) (the United States Supreme Court ruled that tribes generally lack civil jurisdiction over non-members on non-tribal land within the reservation, except in the two circumstances: (1) consensual relationships and (2) activities that directly affect the tribe's political integrity, economic security, or health and welfare).
12. *C & L Enterprises, supra* n 2 (Supreme Court ruled that the Citizen Band had waived its sovereign immunity by entering into a contract that included an arbitration clause and a provision for enforcement of arbitration awards in a court of competent jurisdiction).
13. 25 USC § 2701 et seq.

Foreign-Trade Zones in Indian Country

BY ANNA M. BRUTY AND LAINEY E. RUTTER

INTRODUCTION

Foreign-Trade Zones (FTZs) are longstanding federal economic development tools designed to encourage international commerce by allowing businesses to defer, reduce, or eliminate certain customs duties on imported goods. Although FTZs have been widely utilized by ports, municipalities, manufacturers, and logistics companies throughout the United States, they remain relatively underutilized in Indian Country. For tribal nations, FTZs present a potentially significant but often overlooked opportunity that they are well suited for. While tribes participate in sophisticated economic activities, many are understandably hesitant to dive into the unfamiliar operation of FTZs.

Recent developments in federal trade policy, including the increased use of tariffs, have renewed interest in FTZs as businesses seek lawful mechanisms to manage customs costs, improve cash flow, and strengthen supply chain flexibility. However, for tribes, the potential benefits of FTZ designation extend beyond customs savings. FTZ programs in Indian Country can promote continued sovereignty through the encouragement of intertribal commerce in a network that produces independent profit. These considerations make FTZs particularly relevant to attorneys advising tribal governments, tribal enterprises, and other non-tribal affiliates seeking to do business in Indian Country.

FOREIGN TRADE ZONES OVERVIEW

An FTZ is an area of land designated as being "outside the customs territory of the United States," which effectively exempts merchandise from United States tariff laws and customs procedures until the merchandise physically leaves the zone and enters customs territory for domestic consumption or use.[1] FTZ administration is governed by two site framework models: the Alternative Site Framework (ASF), which is modern and flexible, and the Traditional Site Framework (TSF), which relies on fixed site boundaries and individualized approvals.[2]

FTZ sites are established through a federally approved "grantee," typically a public or quasi-public entity such as a port authority or development agency.[3] The grantee operates the FTZ through a General Purpose Zone (GPZ) that must be located in or "adjacent to" a U.S. port of entry. This requirement is typically satisfied by locations within approximately 60 miles or 90 minutes of driving distance from such a port.[4] GPZs generally function as magnet sites that are multiuser facilities where multiple businesses operate under the singular designated zone for storage, distribution, or processing activities.[5] Existing FTZ grantees may sponsor a usage-driven Subzone designation for a single-user to host specialized facilities subject to the FTZ Board's approval.[6] These Subzones can be established outside of the adjacency requirement only if the U.S. Customs and Border Protection (CBP) Port Director agrees that proper CBP oversight can be accomplished, and the operator of the Subzone agrees to present merchandise and documents for examination at a CBP site when requested.[7] This allows for some businesses to obtain FTZ benefits without relocating operations to an existing GPZ.

GENERAL BENEFITS OF FTZS

The creation of FTZs was authorized in 1934 with the purpose of encouraging and expediting foreign commerce.[8] FTZs provide participating entities with a range of customs and tax advantages designed to reduce costs and improve cash flow in international trade and manufacturing operations through duty exemptions, duty deferrals, inverted tariff relief, ad valorem tax advantages, situational duty eliminations, and reduced Customs filing and Merchandise Processing Fee (MPF) obligations.[9]

Duty exemption, deferral, and elimination

Duty exemptions and eliminations are among the most significant of the FTZ benefits. As a general rule, there are no customs duties owed on foreign merchandise admitted into an FTZ unless and until it enters U.S. commerce.[10] This duty exemption encapsulates reexported merchandise and merchandise transferred between FTZs. This allows manufacturers to strategically import components, assemble or process goods, and export finished products without incurring U.S. customs duties. In addition, FTZs may generate savings through duty eliminations on scrap, waste, or yield loss. Operators may reprocess, recycle, or reexport such materials within the zone to keep it outside of U.S. commerce and reduce or eliminate duty exposure.

FTZs can also defer duty payments on defective or damaged merchandise while it is being tested, repaired, or stored within the FTZ.[11] This allows entities within the FTZ to alter, repackage, or relabel defective or damaged merchandise to make those products more suitable for resale in the U.S. stream of commerce, or to reexport those products to foreign markets. Import duties can also be deferred strategically by postponing the merchandise's exit into domestic consumption, which improves liquidity by freeing working capital that would otherwise be tied up in immediate customs payments and may allow operators to deploy those funds for operational or investment purposes during the deferral period.

Inverted tariffs

Entities within an FTZ can import raw materials, or other components, and produce a final product that is subject to lower duty rates.[12] This benefit, while highly industry dependent and directly affected by the Harmonized Tariff Schedule of the United States, is one of the most widely known advantages of FTZs and creates an immediate financial benefit compared to traditional production operations taking place in U.S. Customs territory. However, it is important to note that recent federal tariff actions have prompted increased scrutiny of FTZ-related tariff optimization strategies, including efforts to limit certain inverted tariff advantages.[13]

Ad valorem tax relief

FTZs further provide ad valorem tax relief, as most merchandise held within a zone is exempt from state and local inventory taxes while under FTZ status.[14] This can significantly reduce carrying costs for businesses holding large inventories.

Weekly entry savings

Finally, FTZ users benefit from reduced Customs administration burden, including simplified "weekly-entry" procedures.[15] Typically, CBP procedures require importers to file a Customs entry form and pay a Merchandise Processing Fee for every single shipment they release into the U.S. stream of commerce. FTZ users, on the other hand, are only obligated to file one Customs entry and pay the MPF "during any 7-day period" for all shipments released from the zone during that period.[16] For high-volume withdrawals from an FTZ, a zone user would realize significant savings compared to their counterparts who do not operate within an FTZ.

BENEFITS AND CONSIDERATIONS FOR TRIBAL FTZS

While the Customs benefits of FTZs apply regardless of location, zones that are situated on tribal lands may present additional economic development opportunities because they operate within the broader framework of tribal sovereignty. Accordingly, tribes considering FTZ development should carefully evaluate jurisdictional and tax implications as part of the project planning process to maximize sovereignty and economic advancements for tribal and third-party entities.

Strategic site location

For tribal nations establishing an FTZ, the location may be as important as the customs benefits. Tribes with fee land located adjacent to or near tribal trust land may be able to integrate FTZ operations with existing economic development projects like manufacturing facilities, warehousing operations, retail enterprises, and transportation infrastructure. Strategic placement of FTZ facilities can create opportunities to attract third-party investment, support tribally owned businesses, and expand commercial activity within the tribe's jurisdictional footprint without interference by the state.

The extent to which state taxes and regulations apply to activities occurring within a tribal FTZ depends on a variety of factors, including the status of the land involved, the identity of the parties, and the nature of the activity at issue. A tribe choosing to develop FTZ operations on tribally owned fee land while coordinating related commercial activities on adjacent trust land can potentially maintain a significant role in the overall development strategy while also providing flexibility for financing, leasing, and business partnerships.

Leveraging federal contracting opportunities

For some tribes, the greatest value of an FTZ may arise when combined with existing federal procurement advantages. Tribally owned businesses participating in the U.S. Small Business Administration's 8(a) Business Development Program may receive access to sole-source contracting opportunities that are unavailable to most non-tribal businesses.[17] In addition, tribal enterprises may benefit from federal procurement preferences under programs such as the Buy Indian Act and the Buy American requirements.[18] When combined with the customs and inventory advantages associated with FTZ operations, these federal contracting programs can create a powerful economic development platform. A tribally owned manufacturer operating within an FTZ, for example, may be able to reduce customs costs on imported inputs while simultaneously accessing federal procurement opportunities for domestically manufactured products. This combination of trade and procurement advantages may make FTZs a particularly attractive tool for tribal economic diversification and industrial development.

Considerations specifically for michigan tribes

Michigan tribes may be particularly well positioned to explore FTZ opportunities because of their proximity to Canada, extensive rail and highway networks, and the Great Lakes shipping infrastructure. Several tribes are located near transportation corridors, international border crossings, and manufacturing supply chains that may be compatible with FTZ development. Michigan's longstanding trade relationship with Canada may create unique opportunities for tribal enterprises engaged in cross-border commerce. FTZs may warrant consideration as part of a broader tribal economic development strategy.

TRIBES IN THE FTZ SPACE

The combination of heightening interest in FTZs and the designation preferences for public entities has allowed for an increasing number of tribally owned and operated FTZs. Even so, since the initial authorization of FTZs in 1934, fewer than 10 tribes are publicly known to have applied to create an FTZ, a significantly low number compared to the over 250 sites in the U.S. today.[19] The underutilization of this opportunity could be rooted in negative historical practices that created tribal skepticism of federal offers, or it could stem from practical limitations, including some tribal nations being secluded away from functional infrastructure. However, active tribal FTZs are examples of success and variety.

An example of an initial FTZ tribal grantee is Lummi Indian Business Council in Washington. The Lummi Nation applied and became the initial grantee for an FTZ established on their reservation lands.[20] In 2023, they reorganized under the ASF and defined a service area covering all Lummi-owned properties and designated their existing site as a magnet site. It is important to note that the Lummi Nation was originally approved to create an FTZ in 1986, but there was no record of activity until 2015.[21] Tribes can create FTZs without the need to rush into operations, but they must be careful because most FTZ designations sunset after five years.

Tribes who are not in the position to apply for their own FTZ due to location or financial considerations may utilize preestablished sites. In 2014, the Port Authority of Greater Oklahoma City designated Iron Horse Industrial Park as a magnet site of the existing FTZ.[22] This designation was on 700 acres of traditional trust land owned by the Citizen Potawatomi Nation (CPN).[23] This site is strategically placed close to several highways and railroads which connect the FTZ to international ports and foreign markets. The CPN have been able to designate portions of their FTZ for renewable energy development to promote their environmental sustainability values and have also been able to partner with universities to promote higher education.[24]

These examples illustrate that tribes need not follow a single model when pursuing FTZ designation and can adapt their zone to their location, infrastructure, and economic objectives and needs.

CONCLUSION

Stated simply, an FTZ is a designated geographical area where foreign and domestic goods are treated, for tariff and state tax purposes, as if they had never entered the United States Customs territory. As more tribes establish tribal FTZs, an intertribal network of commerce is created that bolsters tribal sovereignty and individual financial gain. Much as historic trade routes facilitated the exchange of goods, resources, and ideas among Native Nations, a modern network of tribally owned FTZs could create new avenues for collaboration between tribes and private industry, expanding commercial opportunities across Indian Country and beyond while further establishing tribes as influential participants in the national and global economy.

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ENDNOTES

1. 15 CFR § 400.1(c).
2. *Overview for CBP: Alternative Site Framework (ASF)*, International Trade Administration US Foreign-Trade Zones Board (2020) <https://perma.cc/YVM9-6FK5> (all websites accessed Aug 11, 2026).
3. 15 CFR § 400.2(u).
4. *Id.* at § 400 (Subject to FTZ Board discretion).
5. *U.S. Foreign-Trade Zone (FTZ) Program*, Congressional Research Service (Oct 31, 2019) <https://www.congress.gov/crs_external_products/IF/PDF/IF11348/IF11348.1.pdf.>
6. *Id.*
7. 15 CFR § 400.11(b)(2)(ii) (The "adjacency" requirement is satisfied if a subzone meets the following requirements relating to CBP supervision: (A) Proper CBP oversight can be accomplished with physical and electronic means; (B) All electronically produced records are maintained in a format compatible with the requirements of CBP for the duration of the record period; and (C) The operator agrees to present merchandise for examination at a CBP site selected by CBP when requested, and further agrees to present all necessary documents directly to the relevant CBP oversight office).
8. 19 USC §§ 81(a)-81(u).
9. *Id.*
10. *Id.* at § 81(c).
11. *Id.*
12. *Id.*
13. *Memorandum on America First Trade Policy*, 90 FR 8471 (Jan 20, 2025) <https://perma.cc/XH6Z-DRC9>.
14. 19 USC § 81(c).
15. 19 CFR § 146.63(c).
16. 19 USC § 1484(i)(1).
17. Sections 7(j)(10) and 8(a) of the Small Business Act (15 U.S.C. §§ 636(j)(10) and 637(a)) authorizes the U.S. Small Business Administration (SBA) to establish a business development program, which is known as the 8(a) Business Development program.
18. The "Buy Indian Act" is a U.S. law that gives preference to Indian-owned businesses for federal contracts, particularly those awarded by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). This act, formally 25 USC § 47, aims to support Indian economic development and create employment opportunities for Native Americans.
19. *Tribal Economic Development Principles-at-a-Glance Series: Native American Foreign Trade* Zones, US Department of the Interior <https://perma.cc/WXK5-AAYR>.
20. *Business Incentives: Foreign Trade Zone #128*, Lummi Nation <https://perma.cc/7AL9-PPQW>.
21. *Tribal Economic Development*, *supra* n 19.
22. *Foreign Trade Zone*, Iron Horse Industrial Park <https://perma.cc/25BU-Z9Q2>.
23. *Iron Horse Wins 2025 Honoring Nations Award*, Citizen Potawatomi Nation (Jan 14, 2026) <https://perma.cc/PX7H-VST7>.
24. *Our Partners*, Iron Horse Industrial Park <https://perma.cc/W3XS-G3TY>.

Traversing personal injury law in Indian Country

BY PETER SCHINKAI

INTRODUCTION

Tribal tort law is an incredibly unique niche, especially in relation to personal injury and workers' compensation claims. The laws of the State of Michigan do not apply in Indian Country. Instead, tribes have sovereign immunity unless explicitly waived, and the tribe's own laws might vary greatly from Michigan's. Therefore, it is critical that an attorney advising a prospective client regarding a potential personal injury or workers' compensation claim be familiar with the applicable tribal law in order to set the correct expectations.

In my own practice, working within this field, I often have to be the bearer of bad news to prospective clients and attorneys unfamiliar with applicable tribal law. I might have to explain that with respect to their particular claim, the tribe has blanket sovereign immunity. Or I might have to advise that although Michigan has lengthy limitations periods for personal injury claims, this particular tribe does not, and the prospective client has already missed the filing deadline. Or I might have to explain that even though the tribe has an applicable law, and the filing deadline has not passed, the claim cannot succeed because a section of that particular tribe's law precludes recovery of damages.

SOVEREIGN IMMUNITY

To reiterate what several other authors have emphasized in this issue, every federally recognized tribe enjoys sovereign immunity. This doctrine has its roots in treaties signed by the British and French with numerous Native American nations during colonial times. Later, Native American sovereign immunity was established as a principle of constitutional law across the United States in two landmark cases in 1831 and 1832, which later became known as the Cherokee Cases.[1]

In *Cherokee Nation*, the United States Supreme Court stated that "from time immemorial, the Cherokee Nation have composed a sovereign and independent State, and in this character have been repeatedly recognized, and still stand recognized by the United States."[2] One year later, in *Worcester*, the Court held that the Cherokee Nation "was acknowledged to be a sovereign nation, and by which the territory occupied by them was guaranteed to them by the United States; and that the laws of Georgia under which the plaintiff in error was indicted are repugnant to the treaties, and unconstitutional and void."[3] In other words, the laws of the State of Georgia could not constitutionally be enforced against Native Americans in Indian Country.

In the nearly two centuries that have passed since the United States Supreme Court ruled in the Cherokee Cases, tribal sovereign immunity has been reaffirmed time and again. One exception is through an explicit waiver of sovereign immunity from the applicable tribe, and then, only for the particular issue at hand.[4] The implications of this doctrine for both personal injury and workers' compensation cases are that if an injury occurs on land held by one of the state's 12 federally recognized tribes, Michigan's state law does not apply, unless there has been an explicit waiver of sovereign immunity that applies directly to the cause of action, allowing the application of state law.

Even where sovereign immunity has been waived, moreover, the waiver usually requires that tribal courts retain jurisdiction over the matter and that the tribe's own law, rather than Michigan's, applies to the claim before the court.

From my experience, attorneys tend to make mistakes with sovereign immunity in the civil tort realm in one of three scenarios. First, an attorney might not be able to find the applicable tribal law,[5] or just ignores it altogether. Next, an attorney may ignore the tribe's jurisdiction and attempt to file a lawsuit in state court, under state law. Finally, an attorney may correctly file a lawsuit in the appropriate tribal court but attempt to apply Michigan's tort laws instead of the tribe's own tort laws because the law may not exist,[6] because the attorney may have missed a critical tribal law deadline,[7] or simply as a result of an honest mistake.

Filing in the wrong jurisdiction is often correctable, if done quickly. Missing deadlines or trying to file a lawsuit in a tribal court that does not have an applicable law often results in an embarrassing dismissal and an angry client.

PERSONAL INJURY CASES

Easily the most common types of personal injury cases on tribal land are slip-and-fall cases. These claims often arise within a tribally owned casino or hotel. Also, these injuries often occur to people with long-term disabilities and/or to senior citizens — groups who are unlikely to experience economic loss as a result of an injury.

That fact is important because, for tribes that do have personal injury statutes, the cap on damages is frequently directly linked to economic loss. As an example, the Pokagon Band of Potawatomi Indians Tort Claims Act limits awards of damages to the plaintiff's economic loss plus "not more than fifty percent (50%) of the Economic Loss sustained" for pain and suffering related damages.[8] This means that even if the tribe is found liable for the claimant's injury, the claimant would not be able to recover damages if no economic loss resulted from the injury. The result is that some people who suffer serious injuries on tribal land, like retirees and those on long-term disability, will not be able to recover damages even if they win a lawsuit against the tribe.

Additionally, tribes that have some sort of negligence law still tend to have strict notice requirements and short statutes of limitations. For example, the Match-E-Be-Nash-She-Wish Band of Pottawatomi has enacted the Gun Lake Tort Claims Ordinance.[9] This ordinance states that no "claim may be brought under this chapter unless written notice of the claim is served upon the Gaming Authority by certified mail, return receipt requested, within 180 calendar days after the claim accrues."[10] The ordinance also states that the notice must contain very specific language[11] and that every claim "filed under this chapter *must include* proof of compliance with this section."[12] Additionally, the statute of limitations for such claims is limited to "240 calendar days of the date on which the claim accrued."[13] Failure to meet all of these requirements will result in the claim being dismissed.

Another hurdle is where the tribe may not have any negligence law at all. For instance, neither the Nottawaseppi Huron Band of the Potawatomi (NHBP), which owns FireKeepers Casino Hotel in Battle Creek, nor the Saginaw Chippewa Indian Tribe, which owns Soaring Eagle Casino & Resort in Mt. Pleasant, has a negligence law for patrons that get hurt within their casinos or hotels. In these situations, each tribe will likely assert its sovereign immunity, which may bar any sort of recovery for a personal injury. In my experience working with these types of tribes, an insurance policy may exist that allows for some level of recovery, but there might also be additional hurdles in order to recover.

WORKERS' COMPENSATION CASES

The most common types of tribal workers' compensation claims tend to come from employees of tribally owned casinos and employees who work for the tribal government in landscaping and/or maintenance capacities. In any tribally managed employee workers' compensation case, though, it is vital to understand that tribal law dictates potential remedies and not the laws of the State of Michigan.

Workers' compensation cases that arise out of employment under tribal law share a lot of the same challenges as their personal injury counterparts. Once again, some Michigan tribes do not have any sort of formal legislation that governs procedures or rights for injured employees. In the cases of tribes that do provide workers' compensation protection, the laws might be very heavy-handed against the employee, severely limiting their rights to wage loss and/or medical treatment. Additionally, these tribal laws rarely provide employees with protection from termination if they are terminated because they cannot work because of their injury.

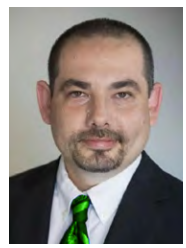
Perhaps one of the most straightforward workers' compensation laws is that of the Sault Ste. Marie Tribe of Chippewa Indians.[14] The tribe's code, although unique in certain aspects, is similar to Michigan's own workers' compensation law, even if it is not a one-to-one match. For instance, it clearly defines what an average weekly wage is,[15] how employees can apply for benefits,[16] and the steps to take if their application is denied.[17]

In contrast, some tribes do not have any organized workers' compensation system, including tribes that may nevertheless have a negligence law on their books. For instance, as mentioned earlier, the Pokagon Band of Potawatomi has a Tort Claims Act. However, the tribe does not have an independent workers' compensation law. In this situation, as with any tribe that does not have a workers' compensation law, an injured employee's compensation is normally governed by the policies and procedures of the employer and potentially a third-party or in-house workers' compensation insurance policy, if applicable. Anything that falls outside of these policies and procedures would not be compensable because of the tribe's sovereign immunity.

CONCLUSION

When a prospective client comes to an attorney with a potential personal injury or workers' compensation claim that occurred in Indian Country, special expertise is required. The client likely does not know that different laws will apply to their potential claim, and it is even possible that the client is not aware that they were on tribally owned land when the claim arose. Therefore, it is vital that the attorney sets proper expectations during the intake, takes the time to properly review the appropriate tribal laws, and proceeds with the utmost caution.

An uninformed attorney can make a fatal mistake in these cases, simply because tribal laws can be so different from Michigan's laws. With a proper understanding of the laws and their application to the case, though, the attorney can often come up with a beneficial resolution for their client.



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ENDNOTES

1. *Cherokee Nation v State of Georgia*, 30 US 1; 9 L Ed 25 (1831) (holding "[t]hat from time immemorial, the Cherokee Nation have composed a sovereign and independent State, and in this character have been repeatedly recognized, and still stand recognized by the United States" [quotation marks and citation omitted]); *Worcester v State of Georgia*, 31 US 515; 8 L Ed 483 (1832) (abrogated by *Oklahoma v Castro-Huerta*, 597 US 692 (2022)).
2. *Cherokee Nation*, 30 US at 3.
3. *Worcester*, 31 US at 515.
4. This is also very situational specific. For example, in a contract between a tribe and a private business, the explicit waiver would be specific to that contract. However, for a slip-and-fall case at a tribally owned casino, it would depend on whether the tribe has an ordinance or law waiving its own sovereign immunity for that type of incident.
5. Not all tribes put their laws online. The tribes that do put them online do not necessarily put them in a centralized location that is easy to find. As a practical tip, it is advantageous to contact the appropriate tribal court to ask them for assistance with finding the law an attorney is looking for.
6. This is the case with approximately half of the tribes in Michigan. In those instances, the tribe will likely claim blanket sovereign immunity.
7. Tribes that do have tort laws in Michigan tend to have very short filing deadlines to comply with their statute of limitations (as short as six months from the date of injury) and may have even shorter notice requirements (often 2-4 months from the date of injury). If these are not met, then the case will be thrown out.
8. Pokagon Band of Potawatomi Tort Claims Act, ch 3 § 3.03(d) (2023).
9. Match-E-Be-Nash-She-Wish Band of Pottawatomi, ch 4 § 4.5-1, *et seq.*
10. *Id.* at 4.5-10(A).
11. *Id.* at 4.5-10(B)(1-6).
12. *Id.* at 4.5-10(C).
13. *Id.* at 4.5-11.
14. Sault Ste. Marie Tribe of Chippewa Indians Worker's [sic] Compensation Code, § 45.101, *et seq.*
15. *Id.* at § 45.212.
16. *Id.* at § 45.206.
17. *Id.* at § 45.501, *et seq.*

INHERENT RIGHTS, IMPOSED BORDERS

Assessing reform of INA § 289 in a restrictive era

BY YASMEEN FARRAN

For many, the concepts of belonging and homeland are seemingly fixed and inherent. They are not something that people often reflect on. However, when those seemingly fixed ideas begin to rattle, the concept of homeland becomes precarious, carrying a lingering weight rather than existing as an inherent part of being. In an instant, changing policies and colonization can seemingly minimize the concept of homeland to having the right piece of paper or political backing. The concept of a homeland is often taken for granted, yet for millions of people worldwide it is consumed by a struggle against shifting borders, forced migration, and political exclusion, something Indigenous peoples of North America know all too well.

Hundreds of years into policies meant to convert Indigenous homelands into the lands of modern nation-states, Indigenous communities continue to fight to preserve rights that are inseparable from their ancestral homelands. In North America, treaty protections remain a critical mechanism for safeguarding these rights.[1] The 1794 Treaty of Amity, Commerce, and Navigation between the

United States and Great Britain, also referred to as the Jay Treaty, recognized the right of American Indians to freely cross the border between the United States and what is now Canada. Although this provision has been codified into U.S. law, its application has been narrowly restricted through a 50% blood quantum requirement. This article examines the modern application of the Jay Treaty's free passage provision and argues that the right should be expanded to more accurately reflect contemporary Indigenous identities and in recognition of inherent tribal sovereignty. Simultaneously, it cautions against overlooking the legal, administrative, and policy costs associated with such an expansion.

American Indian nations and their traditional territories long predate the modern border between the United States and Canada. This history is reflected in Article III of the Jay Treaty,

> It is agreed that it shall at all times be free to his Majesty's subjects and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America . . .[2]

As the "original inhabitants of the United States," the federal government has long acknowledged that Indians possess an inherent right to free passage between the U.S. and Canadian border.[3] Nonetheless, in hopes of remedying confusion at the border, on April 2, 1928, Congress codified the right in the *Immigration and Nationality Act* (INA).[4]

INA Section 289 provides that, "[n]othing in this subchapter [Subchapter II-Immigration] shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race."[5] Notably, the provision's broad language appears to reaffirm the lawmakers' belief in the inherent right to free passage, regardless of the status of the Jay Treaty. Although beyond the scope of this article, it would be worth exploring whether INA section 289 clarifies that American Indians born in Canada are not immigrants due to their inherent right to free passage rather than allowing free passage to American Indians born in Canada.

This, in part, is what makes INA section 289 unlike any other provision in immigration law. Section 289 effectively exempts American Indians born in Canada who possess at least a 50% blood quantum from the majority of the Immigration and Nationality Act's regulatory scheme. Most notably, Subchapter II of the INA, which governs core immigration matters such as admission, documentary requirements, and removal, does not apply to this group. As a result, only limited portions of the Act, including the provisions addressing General Provisions, Nationality and Naturalization, Refugee Assistance, and Alien Terrorist Removal Procedures, remain applicable.[6]

What does this mean in practice, and why is this provision significant? U.S. immigration laws and policies can be daunting, perhaps now more than ever. The wait for the correct document, stamp, or status can separate spouses across continents, delay children's reunification with their mothers for years, or prevent professionals from serving their employers or advancing in their fields due to where they were born, decisions made by parents while a child, or a seemingly minor mistake made decades earlier. Yet for American Indians born in Canada, much of this system is bypassed entirely. Under Section 289 of the Immigration and Nationality Act, American Indians may enter the United States to work, study, retire, invest, or immigrate without a visa or prior authorization from the Department of Homeland Security.[7] When arriving at a port of entry, one essential condition applies: the individual must possess at least 50% American Indian blood quantum.[8] This requirement does not depend on tribal enrollment; rather, it is strictly an ancestry-based criterion and recognizes blood quantum from a First Nation, Native American Tribe, or a combination of the two that predates the arrival of Europeans.[9] Accordingly, even if an individual is not an enrolled member of a tribe, he or she may still qualify under this provision so long as that individual can demonstrate lineage establishing the requisite 50% blood quantum, which is sufficient to permit entry into the United States.[10]

It seems simple enough, but this single requirement creates obstacles that impede what was described as an inherent right to passage. The blood quantum requirement is particularly troubling given the historical context in which these policies emerged. Blood quantum requirements have long functioned as tools of colonization, cultural erasure, and the systematic weakening of tribal sovereignty. Imposing a tool of colonial policy, while purporting to protect an inherent right, is fundamentally counterintuitive. Tribal nations are not temporary or self-extinguishing; they are enduring political and cultural communities. Although American Indian nations and traditions have evolved, this evolution mirrors that of almost every American society over time. Against this reality, INA Section 289 fails to reflect contemporary Indigenous identities or the lived realities of American Indian families. Instead, it perpetuates a framework that measures Indigeneity by a diminishing mathematical fraction, rather than by continuity, community, and sovereign identity.

Blood quantum itself is a race-based construct cemented in US federal Indian law for the purposes of land allotment.[11] In an analysis of blood quantum as it has been applied throughout U.S. legal history, what started as a means of determining descent and distribution became a means for disadvantaging minority groups.[12] In the case of American Indians, a means to diminish and ultimately eliminate American Indian identity. Although a majority of tribes today use some blood quantum metric as a prerequisite for enrollment, there has been a shift away from blood quantum policies to alternative enrollment requirements.[13] As Steve Russell aptly noted in his article, "The Racial Paradox of Tribal Citizenship," "Citizenship by blood quantum alone is a guarantee of physical extinction. Know the tribal population, the required blood quantum, birth and death rates, rate of exogamous marriage, and the date of extinction is easily calculated. This is not opinion. This is arithmetic."[14] INA Section 289's use of blood quantum for determining who is eligible for the benefit under this statute creates an unspoken expiration date on this benefit and impedes tribal sovereignty.

What lawmakers characterized as an inherent right when enacting Section 289 of the Immigration and Nationality Act is, in practice, treated as inherent only for those who can trace their lineage to at least 50% American Indian blood quantum. As a result, a mother who meets the 50% threshold may freely enter the United States, while her child, possessing only 25% blood quantum, would be rendered ineligible under the same provision. This rigid distinction forces families into impossible choices and underscores the human cost of the statute's limitations. By restricting eligibility under INA Section 289 exclusively to those with 50% blood quantum, the statute offers a benefit that is theoretically available but practically constrained. It is akin to opening a public park with only a handful of benches: access exists, yet space is deliberately limited. In this way, the benefit is narrowly rationed, allowing only a shrinking subset of American Indians to take advantage of a right rooted in precolonial existence.

Additionally, the blood-quantum requirement imposed by INA Section 289 creates a substantial obstacle for American Indians who are descendants of Canadian First Nations. The problematic construct of blood quantum is distinctly American, as Canada, by contrast, does not maintain blood quantum records.[15] As a result, American Indians who otherwise qualify under INA Section 289 may face significant difficulty assembling the documentation required for presentation to US Customs and Border Protection (CBP). This challenge is further compounded by the increasingly exacting evidentiary standards applied by CBP at ports of entry, making it more burdensome for eligible individuals to substantiate their eligibility under the statute. In the past, CBP allowed Canadian Indians who could demonstrate at least 50% blood quantum or any individual recognized as Indian by the Canadian government to enter per INA Section 289.[16] However, per CBP, "To qualify for these privileges, eligible persons must provide evidence of their American Indian background at the port of entry. The documentation must be sufficient to show the bearer is at least 50% of the American Indian race."[17] Recent news outlets have reported CBP is adhering more closely to the statutory criteria and requiring probative evidence sufficient to establish at least 50% blood quantum.[18] Essentially, INA Section 289 creates a benefit for American Indians born in Canada through a framework that relies on a blood quantum system Canada itself does not maintain. As such, eligible individuals are in the paradoxical position of proving eligibility under a standard largely foreign to their own governmental and tribal record-keeping practices.

Although INA Section 289 is no more than a single compound sentence, the second half of the compound sentence creates a major obstacle for American Indians born in Canada seeking admission into the United States. Advocates have called for reform to eliminate the bloodquantum requirement set forth in Section 289 of the Immigration and Nationality Act.[19] While the need for such reform is compelling for the reasons discussed above, any effort to amend or challenge Section 289 warrants careful consideration, particularly given the potential legal and practical costs of unsettling the provision itself. By immigration-law standards, Section 289 is extraordinarily broad. With limited and narrow exceptions, there are no other groups where the INA's provisions for inadmissibility and removal sweepingly do not apply to foreign nationals.[20] That statute's broad language allows American Indians born in Canada to bypass much of the bureaucracy and avoid much of the uncertainty that defines the daily experience of countless noncitizens navigating the US immigration system. The magnitude of this benefit can be difficult to appreciate without firsthand exposure to that system's complexity and rigidity. In this respect, Section 289 is something of a legal anomaly, an almost mythical exception within modern U.S. immigration law.

U.S. immigration policy is frequently at the center of political debate, with public opinion sharply divided. The current administration has disrupted long-established immigration policies and procedures, resulting in widespread confusion, mounting backlogs, and heightened unpredictability. Against this backdrop, elevating INA Section 289, along with its unusually broad benefits, for potential reform may produce the opposite of its intended effect. Rather than expanding access, such attention could prompt a reassessment of the statute by an administration inclined toward restriction, particularly if it views Section 289 as allowing a discrete group to bypass much of the Immigration and Nationality Act altogether. In an era marked by increasingly restrictive immigration laws and policies, this broader pattern raises a fundamental question: is the risk of narrowing Section 289 worth the potential reward of reform?

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ENDNOTES

1. Matthew L.M. Fletcher, Politics, Indian Law, and the Constitution, 108 Cal. L. Rev. 495, 506-09 (2020).
2. Treaty of Amity, Commerce, and Navigation, U.S.–Gr. Brit., art. III, Nov. 19, 1794, 8 Stat. 116, T.S. No. 105; but see Marcia Yablon-Zug, Gone but Not Forgotten: The Strange Afterlife of the Jay Treaty's Indian Free Passage Right, 33 Queen's L.J. 565, 572–73 (2008) (arguing that this provision of the Jay Treaty was arguably abrogated by the War of 1812).
3. See U.S., Cong. Rec., vol. 69 at 5582 (29 March 1928). See also Yablon-Zug, supra note 2, at 586.
4. Yablon-Zug, supra note 2, at 586-587; and see Act of April 2, 1928, c. 308, 45 Stat. 401, codified at 8 U.S.C. § 226a (1928) (replaced by 8 U.S.C. 1359 (1982)).
5. Immigration and Nationality Act § 289, 8 U.S.C. § 1359.
6. Immigration and Nationality Act, 8 U.S.C.
7. U.S. Customs & Border Prot., American Indians Born in Canada (Article 1241), https://www.help.cbp.gov/s/article/Article-1241?language=en_US (last visited May 1, 2026).
8. 8 U.S.C. § 1359, supra note 5.
9. Memorandum from Assistant Comm'r, Office of Field Operations, U.S. Immigration. & Naturalization Serv., Valid Documentation for Blood Quantum Under Section 289 of the Immigration and Naturalization Act (n.d.). AILA Doc. No. 19080700.
10. CBP, American Indians Born in Canada, supra note 7.
11. Steve Russell, The Racial Paradox of Tribal Citizenship, 46 AM. STUD. 163, 170 (2005).
12. Id.
13. Native Governance Ctr., Blood Quantum and Sovereignty: A Guide, https://nativegov.org/resources/blood-quantum-and-sovereignty-a-guide/ (last visited May 1, 2026).
14. Russell, supra note 11, at 168.
15. Yablon-Zug, supra note 2, at 605.
16. Id.
17. CBP, American Indians Born in Canada, supra note 7.
18. See Crystal Greene, Across the Border, Indigenous Fears Spike Amidst U.S. Immigration Crackdown, INDIGINEWS (Jan. 30, 2026), https://indiginews.com/features/ice-crackdown-indigenous-rights/; Gia Marcos, Canadian Indian Status Cards Not Accepted at U.S. Border Crossings: First Nations Warn of Overlooked U.S. Federal Law, AOL (Feb. 2, 2026), https://www.aol.com/articles/canadian-indian-status-cards-not-025224373.html.
19. See Rebekah Ross, Let Indians Decide: How Restricting Border Passage by Blood Quantum Infringes on Tribal Sovereignty, 96 Wash. L. Rev. 1 (2021).
20. See Matter of Yellowquill, 16 I. & N. Dec. 576 (B.I.A. 1978).

PLAIN LANGUAGE

1995 called—and wants lawyers to Shepardize cases again

BY MARK COONEY

You've seen the headlines: attorneys facing court sanctions and bar reprimands—resigning and losing coveted positions—over court filings plagued by AI-generated fiction. Technology is wreaking havoc, and all the newfangled AI hocus-pocus is the culprit.

Or is it?

In truth, AI has never been responsible for a single word in a court brief. Nor will AI ever be responsible.

The lawyer who creates and signs a brief—who decides whether any AI-generated text stays or goes—is responsible for every single word. Period.

The alarming headlines needn't exist. If today's lawyers simply do what lawyers routinely did back in 1985, 1995, 2005, or 2015, headline writers will have no fodder. The rules are simple:

- Lawyers must Shepardize[1] every case they cite.
- Before citing a case, a lawyer must read it.

That's it. AI drama over. Headlines gone.

By going old school, new-school AI users can be safe, ethical, and accurate. And they'll avoid the consequences seen in a recent Michigan Court of Appeals case, in which the court ordered an attorney to "personally" pay his opponent "actual damages, including reasonable attorney fees," because he'd "relied on artificial intelligence without adequate verification."[2] That lapse had "le[d] him to cite nonexistent cases and invoke real cases for propositions they do not support."[3]

THE NEW CITE-CHECK TRIFECTA: REVERSED, OVERRULED, OR HALLUCINATED

For decades, lawyers have used citator services, including Shepard's (LexisNexis) and KeyCite (Westlaw), for a variety of reasons. The main reason, though, has been to discover whether a case has been reversed or overruled—in other words, to ensure that a case "is still good law" before relying on it.

But in the past few years, a new motivator has emerged, and it's a doozy: Does the cited case actually *exist*? As we've seen from the headlines about careless lawyers, the answer has been *no* too many times.

When AI gives you a phantom case and you type the citation into LexisNexis or Westlaw, you'll suddenly find yourself swimming in the middle of a strange court opinion that has nothing to do with your issue (and that might not even be from your jurisdiction). This unexpected plunge into AI humbuggery is enough to shake any researcher—but better you than your judge.

Now more than ever, lawyers must check and verify every citation before filing a brief or submitting a memo to a supervisor. Every time. Every case. It's an indispensable step. It always has been.

THE NEED TO READ

Lawyers must also read their cited cases because AI sometimes summarizes real cases in fake ways. In the past few years, I've read, for example, an AI-generated passage that turned a case involving a broken deck rail into a case involving a snowmobile accident. In another document, AI had transformed a young child retrieving a stray ball from a neighbor's yard into a criminal-minded teen trying

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 42 years. To contribute an article, contact Prof. Kimble at Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, visit www.michbar.org/plainlanguage.

to break into the neighbor's car. The cases were 100% real, but AI's descriptions were pure fantasy.

Generative AI's trustworthiness is illusory. Its speed, convenience, and cyberswagger lull some lawyers into believing it. But it isn't trustworthy. I've heard it said that generative AI is a people-pleaser, and that's why it's so dangerous. It will give us what we want whether it exists or not. And there's no magic prompt to guarantee that the information it generates is accurate.

So lawyers, beware. We must read every case we cite. No exceptions. Traps are lurking for those who take shortcuts—traps with consequences.

YES, THERE IS TIME

Cite-checking is no longer the library slog it was in the bound-volume era. Decades ago, law clerks and associates instructed to "Shepardize the cases" in a brief realized that they'd just been sentenced to hours of toil.

But with the advent of LexisNexis and Westlaw, those days are long gone. Today, we simply drag our mouse to copy a citation, paste it into the search bar, and click *enter*. This click reveals whether the case has been reversed or overruled—and whether the case exists.

Reading cases takes time, yes. But not so much time that you can risk the alternative: filing a court brief with false information, being sanctioned, and facing disciplinary proceedings. And if you're a supervising attorney who doesn't believe that your duties include reading or checking cited cases,[4] you'd best ensure that someone else reliable and qualified reads the cases cited in your brief to verify its accuracy.

EFFICIENCIES, YES—SHORTCUTS, NO

I wish that my observations were more cutting edge. The truth is, I'm at least two years late. Back in 2024, for instance, the Second Circuit wrote, "At the very least, the duties imposed by Rule 11 require that attorneys read, and thereby confirm the existence and validity of, the legal authorities on which they rely."[5]

During a recent Legal Writing Institute AI Committee webinar, one presenter noted that the number of cases in which lawyers have been sanctioned for AI misuse has eclipsed 1,400. And now there's Michigan precedent confirming that AI hallucinations are grounds for severe sanctions—including sanctions against attorneys "personally."

We can build efficiencies in the practice of law, but there are no shortcuts. So if you use AI to research or generate text for court briefs, remember that old practices have new value. They're a lawyer's best protection against making headlines for the wrong reason.

[This column is based on the author's May 5, 2026 "Tuesday Tip" for members of Scribes—The American Society of Legal Writers.]

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ENDNOTES

1. I'm using "Shepardize" to refer to citation-checks using Shepard's (LexisNexis), Keycite (Westlaw), or an equivalent service, such as the newly launched RealityCheck (BriefCatch).
2. *Barber v Morawa*, ___ Mich App ___, ___; ___ NW2d ___ (2026) (Docket No. 374773); slip op at 2, 9.
3. *Id.* at ___; slip op at 1.
4. *See, e.g.*, *Johnson v Dunn*, 792 F Supp 3d 1241, 1253 (ND Ala, 2025).
5. *Park v Kim*, 91 F4th 610, 615 (CA 2, 2024).

BEST PRACTICES

Marital torts revisited

BY NICK ROUMEL AND LILLIAN K. SABA

WHAT IS A MARITAL TORT?

A marital tort is nothing more than a traditional tort claim by one spouse against another. It may be contemporaneous with a crime, such as assault and battery, stalking, or rape.[1] It may also encompass negligent or intentional infliction of emotional distress, fraud, harassment, false imprisonment, invasion of privacy, intentional parental alienation, and others such as transmission of venereal disease, conversion, and negligent/intentional spoliation of evidence.[2]

Only five years ago, it appeared that the actual use of marital torts was uncommon. Practical and legal considerations made attorneys, and judges, hesitant to venture outside their comfort zone of traditional divorce litigation.

HAS THE USE OF MARITAL TORTS INCREASED?

The use of marital torts has expanded the toolkit available to the family law bar but remains the exception to typical divorce litigation.

As one judge has said:

> I've had just a few marital tort claims associated with divorce actions, typically in a two-count divorce complaint. In the earliest one I remember, the wife alleged revenge porn against her husband, for threatening to post, and then posting, a nude picture of her on the internet. I believe the complaint alleged invasion of privacy and/or intentional infliction of emotional distress.[3] I determined the marital division of property first, then awarded her $20,000 in damages from his share of the modest marital estate.[4]

The judge also reported

> a couple of cases in which assault and battery was the second count in the divorce complaint. The most recent one was when I awarded a husband $18,000 in damages for A&B, following a couple of years of recurring threats and a few acts of physical violence, ending with the wife's arrest and criminal conviction. Husband sustained a soft-tissue back injury, followed by several months of intermittent doctor visits and physical therapy. I wasn't persuaded his injuries were permanent, but he had out-of-pocket medical expenses of a couple thousand dollars, and pain and suffering. Again, I divided the assets and liabilities, and then awarded damages against wife's share (which I offset against her equity interest in the marital home).[5]

APPELLATE DEVELOPMENTS IN MARITAL TORTS

The 1983 Michigan Court of Appeals opinion in *Goldman v. Wexler*[6] stands for the concept that a plaintiff was entitled to maintain a tort action against defendant for a battery committed during the marriage, after their divorce settlement. In that case, the Court of Appeals rejected defendant's argument that "because the property settlement which was incorporated into the divorce judgment took into account the fault of the parties and because plaintiff received

"Best Practices" is a regular column of the *Michigan Bar Journal* edited by George Strander of the Michigan Bar Journal Committee. To contribute an article, contact Mr. Strander at gstrander@yahoo.com.

at least partial compensation for the injuries she suffered as a result of the alleged battery, res judicata precludes this action."[7] The Court of Appeals reasoned that "the subsequent action is based upon a different cause of action from that upon which the prior action was based" and it was not "actually litigated and determined by the judgment. It is not conclusive as to questions which might have been but were not litigated in the original action. This is the doctrine of collateral estoppel."[8]

The Court stated:

> The prior action between these parties was one for divorce based on the Michigan no-fault divorce statute. The present action is for a battery which is alleged to have occurred during the course of the marriage. Although we agree that fault continues to be a consideration in property division disputes in a divorce action, we cannot agree, nor does defendant seriously contend, that both claims constituted but a single cause of action. Consequently, this claim is neither barred by, nor merged into the divorce judgment.[9]

The very few cases that have discussed marital torts in the last five years do so in the context of subsequent tort actions rather than tort claims brought contemporaneous with the divorce.

In one, *Goldman* was cited with approval in a bankruptcy proceeding to the effect that "consent judgments are not to be given collateral estoppel effect."[10] There is an important exception, however — if the parties have entered into an agreement expressly "'manifesting an intention that the judgment be conclusive with respect to one or more of the issues,' the consent judgment may be given collateral estoppel effect as to those issues."[11]

A 2021 Connecticut decision cited *Goldman*, as well as a later Michigan Court of Appeals case from 1987, *McCoy v. Cooke,*[12] in allowing post-divorce tort claims to proceed:

> Even if [the prior court decision] found that the defendant used the credit card and financial account in an unauthorized and fraudulent matter by clear and convincing evidence, the doctrine of collateral estoppel would not preclude the plaintiff from bringing a *claim* of conversion. In other words, while collateral estoppel could preclude the parties from relitigating the issue of whether the defendant committed the act of conversion or the extent to which she committed it, it does not preclude a tort action to recover on the conversion claim. In *McCoy* the Michigan Court of Appeals made this point clear in very similar circumstances.[13]

SOME PRACTITIONERS ARE WARY OF USING MARITAL TORTS

Some attorneys question how marital torts — with their implicit allocation of fault — could coexist with the concept of no-fault divorce:

> Marital torts vs No fault divorce. The concept of alleging marital torts has merit, but I think you would encounter significant evidentiary issues. Moreover, these torts are subterfuge for fault … [in] spousal support considerations. These spousal support considerations dovetail with custody matters to the extent they impact the best interests of the child. Marital torts undoes no fault divorce, and I object on behalf of all those folks who can't afford to fight it out. It's wrong. Clever, but wrong.[14]

Another wrote:

> I understand your position, but it seems to me that it is more equitable to argue it during a divorce than after when they have already been compensated for the "fault." **This way the court can analyze the entire case and do what they think is equitable without a potential double dip in a separate suit.**[15]

LEGAL AND PRACTICAL CONSIDERATIONS

Including marital tort claims along with a petition for divorce has the benefits of efficiency, allowing all claims to be determined by the same trier of fact. It may bring comfort to a client who doesn't want to face — or pay for — subsequent litigation. It also provides the opportunity for practitioners to partner with other attorneys, and present a formidable team and litigation advantage, with additional "bargaining chips" for settlement.

However, it may be wise to consider bringing marital torts afterwards, where family law practitioners and judges may find themselves in unfamiliar procedural territory, especially if a jury trial is a possible consideration. Hence, make sure to preserve tort claims for subsequent litigation, especially where there have been helpful findings of fact on your client's behalf. Ensure that a divorce judgment does not contain a bar to later litigation. Take into account the possibility of counterclaims or other SLAPP-like responses.

Weigh the considerations of collectability and the impact of continued litigation on the client's resources and their efforts to build a new life, especially if children are involved, and whether further litigation will pose a risk to your client's personal safety. But if a divorce resolution does not fully compensate your client for having endured significant misconduct, after taking into account the factors above, consider consulting or partnering with a marital tort practitioner for asserting your client's right to gain full justice for the harm done to them.

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ENDNOTES

1. MCL 750.4. See *People v. Veenstra*, 337 Mich 427, 430; 60 NW2d 309 (1953) (stating that the same act could be both a crime and a tort).
2. Roumel & Saba, *Marital Torts Can Be a Valuable Tool in a Divorce Case*, Michigan Bar J (July 2019) <https://perma.cc/593V-EYTZ>.
3. MCL 750.145e criminalizes the "dissemination of sexually explicit visual material of another person." It is a misdemeanor with increased penalties for subsequent offenses. MCL 750.145f. Some courts have awarded damages for associated tort claims. See, e.g., Laytner, *Woman wins $500,000 judgment against man in 'revenge porn' case*, Detroit Free Press (April 9, 2021) <https://perma.cc/QKE9-3VTP> (all websites accessed June 5, 2026); and *Plaintiff Wins Money Damages in Revenge Porn Case Even Though No Pornographic Images Were Ever Shared Publicly*, Grabel & Associates (Jan 30, 2020) <https://perma.cc/TAL5-ZLJX>. And at least one bankruptcy court has found such a judgment to be non-dischargeable. See *Martin v. Smith*, unpublished opinion of the United States Bankruptcy Court for the Eastern District of Michigan, issued 2020 (Case No. 19-04232). The underlying claim, filed in Wayne County Circuit Court, was based on common law invasion of privacy (public disclosure of private material), common law intentional infliction of emotional distress, and statutory civil stalking per MCL 600.2954.
4. Email from a Michigan Circuit Court Judge (Nov 20, 2023), who has asked to remain anonymous.
5. *Id.*
6. *Goldman v. Wexler*, 122 Mich App 744; 333 NW2d 121 (1983).
7. *Id.* at 747.
8. *Id.*
9. *Id.* at 746-747 (citations omitted).
10. *In re Moore*, unpublished opinion of the United States Bankruptcy Court for the Eastern District of Michigan, issued April 27, 2023 (Case No.17-20106-DOB) (citations omitted).
11. That is why, in our 2019 article, we cautioned practitioners that "If a client wishes to pursue torts after the divorce, do not include a general release, because that means the divorce judgment satisfies all the claims." See *Roumel & Saba*, *supra* n 2.
12. *McCoy v. Cooke,* 165 Mich App 662; 419 NW2d 44 (1988).
13. *Kuselias v. Niederkohr*, unpublished opinion of the Connecticut Superior Court, issued July 6, 2018 (Case No. CV175039209S).
14. This quote was made on Nov 23, 2023, by a seasoned family law practitioner on a listserv, who shall remain nameless in deference to her candidness.
15. *Id.*

PRACTICING WELLNESS

How 12-step programs can help lawyers reclaim balance, foster resilience, and promote overall well-being

BY MOLLY RANNS

The legal profession is built on high stakes, high pressure, and high expectations. Lawyers are expected to anticipate worst-case scenarios and maintain complete control in environments where the margin for error is extremely thin. While the skills lawyers possess are essential for effective advocacy, they can also contribute to chronic stress, burnout, and unhealthy coping mechanisms. And while the legal profession is often associated with prestige, intellectual rigor, and financial success, underlying the image of confidence and professional achievement is a troubling reality: Lawyers experience significantly higher rates of stress, depression, anxiety, and substance use than the general population.[1]

Long hours, client pressures, and the expectation for perfection at all times can lead to conditions which erode mental and emotional well-being. A continued increase in calls to the State Bar of Michigan's Lawyers and Judges Assistance Program confidential helpline indicates that many lawyers are turning to wellness initiatives to address these stressors — individual psychotherapy, support groups, and mindfulness practices, to name a few. One often-overlooked and underutilized form of support is the enduring and effective 12-step model.[2] 12-step programs, originally developed for and long associated with recovery from alcohol use disorders, offer a powerful framework for lawyers seeking to reclaim balance and well-being. Such programs have evolved into broader communities of support that help participants address unhealthy coping behaviors, emotional isolation, and chronic stress. At their core, they teach emotional regulation, humility, connection, accountability, and sustainable habits for living a healthier life.[3] I

"Practicing Wellness" is a regular column of the *Michigan Bar Journal* presented by the State Bar of Michigan Lawyers and Judges Assistance Program. If you'd like to contribute a guest column, please email contactljap@michbar.org.

have witnessed firsthand how transformative the 12-step program can be for many attorneys.

Research shows that lawyers are especially vulnerable to burnout, imbalance, and addiction.[4] Before we explore the benefits of 12-step programs, let's take a look at why lawyers often struggle more than other professions.

Firstly, ***perfectionism is rewarded***. In a system that's unforgiving, lawyers often internalize the belief that any mistake is catastrophic. This mindset fuels anxiety and self-criticism. Secondly, ***emotional suppression feels like it's part of the job***. Despite the field of law being highly emotionally charged, lawyers are trained to detach from their feelings and are expected to show no emotion, except possibly anger. This can lead to emotional numbness or unhealthy outlets, like alcohol, prescription drugs, overeating, or overworking. The pressure to maintain constant composure can discourage lawyers from acknowledging vulnerability. Lastly, ***help-seeking is stigmatized***. In many legal organizations, mental health struggles are still viewed through a lens of stigma despite growing awareness of attorney well-being issues. Research continues to show that lawyers are reluctant to seek help for fear someone will find out they have a problem or because of concerns about confidentiality.[5]

Knowing all of this, let's take a look at how 12-step programs can support a lawyer's well-being. 12-step programs such as Alcoholics Anonymous, Narcotics Anonymous, Al-Anon, and others offer a structured, community/peer-based approach to personal growth. While originally designed for addiction recovery, their principles apply broadly to anyone seeking balance and emotional resilience. For lawyers struggling with substance use, burnout, or emotional exhaustion, 12-step programs can offer more than recovery. They can provide structure, accountability, connection, and a renewed sense of purpose. Although each program may differ slightly, the core principles generally include admitting the existence of a problem, seeking support from others, taking personal responsibility, making amends where appropriate, developing healthier coping strategies, and supporting others in recovery.[6] 12-step programs are not forms of legal discipline or professional monitoring. They are voluntary support communities grounded in shared experiences and confidentiality. Here's how they can help lawyers in general.

12-step programs provide a safe, nonjudgmental community and reduce isolation. Lawyers often feel they must maintain a façade of competence and control. They are trained to project confidence at all times. In a 12-step program, that façade becomes unnecessary. Participants are encouraged to speak openly about their struggles without fear of judgment. For lawyers who are used to being the problem-solvers, this can be a profound relief. The anonymity of the program also reduces the fear of professional repercussions and helps reduce stigma.

They teach acceptance and letting go of control. The first three steps of 12-step programs are acknowledging powerlessness over a problem, believing in the possibility of help, and choosing to accept that help. These three steps tend to run counter to a lawyer's instinct to control all things! That's also exactly why they're so powerful. The expectations lawyers face are oftentimes impossible. Learning to accept that some things are beyond one's control, and then letting those things go, can reduce anxiety, soften perfectionism, and result in clearer decision-making.

12-step programs encourage honest self-assessment and build accountability. Lawyers are excellent at reading the needs of others — their clients, their employers, their colleagues — but that doesn't necessarily translate to knowing what they need personally. The 12-step framework promotes rigorous honesty and reflection. Participants are encouraged to examine patterns of behavior, recognize the consequences of their actions, and identify areas where change is needed. Sharing an honest self-assessment with peers in a nonjudgmental safe space encourages personal accountability for change.

They promote daily practices that reduce stress. 12-step programs are based upon simple, repeatable habits that support long-term well-being. The "one day at a time" mindset makes overwhelming tasks feel more manageable. Gratitude practices, daily reflection, regular meeting attendance, and service to others are practices that help combat the chronic stress that can exist within the legal field.

For the longest time, many believed 12-step programs were ineffective because of the lack of data. But recent research demonstrates that 12-step programs are extremely effective, similar to or even more so than other evidence-based treatments.[7] They are also offered at little to no cost. Despite their effectiveness, 12-step programs are sometimes misunderstood. Some lawyers may hesitate to participate because they believe the programs are overly religious, incompatible with professional life, or intended only for severe addiction. In reality, many participants approach the programs from spiritual, secular, or entirely personal perspectives. Meetings are attended by people from diverse professions and backgrounds, including judges, attorneys, physicians, and executives. The State Bar of Michigan's Lawyers and Judges Assistance Program maintains a list of 12-step meetings specific to legal professionals on the LJAP website. These meetings are also published in the *Michigan Bar Journal*.

12-step programs are not a cure or the only path to healing, and they are not a replacement for mental health or substance use treatment when clinically appropriate. But for many lawyers, they offer a powerful combination of structure, community, and emotional growth that can counteract the pressures of the profession. They can help lawyers reclaim balance by teaching them to let go of perfectionism, connect with others, and build healthier habits. They foster resilience by encouraging self-reflection, accountability, and emotional awareness. They support well-being by providing a safe space to grow, heal, and rediscover a sense of purpose beyond the demands of legal work. For lawyers who feel overwhelmed, isolated, or stuck in unhealthy patterns, 12-step programs offer something rare: a path forward that is both practical and deeply human.

In a profession built on advocacy and justice, I hope lawyers can also feel empowered to advocate for their own well-being. Seeking help is not a sign of weakness. For many attorneys, it is the beginning of resilience, renewal, and lasting professional sustainability. As always, if you're struggling to do it alone, LJAP is here to help. Call us today on our confidential helpline, (800) 996-5522.

Molly Ranns, MA, LPC, CAADC is Director of the Lawyers and Judges Assistance Program at the State Bar of Michigan.

ENDNOTES

1. Krill, Johnson & Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J Addict Med 46, 46 (2016).
2. Frakt & Carroll, *Alcoholics Anonymous vs Other Approaches: The Evidence Is Now In*, The New York Times (Mar 11, 2020) <https://www.nytimes.com/2020/03/11/upshot/alcoholics-anonymous-new-evidence.html> (all websites accessed Aug 17, 2026).
3. *Id.*
4. Roy, *Attorneys, Addiction and Burnout: A Crisis on the Rise*, Forbes (Nov 26, 2025) <https://perma.cc/R2RN-JRHG>.
5. Krill, Johnson & Albert, *supra* n 1.
6. Frakt & Carroll, *supra* n 2.
7. *Id.*

LIBRARIES & LEGAL RESEARCH

Native American law explainer

BY KINCAID C. BROWN

Native American tribes are the original sovereign peoples of the lands that now comprise the United States, with histories, governments, and cultures that predate the founding of the nation by thousands of years. Long before European colonization, hundreds of distinct tribal nations exercised independent political authority over their territories. Although the United States entered hundreds of treaties recognizing tribes as distinct political entities, federal Indian policy evolved over time through periods of treaty-making, forced removal, allotment, assimilation, termination, and, since the 1970s, tribal self-determination. The legal relationship between tribes and the federal government is grounded in the U.S. Constitution, as well as treaties, federal statutes, and Supreme Court precedent. Today, federally recognized tribes retain inherent powers of self-government except where limited by Congress, and the federal government owes tribes a trust responsibility arising from treaties, statutes, and longstanding federal law. The United States Department of the Interior, acting primarily through the Bureau of Indian Affairs, administers much of this trust relationship by overseeing tribal governance, law enforcement, natural resource management, economic development, education, and the management of tribal trust lands and assets.

TRIBAL CONSTITUTIONS AND GOVERNMENT

In 1934, Congress passed the Indian Reorganization Act, which provided that any tribe "shall have the right to organize for its common welfare" through the adoption of a constitution and by-laws.[1] Elections are conducted by the Secretary of the Interior, and the constitution or amendment is not effective until approved by the Secretary.[2] The Department of the Interior drafted a model constitution that was the basis for many of the original tribal constitutions that were ratified in the period following the passage of the Indian Reorganization Act. Although many tribes with written constitutions have similar governmental characteristics, such as tribal councils and tribal courts, not all tribes have written constitutions. Some tribes rejected application of the Indian Reorganization Act and operate under other governmental models; for instance, the Pueblo Nation operates entirely under customary law.[3]

Most tribes have a tribal council that acts as a legislature for the tribe, with council members generally being elected by the tribe. Under the original model constitutions, council legislation is reviewed by the Secretary of the Interior before it takes effect. Many tribes have removed that requirement through constitutional amendment and now have more autonomy. The legislation of the tribal council is often called the tribal code. The tribal chairman presides over the council and can act as the tribe's executive. The authority of a particular chairman will depend on the particular tribe and their code and customs.

Tribal courts rule on cases brought under the laws of the tribal code. The structure of tribal court systems varies from tribe to tribe, with some tribes having appellate courts in addition to trial courts. Judges can be popularly elected, but many are also appointed by the tribal council. Some tribal courts rule with written opinions. Depending on the tribe, customary law or other methods of traditional Native American dispute resolution may be appropriate within the regular tribal court; some tribes will have established separate courts for alternative dispute resolution.[4]

TRIBAL SOVEREIGNTY

Native American tribes possess a unique form of inherent sovereignty,[5] meaning they retain the authority to govern themselves as distinct political communities unless that authority has been limited by Congress. This sovereignty predates the formation of the United States and is recognized in a variety of legal sources, including Article I of the Constitution. The Supreme Court has recognized that tribes retain their inherent powers of self-government except where those powers have been withdrawn by treaty or Congress.[6] Federally recognized tribes therefore possess the authority to establish their own governments, enact and enforce laws, regulate their territories, operate courts, and manage their internal affairs, including matters involving tribal membership, domestic relations, and economic development.[7] However, tribal sovereignty is not absolute; tribes are "domestic dependent nations" that maintain a government-to-government relationship with the United States;[8] the federal government possesses exclusive authority over relations with Indian tribes; states generally lack jurisdiction within tribal territory;[9] and Congress possesses broad authority over Indian affairs.[10] Consequently, states generally lack jurisdiction over tribal lands and tribal members unless Congress has expressly authorized such authority.[11]

PUBLIC LAW 280

The statute[12] transferred federal criminal jurisdiction and granted certain states jurisdiction over specified civil causes of action arising in Indian country. With exception to particular reservations, Congress made California, Nebraska, Oregon, Wisconsin, and later Alaska[13] mandatory Public Law 280 states while authorizing other states to assume jurisdiction voluntarily under prescribed procedures. Importantly, Public Law 280 did not diminish tribes' inherent sovereignty or confer upon states general civil regulatory authority over tribal governments, tribal members, or Indian trust lands. Rather, the Supreme Court has consistently held that the statute grants states adjudicatory jurisdiction over specified civil causes of action and criminal jurisdiction in Indian country but not broad authority to regulate tribal affairs.[14] Consistent with this principle, tribal governments retain their inherent powers of self-government except where expressly limited by Congress.[15] Public Law 280 has nevertheless significantly affected law enforcement and civil adjudication in Indian country by replacing exclusive federal jurisdiction in many circumstances with state jurisdiction while preserving tribal authority, thereby creating complex questions of concurrent and overlapping jurisdiction among tribal, state, and federal governments.[16]

GAMING

Native American tribal gaming developed as an exercise of inherent tribal sovereignty and as a means of promoting economic self-sufficiency in response to the limited economic opportunities historically available on many reservations. Beginning in the 1970s and 1980s, several tribes established bingo halls and other gaming operations, asserting their sovereign authority to regulate gaming on Indian lands; this authority was affirmed by the Supreme Court.[17] Congress then enacted the Indian Gaming Regulatory Act (IGRA),[18] which established a comprehensive federal framework governing Indian gaming. IGRA recognizes that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands" when such gaming is not prohibited by federal law and is conducted in a state that does not prohibit the activity as a matter of criminal law and public policy,[19] while declaring that the purposes of the Act are to promote tribal economic development, tribal self-sufficiency, and strong tribal governments.[20] The Act further established three classes of gaming[21] and created the National Indian Gaming Commission to oversee aspects of tribal gaming.[22]

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ENDNOTES
1. 25 USC §5123.
2. *Id.*
3. See Canby, *American Indian Law in a Nutshell* (West Academic, 8th ed, 2025), p 80.
4. *Id.* at 76.
5. See *Montana v. United States,* 450 US 544, 565; 101 S Ct 1245; 67 L Ed 2d 493 (1981).
6. *United States v. Wheeler,* 435 US 313, 322-323; 98 S Ct 1070; 55 L Ed 2sd 303 (1978) (superseded by 25 USC § 1301(2)).
7. See *Santa Clara Pueblo v. Martinez,* 436 US 49, 55-56; 98 S Ct 1670; 56 l Ed 2d 106 (1978).
8. *Cherokee Nation v. State of Georgia,* 30 US 1, 17; 8 L Ed 25 (1831).
9. *Worcester v. State of Georgia,* 31 US 515; 8 L Ed 483 (1832) (abrogated by *Oklahoma v. Castro-Huerta,* 597 US 692 (2022)).
10. See *United States v. Kagama,* 118 US 375, 380-381; 6 S Ct 1109; 30 L Ed 228 (1886).
11. See *Williams v. Lee,* 358 US 217, 220-222; 79 S Ct 269; 3 L Ed 2d 251 (1959).
12. Public Law 280, 67 Stat 588 (1953), codified principally at 18 USC §1162 and 28 USC §1360.
13. Added in 1958.
14. *Bryan v. Itasca Co, Minnesota*, 426 US 373; 96 S Ct 2102; 48 L Ed 2d 710 (1976).
15. Wheeler *supra* n 6 (criminal) and Martinez *supra* n 7 (civil).
16. See e.g., *Washington v. Confederated Bands & Tribes of the Yakima Indian Nation*, 439 US 463; 99 S Ct 740; 58 L Ed 2d 740 (1979).
17. *California v. Cabazon Band of Mission Indians*, 480 US 202; 107 S Ct 1083; 94 L Ed 2d 344 (1987) (superseded by 25 USCA § 2710).
18. 25 USC §2701 et seq.
19. 25 USC §2701(5).
20. 25 USC §2702(1).
21. 25 USC §2703.
22. 25 USC §2704.

ETHICAL PERSPECTIVE

Lawyers beware: Your clients' use of AI puts them at risk

BY DELANEY BLAKEY

Whether we like it or not, as it currently stands, artificial intelligence (AI) is shaping the future of the legal profession. More than changing how lawyers review documents and draft pleadings, artificial intelligence is also changing how clients act. For example, before reaching out to an attorney, a potential client may put the facts of their matter into a generative AI platform and ask the chatbot if they have a chance of winning if they pursue a lawsuit. Once a client has an attorney retained, they may send things to their lawyer that have been drafted or summarized by AI. As lawyers, we need to be aware of the risks that this behavior creates for our clients and advise them accordingly. It is imperative that lawyers explain to clients that the use of AI could jeopardize confidentiality.[1]

WHAT IS GENERATIVE AI?

AI-powered tools offer capabilities that mirror key legal skills, including analytical and research abilities, attention to detail, persuasive writing, organization, and interpersonal communication. Generative AI is a subset of artificial intelligence capable of creating new content (images, text, videos, audio clips, etc.) in response to prompts, based on a large reference database of examples. Regular old artificial intelligence has been around for more than 30 years. It is used in all kinds of things from spelling and grammar check software to smartphone photography, email spam filtering, Google Maps, and your Facebook timeline. Those who say they do not use AI probably mean that they do not use generative AI.

Generative AI is what most people think of when they think of AI. It came into the public's consciousness with the release of ChatGPT to the public in 2022. It generally refers to an artificial intelligence program that recognizes patterns and is designed to generate content rather than provide factual answers. Many articles have been written about the impact of generative AI on the practice of law.[2] We all know that generative AI is having a significant impact on day-to-day legal work. One risk you may be less aware of, however, is the impact these generative AI programs, and our clients' use of them, will have on client relationships.

CONFIDENTIALITY

Lawyers have an affirmative duty under MRPC 1.6 to protect their clients' confidences and secrets. This requires lawyers to protect clients' confidences and secrets when inputting client information into any type of program, including generative AI programs. Under MRPC 1.6, lawyers must maintain client confidences and cannot disclose information without informed consent unless an exception applies. AI tools pose new challenges in ensuring confidentiality, making it essential for lawyers to carefully evaluate how these tools handle data. For example, conversations you have with an AI program may be reviewed by a human if the program detects a safety risk. If content is flagged as high risk, it may be reviewed by a real person. Further, depending on the AI program and the settings on your account, your conversations may be reviewed at any point by human trainers to assist them in improving the AI model. Further, information input into an AI program may be used by the model in a conversation with another user. The risks to confidentiality when using these tools are substantial.[3] The focus of this article, however, is on client behavior.

CLIENT USE AND RISK

One major risk generative AI poses is the fact that clients may be unaware that the information they enter into these programs may not be confidential. Information entered

"Ethical Perspective" is a regular column providing the drafter's opinion regarding the application of the Michigan Rules of Professional Conduct. It is not legal advice. To contribute an article, please contact SBM Ethics at ethics@michbar.org.

into AI prompts is often incorporated into the learning model or reviewed for safety or abuse detection, risking client confidentiality.

Sam Altman, the CEO of OpenAI, recently said in a podcast interview that "if you go talk to ChatGPT about your most sensitive stuff and then there's like a lawsuit or whatever, we could be required to produce that."[4] Many users (if not most) still assume that anything they type into a generative AI prompt is private. Clients may believe that their prompts are temporary and private, but it is very possible that everything input into a generative AI tool is being stored, reviewed, and preserved. And, if requested, inputs may need to be produced in discovery. For litigators, the danger of this discoverability is apparent. For clients, it is less obvious.

This issue has already been through the courts in at least one instance. In *United States of America v. Bradley Heppner*,[5] Heppner used Anthropic's AI tool Claude, a generative AI tool, to input his defense strategy, seeking comments on his strategy and potential arguments, and he asked what the other side might argue. Then, he gave all the information he received from Claude to his attorney. Heppner was criminally charged with fraud-related activities, his electronic devices were seized, and the AI communications were obtained by the government. Heppner's lawyers argued that Heppner utilized Claude for legal advice, which should be protected under attorney-client privilege or the work product doctrine. The judge ruled that the written exchanges between Heppner and Claude were not protected from disclosure to the government by the work product doctrine or attorney-client privilege.[6] Importantly, Heppner did not tell his attorney in advance that he was planning to use AI.

Heppner is far from the only client inputting information about his legal matter into a generative AI platform. When a client uses a public tool, like ChatGPT or Copilot, without opting for enterprise-level privacy protection, inputting sensitive information might be considered disclosure to a third party. If the provider of the tool maintains the ability to retain, review, or use the input information, courts may find that confidentiality has not been preserved. Thus, it is imperative in today's age for lawyers to educate their clients about the risks and benefits of using these tools.[7]

Further, while *Heppner* is a criminal case, the same applies in the civil context. Forensic evaluations of electronic devices occasionally occur in the context of civil litigation. Now that the court in *Heppner* has affirmatively stated that the information entered into an AI chatbot may not be protected, subpoenas may follow. A further risk posed by using these AI tools is that clients' accounts may be vulnerable to hacking by third parties.

The risks that are posed by AI chatbots providing legal advice go beyond the risk to confidentiality. States are starting to take action in light of these risks. For example, New York is currently considering a bill that would ban these AI platforms from offering legal or medical advice.[8] However, the wheels of bureaucracy turn slowly, and until regulation catches up with reality, lawyers should be aware of these risks and make sure clients are aware of them as well.

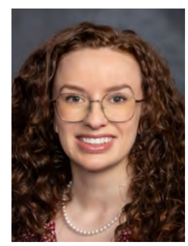
CLIENT RELATIONS

Further, if a client is coming to you, it is because they think their cause is good. Now, with generative AI tools, which are programmed to agree with you and tell you what you want to hear, clients will believe even more strongly in the rightness of their cause. We all need to prepare for the impact this shift will have on client relationships. Clients will likely increasingly rely on generative AI programs for help with legal advice and strategy. Given the fact that these tools tell people what they want to hear, give false information, and even completely hallucinate, this will create a big shift in the lawyer-client relationship.

If lawyers are not careful and purposeful in their approach, they run the risk of eroding the trust that clients place in them, and trust has always been the foundation upon which the attorney-client relationship stands.

CONCLUSION

Awareness is the first step in preparing your practice for the changes AI is bringing about. Lawyers should be aware of the risk their clients put themselves at by using generative AI programs and **warn their clients** of any risks to the confidentiality of the information they input into these programs. Further, in the age of AI, lawyers must do what AI can't: form real, personal connections with clients based on trust. Through preparation, knowledge, and empathy, lawyers can earn a client's trust and stay one step ahead of this emerging technology.



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ENDNOTES

1. MRPC 1.4.
2. For example: Siskind, *How Lawyers Can Use Generative AI to Create Powerful Marketing Content*, American Bar Association (Nov 2, 2025) <https://www.americanbar.org/groups/law_practice/resources/law-practice-magazine/2025/november-december-2025/using-ai-to-market-content/> (all websites accessed Aug 11, 2026); Couture, *The Impact of Artificial Intelligence on Law Firms' Business Models*, Harvard Law School Center on the Legal Profession (Feb 24, 2025) <https://perma.cc/22K7-NEEW>; and DeBord, *AI for Lawyers: 6 Ways Lawyers (and Law Firms) Can Benefit from AI*, DISCO (June 12, 2025) <https://perma.cc/Q6PN-4Z2E>.
3. For more on what a lawyer can and should do to protect client confidences when using artificial intelligence in their legal practice, see *Transforming the Legal Landscape in the Age of AI*, State Bar of Michigan (June 2025) <https://perma.cc/K8YU-48GF>, p 31.
4. Scammell, *Sam Altman says your ChatGPT therapy session might not stay private in a lawsuit*, Business Insider (Jul 25, 2025) <https://perma.cc/BH2D-LA3D>.
5. *United States v. Heppner*, unpublished memorandum opinion of the United States District Court for the Southern District of New York, issued Feb 17, 2026 (Case No. 1:25-cr-00503-JSR).
6. *Id.* at 1.
7. See generally MRPC 1.1 Comment: Maintaining Competence; MRPC 1.3; and MRPC 1.4.
8. See Quinlain, New York considers bill that would ban chatbots from giving legal, medical advice, State Scoop (March 3, 2026) <https://perma.cc/6WVJ-Y3BS>.

LEGAL NOTICE

NOTICE OF APPOINTMENT OF INTERIM ADMINISTRATOR

The 3rd Circuit Court has ordered that:

State Bar of Michigan by **April J. Alleman,** P81156
306 Townsend Street
Lansing, MI 48933
517.346.6392

is hereby appointed Interim Administrator to serve on behalf of:

Attorney **Brandon C. Byrd**, P83734
13211 Ventura Dr.
Belleville, MI 48111-1352
313.409.2775

Ordered by 3rd Circuit Court on August 5, 2026.
Case no. 26-013122-PZ

NOTICE OF APPOINTMENT OF INTERIM ADMINISTRATOR

The Iron Circuit Court has ordered that:

Attorney **Andrew M. Luoma,** P79602
706 Crystal Avenue
Crystal Falls, MI 49920
906.875.4543

is hereby appointed Interim Administrator to serve on behalf of:

Attorney **John L. Harrison,** P32501
706 Crystal Avenue
Crystal Falls, MI 49920
906.875.4543

Ordered by Iron Circuit Court on August 24, 2026.
Judge Donald S. Powell

FROM THE MICHIGAN SUPREME COURT

ADM File No. 2022-19
1.5, 1.15, and 1.15A, and Proposed Additions of Rules 1.15B and 1.15C of the Michigan Rules of Professional Conduct

To read this file, visit perma.cc/4LZP-D7BH

ADM File No. 2024-30 ADM File No. 2024-39
Amendment of Rule 7.306 of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.306 of the Michigan Court Rules is adopted, effective September 1, 2026.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 7.306 Original Proceedings

(A)-(B) [Unchanged.]

(C) The following actions must be initiated only in the Supreme Court as an original proceeding and in accordance with this rule:

(1)-(2) [Unchanged.]

For any filing deadlines expressed in terms of hours, MCR 1.109(G)(5)(b) does not apply.

(D) What to File. Service provided under this subrule must be verified by the clerk. To initiate an original proceeding, a plaintiff must file with the clerk all of the following:

(1)-(2) [Unchanged.]

(3) Proof that the complaint and brief were served on the defendant, and

(a)-(b) [Unchanged.]

(c) for purposes of a complaint filed under MCL 168.46, it must also include a date and time stamped copy of the board of state canvasser's certification of the completed recount, and service of a copy of the complaint and brief shall be made on the defendant(s) and all of the following persons if not named as a defendant:

(i)-(iv) [Unchanged.]

A complaint filed under MCL 168.46 must be filed with the Court within 24 hours after the board of state canvassers's~~governor's~~ certification of the completed recount or by~~but no later than~~ 8:00 a.m. on the day before the electors of President and Vice President are required to convene pursuant to MCL 168.47, whichever is earlier.

(d) for purposes of a complaint filed under MCL 168.845a, it must also include a date and time stamped copy of the certification or determination of the presidential election results, and service of a copy of the complaint and brief shall be made on the defendant(s) and all of the following persons if not named as a defendant:

(i)-(iv) [Unchanged.]

A complaint filed under MCL 168.845a must be filed with the Court within 48 hours after the certification or determination of the results of a presidential election and must name the board of state canvassers as a defendant.

(4) [Unchanged.]

Copies of relevant documents, record evidence, or supporting affidavits may be attached as exhibits to the complaint.

(E)-(F) [Unchanged.]

(G) Reply Brief. 1 signed copy of a reply brief may be filed as provided in MCR 7.305(E). In an action filed under Const 1963, art 4, § 6(19), a reply brief may be filed within 3 days after service of the answer and supporting brief, unless the Court directs otherwise. In an action filed under MCL 168.845a, a reply brief may be filed within 24 hours~~1 day~~ after service of the answer and supporting brief, unless the Court directs otherwise. A plaintiff may not file a reply brief in an action for judicial review under MCL 168.46.

(H)-(L) [Unchanged.]

Staff Comment (ADM File Nos. 2024-30 and 2024-39): The amendment of MCR 7.306 clarifies previously-adopted amendments regarding election-related original proceedings. Changes include expressing certain deadlines in terms of hours instead of days and requiring date and time stamped copies of certain election-related certifications.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

ADM File No. 2019-40
Adoption of Administrative Order No. 2026-4, Rescission of Administrative Order No. 2012-7, and Amendments of Rules 2.407 and 8.110 of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following adoption of Administrative Order

FROM THE MICHIGAN SUPREME COURT (CONTINUED)

No. 2026-4, rescission of Administrative Order No. 2012-7, and amendments of Rules 2.407 and 8.110 of the Michigan Court Rules are adopted, effective September 1, 2026.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Administrative Order No. 2026-4 – Judicial Officers' Remote Appearances

In accordance with this administrative order, and subject to the chief judge's discretion under MCR 8.110, judicial officers may preside remotely. Judges appearing remotely must ensure that doing so does not interfere with the rights and interests of the parties in any given case, that the remote proceeding is beneficial to the parties, and that public perception of the court is considered.

Judges must comply with in-person requests pursuant to MCR 2.407(B)(4). Attorneys and parties must not be required to attend a proceeding in person if the judicial officer will be presiding remotely.

The judicial officer who presides remotely must

(1) preside from a location that is free of personal distractions;
(2) preside from a location that the judicial officer reasonably believes to have a reliable internet connection that will support remote proceedings;
(3) have their videoconferencing camera on at all times during the proceeding;
(4) display the flags of the United States and Michigan as provided in MCR 8.115(A); and
(5) wear a black robe if they are a judge or if required by court rules, statute, or their chief judge.

For purposes of this administrative order, the judge may display digital representations of the United States and Michigan flags adjacent to the judge.

A judicial officer's remote participation is subject to the court's ability to produce a suitable recording of the proceeding for purposes of preparing a verbatim transcript in accordance with the Michigan Court Rules.

The State Court Administrative Office must report periodically to this Court regarding its assessment of judicial officers presiding remotely. Courts must cooperate with the State Court Administrative Office in monitoring the remote participation of judicial officers in court proceedings.

For purposes of this order:

- "Videoconferencing" means that term as defined in MCR 2.407.
- A "judicial officer" includes judges, district court magistrates, and referees.

Rule 2.407 Videoconferencing

(A)-(D) [Unchanged.]

~~(E) Notwithstanding any other provision in this rule, until further order of the Court, AO No. 2012-7 is suspended.~~

Rule 8.110 Chief Judge Rule

(A)-(B) [Unchanged.]

(C) Duties and Powers of Chief Judge.

(1)-(2) [Unchanged.]

(3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:

(a)-(b) [Unchanged.]

(c) determine the hours of the court and the judges; coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial administrative work of the court, and require their presence to perform that work <u>in accordance with subrule (C)(4)</u>;

(d)-(i) [Unchanged.]

(4) <u>In requiring presence to perform work under subrule (C)(3)(c), a chief judge may consider requests to work remotely from judicial officers as that term is defined in Administrative Order No. 2026-4. The chief judge has a duty to first consider and ensure that the rights and interests of litigants and the public are met when a judge is working remotely. In addition, the chief judge must weigh the needs of the court and public perception, while affording judges and court personnel the professionalism that they have earned.</u>

(4)-(9) [Renumbered (5)-(10) but otherwise unchanged.]

(D) [Unchanged.]

Staff Comment (ADM File No. 2019-40): Administrative Order No. 2026-4 clarifies how a judicial officer may preside remotely. A related amendment of MCR 2.407 strikes a reference to Administrative Order No. 2012-7 being suspended, and that administrative order is rescinded. The amendment of MCR 8.110 sets out the authority, responsibility, and duty of chief judges when faced with remote-work requests from judicial officers.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

ADM File No. 2026-01
Assignment to the Court of Claims

On order of the Court, Honorable Michael J. Riordan is assigned to sit as a Court of Claims judge for a partial term commencing on July 1, 2026, and expiring on May 1, 2027.

ADM File No. 2026-01
Appointment of Commissioner-at-Large to the State Bar of Michigan Board of Commissioners

On order of the Court, pursuant to SBM Rule 5(2), Robin E. Dillard-Russaw is appointed as commissioner-at-large of the State Bar of Michigan Board of Commissioners to serve a three-year term commencing on adjournment of the 2026 annual meeting of the outgoing Board of Commissioners.

ADM File No. 2026-01
Assignment of Business Court Judge in the 37th Circuit Court (Calhoun County)

On order of the Court, Honorable Jason C. Bomia is assigned to serve as a business court judge in the 37th Circuit Court, for a term commencing July 1, 2026 and expiring on April 1, 2031.

ADM File No. 2026-01
Appointments to the Michigan Tribal State Federal Judicial Forum

On order of the Court, pursuant to Administrative Order No. 2014-12, the following members are reappointed to serve on the Michigan Tribal State Federal Judicial Forum for terms commencing on July 2, 2026 and expiring on July 1, 2029.

- Honorable Patrick J. Conlin, Jr., 22nd Circuit Court
- Honorable Cheryl L. Hill, Marquette County Probate Court
- Honorable Steven W. Paciorka, Leelanau County Probate Court
- Honorable Jennifer L. Whitten, Grand Traverse County Probate Court

Additionally, Honorable Jolene A. Clearwater, Allegan County Probate Court, is appointed to serve on the Michigan Tribal State Federal Judicial Forum for a first full term commencing on July 2, 2026 and expiring on July 1, 2029.

FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS

MODEL CIVIL JURY INSTRUCTIONS

The Committee on Model Civil Jury Instructions solicits comment on the following proposal by December 1, 2026. Comments may be sent in writing to Liza C. Moore, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

The Committee proposes amending M Civ JI 19.03 (Duty of Possessor of Land, Premises, or Place of Business to Invitee), and M Civ JI 19.06 (Duty of Possessor of Land, Premises, or Place of Business to Licensee). Deletions are in ~~strikethrough~~, and new language is underlined.

Chapter 19: Premises Liability (Negligence)
[AMENDED] M CIV JI 19.03

Duty of Possessor of Land, Premises, or Place of Business to Invitee

(1) (a) A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition of the land.~~ that was known to the possessor or that should have been known to the possessor in the exercise of ordinary care.~~

*(The duty to exercise reasonable care exists where the condition was known to the possessor or should have been known to the possessor in the exercise of ordinary care. In determining whether the possessor should know of the condition, you should consider the character of the condition and whether the condition existed for a sufficient length of time that a possessor exercising ordinary care would discover the condition.)

Notes on use

*This paragraph should be used only if there is an issue of constructive notice or inspection. This paragraph should not be used where the possessor has created the condition or where notice is not otherwise in dispute. See *Hulett v Great Atl & Pac Tea Co*, 299 Mich 59, 65-68; 299 NW 807 (1941); *Pugno v Blue Harvest Farms LLC*, 326 Mich App 1, 18-19; 930 NW2d 393 (2018); *Berryman v K_mart Corp*, 193 Mich App 88, 93; 483 NW2d 642 (1992).

Comments

See *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95; 1 NW3d 44 (2023).

On the subject of constructive notice, see *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001)~~; and~~ *Banks v Exxon Mobil ~~Corporation~~*, 477 Mich 983, 983-984; 725 NW2d 455 (2007)~~;~~.

~~o~~On the subject of inspection, see *James v Alberts*, 464 Mich 12, 19-20; 626 NW2d 158 (2001).

On the subject of liability to invitees injured by the criminal acts of third parties, see *MacDonald v PKT, Inc*, 464 Mich 322; 628 NW2d 33 (2001).

History

M Civ JI 19.03 was added January 1982. Amended January 1994, June 2003, March 2005, December 2005, January 2024.

[AMENDED] M CIV JI 19.06

Duty of Possessor of Land, Premises, or Place of Business to Licensee

A possessor of [land / premises / a place of business] is liable for physical harm caused to a licensee by a condition on the [land / premises / place of business] if, but only if —

*(a) the possessor knew or should have known of the condition; and

(~~a~~b) the possessor ~~knew or should have known of the condition and~~ should have realized that it involved an unreasonable risk of harm to the licensee, and should have expected that [he / she] would not discover or realize the danger; and

(~~b~~c) the possessor failed to warn the licensee of the danger; and

(~~c~~d) the licensee did not know or have reason to know of the danger.

Note on use

If there is no dispute as to the legal status of the plaintiff as a licensee, the plaintiff's name should be substituted for the term "licensee" in this instruction.

If there is a factual question as to the legal status of the plaintiff as invitee, licensee, or trespasser, M Civ JI 19.01 should be given.

*This paragraph should not be used where the possessor created the condition or where notice is not otherwise in dispute. See *Hulett v Great Atl & Pac Tea Co*, 299 Mich 59, 65–68; 299 NW 807 (1941); *Pugno v Blue Harvest Farms LLC*, 326 Mich App 1, 18–19; 930 NW2d 393 (2018); *Berryman v K Mart Corp*, 193 Mich App 88, 93; 483 NW2d 642 (1992).

Comment

See *Preston v Sleziak*, 383 Mich 442; 175 NW2d 759 (1970). *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591; 614 NW2d 88 (2000), overruled *Preston* only insofar as *Preston* might be read as adopting the public invitee portion of the definition of "invitee" in the Restatement Torts, 2d, § 332, p 176.

While a possessor owes no duty to pedestrians regarding the natural accumulations of ice and snow on public sidewalks abutting the possessor's land, this rule does not change the duty owed by a possessor to a licensee on the possessor's private premises. *Altairi v Alhaj*, 235 Mich App 626; 599 NW2d 537 (1999)~~, lv den, 461 Mich 1021; 611 NW2d 797 (2000)~~.

In *Burnett v Bruner*, 247 Mich App 365; 636 NW2d 773 (2001), the Court of Appeals held that it was reversible error for the trial court to give an instruction to the jury modeled after an earlier version of M Civ JI 19.06. The Court held that a landowner only owes his or her licensees a duty to warn and does not owe a duty to inspect or repair the premises. The 2006 amendment delete~~s~~d the offending provision from subpart (b) (now subpart (c)). Therefore, it is not necessary to include the supplemental instruction sought by the defendant in *Burnett*.

History

M Civ JI 19.06 was added January 1982. Amended June 2006.

LAWYERS & JUDGES ASSISTANCE

MEETING DIRECTORY

The following list reflects the latest information about lawyers and judges AA and NA meetings. Meetings marked with "*" have been designated for lawyers, judges, and law students only. All other meetings are attended primarily by lawyers, judges, and law students, but also are attended by others seeking recovery. In addition, we have listed "Other Meetings," which others in recovery have recommended as being good meetings for those in the legal profession.

For questions about any of the meetings listed, please contact the Lawyers and Judges Assistance Program at 800.996.5522 or jclark@michbar.org.

PLEASE DO NOT HESITATE TO CONTACT LJAP DIRECTLY WITH QUESTIONS PERTAINING TO VIRTUAL 12-STEP MEETINGS. FOR MEETING LOGIN INFORMATION, CONTACT LJAP VOLUNTEERS ARVIN P. AT 248.310.6360 OR MIKE M. AT 517.281.9507.

ALCOHOLICS ANONYMOUS & OTHER SUPPORT GROUPS

Bloomfield Hills

WEDNESDAY 6 PM*
Virtual meeting
Kirk in the Hills Presbyterian Church
1340 W. Long Lake Rd.
1/2 mile west of Telegraph
(This is both an AA and NA meeting.)

Detroit

MONDAY 7 PM*
Lawyers and Judges AA
St. Paul of the Cross
23333 Schoolcraft Rd.
Just east of I-96 and Telegraph
(This is both an AA and NA meeting.)

TUESDAY 6 PM*
St. Aloysius Church Office1
232 Washington Blvd.

FRIDAY 12 PM*
Detroit Metropolitan Bar Association
645 Griswold
3550 Penobscot Bldg., 13th Floor
Smart Detroit Global Board Room 2

East Lansing

WEDNESDAY 8 PM
Sense of Humor AA Meeting
Michigan State University Union
49 Abbott Rd.
Lake Michigan Room

Houghton Lake

SECOND SATURDAY OF THE MONTH 1 PM
Lawyers and Judges AA Meeting
Houghton Lake Alano Club
2410 N. Markey Rd.
Contact Scott at 989.246.1200 with questions.

Rochester

FRIDAY 8 PM
Rochester Presbyterian Church
1385 S. Adams South of Avon Rd.
Closed meeting; men's group

Stevensville

THURSDAY 4 PM*
Al-Anon of Berrien County
4162 Red Arrow Highway

Troy

FRIDAY 6 PM
The Business & Professional (STAG)
Closed Meeting of Narcotics Anonymous
Pilgrim Congregational Church
3061N. Adams
2 blocks north of Big Beaver (16 Mile Rd.)

GAMBLERS ANONYMOUS

For a list of meetings, visit
gamblersanonymous.org/mtgdirMI.html.

Please note that these meetings are not specifically for lawyers and judges.

Virtual

MONDAY 7 PM
AA/NA meeting (St. Paul of the Cross)
Contact Arvin P. at 248.310.6360 for login information

MONDAY 8 PM
Join using this link https://ilaa.org/meetings-and-events/

TUESDAY 7 PM
AA/NA meeting (Royal Oak)
Contact Arvin P. at 248.310.6360 for login information

TUESDAY 8 PM
WOMEN ONLY
Join using this link https://ilaa.org/meetings-and-events/

WEDNESDAY 6 PM
AA/NA meeting (Bloomfield Hills- Kirk of the Hills)
Contact Arvin P. at 248.310.6360 for login information

THURSDAY 7 PM*
Contact Mike M. at 517.281.9507 for information.

THURSDAY 7:30 PM
New Freedom
Contact Arvin P. at 248.310.6360 for login information

SUNDAY 7 PM*
Contact Mike M. at 517.281.9507 for information.

SUNDAY 7 PM*
WOMEN ONLY
Contact Lynn C. at 269.491.1836 for login information.

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted a new instruction, M Crim JI 32.4 (Malicious Destruction of Foliage), which addresses the crime set forth in MCL 750.382. This instruction is entirely new and will take effect on December 1, 2026.

[NEW] M Crim JI 32.4
Malicious Destruction of Foliage

(1) The defendant is charged with the crime of malicious destruction of [tree(s) / shrub(s) / grass / turf / plant(s) / crop(s) / soil]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that there [was / was a / were] [tree(s) / shrub(s) / grass / turf / plant(s) / crop(s) / soil] [standing / growing / located] on land or property that did not belong to the defendant.

(3) Second, that the defendant [cut down / destroyed / damaged] the [tree(s) / shrub(s) / grass / turf / plant(s) / crop(s) / soil] [standing / growing / located] on that land or property without permission of the owner or possessor of the land or property.

(4) Third, that the defendant did this knowing that it was wrong, [without just cause or excuse,]1 and with the intent to [cut down / destroy / damage] the [tree(s) / shrub(s) / grass / turf / plant(s) / crop(s) / soil].2

(5) Fourth, that the extent of the damage was3

[*Choose only one of the following unless instructing on lesser offenses:*]

(a) $20,000 or more.
(b) $1,000 or more, but less than $20,000.
(c) $200 or more, but less than $1,000.
(d) some amount less than $200.

[*Use the following paragraph only if applicable:*]

(6) You may add together damages caused in separate incidents if part of a scheme or course of conduct within a 12-month period when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

Use Notes

1. Use only where evidence supports a legally recognized defense that the destruction was done with just cause or is legally excused.
2. This is a specific intent crime.
3. M Crim JI 32.1, Fair Market Value Test—Malicious Destruction of Property, should be given when applicable.

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by November 1, 2026. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes two new jury instructions addressing crimes within the Prohibited Conduct at Institutions of Higher Education Act, MCL 752.581 *et seq.* The first, M Crim JI 25.10 (Failure to Depart from the Property of a Public Institution of Higher Education After Violating Rules), covers the offense set forth in MCL 752.581. The second, M Crim JI 40.14 (Entering on the Property of a Public Institution of Higher Education to Disrupt or to Damage Persons or Property), covers the offense set forth in MCL 752.582. These instructions are entirely new.

[NEW] M Crim JI 25.10
Failure to Depart from the Property of a Public Institution of Higher Education After Violating Rules

(1) The defendant is charged with the crime of failing to depart from the property of a public institution of higher education after violating rules. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) First, that the defendant was on the campus or property of a publicly owned and operated institution of higher education or in a building or structure of that institution.

(2) Second, that while present at the institution, the defendant violated the institution's rule prohibiting [*identify the rule and describe alleged rule violation*].

(3) Third, that the institution's chief administrator or [his / her] designee notified the defendant that [he / she] held the position of [*describe position held*].

(4) Fourth, that the institution's chief administrator or [his / her] designee also notified the defendant that [he / she] was in violation of the institution's rule prohibiting [*identify rule*] and directed the defendant to leave the campus, property, building, or structure of the institution.

(5) Fifth, that after being directed to leave, the defendant deliberately remained on the campus, property, building, or structure of the institution.

(6) Sixth, that by remaining, the defendant either created a clear and substantial risk of physical harm or injury to persons or damage to property of the institution or unreasonably disrupted or prevented the normal functions of the institution by occupying the space reserved for those functions or by using or threatening to use force to disrupt or prevent those functions.

[NEW] M Crim JI 40.14

Entering on the Property of a Public Institution of Higher Education to Disrupt or to Damage Persons or Property

(1) The defendant is charged with the crime of entering on the property of a public institution of higher education to disrupt or to damage persons or property. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant entered onto the property of a publicly owned and operated institution of higher education or in a building or structure of that institution.

(3) Second, that when the defendant entered onto the institution's property, [he / she] intended to create

[*Select from the following*:]

(a) a clear and substantial risk of physical harm or injury to persons or damage to the institution's property by [*describe alleged conduct that would create risk of injury or damage*].

(b) an unreasonable disruption or prevention of the institution's normal functions [by occupying the space reserved for those functions / through the use or threat of force].

(4) Third, that by [*describe alleged conduct that would create risk of injury or damage or cause disruption*], the defendant did create

[*Select from the following*:]

(a) a clear and substantial risk of physical harm or injury to persons or damage to the institution's property.

(b) an unreasonable disruption or prevention of the institution's normal functions [by occupying the space reserved for those functions / through the use or threat of force].

ORDERS OF DISCIPLINE & DISABILITY

INTERIM SUSPENSION PURSUANT TO MCR 9.115(H)(1)

Brittany A. Campbell, P75152, Lansing. Interim Suspension, Effective June 24, 2026.

Respondent failed to appear before Ingham County Hearing Panel #4 for a June 17, 2026, hearing and satisfactory proofs were entered into the record that she possessed actual notice of the proceedings. As a result, the hearing panel issued an Order of Suspension Pursuant to MCR 9.115(H)(1) [Failure to Appear], effective June 24, 2026, and until further order of the panel or the Board.

REPRIMAND (BY CONSENT)

Eric H. Clark, P31126, Livonia. Reprimand, Effective July 2, 2026.

Respondent and the Grievance Administrator filed a Stipulation for Consent Order of Discipline in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by Tri-County Hearing Panel #3. The stipulation contained respondent's admissions to all of the factual allegations, as well as the allegations of professional misconduct set forth in subparagraphs 27(e)-(h) of the formal complaint. Specifically, that respondent accepted $1,500 to deliver legal documents to an inmate at Lakeland Correctional Facility on two occasions in 2023. The documents, which respondent did not prepare or review, were intercepted by prison staff and law enforcement and tested positive for controlled substances. The stipulation further contained the parties' agreement to dismiss the professional misconduct allegations set forth in subparagraphs 27(a)-(d).

Based upon respondent's admissions and the stipulation of the parties, the panel found that respondent engaged in conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); and, engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court, in violation of MCR 9.104(4).

In accordance with the stipulation of the parties, the panel ordered that respondent be reprimanded. Costs were assessed in the amount of $912.42.

DISBARMENT AND RESTITUTION

Brian T. Dailey, P39945, Grosse Pointe Farms. Disbarment, Effective June 20, 2024.

The Grievance Administrator filed a Twelve-Count Formal Complaint against Respondent. Based on the evidence presented to the hearing panel at hearings held in this matter in accordance with MCR 9.115, the hearing panel found that respondent committed professional misconduct during his representation of various clients in numerous cases, and by failing to make payments of earned wages owed to his former bookkeeper and his assistant, failing to pay other attorneys for referral fees and their portion of earned attorney fees, and failing to pay court-ordered costs to other attorneys.

Specifically, the panel found that respondent: neglected a legal matter, in violation of MRPC 1.1(c) [Count Six]; failed to act with reasonable diligence and promptness in representing a client, in violation of MRPC 1.3 [Counts Six, Eight, Ten]; failed to promptly comply with a client's reasonable request for information, in violation of MRPC 1.4(a), and failed to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions about the representation, in violation of MRPC 1.4(b) [Counts Eight, Ten]; charged or collected, or attempted to charge or collect, clearly illegal or excessive fees, in violation of

MRPC 1.5(a) and MCR 5.313(B) [Count Six]; failed to promptly pay or deliver funds that a third person is entitled to receive, and failed to promptly render a full accounting regarding such funds, in violation of MRPC 1.15(b)(3) [Counts One, Two, Three, Five through Eleven]; failed to hold disputed property separate from the lawyer's property until the dispute is resolved, in violation of MRPC 1.15(c) and failed to hold property of clients or third persons in connection with a representation separate from the lawyer's own property, in violation of MRPC 1.15(d) [Count Two]; asserted a frivolous position in a proceeding, in violation of MRPC 3.1 [Count Five], knowingly disobeyed an obligation under the rules of a tribunal, in violation of MRPC 3.4(c) [Counts One, Four, Five, Six, Eight, Nine, Eleven]; violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a) [Count Five]; engaged in conduct involving dishonesty and deceit, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b) [Counts One through Nine, Eleven]; engaged in conduct prejudicial to the administration of justice, in violation of MRPC 8.4(c) [Counts Two, Four, Five, Eight, Nine, Eleven]; engaged in conduct that is prejudicial to the proper administration of justice, in violation of MCR 9.104(1) [Counts One, Two, Four, Five, Six, Eight through Eleven]; engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2) [Counts One, Two, Four, Five, Six, Eight, Nine, Eleven]; engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3) [Counts One, Three through Eleven]; and, failed to answer a request for investigation or complaint in conformity with MCR 9.113 and 9.115(D), in violation of MCR 9.104(7) [Count Twelve]. The hearing panel also determined the Grievance Administrator failed to establish respondent violated the following rules: MRPC 1.3 and MRPC 1.5(a) [Count Seven]; MRPC 8.1(a)(2) [Count Twelve]; MRPC 8.4(b) [Counts Ten, Twelve]; MRPC 8.4(c) [Counts Three, Seven, Twelve]; MCR 9.104(1) [Counts Three, Seven, Twelve]; MCR 9.104(2) [Counts Three, Seven, Ten, Twelve]; MCR 9.104(3) [Count Twelve]; and MCR 9.104(5) [Count Five].

The panel ordered that respondent's license to practice law in Michigan be suspended for a period of five years and that he pay restitution in the total amount of $24,478.85, plus interest. Respondent timely filed a petition for review and motion for stay. The Attorney Discipline Board initially granted an interim stay on May 28, 2024, but later denied the motion on June 13, 2024, dissolving the stay and making the hearing panel's suspension and restitution order effective June 20, 2024. Upon review, on March 24, 2025, the Board affirmed in part and vacated in part the hearing panel's findings of misconduct, increased discipline from a five-year suspension to disbarment, and affirmed restitution. Respondent filed a motion for reconsideration which was denied by the Board on June 11, 2025.

On July 14, 2025, respondent filed an application for leave to appeal with the Michigan Supreme Court and a revised application for leave to appeal on July 24, 2025, which was denied on February 27, 2026. Respondent then filed a motion for reconsideration, which was denied by the Court on May 22, 2026. Total costs were assessed in the amount of $14,198.15.

TRANSFER TO INACTIVE STATUS (BY CONSENT)

John J. Finn, P33678, Riverview. Inactive Status, Effective July 14, 2026.

On December 29, 2025, the Grievance Administrator filed a formal complaint against respondent alleging that he committed acts

ORDERS OF DISCIPLINE & DISABILITY (CONTINUED)

of professional misconduct warranting discipline. The formal complaint was assigned to Tri-County Hearing Panel #15 for proceedings to be held in accordance with MCR 9.115. Respondent subsequently failed to file an answer to the formal complaint, failed to appear for the scheduled virtual prehearing conference, and his default was entered on March 6, 2026.

On June 4, 2026, the Grievance Administrator filed a Petition to Transfer to Inactive Status alleging that respondent is incapacitated and is unable to continue the practice of law due to a mental or physical infirmity or disability, pursuant to MCR 9.121(B)(1) together with a motion to consolidate both cases and assign the petition to Tri-County Hearing Panel #15. Also on June 4, 2026, the parties filed a Stipulation to Transfer Respondent to Inactive Status Pursuant to MCR 9.121(B). The stipulation contains the parties agreement to set aside respondent's default entered on March 6, 2026, and respondent's admission that he is currently incapacitated to engage in the practice of law because of his physical disability as set forth in the petition to transfer respondent to inactive status.

In accordance with the agreement of the parties, the panel ordered that respondent's license to practice law in Michigan be transferred to inactive status until further order of the Attorney Discipline Board and that Formal Complaint 25-104-GA be held in abeyance in accordance with MCR 9.121(B)(4). No costs were assessed.

DISBARMENT

Levi T. Smith, P80484, Jackson. Disbarment, Effective July 2, 2026.[1]

The Grievance Administrator filed a Notice of Filing of a Judgment of Conviction in accordance with MCR 9.120(B)(3), advising that on December 4, 2025, respondent was convicted of attempted home invasion, in violation of MCL 750.110a(2)(a), a felony; and possession of firearm while committing a felony, in violation of MCL 750.227b, a felony, in the matter titled *People v Levi Trahern Smith*, Oakland County Circuit Court Case No. 2024-290455-FH. In accordance with MCR 9.120(B)(1), respondent's license to practice law in Michigan was automatically suspended, effective December 4, 2025, the date of respondent's felony convictions.

Based on his convictions, Tri-County Hearing Panel #9 found that respondent committed professional misconduct when he engaged in conduct that violated criminal laws of the state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, in violation of MCR 9.104(5); and engaged in conduct involving a violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b).

The panel ordered that respondent be disbarred from the practice of law in Michigan. Total costs were assessed in the amount of $2,039.08.

[1] Respondent's license to practice law in Michigan has been continuously suspended since December 4, 2025, the date of respondent's felony conviction and automatic suspension pursuant to MCR 9.120(B)(1). See Notice of Automatic Interim Suspension issued March 4, 2025, in *Grievance Administrator v Levi T. Smith*.

ORDER OF REINSTATEMENT

On May 4, 2026, Kalamazoo County Hearing Panel #3 entered an Order of Suspension (By Consent) in this matter suspending respondent from the practice of law in Michigan for 45 days, effective May 26, 2026. On July 7, 2026, respondent filed an affidavit pursuant to MCR 9.123(A), attesting that he has fully complied with all requirements of the panel's order and will continue to comply with the order until and unless reinstated. Counsel for the Grievance Administrator informed the Board's staff that the Administrator has no objection to respondent's reinstatement; and the Board being otherwise advised;

Now therefore, it is ordered that respondent, Victor L. Bland, P38278, is reinstated to the practice of law in Michigan, effective July 10, 2026.

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