

The Trend Continues

To the Editor:

I recently received a denial of an application for leave to appeal to the Michigan Supreme Court from a Michigan Court of Appeals decision that I believe has important ramifications to the State Bar of Michigan. The Michigan Supreme Court refused to consider an application for leave to appeal from an unpublished decision of the Michigan Court of Appeals in *Stanke, ex rel. Isabella Bank & Trust v Stanke* (2008 WL 216071) Docket No. 263446 in which the Court of Appeals had held that a lawyer has no duty to a minor child that the lawyer is representing through a next friend.

The Court of Appeals held that there is no attorney-client relationship between the lawyer and the injured minor, precluding any possible malpractice claim by the minor. The lawyer's duty only runs to the minor's next friend. When there is a conflict between the interests of the next friend and the minor, the lawyer has no duty to the minor, and it is up to the court to appoint a guardian ad litem to protect the minor in proceedings in which there may be a conflict between the next friend and the minor. In this case, the minor was unrepresented and had no guardian ad litem, so he had no recourse against the attorneys representing his mother as next friend following settlement of a significant personal injury claim

of the minor. The issue pertained to the control over his money.

I believe that this decision is inconsistent with the general understanding that we all have as attorneys when we are asserting the claim of a minor in a personal injury lawsuit, and that we should all be aware of this decision.

The trend continues in the denial of access to justice for plaintiffs in the state of Michigan.

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To the Editor:

Congratulations to the members of the Criminal Issues Initiative for beginning to discuss the collateral effects of criminal arrests and convictions. I agree that civil and criminal issues are "inextricably intertwined" and that these "problems should be addressed in a more holistic way" ("Toward Bridging the Civil-Criminal Divide," November 2008). The working group appears to have a good start in understanding how criminal charges and convictions may affect civil issues. I hope the mandate of the group is broad enough for it to consider the converse relationship—how the results of civil and administrative procedures contribute to the commission of crime.

As a district court judge, I find the most troubling example of this to be how financially motivated driver's license sanctions make criminals out of otherwise law-abiding citizens. In our state, thousands of people commit at least 10 crimes each week, just by driving to and from work. Although some have demonstrated their inability or disinclination to drive safely, many have lost their right to drive by failing to meet financial obligations imposed by a civil judgment or by the secretary of state. The use of administrative and civil procedures to impose financial obligations and the threat of criminal prosecution to collect them may be efficient, but this process is fundamentally unfair and fraught with serious unintended consequences.

The harm caused by this conjunction of civil and criminal actions goes beyond the interests of the people directly involved. The state's ability to regulate driving and promote highway safety is eroded by the critical mass of unlicensed drivers. Correction resources are wasted by courts struggling to invent non-economic punishment for status criminals. Court dockets are flooded with pointless prosecutions. But positive change has been impeded by our government's reliance on the revenue streams generated by this dubious process. This situation lacks the anecdotal appeal presented by the reformed felon who can't be licensed for a job, but may deserve some attention by those seeking to improve justice "at the intersection of criminal and civil matters."

**Hon. David A. Hogg
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