
STATE BAR OF MICHIGAN - LITIGATION SECTION

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Premier litigation insights and analysis.

Editors - Tom Cedoz, Logan T. Grizzell & Ashley Wahl

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Letter from the Chair

By Andrew L. Stevens

Welcome to the Spring 2026 issue of the Michigan Litigation Journal.

Every litigator works at the intersection of preparation and judgment, and the articles in this issue speak to both. They range from the practical mechanics of e-filing and public-records litigation to a new statutory regime addressing artificial intelligence, and to the craft of persuasion itself. Different subjects, one through line: helping you serve clients well in a profession that never stops changing.

No force is changing that profession faster than artificial intelligence. The commentary has moved from speculation to documentation: a recent comment in the *Houston Law Review* describes how generative AI is rapidly transforming legal research, document review, and e-discovery,¹ while Professor John Villasenor, writing in the *Minnesota Journal of Law, Science and Technology*, observes that generative AI will alter how much of legal writing gets done, and that the practitioners who learn to use these tools effectively will work more efficiently than those who do not.² The tools that now draft, summarize, and predict did not exist in usable form three years ago. Whatever we make of that pace, it is not slowing down.

The cautionary tales are just as well documented. Since *Mata v. Avianca, Inc.* introduced the profession to the hallucinated citation,³ courts across the country (including recent decisions from the Sixth and Seventh Circuits)⁴ have settled on one principle: AI changes a lawyer's workflow, not a lawyer's duties. Competence, candor to the tribunal, and personal verification of every citation and quotation remain nondelegable, whether the brief came from an associate, a contract attorney, or a large language model.

One reason these episodes keep happening is found in our automatic mental machinery. Thinking is metabolically expensive, so the human brain evolved to conserve it: we run on fast, intuitive judgment and engage slow, effortful analysis only when something forces us to. Daniel Kahneman mapped this architecture in *Thinking, Fast and Slow*,⁵ describing an automatic System 1 that supplies quick, confident answers and a deliberative System 2 that is, by design, lazy, endorsing those answers unless it is roused to check them. Fluent, polished prose produces precisely the cognitive ease that keeps System 2 dormant. That is why a well-formatted AI brief invites us to offload not just the typing but the critical thinking, and why a citation that looks right can feel verified when it never was. Hallucinations slip through, in short, because our brains are doing exactly what evolution built them to do: conserving scarce cognitive resources for other work.

So what can litigators do to prepare? The emerging consensus in the literature is refreshingly practical. Learn the tools before a case demands it, because the duty of competence now includes understanding what the technology can and cannot do, as the ABA emphasized in Formal Opinion 512.⁶ Verify everything an AI system produces before it reaches a client or a court. Read the standing orders in the courts where you appear, because a growing number of judges impose specific certification or verification requirements for AI-assisted filings. And press your firms to adopt written policies and real training, so that good judgment is built into the workflow rather than left to chance. The litigators who thrive in the coming decade will not be the ones who avoided these tools; they will be the ones who mastered them while keeping their professional obligations firmly in hand.

A publication like this depends on people who give their time. My thanks to the authors who shared their expertise, and to our team for turning a stack of submissions into the issue you are reading. The Section is only as strong as the members who contribute to it.

This is also a season for gathering. You will find details later in this issue about our upcoming events, including a night at the ballpark, a regional reception in Grand Rapids, and our Annual Meeting. These gatherings are where colleagues become friends and where the Section does some of its best work. I hope to see you there.

If you have an idea for an article, an event, or a way the Section can serve you better, reach out. This is your Section, and it is better for your involvement. Thank you for being part of it.

Sincerely,

Andrew L. Stevens

Chair, Litigation Section

State Bar of Michigan

Endnotes

1. Andrea Bucher, Comment, *Navigating the Power of Artificial Intelligence in the Legal Field*, 62 Hous. L. Rev. 819 (2025), <https://houstonlawreview.org/article/137782-navigating-the-power-of-artificial-intelligence-in-the-legal-field>.
2. John Villasenor, *Generative Artificial Intelligence and the Practice of Law: Impact, Opportunities, and Risks*, 25 Minn. J.L. Sci. & Tech. 25 (2024), <https://scholarship.law.umn.edu/mjlst/vol25/iss2/8>.
3. *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023).
4. See, e.g., *Whiting v. City of Athens*, No. 25-5425 (6th Cir. Mar. 13, 2026) (imposing sanctions and emphasizing that lawyers must personally read and verify every citation, whatever its source); *Dec v. Mullin*, No. 25-2417 (7th Cir. Mar. 30, 2026) (publicly admonishing counsel for fictitious citations bearing the hallmarks of AI hallucination).
5. Daniel Kahneman, *Thinking, Fast and Slow* (Farrar, Straus and Giroux 2011), chs. 1 ("The Characters of the Story"), 3 ("The Lazy Controller"), and 5 ("Cognitive Ease").
6. ABA Comm. on Ethics & Pro. Responsibility, Formal Op. 512: Generative Artificial Intelligence Tools (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

TECHNOLOGY & PRACTICE

Fixing Michigan's Fragmented E-Filing

A litigator's open-source proof-of-concept solution

By Tom Cedoz

Editor's note: The author is an editor of this Journal. The views expressed, and the MUEFS project described, are the author's own.

It was a Tuesday afternoon when the request arrived. A partner needed a subpoena domesticated in a Michigan county that still had no e-filing system. The clerk offered two choices: drive there or mail it. The courthouse was three hours away.

Six hours on the road, plus parking and waiting. Or risk the mail with something time-sensitive. The rest of Michigan kept moving. One lawyer cannot practice across an entire state from behind a desk.

Michigan has eighty-three counties. Its size turns ordinary filings into logistical problems.

MiFILE has brought real progress. It now operates in 127 trial courts.¹ Yet attorneys still encounter different interfaces in different counties, filing types that remain unavailable online, and entire courts reachable only by car or envelope. The system that was meant to solve fragmentation has itself become fragmented.

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That is why I built something else.

The result is MUEFS, the Michigan Unified E-Filing System.² It is a working proof of concept — not a toy or a wireframe, but a fully navigable application where every described feature actually runs. It was built using modern, accessible development tools — and that fact is itself part of the argument. It is a demonstration of what a single, modern platform could deliver across all eighty-three counties and every level of court. It is not a finished product. It is

not a bid for a state contract. It is an answer to a simple question: can Michigan do better than the current patchwork?

The short answer is yes.

The Problem with Patchwork

Credit where it is due. MiFILE was a significant step. Before MiFILE, e-filing in Michigan barely existed. SCAO and its vendor partners brought dozens of courts online and gave attorneys a way to file without a trip to the clerk's window. That matters.

But the system grew the way government technology often grows: in pieces, under contract constraints, on timelines set by budget cycles rather than user needs. The result is a platform that works court by court, not state by state. An attorney filing in Wayne County and then in Washtenaw encounters different interfaces, different quirks, different gaps. Some filing types in some counties still are not online at all.

The upload limit is 25 megabytes, which sounds like a lot until you scan an exhibit binder or a large discovery production. The system does not prompt you when a motion needs a brief or a proposed order. It does not warn you about companion document rules. These are not fatal flaws. They are the friction of a system built to get courts online, not to make filing easy.

What a Unified System Looks Like

MUEFS takes a different approach. One login, one interface, every court in the state. The platform covers Circuit, District, and Probate Courts, Court of Claims, four Court of Appeals districts, and the

Supreme Court. An attorney picks the court, picks the case, and files. The system handles routing, validation, fee calculation, and service.

Under the hood, the architecture uses an adapter layer designed to connect to existing case management systems like JIS and Tyler Odyssey. Those adapters are not yet wired to live systems — this is a proof-of-concept, not a production deployment. But the pattern means no court would need to rip out its existing software.

The underlying stack is worth mentioning. MUEFS is built on FastAPI, React, Docker, Keycloak for authentication, and MinIO for document storage — a modern, maintainable combination that any competent development team could pick up and extend. This is not an incidental detail. It matters because it shows the project is built on a foundation that could realistically scale, not just a demonstration that works once under ideal conditions.

The platform checks MCR 1.109 compliance on its own.³ Upload a document, and the system confirms it is a text-searchable PDF, flags PII, and checks the format. These are things attorneys now do from memory or from habit. A good system should do them by default.

Features That Earn Their Keep

Some specifics. MUEFS includes a catalog of 135 document types drawn from the Michigan Court Rules. While the catalog itself is not court-specific, the system applies court- and case-type-specific filing requirements so each court enforces its own required companion documents in context. File a motion, and the system prompts for the expected companion documents — a brief in support under MCR 2.119(A)(2) and a proposed order (standard practice under MCR 2.602).⁴ File a discovery motion, and it prompts for a meet-and-confer certification under MCR 2.313.⁵ These are companion document rules that every litigator knows — and that every litigator

has, at some point, missed on a rushed Friday afternoon.

The filing wizard walks self-represented litigants through the process in plain language. It does not assume they know what a “case type” means or which court to pick. It is built for the tenant answering an eviction notice or the grandmother seeking guardianship — people who meet the court system without a lawyer and cannot afford to get a step wrong. For attorneys, the interface is faster: open a case, click “File with Court,” and the system pre-fills the court, case title, and case type, so you only need to select the document and attach files. Case favorites let you bookmark the matters you touch every day. Drafts save on their own. A browser crash costs you nothing.

Fee waivers under MCR 2.002 are built into the payment flow.⁶ A filer who qualifies need not file a separate motion or track down a different form. The option appears at the right point in the process. Small thing. But for someone who cannot afford filing fees, it is the difference between access and a closed door.

On the clerk side, the review queue supports batch acceptance, tracks how long filings have waited, and provides common rejection reasons as one-click options. Fifty filings a day is normal. Clerks should not need to type the same rejection reason fifty times.

The upload limit is 100 megabytes. Four times what MiFILE allows. Not because bigger is always better, but because a litigator should not need to split a deposition transcript into four uploads to clear an arbitrary cap.

Case records are also searchable without an account. Anyone can look up a case by number or party name, view the docket, and download public documents. Sealed and confidential filings stay restricted to the filer and court staff. This is how public records should work: open by default, protected where it counts.

What Courts and SCAO Stand to Gain

Most of the features above are pitched at attorneys. But the strongest case for a unified system may be the one aimed at the people who run the courts.

Right now, SCAO manages a patchwork of vendor contracts, each covering a subset of courts with its own terms, its own pricing, and its own update cycle. A single platform replaces that with one system to maintain, one set of training materials, and one line item in the budget. Courts that are not yet on MiFILE could come online without a separate procurement process. Courts already on MiFILE would not lose ground; the adapter layer is built to work with existing case management systems, not replace them.

The data argument matters too. Today, there is no easy way to pull statewide filing data across all courts. How many filings does the 3rd Circuit handle per month versus the 6th? What is the average time from submission to acceptance in Ingham County? Which courts have the highest rejection rates, and why? A unified system captures all of that in one place. SCAO would have real numbers to inform policy, allocate resources, and report to the legislature.

Pre-submission validation also helps clerks and courts directly. When the system catches a non-searchable PDF or a missing brief before the filing reaches the clerk's desk, that is one fewer rejection to process, one fewer confused filer calling the clerk's office, and one fewer delay in the case. Fewer bad filings in means less work on the back end.

And there is the access-to-justice angle. Fee waiver tracking, self-represented litigant completion rates, filing volumes by case type and county: this is the kind of data that grant applications and legislative testimony run on. A unified system produces it as a byproduct of doing its job.

Open Source and What It Means Here

MUEFS is released under the AGPL-3.0 license. That means anyone can read the code, run it, change it,

and contribute to it. If the state, a court, a legal aid group, or a law school wanted to pick it up and build on it, they could. No licensing fees. No vendor talks. No lock-in.

This is not an abstract idea. Government-built open-source software has a record. The most cited example is VistA, the electronic health records system the VA built and ran for decades.

VistA achieved a 99.997% pharmacy prescription accuracy rate, was rated the top EHR in the country by physicians in independent surveys, and won Harvard's Innovations in American Government Award.⁷ The VA released the code as public domain software. Jordan adopted it across its public hospital system. Several U.S. states used it in non-VA hospitals. One agency built it. The whole country benefited.

Closer to home, the federal judiciary is rebuilding its own filing infrastructure. The Administrative Office of the U.S. Courts is building a replacement for CM/ECF, the system that handles all federal court e-filing, with initial components in testing at six federal courts as of March 2026.⁸ If the federal courts can rebuild the system that runs their dockets, there is no technical reason Michigan cannot do the same for its state courts.

That said, open source is not free in the way people think. Someone still needs to host the system, maintain it, audit it for security, and patch it. Courts that adopted MUEFS or something like it would need IT support, in-house or on contract. The savings come from cutting per-transaction licensing fees and customizing without asking a vendor for a change order.

What Comes Next — and Why This Is Realistic Now

Michigan does not need another decade of incremental improvements to a fragmented system. The legislative foundation for a unified statewide

platform was laid in 2015, when the Legislature passed six public acts that created a dedicated funding mechanism through modest increases in civil case initiation fees.⁹ The technical barriers to a single, modern, statewide e-filing platform have fallen. A unified front end with intelligent guidance, public search, high upload limits, and strong clerk tools can sit in front of existing case management systems through adapter layers.

Even in the courts that have gone live, meaningful improvements to the day-to-day filing experience have been slow to arrive.¹⁰ Core pain points that litigators encounter constantly — arbitrary upload limits that force splitting of large productions, the absence of intelligent prompts or validation for companion documents such as briefs and proposed orders, and the lack of built-in guidance on meet-and-confer certifications — have persisted for years. These are not minor inconveniences. They are friction that a modern e-filing system should eliminate by default.

What makes rapid progress newly realistic is the emergence of capable agentic coding assistants. These tools can understand large codebases, translate natural-language requirements into working features, generate tests, and iterate quickly under human direction. For a domain as rules-driven as Michigan Court Rules compliance, document validation, and structured workflows, agentic AI is exceptionally well suited. It can accelerate the encoding of clear procedural requirements, the building of smart prompts, and the maintenance of the system far more efficiently than traditional development alone.

This represents a more grounded and achievable contribution of artificial intelligence to access to justice than many of the more speculative applications currently discussed. Large language models that attempt to provide legal advice or draft case-specific arguments carry well-known risks of hallucination and incorrect statements of law. In contrast, using agentic tools to build and continuously improve court infrastructure — encoding the

Michigan Court Rules into validation logic, guiding users through required steps, maintaining accurate public records, and surfacing the right documents at the right time — operates in a domain where outputs can be tested, reviewed by lawyers and clerks, and verified against objective rules. The result is better tools for everyone who uses the courts, not an attempt to automate legal judgment itself.

The combination of open-source foundations and modern development tools means that a single, high-quality e-filing platform for Michigan is no longer an inevitable multi-year vendor project. It is a realistic goal that the State Court Administrative Office, individual courts, legal aid organizations, or even groups of practitioners could pursue and improve over time.

A live, fully functional demonstration is available today at demo.tomcedoz.com — no download required. Anyone can walk through the actual filing flows, companion document prompts, clerk review queue, and public case search. The full source code is public at <https://github.com/Tzodec1526/MUEFS> under the AGPL-3.0 license. Anyone can clone it, inspect how it works or build on it.

The worst outcome is that the current patchwork continues indefinitely. The best is that Michigan seizes the tools now available and delivers the unified, modern e-filing experience its litigators and citizens deserve.

Somewhere soon in Michigan, another lawyer will be offered the same two choices: drive there or mail it. There is now a third answer. Michigan just has to choose it.

Tom Cedoz is a partner at Husch Blackwell LLP in Michigan, where he focuses on commercial litigation and labor and employment matters, with substantial work at the intersection of artificial intelligence and the law.

Endnotes

1. MiFILE is Michigan's statewide e-filing portal, administered by the State Court Administrative Office (SCAO). As of June 2026, the

official MiFILE portal states that it currently supports 127 trial courts.

See <https://mifile.courts.michigan.gov/availablecourts>

2. The MUEFS source code is available at

<https://github.com/Tzodec1526/MUEFS> under the GNU Affero General Public License v3.0 (AGPL-3.0).

3. MCR 1.109 governs electronic filing and service in Michigan courts.

It requires, among other things, that electronically filed documents be text-searchable PDFs.

4. MCR 2.119 requires that a motion presenting an issue of law include a brief citing supporting authority and provides for proposed orders.

5. MCR 2.313 and related provisions require that a motion to compel discovery generally include a certification that the movant has in good faith conferred or attempted to confer with the opposing party.

6. MCR 2.002 provides for waiver of fees and costs for indigent parties.

7. The VA's VistA system was released as public domain software under the Freedom of Information Act and received the Innovations in American Government Award from Harvard's Ash Institute in 2006.

See Press Release, US Department of Veterans Affairs, VA Receives 2006 Innovations in Government Award (July 2006),

<https://news.va.gov/press-room/va-receives-2006-innovations-in-government-award/>; see generally

<https://en.wikipedia.org/wiki/VistA>.

8. Administrative Office of the U.S. Courts, Judges Outline Accelerated Modernization of Case Management System (March 10, 2026), <https://www.uscourts.gov/data-news/judiciary-news/2026/03/10/judges-outline-accelerated-modernization-case-management-system>.

9. See "Michigan's E-filing Law: A Model Act," Michigan Bar Journal (2016), discussing the six public acts effective January 1, 2016, that established the statewide e-filing framework and the Judicial Electronic Filing Fund financed by modest increases in civil case initiation fees.

10. MiFILE integrates TrueFiling for the filer-facing portal with Hyland OnBase for document management and clerk workflow processing in the standard solution. See SCAO MiFILE resources and the MiFILE E-Filing Integration Guide.

PRACTICE GUIDE

Practical Strategies for Litigating Michigan Open Meetings Act and Freedom of Information Act Claims: From Intake Through Summary Disposition and Beyond

By Charles L. Bogren

Michigan's Open Meetings Act and Freedom of Information Act exist to keep government business visible. Public bodies must hold their deliberations and make their decisions in meetings the public can attend. People have a right to see most government records unless a specific exemption applies. These goals are straightforward. The details, however, create plenty of room for disagreement. That disagreement shows up regularly in circuit court.

Lawyers who represent municipalities, school districts, and any other entity subject to these acts – or who sue them on behalf of residents, media outlets, or advocacy groups – regularly handle these cases. The vast majority of these cases resolve well before trial. The outcomes usually turn on early assessment of the facts and law, followed by targeted motion practice. This article walks through the typical path these cases take, with practical points on what tends to matter at initiation, on summary disposition, and in settlement discussions.

The Basics of Each Act

The Open Meetings Act, MCL 15.261 et seq., applies to any state or local legislative or governing body. That includes city councils, township boards, school boards, commissions, and many committees and subcommittees. A "meeting" occurs when a quorum gathers to deliberate or decide a matter of public policy. The default rule is that the meeting must be open to the public. Advance notice must be posted at the body's offices, placed on its website if it has one, and sent to anyone who has requested it.¹

Closed sessions are allowed only for the reasons listed in MCL 15.268. Common examples include discussing specific pending litigation with the body's attorney when an open discussion would hurt the body's position on settlement or trial or reviewing material that is exempt from disclosure under FOIA. The motion to enter closed session must state the reason with specificity. The statute permits consulting counsel about trial or settlement strategy only in connection with "specific pending litigation," and the purpose for calling the closed session must be entered in the minutes. A generic reference to "pending litigation" invites challenge.²

Minutes must be kept for open sessions and, in most cases, for closed sessions as well. They must be made available to the public, though some closed-session minutes can remain sealed for a period.

The Freedom of Information Act, MCL 15.231 et seq., gives any person the right to inspect or copy public records. A public record is a writing that a public body prepared, owned, used, or retained in the performance of an official function. The public body generally has five business days to respond to a request, with a ten-business-day extension permitted should it prove necessary. The public body can charge for the actual incremental cost of searching for and copying records, subject to statutory caps. Fees can be waived when disclosure is in the public interest.³

Exemptions appear in MCL 15.243. They cover information that would invade personal privacy, attorney-client communications, attorney work product, and certain pre-decisional deliberative

material. The deliberative-process exemption protects recommendations, advice, and opinions that are part of the government's decision-making process.

How These Cases Usually Begin

An Open Meetings Act case typically starts when a resident, group, or media outlet believes a public body held a meeting without proper notice, closed a meeting without legal authority, or made a decision that should be undone because the process violated the statute. The plaintiff can ask the circuit court to invalidate the decision, issue an injunction against future violations, or award damages and fees against individual officials who acted intentionally. Lawsuits seeking to invalidate a decision generally must be commenced within 60 days after the approved minutes involving the challenged decision are made publicly available (with a shorter 30-day period for certain financial decisions such as contracts, bids, assessments, bonds, or borrowing proposals).

A FOIA case usually begins after a request is denied in whole or in part or after the public body fails to respond within the statutory time. The requester sues in circuit court for an order compelling disclosure. If the requester prevails, the court awards reasonable attorney fees, costs, and disbursements. Partial success can still support a fee award in the court's discretion.

These cases are decided by the quality of the record created before the lawsuit.

When a new complaint or file lands on your desk as defense counsel, start by collecting the core documents immediately. For an OMA matter, the first step is to get the notice, agenda, minutes, any recording or transcript, and the exact wording of the motion to go into closed session. For a FOIA matter, get the original request, the response letter, any search logs or internal notes, and descriptions or copies of the withheld records. Speak with the clerk, FOIA

coordinator, and any other staff involved in handling it. In many cases the problem is not bad faith but a misunderstanding of what the statute actually requires or an incomplete record documenting what was done on the municipality's part.

Summary Disposition: The Most Common Battleground

These cases frequently resolve on summary disposition. The material facts are often undisputed. OMA issues such as whether the notice was posted where the law requires, or whether a quorum was present, can often be determined through discovery. Whether the closed-session motion identified the specific litigation or instead used too-broad language is also often litigated. In FOIA cases the questions are typically narrower – the issue is almost always whether the municipality is withholding documents it has not identified, or whether withheld documents fit an exemption. Judges can and do decide many of these issues without a trial.

For defendants in OMA cases, common arguments include that the suit is time-barred, that the closed-session reason matched one of the statutory exceptions, and that the motion to close gave the required level of detail. Not every procedural violation supports invalidation of a decision. Failures involving notice or the openness requirement itself are the ones most likely to support that remedy. Other violations may support injunctive relief or claims against individual officials but do not automatically undo the action taken.

Plaintiffs in OMA cases can also move for summary disposition when the violation appears clearly from the documents. One example is a quorum of board members using emails or text messages to deliberate and reach a decision on public business without ever assembling in person. The Michigan courts have recognized that such serial communications can constitute a "meeting" under the Act when they involve deliberation on a matter of public policy.

In FOIA cases, summary disposition is common on whether a requested item qualifies as a public record or whether an exemption applies as a matter of law. An affidavit from the records custodian that describes the search performed and explains the basis for any exemption can often prove beneficial to the court in making a determination. Courts regularly decide these questions at the motion stage.

Plaintiffs can seek summary disposition when the public body has no valid exemption or failed to respond in time. They can also request fees in the same motion or in a follow-up proceeding.

Discovery and Trial

Discovery in these cases tends to stay focused. In OMA matters, parties may need limited depositions of board members or staff to establish what actually occurred at a meeting or why notice was handled a certain way. In FOIA matters, the focus is usually on the adequacy of the search and the factual basis for any exemption claim. Many judges keep discovery tight because the core issues are often legal rather than heavily factual. Motions for protective orders are not uncommon by defense counsel when the discovery requests seem to go beyond the scope of the case itself.

If a case survives summary disposition, it usually proceeds to a bench trial before the circuit judge. The judge decides whether a violation occurred and what relief, if any, is appropriate.

Remedies, Fees, and What Drives Settlement

Under the Open Meetings Act, a public official who intentionally violates the statute can be held personally liable for actual and exemplary damages of up to \$500 total, plus court costs and actual attorney fees. Only one action may be brought against a public official for a single meeting, which further limits an individual official's exposure. The public body itself can face injunctive relief. When a decision is invalidated, the body can often reenact it properly at a

later open meeting. This cure mechanism reduces the practical stakes in some cases.⁴

FOIA fee shifting is plaintiff-friendly. If the requester prevails, the court must award reasonable attorney fees, costs, and disbursements.⁵ Michigan courts have applied a catalyst approach in some cases, meaning fees can be available even if the public body disclosed the records voluntarily after the suit was filed but before a court order.⁶ Partial success can still support an award in the court's discretion. This exposure often pushes public bodies toward settlement when their exemption position is reasonable but not certain to win.

On the plaintiff side, detailed time records from the first day matter. Courts apply a lodestar calculation — reasonable hourly rate multiplied by reasonable hours expended — and may adjust based on results obtained and other factors. Defendants facing a fee motion should be prepared to challenge both the rate and the hours if they appear excessive for the work performed or the results achieved.

Compliance Steps That Reduce Litigation Risk

Public bodies and their lawyers can avoid, or win, more of these cases by building good habits up front.

For Open Meetings Act matters:

- Train clerks, administrators, and officials regularly on what constitutes a meeting (including serial communications) and how to word a motion to enter closed session. Consult with your corporate counsel if necessary.
- When litigation or other sensitive matters are discussed in closed session, make sure the motion identifies the specific matter with enough particularity for the public to understand the topic.
- Post notices in all required locations and keep proof of posting and distribution.

- Keep accurate minutes and make them available promptly.

For FOIA matters:

- Respond within the statutory deadlines, even if only to grant an extension and explain why.
- Tie every exemption claim to the specific language of MCL 15.243 when explaining it in your correspondence, and document the search performed internally.
- Maintain a consistent practice for describing withheld records so the description will stand up to scrutiny if litigation follows.

When a request or complaint arrives, evaluate it promptly and realistically. Some FOIA requests seek clearly exempt material or are so broad that they invite clarification and potentially negotiation. Some OMA claims rest on minor procedural issues that do not support the full relief requested. Early, candid assessment leads to better results for clients on both sides.

A Final Word

Most Open Meetings Act and Freedom of Information Act cases are decided by the quality of the record created before the lawsuit and by the strength of the early motion practice. Lawyers who know the statutes in detail and move promptly on summary disposition when the law supports it put their clients in the best position. These laws serve a real public purpose. Handling the resulting litigation well helps keep the process workable and fair for public bodies and requesters alike.

Charles L. Bogren is a partner at Plunkett Cooney in Grand Rapids and co-leads the firm's Governmental Law Practice Group. His practice focuses on municipal and governmental litigation, including Open Meetings Act and Freedom of Information Act matters, First Amendment and due process claims, civil rights actions under 42 U.S.C. § 1983, and

employment litigation for public employers. He regularly trains public officials and law enforcement agencies on these topics and has obtained summary disposition and other favorable results for municipal clients in OMA, FOIA, and related cases.

Endnotes

1. MCL 15.261 et seq. (Open Meetings Act).
2. MCL 15.268(1)(e) (permitting a closed session to consult with the body's attorney regarding trial or settlement strategy only in connection with "specific pending litigation"); MCL 15.267(1) (requiring that the purpose for calling the closed session be entered into the minutes).
3. MCL 15.231 et seq. (Freedom of Information Act).
4. MCL 15.270 (invalidation of public body decisions; reenactment to cure procedural defects).
5. MCL 15.240(6) (mandatory award of reasonable attorney fees, costs, and disbursements to a prevailing party in a FOIA action; discretionary award on partial success).
6. See *Amberg v City of Dearborn*, 497 Mich 28, 33-34 (2014) (a requester "prevails" under MCL 15.240(6) when the action was reasonably necessary to compel disclosure and had a substantial causative effect on the delivery of the information), quoting *Scharret v City of Berkley*, 249 Mich App 405, 414 (2002).

EMERGING ISSUES

Michigan's Protection from Intimate Deep Fakes Act and Federal TAKE IT DOWN Act

By Lindsey M. Mead and Alexander S. Rusek

Fast Facts:

- Michigan's Protection from Intimate Deep Fakes Act creates a civil cause of action against creators and disseminators of sexually explicit Deep Fake images and video.
- Michigan's Protection from Intimate Deep Fakes Act creates misdemeanor and felony criminal offenses for the creation and dissemination of sexually explicit Deep Fake images and video.
- Michigan's Protection from Intimate Deep Fakes Act follows the enactment of the federal TAKE IT DOWN Act in May 2025.

Exploding onto the scene in November of 2022, generative artificial intelligence programs ("AI") (such as ChatGPT, Gemini, Grok, Midjourney, Claude, Microsoft Copilot, and many others) have gained widespread adoption in personal and professional settings alike. Concerningly, the proliferation of these sophisticated AI tools has created a new and insidious form of personal violation: the nonconsensual creation and dissemination of sexually explicit "Deep Fakes."¹

In response to the rising proliferation of Deep Fakes, the State of Michigan has moved in a bipartisan manner to address the issue by enacting Public Act 11 of 2025, titled the Protection from Intimate Deep Fakes Act (the "Act"), effective August 26, 2025.² This landmark AI legislation establishes a framework of civil remedies and criminal penalties designed to hold perpetrators accountable and provide recourse for victims.

What is a "Deep Fake?"

There is no singular definition of what constitutes a Deep Fake, but commentators have described them as:

- "a video, photo, or audio recording that seems real but has been manipulated with AI. The underlying technology can replace faces, manipulate facial expressions, synthesize faces, and synthesize speech. Deepfakes can depict someone appearing to say or do something that they in fact never said or did."³
- "an artificial image or video (a series of images) generated by a special kind of *machine learning* called ['deep'] learning (hence the name)."⁴
- "videos, picture or audio clips made with artificial intelligence to look real. They can be used for fun, or even for scientific research, but sometimes they're used to impersonate people like politicians or world leaders, in order to deliberately mislead people."⁵
- "[a 'deepfake'] refers to recreated media of a person's appearance and/or voice by a type of artificial intelligence called deep learning (hence the name, deepfake)."⁶

Michigan has moved in a bipartisan manner to address the issue.

The Protection from Intimate Deep Fakes Act aims to address the issue of AI Deep Fakes in Michigan.⁷

Under the statute, a Deep Fake is defined as "a video

recording, motion-picture film, sound recording, electronic image, or photograph, or a technological representation of speech or conduct substantially derivative of such a recording, film, image, or photograph, that is not an original recording of an actual occurrence or an original photograph without substantial modification to which both of the following apply: (i) [i]t is so realistic that a reasonable person would believe it depicts speech or conduct of a depicted individual. (ii) [t]he production of it was substantially dependent on technical means, rather than the ability of another individual to physically or verbally impersonate the depicted individual.”⁸

Creation of a Civil Cause of Action

The Protection from Intimate Deep Fakes Act establishes a civil cause of action for “the nonconsensual creation or dissemination of a deep fake”.⁹ To bring this new cause of action, a plaintiff has the burden to prove that: (1) The “person who created or disseminated the deep fake knew or reasonably should have known that the creation, distribution, or reproduction of the deep fake would cause physical, emotional, reputational, or economic harm to an individual falsely depicted; or created or disseminated the deep fake in order to harass, extort, threaten, or cause physical, emotional, reputational, or economic harm to an individual falsely depicted[.]” (2) The Deep Fake must realistically depict one or more of the following: “[t]he intimate parts of the depicted individual” or “[t]he depicted individual engaging in a sexual act”; and (3) The depicted individual is identifiable either “[f]rom the deep fake itself, by the depicted individual or by a reasonable individual viewing or listening to the deep fake” or “[f]rom the personal information displayed in connection with the deep fake.”¹⁰

An action based on the creation or dissemination of Deep Fakes accrues at the time the depicted individual “discovers that the deep fake has been created or disseminated.”¹¹ The action may be filed in the county where the defendant *or* plaintiff reside *or*

“where the deep fake was produced, reproduced, or stored.”¹² Courts must allow confidential filings in this type of action, and may elect to “grant injunctive relief to maintain the confidentiality of the plaintiff using a pseudonym.”¹³

For cases filed asserting a civil cause of action under MCL 752.383, it is not a defense to a claim that the individual depicted in the Deep Fake consented to the creation or possession of the Deep Fake or to the voluntary transmission of the Deep Fake, whether disseminated publicly or privately, unless *both* of the following apply: (1) “[t]he consent is contained in an agreement written in plain language signed knowingly and voluntarily by the depicted individual;” and (2) “[t]he consent includes a general description of the intimate digital depiction and, if applicable, the audiovisual work into which it will be incorporated.”¹⁴

Conversely, the Act creates multiple defenses to a civil cause of action brought for the creation or dissemination of Deep Fakes. The defenses are:

- “The creation or dissemination was made for the purpose of a criminal investigation or prosecution that is otherwise lawful.”¹⁵
- “The creation or dissemination was for the purpose of, or in connection with, the reporting of unlawful conduct.”¹⁶
- “The creation or dissemination was made in the course of seeking or receiving medical or mental health treatment, and the image is protected from further dissemination.”¹⁷
- “The deep fake related to a matter of public interest, the creation or dissemination served a lawful public purpose, the person creating or disseminating the deep fake as a matter of public interest clearly identified that the video recording, motion-picture film, sound recording, electronic image, photograph, or other item was a deep fake, and the person

acted in good faith to prevent further dissemination of the deep fake.”¹⁸

- “The creation or dissemination was made for legal proceedings and was consistent with common practice in civil proceedings necessary for the proper functioning of the civil justice system, or protected by court order that prohibited any further dissemination.”¹⁹

There are also other carveouts in the Act for: (1) “an interactive computer service as defined in 47 USC 230(f)(2);”²⁰ (2) “[a] provider of public mobile services or private radio services;”²¹ (3) “[a] telecommunications network or broadband provider;”²² and (4) “[a] provider or developer of a technology used in the creation of a deep fake, if the technology is not designed for, marketed for, or deployed for the nonconsensual creation or dissemination of deep fakes that realistically depict the intimate parts of depicted individuals or depicted individuals engaging in sexual acts, and if the provider or developer has prohibited explicit deep fake content in accordance with the provider’s or developer’s terms of service.”²³

Damages available for a prevailing civil action plaintiff include: (1) economic and non-economic damages, including, without limitation, financial losses that were incurred due to the creation or dissemination of the Deep Fake, as well as damages for “mental anguish, embarrassment, and humiliation[;]”²⁴ (2) a financial amount equal to any profit made by the individual found liable from the creation or dissemination of the Deep Fake;²⁵ and (3) actual court costs and fees, including reasonable attorneys’ fees.²⁶

Creation of Criminal Penalties

Aside from the civil cause of action created by the Act, the Act also creates a misdemeanor offense punishable by imprisonment for not more than one

year, a fine of not more than \$3,000.00, or both, for people convicted under the Act.²⁷

To secure a conviction under the Act, there are numerous elements that a prosecutor must prove. First, it must be shown that the accused “knew or reasonably should have known that the creation, distribution, dissemination, or reproduction of the deep fake would cause physical, emotional, reputational, or economic harm to an individual falsely depicted.”²⁸ Second, the Deep Fake must realistically depict either: (1) “[t]he intimate parts of the depicted individual[;]” or (2) “[t]he depicted individual engaging in a sexual act.”²⁹ Third, the depicted individual must be identifiable “[f]rom the deep fake itself, by the depicted individual or by a reasonable individual viewing or listening to the deep fake[;]”³⁰ or “[f]rom the personal information displayed in connection with the deep fake.”³¹

The Act also creates a felony criminal offense and penalties for those who “intentionally create or disseminate a deep fake”³² if certain aggravating factors are present. A perpetrator convicted of a felony under the Act faces up to three years imprisonment, a fine of not more than \$5,000.00, or both, if *any* of the following are true: (1) the depicted individual suffers financial loss;³³ (2) the perpetrator created or distributed the Deep Fake with the intent to profit from it;³⁴ (3) the perpetrator maintains an “internet website, online service, online application, or mobile application for the purpose of creating or disseminating the deep fake[;]”³⁵ (4) the perpetrator posts the Deep Fake on a website;³⁶ (5) the perpetrator created the Deep Fake with the intent to “harass, extort, threaten, or cause physical, emotional, reputational, or economic harm to the depicted individual[;]”³⁷ or (6) the perpetrator has previously been convicted for violating MCL 752.388(1).³⁸

For an action filed asserting a criminal cause of action under the Act, it is not a defense under MCL 752.388 to assert the individual depicted in the Deep Fake

consented to the creation or possession of the Deep Fake, or to the voluntary transmission of the Deep Fake, whether transmitted publicly or privately, unless *both* of the following circumstances apply: (1) the consent is contained in a written agreement utilizing plain language and executed knowingly and voluntarily by the depicted individual; and (2) the consent documentation includes a general description of the intimate digital depiction of the impacted individual and, if applicable, the audiovisual content into which it will be incorporated.³⁹

Moreover, the Act contains an exception which states that MCL 752.388 does not apply if any of the following are relevant to the creation or dissemination of the Deep Fake: (1) the Deep Fake is made for the purpose of a criminal investigation or prosecution; (2) the Deep Fake is for the purpose of, or in connection with, the reporting of conduct that is unlawful; (3) the Deep Fake is made in the course of seeking or receiving medical or mental health treatment, and the Deep Fake work is protected from further dissemination; (4) the Deep Fake relates to a matter of public interest, and the creation or dissemination of the Deep Fake serves a lawful public purpose; or (5) the Deep Fake is made for legal proceedings and is consistent with common practice in civil proceedings necessary for the proper functioning of the civil justice system, or protected by a court order that prohibits any further dissemination of the Deep Fake.⁴⁰

The Act provides that MCL 752.388 must not be construed as to impose liability on any of the following entities for providing the infrastructure or access necessary to transmit Deep Fake content created by another person: (1) “[a]n interactive computer service as defined in 47 USC 230(f)(2);” (2) “[a] provider of public mobile services or private radio services”; (3) “[a] telecommunications network or broadband provider”; or (4) “[a] provider or developer of a technology used in the creation of a deep fake, if the technology is not designed for, marketed for, or deployed for the nonconsensual creation or dissemination of deep fakes that

realistically depict the intimate parts of depicted individuals or depicted individuals engaging in sexual acts, and if the provider or developer has prohibited explicit deep fake content in accordance with the provider’s or developer’s terms of service.”⁴¹

In sum, the same liability carveouts for civil actions brought under the Act are also available as to any criminal charges associated with the creation and dissemination of Deep Fakes under Michigan law.⁴²

The Federal TAKE IT DOWN Act

In May 2025, President Donald J. Trump signed into law the Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks Act (the “TAKE IT DOWN Act”) with bipartisan support.⁴³ The TAKE IT DOWN Act amends 47 USC 223 and adds a new 47 USC 223a, making several significant changes, such as:

- Criminalizing the publication of non-consensual intimate visual depictions, which includes both authentic images and AI-generated Deep Fakes.⁴⁴ Penalties for a knowing violation involving an adult can include fines and up to two years of imprisonment.⁴⁵ Publications concerning minors have more stringent requirements and carry a sentence of up to three years.⁴⁶
- Requiring a notice and takedown process for “covered platforms”, including social media websites and mobile applications.⁴⁷ Upon receiving a valid removal request from an identifiable individual, platforms must remove the intimate visual depiction or deepfake within 48 hours.⁴⁸ The new takedown requirements for platforms took effect on May 19, 2026.⁴⁹
- Holding platforms accountable for non-compliance, with enforcement handled by the Federal Trade Commission (FTC).⁵⁰ Failure to reasonably comply with the notice and

removal requirements is treated as a violation of the Federal Trade Commission Act.⁵¹

- Granting liability protection for good-faith removals.⁵² Platforms that disable access to or remove content in good faith based on a valid takedown request are protected from legal claims, even if the content is later determined to be lawful.⁵³
- Providing definitions for key terms, such as “digital forgery” and “intimate visual depiction”.⁵⁴ For example, a “digital forgery” must be indistinguishable from an authentic visual depiction according to a reasonable person.⁵⁵
- Criminalizing threats to publish intimate visual depictions or Deep Fakes.⁵⁶ Threats involving authentic depictions carry the same penalties as publication. Threats involving digital forgeries carry lesser penalties, with up to 18 months of imprisonment for threats involving adults and up to 30 months for threats involving minors.⁵⁷

Altogether, the TAKE IT DOWN Act represents a robust federal response to the evolving challenges posed by non-consensual intimate Deep Fakes and related digital forgeries. By establishing criminal penalties, expedited removal requirements, and platform accountability, the TAKE IT DOWN Act seeks to balance the urgent need for individual privacy and safety with protections for good-faith compliance by technology providers. As these provisions come into force, they are likely to shape both the conduct of online platforms and the legal landscape for victims and content creators alike. However, given the sweeping nature of these reforms, the TAKE IT DOWN Act is expected to face constitutional scrutiny, particularly with respect to the First Amendment and due process concerns.

Constitutional Challenges to Michigan’s Protection from Intimate Deep Fakes Act and Federal TAKE IT DOWN Act

As of this writing, no formal constitutional challenges to the Act have been brought in the state of Michigan, nor challenges to the TAKE IT DOWN Act at the federal level. Nonetheless, commentators across the nation widely anticipate that free speech challenges may be filed against legislation with the same aims as the TAKE IT DOWN Act. In particular, the Electronic Frontier Foundation and Center for Democracy & Technology joined ten other organizations in February of 2025 to oppose the TAKE IT DOWN Act when it was in its bill stage by sending a letter to the Senate which stated, “In its current form, the bill [now, the TAKE IT DOWN Act] creates a notice and takedown (NTD) mechanism that would result in the removal of not just nonconsensual intimate imagery but also speech that is neither illegal nor actually [non-consensual distribution of intimate imagery]. This mechanism is likely unconstitutional and will undoubtedly have a censorious impact on users’ free expression.”⁵⁸

Moreover, after its enactment, the Cyber Civil Rights Initiative (“CCRI”) issued a statement on April 28, 2025 that said as follows: “CCRI has serious concerns about the constitutionality, efficacy, and potential misuse of TAKE IT DOWN Act’s notice and removal provision. While we wholeheartedly support the expeditious removal of nonconsensual intimate content and have long called for increased legal accountability for tech platforms that choose to distribute unlawful content, CCRI objects to the notice and removal provision because it is (1) unlikely to accomplish these goals and (2) likely to be selectively and improperly misused for political or ideological purposes that endanger the very communities most affected by image-based sexual abuse. CCRI repeatedly raised its concerns about the notice and removal provision with federal lawmakers in the hopes that significant revisions would be made

to the bill prior to passage. While some of our suggested revisions were made, the takedown provision as passed by Congress today remains unconstitutionally vague, unconstitutionally overbroad, and lacking adequate safeguards against misuse.”⁵⁹

At the state level, though Michigan’s Act has yet to face any legal challenges, other states that passed similar legislation to the Act have already encountered scrutiny. For example, on August 5, 2025, a federal judge struck down California’s Deep Fake law aimed at restricting AI-generated Deep Fake content during election periods⁶⁰ under California’s legislation, AB 2655 (officially titled the Defending Democracy from Deepfake Deception Act of 2024).⁶¹ Elon Musk’s social media platform, X, sued the state of California in November 2024 challenging AB 2655.⁶² Notably, the federal judge – John Mendez – declined to give an opinion on the free speech arguments that were central to the plaintiffs’ case within his decision, instead citing the Communications Decency Act of 1996 for online platforms like X as the basis that supported his decision.⁶³

Though California’s Defending Democracy from Deepfake Deception Act of 2024 was tailored to the use of *political* Deep Fakes, Minnesota, like Michigan, has also developed legislation aimed at creating a broader cause of action for the non-consensual dissemination of Deep Fakes depicting intimate parts or sexual acts of a person within Minnesota Statutes, Chapter 604.⁶⁴

Conclusions

Michigan has joined the likes of Minnesota, Texas, Virginia, California, and others in addressing the proliferation of Deep Fakes. At the federal level, the TAKE IT DOWN Act has similar aims, seeking to set a national standard for platform accountability and victim protections against Deep Fakes. As legislative and judicial landscapes continue to evolve,

ongoing debates around privacy, free speech, and technological innovation will undoubtedly shape the future of this legislation as a whole. The legal and societal response to Deep Fakes remains in flux, with further court challenges, amendments, and stakeholder dialogues likely on the horizon.

Ultimately, the effectiveness and fairness of these measures will depend on their ability to protect individuals from harm while safeguarding constitutional rights in the ever-evolving digital age.

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Endnotes

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BOOK REVIEW

Impacting with Inspiration: Snow's Rules to Speak By (Present and Persuade Like the Country's Best Lawyers)

How you run the race—your planning, preparation, practice, and performance—counts for everything. Winning or losing is a by-product, an aftereffect, of that effort.

—John Wooden

By David C. Sarnacki

All trial attorneys want to win. The best and most successful trial attorneys learn to plan, prepare, practice and perform when it matters. Whether it's a motion, mediation, negotiation, conference or court proceeding, the best advocates strive to persuade.

When we plan our presentations and courtroom communication, it's normal to imagine how well we think things will go. We will impact the outcome. We will present a coherent and inspiring message. We will be respected as *the* authority on the case.

One cannot be a great trial lawyer without being a great storyteller.

And then our best-laid plans go awry. What happened? Why is there a discrepancy between how we envisioned our courtroom performance would go and how it actually went? More importantly, what can we do about it? Who can help us?

Enter John G. Snow. For his own benefit, Snow studied how to become a better speaker. For our benefit, he is sharing with us his personal secrets and those of "the country's best lawyers" in a new book, *Rules to Speak By: Present and Persuade Like the Country's Best Lawyers*. While we may have plenty of books aiding our legal writing, this is the book for persuasive speaking, regardless of the nature of one's practice.

Snow is a trial and appellate advocate in Los Angeles, with multiple eight-figure trial awards for his clients. He is the Director of Legal and Trial Training for the

Los Angeles City Attorney's Office and serves on the Board of Directors for Scribes, The American Society of Legal Writers.

In researching and writing *Rules to Speak By*, Snow analyzed what worked for him, watched great lawyers in action, studied famous cases, surveyed judges, researched the science of persuasion, and then condensed and simplified the core principles into his 10 rules of public speaking. Snow did the work, and we can reap the benefits.

SNOW'S 10 RULES OF PUBLIC SPEAKING

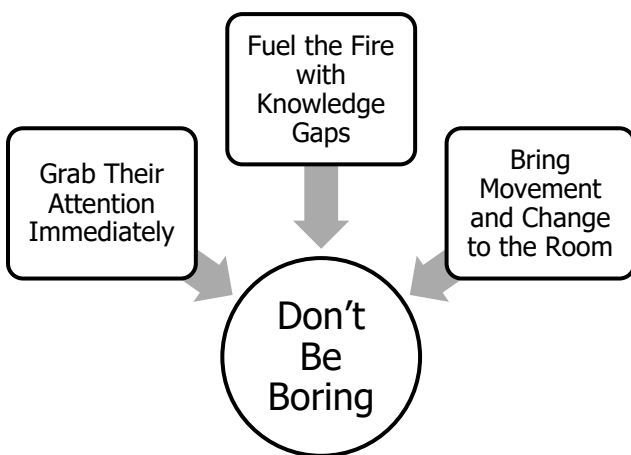
1. Don't Be Boring
2. It's Not About You; It's About Them
3. Have a Memorable Through Line
4. Make It Easy for Them
5. Prepare for Listeners, Not Readers
6. Give Them Something Good to Look At
7. Bring Your Best Voice
8. No Weird Body Language
9. Be a Real Human Being
10. Being Natural Doesn't Mean Don't Practice

In less than 200 pages, Snow shares his rules by presenting the challenge, revealing the persuasive principle, and highlighting the examples necessary for us to understand and embrace each rule. Want to know how U.S. Supreme Court Justices like Ginsburg or Roberts or Sotomayor communicate strategically? Want to know how famous lawyers impacted trials like the Oklahoma City bombing trial, the George Floyd murder trial, and the Enron trial? Want to

know what veteran judges have learned from decades of watching advocates battling in court? Snow knows, and he shows us what we need to know and do.

As an example of Snow's Ten Rules of Public Speaking, let's look at his Rule One: "Don't Be Boring." Simple enough? Yes, but there are layers of persuasive science below the surface. "When we speak, we are asking people to give us their most valuable resource—their attention—with the chance to change how they see the world. It is an awesome task."¹ Our challenge is twofold: (1) to learn the speaking skills we were never taught in law school; and (2) to unlearn the bad habits we acquired by imitating what everyone else seemed to be doing.

For this first rule of public speaking, Snow focuses on three areas:



Snow mentors us in Grabbing Attention Immediately. We break expectations so that the listeners become "curious about what [is] coming next" and stay curious. Snow uses examples from the Oklahoma City Bombing trial (jump in, set the scene, create suspense), the Amber Guyger trial (sudden, unexpected, question-provoking), the Florida v. Brenton Butler trial (connecting the case to a timeless quote so jury wonders what comes next), and the Enron trial (enticing the jury to join in on the journey through the evidence).

Because attention wanes over time, Snow shows the importance of "Fueling the Fire with Knowledge

Gaps." One tool in this strategy is to pose a new question. Another is to introduce a new twist in the story. And a third is to share a new surprise of relevant information. These three tools "expose a new 'knowledge gap.'" That means they highlight something the audience doesn't know and create a burning desire for them to know more about it.

And Snow demonstrates how simple it is to bring energy to our listeners. Because we operate in controlled environments (conference rooms, Zoom, courtrooms) even the simplest change can generate interest. His message is equally simple: "Bring Movement and Change to the Room."

Snow peppers his other nine rules with simple principles, compelling examples, and advice from the wise people we should listen to. Periodically, Snow includes "quick tips" from great trial attorneys, appellate advocates, judges, presentation gurus, and others. Snow wraps up his book with some final considerations and seven sets of exercises.

Here's a sample of Snow's comments in *Rules to Speak By*:

- Educational psychologists discovered that people pay the most attention to things that are relevant and important to them. Psychologists also discovered that people are bad at spotting information that might be valuable to them. They need to be shown — explicitly — how and why information will help them in their lives.²
- How do we make jurors and judges think our ideas are theirs? Facts. Facts force people to draw inferences and conclusions on their own. And when we control the facts they will focus on — and how those facts are presented — we can control the inferences they will draw.³
- [A] good through line . . . should capture as much of our core message as possible in a

punchy, succinct way. In a trial, it should capture the strongest reason we should win.⁴

- Almost all the advice in this book so far will help us be relatable and connect with our audiences, but there's more to it. We need to talk like real people, which means being conversational and not overly formal. And we need to show humility and vulnerability, sometimes.⁵
- One cannot be a great trial lawyer without being a great storyteller. This means we need to tell lots of stories.⁶
- Calmness is a by-product of our practice and preparation.⁷
- You should crave feedback because it accelerates your growth.⁸

The simplicity of Snow's own explanation for writing *Rules to Speak By* demonstrates its value to attorneys striving to impact the outcome:

*This is a book of public speaking lessons for lawyers. In other words, how to talk to juries, judges, colleagues, and clients. The lessons are built around ten rules. The rules are designed to help the audience. If we follow them, our speeches will be better, the audience will pay more attention, and we will be more persuasive.*⁹

Having experienced boredom more often than inspiration, Snow knew that he wanted to become a better speaker. So, he began his quest, claimed the reward of wisdom, and returned to us with this elixir. In *Rules to Speak By*, Snow brings something important to share with us: the power to move beyond boredom and into persuasion.

John G. Snow, *Rules to Speak By: Present and Persuade Like the Country's Best Lawyers*, Carolina Academic Press (2026).

David C. Sarnacki helps people through separation and divorce as either their advocate or mediator. He strives for creative problem-solving, honest advice, and powerful advocacy in even the most difficult matters. And he is regularly recognized for his excellence in family law, mediation, and collaborative divorce, twice being awarded the honor of Best Lawyers in America's "Lawyer of the Year" for Grand Rapids, Michigan divorce matters.

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RESOURCES

ICLE's Litigation Toolbox

By Rebekah Page-Gourley, Lead Staff Attorney, Institute of Continuing Legal Education (ICLE)

Evidentiary Resources for Every Learning Style

Whether you're trying to get a critical piece of evidence admitted or objecting to an opposing witness's testimony, it's essential to have the Michigan Rules of Evidence (MRE) at your fingertips. ICLE is here to help you effectively apply the MREs in practice no matter how you prefer to learn.

Reading:

If you're looking to get a general overview of the various evidentiary rules and relevant caselaw, the "Basic Michigan Evidence" chapter in [Michigan Basic Practice Handbook](#) (ICLE 6th ed) is a great place to start. [Michigan Courtroom Evidence Annotated](#) (ICLE 6th ed) is excellent for trial or hearing preparation as it contains the full text of the MREs, concise explanations of how to use them, and a curated selection of helpful case annotations. Likewise, [Introducing Evidence at Trial](#) (Hon. Janice K. Cunningham et al eds, ICLE 4th ed) includes short descriptions of the foundational requirements for dozens of types of evidence along with attorney-drafted sample witness examinations.

Watching/Listening:

If you prefer to learn by watching or listening to experts discuss key concepts or demonstrate best practices, the numerous on-demand seminars in the ICLE Partnership are a great option. The most recent addition to the demonstration collection, [Evidence Demo Series: Hearsay and Nonhearsay](#), features Chief Judge Patricia Perez Fresard, attorney Kaitlyn A. Cramer, and Assistant Prosecuting Attorney Kanika Ferency. Filmed in the University of Michigan moot courtroom and accompanied by explanatory videos, these demonstrations help

viewers distinguish between statements that meet the definition of hearsay and statements that are excluded from that definition. This presentation is based on the sample witness examinations in retired judge Joyce A. Draganchuk's "Hearsay and Nonhearsay" chapter of *Introducing Evidence at Trial* and really brings them to life. Note that ICLE's on-demand seminars are also available in MP3 format so you can always choose to listen while you multitask.

In-Person Interaction:

Finally, if you enjoy interactive workshops featuring fun exercises and opportunities for in-person practice in real time, you'll definitely want to check out ICLE's [Ultimate Evidence Workshop: Admitting, Impeaching, and Objecting](#). The one-day event includes presentations by judges and expert practitioners, networking opportunities, and interactive games to test your knowledge. The last installment was February 26, 2026, but be on the lookout for future dates.

To find out more about our litigation resources, or to suggest ideas for new content, contact me at rebekahp@icle.org.

SECTION NEWS

Honors Reception and Upcoming Events

Litigation Section Honors Reception

The Litigation Section celebrated a successful Honors Reception on May 14, 2026. The reception drew members and judges from across the state for an evening of recognition and collegiality. The Section extends its congratulations to the Honorable Sean F. Cox, who received the Judicial Excellence Award in recognition of his distinguished service on the bench. Our thanks to everyone who attended and helped make the reception a memorable success.

Upcoming Events

Social Event — Detroit Tigers Game

Thursday, August 13, 2026. Join fellow Section members for a night at the ballpark in the Right Field Balcony. Tickets are \$40 each and include a \$30 concession voucher. Seating is limited to 30 tickets, so reserve early. Register at <https://connect.michbar.org/litigation/events>.

Regional Reception — Grand Rapids

Tuesday, September 22, 2026, at Social House in Grand Rapids. There is no cost to attend, and space is limited to 50 members. Details and registration will follow once arrangements are finalized.

Annual Meeting — via Zoom

Wednesday, September 16, 2026, at 9:00 a.m. The Section's Annual Meeting will be held over Zoom. All members are welcome; meeting access details will be circulated in advance.