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The editorial staff of the *Michigan Business Law Journal* welcomes suggested business law topics of general interest to the Section members, which may be the subject of future articles. Proposed business law topics may be submitted through the Publications Director, Brendan J. Cahill, *The Michigan Business Law Journal*, 39577 Woodward Ave., Ste. 300, Bloomfield Hills, Michigan 48304, (248) 203-0721, bcahill@dykema.com, or through Tala Dahbour, ICLE, 1020 Greene Street, Ann Arbor, Michigan, 48109-1444, tdahbour@icle.org. General guidelines for the preparation of articles for the Michigan Business Law Journal can be found on the Section's website at http://connect.michbar.org/businesslaw/newsletter.

Each issue of the *Michigan Business Law Journal* has a different primary, legal theme focused on articles related to one of the standing committees of the Business Law Section, although we welcome articles concerning any business law related topic for any issue. The deadlines for submitting articles are as follows:

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MISSION STATEMENT

The mission of the Business Law Section is to foster the highest quality of professionalism and practice in business law and enhance the legislative and regulatory environment for conducting business in Michigan.

To fulfill this mission, the Section shall: (1) expand the resources of business lawyers by providing educational, networking, and mentoring opportunities; (2) review and promote improvements to Michigan's business legislation and regulations; and (3) provide a forum to facilitate service and commitment and to promote ethical conduct and collegiality within the practice.

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From the Desk of the Chairperson

By Michael K. Molitor

Welcome to another issue of the *Michigan Business Law Journal*, the triannual publication of the Business Law Section of the State Bar of Michigan. As usual, we have the case digest and our regular columns: "Taking Care of Business" by Alexis Lupo of LARA, "Tax Matters" by Eric Nemeth of Varnum, LLP, and "Touring the Business Courts" by Douglas Toering and Kevin Gorica of Mantese Honigman, P.C.

In this edition, we also have four insightful and informative articles for your reading pleasure: "A Primer on Handling an Administrative Agency Matter," by Matthew P. Allen of Miller Canfield, "Designing AI Governance for In-House Legal: From Default Use to Deliberate Design," by Jordan Segal of Maddin Hauser, "The Human-Centric Practice of Law" by Victoria Policicchio, of Champion Home Builders, Inc, and "When Regulation Becomes Extortion: Unconstitutional Conditions, Development Approvals, and Challenges to Local Governments' Permitting Power" By Andrew Goetz and Emily Palacios. We hope you enjoy them. Thanks to the Regulation of Securities Committee and the In-House Counsel Committee for coordinating them, and, of course, thanks to the authors.

While staring at a blank screen as I started to write this column, I thought, what better source of inspiration than to see what my predecessor, Ian Williamson, wrote in his Chair's column a year ago? One thing that he said was that "business lawyers were practicing during interesting times" and that he had had little idea "how interesting they were about to become," with the many changes brought about by the current administration a year ago. I think most would agree that things have not become any less "interesting" since then and that the pace of change has only intensified. I hope that times like this remind us of the importance of the rule of law and, by extension, the importance of lawyers. So, hats off to all of you business lawyers reading this: I can only imagine the difficulties of trying to navigate clients through such challenging times. The fact that so many of you can find time to devote to the Business Law Section is impressive and deeply appreciated.

You may be reading this to see what's going on with the Business Law Section. On February 12, a few days before I finished this column, the Section held its eighth annual Privately Held Business Forum, this year entitled "The Business of the Lawsuit," at the Gem Theatre in Detroit. (Fun fact: when it was moved to make way for the construction of Comerica Park, the Gem Theatre set a Guiness World Record for being the heaviest building ever moved on wheels, at approximately 5.5 million pounds.) The event featured a great lineup of speakers and panelists, including prominent attorneys and retired federal judges, and it was very well-received. Thanks to Mark Rossman and his team at Rossman, P.C., for organizing the event. If you haven't attended this event before, you should make sure to do so next year.

There are several other upcoming events. First, the Section's LLC and Partnership Committee, along with the In-House Counsel Committee and the Business Litigation Committee, will be hosting an event in Troy on May 7, 2026. It will cover topics pertinent to in-house counsel and indeed to all business attorneys, including drafting corporate governance documents, litigating in Michigan business courts, artificial intelligence and data security, internal investigations, and employment law. Several business court judges will speak at a panel discussion about litigating in the business courts.

The Section's flagship event, the annual Business Law Institute, will be held on Friday, October 9, at the JW Mariott in Grand Rapids. Planning is under way for the event, and, as usual, we will have a great lineup of speakers and topics. That said, the Section also welcomes any inquiries from members interested in presenting at the Business Law Institute or one of our other events, sharing their research, expertise, and experience. Please note, while the annual meeting of the Section will as usual take place during the lunch break on October 9, the post-BLI reception and dinner has now become a *pre*-BLI reception and dinner, and it will take place on Thursday, October 8.

Finally, plans are underway for the Section's aptly named "Business Boot Camps," tentatively scheduled for mid-November 2026 in Grand Rapids and early March 2027 in Ann Arbor. These two-day sessions are designed for new lawyers, or lawyers entering new fields, and focus on developing practical skills with expert guidance.

To repeat what I said in my last column: get involved with the Section—we'd love to have you! The Section has twelve committees and six directorships. The committees have periodic meetings and programs about new legal developments in their respective areas and are a great way of meeting other lawyers in your field. The committees also frequently help develop the law in Michigan. For example, the Corporate Laws Committee is currently in the midst of one of its periodic sets of amendments to the Michigan Business Corporation Act and hopes to see them pass into law this year. (Fingers crossed!) The LLC and Partnership Committee has begun work on a similar project to update the Michigan Limited Liability Company Act. Over the years, many committees have drafted *amicus* briefs at the request of the Michigan Supreme Court—often successfully.

Whatever your precise interest in business law, there is a committee for you. For more information, please take a look at the Section's website at https:/connect.michbar.org/businesslaw/home and contact me or any other Council member with questions, comments, or suggestions. My email is molitorm@cooley.edu. I look forward to hearing from you.

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A Note Regarding Preclearance

Document preclearance for state business registry filings refers to the process by which a state agency reviews proposed business entity documents before they are officially submitted for filing. The purpose of preclearance is to identify deficiencies or confirm that the document substantially conforms to statutory requirements. This reduces the risk of rejection at the time of filing. For business lawyers, this process historically provided an added layer of certainty, particularly in transactions where timing is critical, such as mergers or conversions.

In Michigan, the Corporations Division within the Department of Licensing and Regulatory Affairs (LARA) previously had a preclearance policy under Policy Statement C-38, which was last revised on January 31, 2000. That policy remained in effect for over two decades until it was rescinded by Policy Statement C-72 on April 4, 2025. The rescission coincided with the launch of the MiBusiness Registry Portal in June 2025, which modernized filing processes but eliminated the functionality to accommodate preclearance requests.

This change was necessary because the prior preclearance policy and process was outdated and inconsistent with the efficiencies introduced by the portal. The new system is designed to collect statutorily required information through structured online forms, reducing the percentage of filings that need to be returned for correction. This shift reflects a broader trend among state business registry offices toward automation and standardization. The goal is to improve turnaround times and reduce administrative burdens for both filers and regulators.

While these improvements are generally positive, they present challenges for practitioners accustomed to preclearance. Historically, documents submitted for preclearance, such as Certificates of Merger and Certificates of Conversion, were often submitted without signatures. This allowed attorneys to confirm compliance before execution. Under the portal's design, however, a signature is required for submission. This requirement effectively eliminates the ability to test a document electronically before filing.

This change has practical implications for transactional attorneys and financial institutions. For example, banks frequently require confirmation that merger or conversion documents will be accepted before closing a deal.

It is worth noting that "preclearance" has always been somewhat of a misnomer. Whenever a document is submitted with the appropriate filing fee, the Corporations Division reviews it. If the document meets statutory requirements, it is filed. If deficiencies exist, the document is returned for correction. In other words, the review process is not fundamentally different.

For those who still wish to seek a review prior to filing, the only option is to submit the document on paper, either by mail or in person, and pay the filing fee. To prevent premature filing, submitters often include a "fatal flaw," such as omitting a signature. However, seeking a review prior to filing with this approach comes with significant drawbacks. Notices of correction are issued by mail, introducing delays that can be problematic for time-sensitive transactions. You will need substantial lead time to account for the postal delivery to the Corporations Division, processing and review time, and postal delivery time to send the notice of correction to you. The term "preclearance" will not appear in the notice of correction. It will simply be treated as a standard correction.

As Michigan transitions away from formal preclearance, business lawyers should adjust their practices accordingly. Plan ahead and build additional time into transaction schedules to accommodate potential corrections. Leverage portal features to use the structured online forms to minimize errors.

While the elimination of preclearance may feel like a loss of flexibility, the modernization of filing systems ultimately promotes efficiency and accuracy. By understanding these changes and adapting strategies, practitioners can continue to safeguard their clients' interests in an evolving environment.

Alexis Lupo, Corporations Division Director; Michigan Department of Licensing & Regulatory Affairs; Corporations, Securities & Commercial Licensing Bureau. As Corporations Division Director with the State of Michigan, Ms. Lupo oversees the review and filing of business entity documents for the formation, continuation, and growth of corporations, limited liability companies, limited partnerships, limited liability partnerships, and trademarks. She is a member of the State Bar of Michigan and serves on the Business Law Council as well as the Corporate Laws, Nonprofit Corporations, and LLC & Partnerships Committees of the Business Law Section. Ms. Lupo is also a past president of the International Association of Commercial Administrators, which is comprised of government officials responsible for business registries and secured transaction systems around the world.

IRS Reorganization and Uncertainty

The last year at the IRS was one of extreme uncertainty. Various estimates show total IRS personnel reductions from approximately 103,000 to about 71,000. It seems that every day I hear of IRS employees retiring or resigning to take positions at other federal or state agencies or the private sector. In late November 2025, the IRS sent layoff notices to approximately 1400 IRS employees. It is reported that about a third of the layoffs were in the examination division and another third in information services. The proposed budget for the IRS has further reductions according to the Tax Law Center at New York University. At the time of the drafting of this column, the proposed cut is about nine percent for a budget of about $11.2 billion—a reduction from the $12.3 billion current budget. The largest cuts are forecasted for enforcement, technology, and operations support.

The leadership at the IRS is also undergoing significant changes. At present, the IRS does not have a Senate-confirmed commissioner. There has been a proverbial carousel of acting commissioners and the short tenure, 51 days, of now, former IRS Commissioner Billy Long. At present, Treasury Secretary Bessent is the acting commissioner, the sixth commissioner since February 2025. However, a new position of "IRS CEO" was created, and Frank Bisignano, the current Social Security Commissioner, is serving in the dual role. There is no statutory authority for this position; therefore, there is great uncertainty about the propriety of delegation orders and other statutory requirements.

In the meantime, Guy Ficco, Chief of IRS Criminal Investigation (CI), is retiring. He took over the leadership in April 2024. Jarod Koopman will succeed him and serve a dual role of co-chief tax compliance officer, among other changes within CI leadership. Todd Newman, will now be the CFO of the IRS. He previously was part of the Department of Government Efficiency. IRS Appeals will have a new chief, David Borden.

Regardless of the leadership changes, the IRS is still adjusting to the staffing reductions and implementations of the new tax law, as well as filing season. The practical implications are longer delays in receiving responses from the IRS, assuming that a response comes at all. Many claims and submissions continue to languish; such as, the well-documented delay in processing ERC claims. I don't foresee an improvement in the coming year. This reality places an onus on taxpayers and their representatives to be proactive in addressing any IRS notices and correspondence. Document all submissions, do not rely upon telephone advice without documentation and send all submissions to the IRS via fax or certified mail to establish receipt by the IRS.

Department of Justice Tax Division—NO MORE

The Department of Justice Tax Division was officially dissolved. Tax enforcement by DOJ is now split between the general civil section of DOJ and the criminal section of DOJ. Tax is now essentially a "Section" rather than a "Department." This is a significant downgrade. At present, the stated enforcement priorities are employment tax (this is related to immigration enforcement), identity theft of taxpayer information, also related to immigration enforcement, offshore, and Swiss bank enforcement. It has been widely reported that parts of the now former Tax Division have had 40 percent personnel reductions. It will take some time for the proverbial dust to settle after the reorganization. I expect there will be dialogue between the IRS and DOJ leadership not only as to the types of matters that DOJ will accept from the IRS but also the volume of such referrals including lien enforcement, refund litigation, as well as criminal prosecution.

The realites of staffing models may create proactive opportunities for taxpayers to file refund claims and proceed to refund litigation in an attempt to break the administrative bottleneck. Each matter is different, and litigation with DOJ can be expensive given the historic practices of DOJ utilizing more discovery and motion practice. However, that is the past, and the future may be different. Certainly, food for thought.

Voluntary Disclosure

As I have written in some previous columns, the IRS Voluntary Disclosure can be an excellent alternative for a taxpayer who wants to address concerns and issues regarding previous tax filings, other submissions, or the lack of filing. Pursuant to IR-2025-124, released December 22, 2025, the IRS is seeking comments about proposed changes and updates to the voluntary disclosure program. The proposed changes include a tighter deadline to submit necessary tax returns and payment of applicable tax and penalties. The penalties will generally be the 20 percent accuracy related penalty rather than the 75 percent civil fraud penalty to amended tax returns, and failure-to-file penalties will apply to delinquent tax returns but not failure-to-pay penalties. FBAR, or Foreign Bank Account Reporting, penalties of up to $10,000 will generally apply rather than the potentially significantly higher FBAR penalties.

The voluntary disclosure program is potentially a tremendous option for taxpayers to address tax issues. Business breakups and marital disruptions are only some of the ways that tax concerns come to light. To be eligible, the taxpayer must initiate contact before the IRS makes contact. The IRS may be reviewing records before the taxpayer knows. An important caveat, the disclosure must be 100 percent accurate and fully disclose any and all issues. This is not a half measure or a poker game. In all of my years of practice, I have yet to have a client who, once under investigation or worse, indicted, does not want relief that voluntary disclosure brings.

An important additional factor for taxpayers to consider, I have seen a significant rise in litigation and investigations related to PPP loans and government contracting. Many of the matters were initiated by private citizens utilizing AI technology to scour public databases for various government programs. The AI technology finds aberrations or inconsistencies and the relator files a *Qui Tax* action. The relator's counsel contacts DOJ with the hope of getting the government to take over the litigation and pursue the taxpayer, thus, bringing the enforcement weight of the government into play, including potential criminal investigation and prosecution. If the government secures a judgment, which usually has a two -three multiplier, the relator collects a percentage. The practical application is the government contracting out much of the detective work. The government is investing in AI technology for enforcement. As always, plan accordingly.

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Some Best Practices for Motions, Briefs, and Hearings

Motion and Brief Best Practices

"*I didn't have time to write a short letter, so I wrote a long one instead.*"
– Blaise Pascal

Background of Michigan Business Courts

Michigan established business courts effective January 1, 2013.[1] Since then, business courts have become part of the fabric of Michigan's jurisprudence. Indeed, attorneys licensed within the past 13 years have not known a time when Michigan did not have business courts. As business court practice has matured, business court judges have developed views on what effective advocacy looks like in their courts. Over the years, *Touring the Business Court* columns[2] have gathered insights directly from business court judges through interviews with those judges. This article distills that advice as well as other recommendations from the business court judges to highlight some of the best practices for motions, briefs, and hearings.

The Top Six Briefing Tips: Make Briefs Clear, Concise, Direct, Relevant, Respectful, and Well-Supported

Business court judges (like other judges) prefer briefs that are: clear, concise, direct, relevant to the issues, respectful, and well-supported. In that regard, it is helpful to keep in mind the purpose of the business court:

> (3) The purpose of a business court is to do all of the following:
>
> > (a) Establish judicial structures that will help all court users by improving the efficiency of the courts.
> >
> > (b) Allow business or commercial disputes to be resolved with the expertise, technology, and efficiency required by the information age economy.
> >
> > (c) Enhance the accuracy, consistency, and predictability of decisions in business and commercial cases.[3]

Below are some specifics.

Purpose of the Motion and Brief

The motion and brief are an attorney's direct line of communication to the business court judge. They present a unique opportunity to carefully choose your words, sentences, paragraphs, and ideas and present them in a succinct and compelling manner. The goal is to make the case and issues clear to the judge by focusing on the specific issues at hand. Effective briefs tailor their approach to their audience—the judge. In doing so, however, the briefs also speak to the opposing counsel, the opposing party, and any insurance company that might be involved.

Clarity, Conciseness (and Precision), Directness, Relevance

Judges prefer clarity and conciseness because it allows the judge to clearly and quickly grasp the core issues of the case. Judges value briefs that provide relevant background information—but only relevant information. (For example, a motion to compel does not need to recite all the procedural and substantive facts of the case.) Moreover, persuasive briefs effectively tie the facts and law together. To do so, judges praise brevity. As one business court judge puts it, "Be simple and clear with the facts—leave out the nonsense." Or, another judge observed, the 20-page cap "is not a goal"; it's a maximum that should generally not be reached. A well-edited brief signals disciplined thinking and respect for the court's time. Briefs should effectively weave the issues, applicable law, and analysis together by going to the heart of the issue. A concise introduction along with clear headings and subheadings helps to provide judges with a clear direction of where the brief is heading.

Effective briefs do not require the judge to do the work for you. Judges do not want to dig through cluttered arguments; they want to know the precise issue and relief requested. As one judge recommended, "Provide more than superficial analysis. Do not presume the court will do your work for you." Another judge suggested that you spell out the basis for the motion in the motion itself: "Don't just say 'see attached brief.'"

When defending against an argument (or an anticipated argument) from the opposing counsel, address the issues (including the "bad facts") directly. Avoid hyperbole and be candid with the court. "Evading questions by the judge" is counterproductive, as one judge noted. Additionally, focus on the law that is relevant to the specific issue before the court. As one judge observed, be "clear and concise. If you are defending an argument, hit the issues head-on."

Respectful

Judges caution against unnecessary rhetoric. As one judge noted, "belligerence typically masks lack of merit." Do not attack opposing counsel. This advice was repeated time and again in our interviews with business court judges.

In a related vein, judges want lawyers to make a genuine attempt to resolve issues before filing a motion. For a discovery motion, for example, this may take the form of a detailed letter or email to opposing counsel explaining the issues. Sometimes, a phone call or a Zoom meeting can resolve an issue or narrow the issues. "Pick up the phone" is advice many judges have given. As one judge mentioned, do everything you can to narrow the issues; bring me "only what you can't agree on."

Well-Supported Briefs

Court rules, Michigan Supreme Court cases, and published Michigan Court of Appeals decisions, of course, provide the most compelling support for a brief. Avoid irrelevant citations and unpublished authority that do not bear directly on the issue at hand. As

one business court judge put it, "Give me one good case on point that actually says what you say it says, and I'll be forever grateful." Judges also find that citing too many cases that are relevant to the subject matter generally but that do not apply to the specific legal issue may obscure your main point. As one judge suggested, "Ask yourself: 'Can someone who does not know the case understand the motion?''

Further, a brief may be more persuasive when it acknowledges that there are no published cases directly on point. If there is nothing on point, just say so. (In that event, unpublished opinions or cases from another jurisdiction may be helpful.) That being said, decisions by other Michigan business court judges can be persuasive. Also, know when to provide a judge's copy of the motion and brief.

TROs and Preliminary Injunctions

Regarding motions seeking equitable relief, especially temporary restraining orders, it is important to recognize that there is an asymmetry of information. Attorneys may spend days or sometimes weeks with a client's matter before filing the motion, while the judge is encountering it for the first time. Business court judges are cautious about granting this extraordinary relief, especially ex parte. Judges advise attorneys to strictly adhere to the specific court rules and to state specific facts supporting each element for a TRO and a preliminary injunction. But as one judge said, TROs should be "used sparingly."

Further, temporary restraining orders must provide the reason why notice cannot be given and why notice would create a risk of harm.[4] It is not enough to explain the irreparable harm that will occur. Judges recognize the urgency of such requests and often act quickly.

Still, judges also wonder why a party is seeking an ex parte order when that party or its attorney has had communications with the other side before filing the motion. That would suggest that some kind of notice of the motion (maybe even in a telephone call or an email) could probably have been given.

Hearings and Oral Argument

"[*Oral argument is*] *an opportunity to face the decision-makers; to try to answer the questions that trouble judges*."
— Justice Ruth Bader Ginsburg

The Top Six Traits of Persuasive Attorneys: Prepared, Punctual, Professional, Respectful, Candid and Direct, and Know What the Judge Wants

Business court judges agree: Persuasive attorneys are prepared; punctual; professional and respectful in the way they address the court and opposing counsel; and candid and direct in response to questions from the court or points from the opposing side. And they know how the judge will likely handle the hearing.

Preparing for the Hearing

The hearing is the judge's opportunity to ask questions, clarify issues, and obtain more information. This allows the attorney to address the judge's concerns and questions directly. Attorneys, of course, should be familiar with the facts and the key legal authorities.

In addition, counsel should anticipate questions from the court and arguments from opposing counsel and be prepared to respond. One judge recommended that counsel be prepared for "intensive questions." Another judge summed it up: "be prepared, and know your case."

Conduct During Hearing: Be Candid and Direct in Response to Questions or Arguments, Professional, and Respectful

During oral argument, attorneys should listen carefully and be prepared to adapt in response to the court's questions and concerns. While delivering an argument, judges prefer that attorneys focus on critical issues rather than addressing tangential ones. Further, judges caution against summarizing the written brief in oral argument. Make your "point succinctly and without unnecessary repetition," recommended one judge. On the other hand, you should be prepared to make a record if needed.

Moreover, respond fully to the questions from the court and the points from opposing counsel. During this process, judges recommend talking *to* the court, not *at* the court. When questioned, judges prefer a direct answer; evasion or delay may undermine credibility. In other words, deal directly with the weakness of your case, just as you have done in your brief.

Be prepared to explain how you have attempted to resolve the dispute with opposing counsel. Asked about what is counterproductive at oral argument, one judge said this: being notified at the hearing that "attorneys had not met and conferred and that they could have narrowed the issues."

Of course, professionalism and candor are a given. Thus, oral argument should not descend into personal attacks and sarcasm—it is inappropriate and it distracts from the merits.[5] As one judge observed, personal attacks "get in the way of your actual mission, which is to further your client's interests."

Practical Considerations

Judges have raised concerns about the growing reliance on substitute attorneys at motion calls. While delegation may be unavoidable at times, sending a lawyer unfamiliar with the record defeats the purpose of oral argument. To judges, this is frustrating and unhelpful, especially when the judge comes prepared to deal with a particular issue.

And, as always, know your judge and his or her specific protocols.[6] More on that below.

Judge-Centered Approach

Hearing Dates

Part of knowing your judge involves scheduling motions consistent with the judge's protocol and calendar. For many judges, this usually isn't an issue, except when it comes to TRO

motions and dispositive motions. As to the former, some judges recommend contacting the judge's clerk to notify the court that a TRO motion has been filed. Regarding dispositive motions, check the court's protocol on hearing dates. Many judges set separate hearing dates for dispositive motions. If a hearing is likely to be particularly long or involved, one judge recommends notifying the court several days in advance. Or when uncertain, email the clerk (copying opposing counsel) about whether the judge would like to set a special hearing date. If you are uncertain whether your motion is up for hearing at the scheduled time, check the court's online docket.

Review Prior Decisions

Michigan business court opinions are posted online. This State Court Administrative Office database is keyword searchable and provides the date of the order and the full opinion. The search function returns all opinions that use the words it contains. For instance, a search for *shareholder oppression* returns all opinions that use the word *shareholder* and/or the word *oppression* in the same opinion. The search can be further narrowed to only cases that contain the phrase *shareholder oppression* through quotation marks—"shareholder oppression." The opinions found in the database can provide insight into how a particular judge has ruled on an issue in the past and provide guidance as to future rulings on a similar issue. As a result, attorneys can emphasize certain aspects of a claim or defense in front of a particular judge, or perhaps not file a particular motion or agree to the relief requested by the opposing party.

The Michigan business court opinion database can be accessed at: https://www.courts.michigan.gov/administration/trial-court/trial-court-operations/business-court/.

Local Administrative Orders; More on Judge's Protocols

Each business court has a local administrative order ("LAO") for operation of its respective business court docket. The LAO is approved by the State Court Administrative Office. LAOs contain useful information regarding internal policies and procedures for local court management. As mentioned, judges also advise attorneys to review their protocols. A judge's protocol typically may contain information regarding Zoom hearings, summary disposition motions, motions for reconsideration, adjournments, emergency motions, and physical copy requirements. In addition, these protocols may address page limits, scheduling orders, case management, exhibit labeling, proposed orders, protective orders, and expectations regarding meet-and-confer obligations.

Below are links to business court protocols for the various business courts:

Allegan County Business Court Judge Protocol

Judge Mathew W. Antkoviak: https://www.allegancounty.org/courts-law-enforcement/48th-circuit-court/judges

Berrien County Business Court Judge Protocol

Judge Donna B. Howard: https://www.berriencounty.org/695/Hon-Donna-B-Howard-Presiding-Judge

Calhoun County Business Court Judge Protocol

Judge Brian K. Kirkham: https://www.calhouncountymi.gov/departments/courts/circuit_court/business_court.php

Genesee County Business Court Judges' Protocols

Judge B. Chris Christenson: https://cms2.revize.com/revize/geneseecountyjudicialcourt/Documents/General%20Information/Judges/Policy-procedures-Civil-Criminal-christenson.pdf

Judge Brian S. Pickell: https://cms2.revize.com/revize/geneseecountyjudicialcourt/Documents/General%20Information/Judges/Policy-and-Procedures-Pickell.pdf

Ingham County Business Court Judge Protocol

Judge James S. Jamo: https://cc.ingham.org/courts_and_sheriff/circuit_court/jamo.php

Jackson County Business Court Judge Protocol

Judge Richard N. LaFlamme: https://www.co.jackson.mi.us/382/Honorable-Richard-LaFlamme

Kalamazoo County Business Court Judge Protocol

Judge Curtis J. Bell: https://www.kalcounty.gov/directory.aspx?EID=95

Kent County Business Court Judge Protocol

Judge Curt A. Benson: https://www.kentcountymi.gov/DocumentCenter/View/5525/Bensons-Procedures-PDF?bidId=

Livingston County Business Court Judge Protocol

Judge Matthew J. McGivney: https://milivcounty.gov/courts/judges/mcgivney/

Macomb County Business Court Judges' Protocols

Judge Richard L. Caretti: https://www.macombgov.org/departments/16th-judicial-circuit-court/honorable-richard-l-caretti

Judge Kathryn A. Viviano: https://www.macombgov.org/departments/16th-judicial-circuit-court/honorable-kathryn-viviano

Monroe County Business Court Judge Protocol

Judge Daniel S. White: https://www.co.monroe.mi.us/485/38th-Circuit-Court

Muskegon County Business Court Judge Protocol

Judge Kenneth S. Hoopes: https://co.muskegon.mi.us/365/Chief-Judge-Kenneth-S-Hoopes

Oakland County Business Court Judges' Protocols

Judge Victoria A. Valentine: https://www.oakgov.com/home/showpublisheddocument/16631/639003748206800000
Judge Michael David Warren, Jr.: https://www.oakgov.com/government/courts/circuit-court/judges/civil-criminal/hon-michael-warren

Ottawa County Business Court Judge Protocol

Judge Jon A. Van Allsburg: https://miottawa.org/courts/20th-circuit/

Saginaw County Business Court Judge Protocol

Judge M. Randall Jurrens: https://www.saginawcountymi.gov/courts-public-safety/courts/business-court/

St. Clair County Business Court Judge Protocol

Judge Michael L. West: https://www.stclaircounty.org/Offices/63

Washtenaw County Business Court Judge Protocol

Judge Carol A. Kuhnke: https://www.washtenaw.org/1443/Honorable-Carol-Kuhnke

Wayne County Business Court Judges' Protocols

Judge David J. Allen: https://www.3rdcc.org/departments---divisions/divisions/civil
Judge Annette J. Berry: https://www.3rdcc.org/departments---divisions/divisions/civil
Judge Edward Ewell, Jr.: https://www.3rdcc.org/departments---divisions/divisions/civil
Judge Muriel D. Hughes: https://www.3rdcc.org/departments---divisions/divisions/civil
Judge Brian R. Sullivan: https://www.3rdcc.org/departments---divisions/divisions/civil

NOTES

1. MCL 600.8031 et seq.

2. The columns have regularly appeared in the Michigan Business Law Journal since the Spring 2018 issue. They are word-searchable. Most current (and many former) business court judges have been interviewed. https://connect.michbar.org/businesslaw/newsletter.

3. MCL 600.8033.

4. MCR 3.310(B)(1).

5. One judge reminded attorneys to remember the oath they took when they were admitted into practice. https://www.michbar.org/generalinfo/lawyersoath.

It is also important to be familiar with the 12 Principles of Professionalism. https://www.michbar.org/generalinfo/professionalism_principles.

6. To the degree that anything here is contrary to the practice or protocol of a particular judge, the judge's practice and protocol obviously prevail.

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A Primer on Handling an Administrative Agency Matter

By Matthew P. Allen

Introduction

This article provides an overview of the basic structure of administrative agencies, a summary of the main issues to consider when representing a client in an administrative agency investigation or proceeding, and an update on recent court decisions that have curbed the authority of administrative agencies in the United States.

The executive branch has joined the judicial branch in limiting the authority of federal agencies—the Trump administration's "Department of Government Efficiency" has been tasked by executive order with "deregulating" administrative agencies by repealing agency regulations, reducing agency staff and employees, and attempting to dismantle certain agencies entirely. In addition, the White House attempted to remove a Federal Reserve Board governor—and former Michigan State University professor—challenging a 90-year-old U.S. Supreme Court decision that limits the ability of the president to remove certain agency officials. Not since President Franklin Roosevelt's New Deal have we witnessed such a fundamental shift in administrative law. Thus, it is an interesting time to examine administrative agencies. And since every U.S. citizen has some interest regulated by an administrative agency, this is a timely topic for our Michigan legal community.

I have represented companies and individuals in a host of federal, state, and municipal administrative agency investigations, licensing examinations, enforcement actions, and litigation. The agencies I have worked with include the U.S. Securities and Exchange Commission; the Federal Trade Commission; the Federal Election Commission; the U.S. Department of Commerce Bureau of Industry and Security; the Michigan Corporations, Securities & Commercial Licensing Bureau; the Detroit Buildings, Safety Engineering, and Environmental Department; and many others. Frequently, clients facing a regulatory inquiry face parallel criminal exposure from the U.S. Department of Justice (DOJ) or Michigan Department of Attorney General, in addition to private suits for damages by disappointed investors, consumers, or customers.

This article provides an outline of basic issues to consider when preparing to represent a client in an administrative agency matter.

What Are Administrative Agencies, and Where Do They Come From?

Starting in the 1930s, President Roosevelt's New Deal rapidly proliferated the U.S. "administrative state" by creating a host of new agencies with powers meant to reform government to better respond to the economic, social, and political challenges facing the country.

It has been said administrative agencies have become "a veritable fourth branch of the government." They are created by congressional and state legislation, and they usually "reside" in the executive branch. The scope and reach of agency powers are defined by statute and interpreted by the courts. These agencies make rules and regulations for all areas of society where Congress or state legislatures identify a need for government intervention and oversight, including as examples:

- How securities are sold to the public.
- What export controls should be applied to which goods.
- What substances companies can put in our food, air, and water.
- How much society should pay for our nation's social security.
- What the rules of commerce are for companies doing business in the United States.
- What work rules companies and unions can impose on employees.
- What the requirements are for fair and free elections.
- How to ensure our national security.

And the list goes on and on. In many instances, Congress authorizes these agencies to investigate, adjudicate, and enforce the rules they have written. This creates constitutional tension between, on the one hand, ensuring that agencies exercise only the power

and authority Congress has given them, with appropriate oversight by the executive branch, and, on the other hand, providing enough discretion to the agencies so they can effectively apply their technical expertise in whatever area they were created to administer.

Over the decades, government administrations at every level have championed either increasing government agency regulation for the protection of citizens (colloquially known as "big government") or decreasing the scope and reach of agency rules and regulations ("small government"). Sometimes the debate is whether the central federal government or the states should regulate a certain area. At this moment, the most recent iteration of Chief Justice Roberts's U.S. Supreme Court and the Trump administration have made decisions that reflect their belief that federal administrative agencies have exceeded their proper constitutional authority. These decisions have already begun to create new "subissues" of administrative law in the lower courts that will make their way back to the High Court.

While there are innumerable state and federal administrative agencies and industries they regulate, the basic model of administrative procedure and decision-making is similar.

Five-Step Road Map for Responding to an Administrative Agency

While there are innumerable state and federal administrative agencies and industries they regulate, the basic model of administrative procedure and decision-making is similar. Whether your client is being investigated or sued by an administrative agency, is seeking relief against another party in an agency proceeding, or is seeking other regulatory relief from an agency, the steps below can be applied to advise your client.

Step 1: Understand Your Client's Potential Criminal Exposure and Law Enforcement Involvement

Many administrative rule regimes contain specific authorization for criminal charges and penalties. For example, the U.S. Department of Commerce Bureau of Industry and Security (BIS) is authorized by statute to regulate, investigate, and adjudicate export control and tariff code disputes and impose various civil and regulatory licensing penalties on any person who "violates, conspires to violate, or causes a violation" of the Export Control Reform Act or any Export Administration Regulation. *See, generally,* 50 USC 4801-4852. Congress also included a provision allowing the imprisonment of a person for up to 20 years for "willfully" committing, attempting to commit, or conspiring to commit specific "unlawful acts" set forth in the statute. *See* 50 USC 4819(b). It is the same in Michigan: For example, the governor and Legislature empower the Michigan Corporations, Securities & Commercial Licensing Bureau to regulate and enforce the Michigan Uniform Securities Act, including investigating any "false or misleading" statements or omissions in connection with the purchase or sale of securities. *See, generally,* MCL 451.2102; MCL 445.2034. A person who "willfully violates this act or a rule adopted or order issued under this act … is guilty of a felony punishable by imprisonment" for up to ten years. MCL 451.2508.

This is in addition to other types of general criminal charges potentially available to the U.S. government or the state of Michigan, such as conspiracy, false pretenses, conversion, embezzlement, mail fraud, and wire fraud.

So, for example, if your client is being investigated by BIS for engaging in transactions "with intent to evade" export control laws or tariff codes, it is important to understand whether investigators may view your client as having "willfully" done so, thus exposing your client to referral by BIS to the U.S. Department of Justice for criminal investigation. In a document-intensive case, sometimes your client's opinion of their intent and "willfulness" may be different from the view federal agents take of your client's knowledge of wrongdoing as reflected in the documents. The more complex or unsettled the law—think tax, campaign finance, and similar laws—the greater likelihood that your client may have effective *mens rea* defenses to criminal charges. If your client faces criminal exposure, that changes the risk calculus of cooperating in the regulatory investigation or administrative proceeding for various reasons, including but not limited to:

- **Fifth Amendment Rights versus Cooperation**. An individual client has a Fifth Amendment right to remain silent in civil or criminal proceedings. However, if they cooperate—by giving interviews or testimony—they may waive that right in a later criminal case. Waiver rules vary by jurisdiction, so counsel must be attentive to local law.
- **Adverse Inferences in Civil and Regulatory Cases**. While silence cannot

be used against a client in criminal court, civil regulators and plaintiffs may draw adverse inferences from it. This creates a tension between preserving criminal defenses and risking civil liability. One strategy is to seek a stay of civil proceedings pending resolution of related criminal matters, citing due process, judicial efficiency, or comity.

- **Balancing Liberty and Business Interests**. Protecting against criminal exposure may harm a client's regulated business. Clients often must weigh their liberty and business interests when deciding whether to cooperate. Tools like immunity, nonprosecution, or deferred prosecution agreements can help. Companies should consider conducting internal investigations and how they might support cooperation efforts.
- **Identifying the Client and Managing Conflicts**. Corporations lack Fifth Amendment rights, so their cooperation strategy differs from that of individual officers. Companies may try to deflect blame onto individuals. Counsel must identify and manage conflicts and consider common interest agreements to share privileged information without waiver; requirements for these agreements may differ by jurisdiction.
- **Privilege, Cooperation, and Waiver Risks**. Attorney-client and work product privileges are critical in regulatory investigations with criminal overlap. Disclosure of internal investigations may waive privilege, depending on the jurisdiction. For example, the Sixth Circuit does not recognize "selective waiver," meaning any voluntary disclosure to the government waives privilege in all contexts.

Sometimes the risk of cooperating in the face of criminal exposure pays off. For example, I obtained a declination of prosecution from the DOJ and Federal Election Commission in exchange for my client's cooperation efforts in an investigation of potential violations of the Federal Election Campaign Act, and various FEC regulations, relating to a "dark money" political campaign finance structure. But cooperating in the face of criminal exposure requires very clear communication with your client about the risks, as well as a trusted dialogue with regulators and prosecutors.

Step 2: Study the Agency-Enabling Legislation: What Is the Scope of the Agency's Authority? What Authority Has the Legislature Delegated to the Agency?

Administrative agencies can only be created by legislation, and they can exercise only those powers delegated to them in their enabling statute. That authority can be broad or narrow or anywhere between, but it always needs to be expressly endowed to be exercised. The U.S. Supreme Court has recently ruled that statutory silence or ambiguities about an agency's law-interpreting power do not imply a delegation of that power by the legislature to the agency. *See Loper Bright Enters v Raimondo,* 603 US 369, 399-400 (2024). Therefore, the statutory delegation must expressly empower the agency with authority. The statute must state some "intelligible principle" of the agency's tasks and discretion, or else the delegation will be an unconstitutional attempt to provide broad legislative power to an executive branch agency. *See Pickens v Hamilton-Ryker IT Sols, LLC,* 133 F4th 575, 587-88 (6th Cir 2025). Courts have upheld very broad delegations of authority as constitutional. Some examples of broad constitutional delegations:

- The Fair Labor Standards Act delegates authority to the secretary of labor to define by regulation when an employee works "in a bona fide executive, administrative, or professional capacity."
- The Federal Trade Commission is empowered by the Federal Trade Commission Act to prevent people and entities from using unfair methods of trade or competition affecting commerce.
- Michigan's Natural Resources and Environmental Protection Act empowers the Michigan Department of Environment, Great Lakes, and Energy to protect and conserve the state's water resources and control pollution of surface and underground waters.
- The Michigan Uniform Securities Act empowers the Michigan Department of Licensing and Regulatory Affairs—through the Corporations, Securities & Commercial Licensing Bureau—to regulate the issuance, purchase, and sales of securities within the state of

Administrative agencies can only be created by legislation, and they can exercise only those powers delegated to them in their enabling statute.

Michigan.

An agency cannot act beyond its express authority. So read the enabling legislation. Do not skip this part.

As an example of this point, I convinced the Federal Election Commission (FEC) and DOJ to issue a written declination of enforcement action and prosecution against my client in exchange for his cooperation. Section 30122 of the Federal Election Campaign Act makes it unlawful to "make" a political contribution in the name of another. The FEC added a regulation penalizing secondary actors, saying no person shall "knowingly help or assist any person in making a contribution in the name of another."

Because my client was merely a director of the company that allegedly made the political contribution in the name of another company, he was a secondary actor in assisting the company's alleged violation of Section 30122. And because this enabling election law statute did not make secondary actors liable for "helping or assisting" violations of the election laws, the FEC and DOJ lacked constitutional authority to charge my client for violating the election contribution law at issue. The government agreed. As a result, the FEC issued an interim rule removing the regulatory provision making it unlawful to "help or assist" a violation of Section 30122 of the act because it extended beyond the conduct Congress delegated to the FEC to regulate. *See* 88 FR 33816-02, 2023 WL 3620498 (May 25, 2023).

The U.S. Supreme Court recently limited the scope of judicial deference to administrative agencies' interpretations of federal statutes.

Step 3: What Does the Administrative Procedure Act Say, and How Have Recent Supreme Court Decisions Affected Judicial Review Under the APA?

Congress and most state legislatures have enacted Administrative Procedure Acts that provide general legislative directives and guidelines for agencies to follow in their structure and operations. The federal APA is found at 5 USC 500-808, and the Michigan APA at MCL 24.201-328. Some states, such as Michigan, pattern their APA after the Revised Model State Administrative Procedure Act, drafted by the National Conference of Commissioners on Uniform State Laws, which has approved and recommended the uniform APA for enactment in all states.

APA statutes are generally structured with the following main components, with citations to the federal and Michigan APA provisions for reference:

- **Rulemaking Procedures**—provides procedures for how agencies in that jurisdiction shall process and publish rules governing their administration. There may be formal and informal rulemaking procedures, required notice and comment periods on proposed rules, requirements for public hearings and input, and requirements for regulatory impact statements about the cost and burdens the proposed rule will impose on agencies and the public, among other issues. *See, e.g.*, 5 USC 553, 561-570; MCL 24.231-266.
- **Adjudication Procedures**—provides due process protections for contested proceedings before the agency, including identification, qualifications, and powers of hearing officers, usually administrative law judges; notice requirements for respondents; scope of any discovery; hearing requirements, including any applicable rules of evidence, burdens of proof, presumptions, form of witness testimony, and maintenance of the record; and requirements for final decisions and orders. *See, e.g.*, 5 USC 554-559; MCL 24.271-288.
- **Judicial Review of Agency Decisions**—these provisions outline what rights parties have to judicial review, the forum and venue of judicial proceedings, the types of actions reviewable, the categories of relief available, and the critically important scope and standard of judicial review available. *See, e.g.*, 5 USC 701-706; MCL 24.301-306.

The U.S. Supreme Court recently limited the scope of judicial deference to administrative agencies' interpretations of federal statutes. *See Loper Bright Enters v Raimondo,* 603 US 369 (2024). In my view, this requires the court to overrule prior decisions permitting federal courts to defer to agency interpretations of their own rules, called the *Auer* doctrine, for the case in which it was applied. *See* Matthew P. Allen, *A Matter of Deference*, American Bar Association (Mar 3, 2025).

Always study the detailed commentary and analysis contained in the uniform APA relating to a provision at issue because it may prove a helpful reference when advocating an interpretation of the corollary rule in your state's APA or even the federal APA.

An example shows how the APA can benefit your client. I recently persuaded the Securities and Exchange Commission (SEC) to withdraw an "extraordinary circumstances" standard it had imposed on my client as a condition to rejoining the securities industry, ruling it exceeded the agency's authority under the Investment Advisers Act of 1940 and the Securities Exchange Act of 1934. *See* SEC Release No. 6872 (April 11, 2025).

Under SEC Rule of Practice 193 (17 CFR 201.193), a person barred from the industry may reapply by showing it is "in the public interest." In a 1994 SEC release (No. 34720), the commission distinguished between "qualified" bar orders (allowing reentry after a set time) and "unqualified" ones (implying permanent exclusion). The release introduced the "extraordinary circumstances" standard for unqualified bars, though this standard is not in Rule 193 and lacked interpretive guidance. Importantly, the 1994 release did not go through APA notice and comment procedures.

We argued the 1994 release was a legislative rule because it imposed new legal duties not found in Rule 193. Legislative rules require APA compliance, including public vetting. See *Mann Constr, Inc v United States*, 27 F4th 1138 (6th Cir 2022). Because the SEC had not followed APA procedures, the rule was invalid and could not be applied to our client.

In its final order, the SEC granted our client's application and stated it would no longer use the "extraordinary circumstances" test under Rule 193. *See* SEC Release No. 6872, at 5.

Step 4: Learn the Rules—Impact of Agency Regulations, Rules, Guidelines, Manuals, and Guidebooks

Because finding and succeeding on constitutional or APA challenges to an agency's structure or rulings is a rare occurrence, and judicial review of agency final decisions is limited, lawyers must put their best case forward under the agency's rules. This means understanding all the regulations, rules, guidelines, letter rulings, no-action letters, rules of practice, manuals, and guidebooks that may apply to the agency action. Federal regulations are published in the *Federal Register* and then codified in the Code of Federal Regulations (CFR). The CFR is divided into 50 titles that cover broad areas subject to federal regulation. In Michigan, regulations are published in the *Michigan Register* and then codified in the Michigan Administrative Code. Both are overseen by the Michigan Office of Administrative Hearings and Rules, which is part of the Department of Licensing and Regulatory Affairs.

Administrative agencies in different jurisdictions or regulating different subject matters each have different procedural and substantive rules governing their proceedings. The example below illustrates the types of laws, rules, and manuals applicable in the federal regulation of the purchase and sale of securities.

In Section 10(b) of the Securities Exchange Act of 1934, Congress makes it unlawful to use any "manipulative or deceptive device or contrivance" in connection with the purchase or sale of any security in violation of "rules and regulations as" the SEC may prescribe. 15 USC 78j(b). Rule 10b-5 was created by the SEC to enforce Section 10(b) under the authority delegated there. Rule 10b-5 generally prohibits fraud, fraudulent statements or omissions, and deceit in connection with the purchase or sale of any security. 17 CFR 240.10b-5. The SEC is empowered by Congress to investigate and bring enforcement actions against individuals and entities suspected of violating the federal securities statutes or the SEC "rules and regulations thereunder." 15 USC 78u. Congress authorized the creation of self-regulatory agencies like the Financial Industry Regulatory Authority (FINRA) to regulate and enforce the Exchange Act and, in FINRA's case, FINRA Rules governing broker-dealers, under the oversight of the SEC. 15 USC 78o-3.

The SEC's Division of Enforcement oversees the agency's civil law enforcement function by investigating and prosecuting securities law violations, including violations of Section 10(b) and Rule 10b-5. The division's more than 100-page Enforcement Manual is a reference for SEC enforcement staff and contains important details defense lawyers should master in order to navigate their client's rights and strategies, including types of SEC investigations; how they are ranked within the commission; how whistleblowers are used; how criminal referrals are made to the DOJ; the Wells process to try to resolve the investigation; how assertions of attorney-client, Fifth Amendment, and other privileges affect the investigation; and detailed cooperation tools and procedures, among many other provisions.[1] FINRA has its own manual

Administrative agencies in different jurisdictions or regulating different subject matters each have different procedural and substantive rules governing their proceedings.

containing similar rules and provisions for FINRA investigations of broker-dealers and their agents.

If the SEC finds cause to sue your client for Section 10(b) or Rule 10b-5 violations after an investigation concludes, it can do so by filing a civil action in a federal court with competent jurisdiction over your client, or by filing an in-house administrative action before an SEC administrative law judge. There are significant consequences for your client depending on the SEC's decision. In federal court, your client is protected by the familiar due process protections of the Federal Rules of Civil Procedure and Federal Rules of Evidence. In SEC administrative actions, however, the SEC Rules of Practice apply. 17 CFR 201.100-900. These are very different from—and offer fewer procedural rights and protections to your client than—the Federal Rules of Civil Procedure and Evidence. But there are also benefits to proceeding in an administrative action in certain cases.

Step 5: Understand Important Court Decisions That May Affect Your Rights and Claims Before the Agency

Courts seem to be constantly interpreting some aspect of administrative law, so case law research is critical. Since we are using securities law as our example, here are some recent decisions in addition to the cases discussed above affecting the authority of the SEC and FINRA:

SEC v Jarkesy, *603 US 109 (2024)—Seventh Amendment Requires Jury Trial of SEC Penalty Cases*

The Supreme Court held that the U.S. Constitution prohibits the SEC from bringing civil penalty actions as in-house administrative proceedings. The court found that statutory penalty cases were "suits at common law" under the Seventh Amendment and therefore required a jury to decide. The court found that securities penalty cases were not "public rights" matters that could be taken from Article III courts and decided by the executive branch.

Alpine Sec Corp v FINRA, *121 F4th 1314 (DC Cir 2024),* **cert denied,** *145 S Ct 2751 (2025)—Regulation by Private Entities Must Be Supervised by Government Agency*

FINRA is a private entity that Congress permits to regulate certain parts of the securities industry under the supervision and ultimate control of the SEC. In *Alpine*, FINRA expelled a broker-dealer member for violating FINRA rules in an expedited proceeding. Because FINRA's decision was not reviewable by the SEC before it took effect, the court held that Alpine was likely to succeed on its claim that FINRA's decision violated the private nondelegation doctrine, "which requires that a private entity statutorily delegated a regulatory role be supervised by a government actor."

West Virginia v EPA, *597 US 697 (2022)—Agencies Limited When Regulating "Major Questions"*

Part of a series of High Court decisions in 2022 that presaged a decline of judicial deference to agency decisions, *West Virginia v EPA* refused to defer to the Environmental Protection Agency's interpretation of a Clean Air Act provision that the EPA claimed as the statutory basis to regulate greenhouse gas emissions by power plants. The court found that the EPA rule would make industrywide changes of "vast economic and political significance" and, under the "major questions" doctrine, the EPA could do so only with express permission from Congress, which the court found it did not have.

Conclusion

"[Administrative law] moves pretty fast. If you don't stop and look around once in a while, you could miss it." Not exactly Ferris Bueller's advice, but equally prescient. For legal practitioners, staying ahead in any administrative proceeding requires not only a firm grasp of statutory frameworks and procedural rules but also an awareness of the broader constitutional currents shaping the apparent transformation of agency authority. Stay tuned.

NOTES

1. On February 24, 2026, the SEC announced significant updates to its Enforcement Manual. The changes mark a strategic inflection point in SEC enforcement by offering clearer guidance on important issues for defense counsel, more structured dialogue, and greater transparency without abandoning regulatory rigor. *See* www.sec/gov/newsroom/press-releases/2026-20-secs-division-enforcement-announces-updates-enforcement-manual.

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When Regulation Becomes Extortion: Unconstitutional Conditions, Development Approvals, and Challenges to Local Governments' Permitting Power

By Andrew Goetz and Emily C. Palacios

Land-use permitting is a delicate balance for most developers. Local governments impose approval conditions—such as construction requirements, dedications of land, or payments-in-lieu—and developers adapt projects to meet them. Over time, many conditions have become an ordinary feature of land-use approvals, and many are legitimate tools for managing growth.

But for cash-strapped local governments, eager for new revenue streams but loath to raise taxes, land-use permitting presents a tempting source of money. Demanding large fees or "donations" of property from a handful of developers is much easier than asking the general public to fund public projects. Many local governments thus have a strong incentive to extract additional payments from property developers or other businesses as a condition of granting land-use permits.

The U.S. Constitution's Takings Clause, however, places real limits on how far municipalities may go with those conditions, and during the last few decades, the U.S. Supreme Court has drawn an increasingly sharp line between mitigation and extortion.[1] A recent decision in the United States District Court for the Western District of Michigan illustrates that line when local governments use the permitting process to fund general infrastructure projects through "fee-in-lieu" payments.[2] That decision, *Jamestown Shores, LLC v Jamestown Charter Township*, arose from a municipality's application of a bike-path zoning regulation, yet its reasoning has much broader implications for property developers and other businesses seeking land-use approvals elsewhere. The decision provides meaningful guidance on the circumstances in which property developers and other businesses should consider challenging those conditions, particularly in municipalities that rely on fees-in-lieu or exactions untethered from project-specific impacts.

The Constitutional Boundaries on Permit Conditions

Just as the government cannot directly interfere with constitutional rights, it also cannot interfere with them indirectly.[3] The "unconstitutional conditions doctrine" guards against that indirect interference.[4] To do so, the doctrine prohibits the government from "extract[ing] waivers of constitutional rights" by "offering a benefit that it has no duty to provide on the condition that a party waive a right."[5] The doctrine protects the Constitution's enumerated rights by preventing the government from "deny[ing] a benefit to a person because he exercises a constitutional right."[6]

In the land-use context, the U.S. Supreme Court has enforced a "special application" of that doctrine under the Fifth Amendment's Takings Clause, incorporated against the states by the Fourteenth Amendment.[7] The Takings Clause does not forbid *all* government interference with an owner's use of property. Zoning, setbacks, density limits, and many other land-use regulations are routine exercises of a local government's authority and, in most instances, satisfy the Takings Clause. But when the government demands property or money as the price of a land-use permit, it enters a different constitutional territory, and the Takings Clause protects the property owner's right to "just compensation."[8]

The concern in those cases, as the Supreme Court has explained, is not ordinary regulation but leverage: protecting property owners from "[e]xtortionate demands" by local

governments using monopoly control over permitting to obtain concessions the government could not demand outright.[9] When property owners apply for land-use permits, they are especially vulnerable to coercive requests that they deed or give up some of their property in exchange for the permit.[10] The government often has broad discretion to deny the permit, and the permit is often far more valuable to the owner than whatever the government demands in return.[11] In those circumstances, "the owner is likely to accede to the government's demand" to obtain the permit—"no matter how unreasonable" the demand might be—even when the Takings Clause would otherwise prohibit the government from making that demand directly.[12] The unconstitutional conditions doctrine prohibits the government from "try[ing] to leverage its monopoly permit power" in that way "to pay for unrelated public programs on the cheap."[13]

To prevent local governments from using their permitting authority to engage in that type of "out-and-out extortion," the Supreme Court has imposed two limitations on the government's ability "to condition approval of a permit on the dedication of property to the public."[14] First, "the government must show a 'nexus' between the condition and the project's social costs"—meaning "the government must impose the condition because of those costs and not for other reasons."[15] It is not enough that the permit condition advances a legitimate public purpose in the abstract; it must mitigate the specific negative externality created by the proposed development, such as congestion, flooding, or safety. Generalized concerns about growth, quality of life, or long-term planning do not count. Second, the government "must show a 'rough proportionality' between the condition and the project."[16] This limitation prevents the government from requiring a property owner "to give up more than is necessary to mitigate harms resulting from [the] new development."[17] Although mathematical precision is not required, the government must do more than recite general legislative findings or rely on across-the-board formulas and instead "must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development."[18]

Those two requirements—nexus and rough proportionality—protect against unrelated or overbroad exactions during the permitting process. Those requirements do "not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so."[19] Nor do the requirements turn on whether the government "requires the landowner to relinquish property or requires her to pay a 'monetary exaction' instead of relinquishing the property."[20] Even and perhaps especially when the government demands a fee-in-lieu, the government must connect the imposition and amount of that fee to the impact from the specific project under development, because a "monetary exaction[]" is "functionally equivalent to other types of land use exactions."[21]

The Supreme Court and Sixth Circuit have both highlighted an example showing how that constitutional standard applies in practice.[22] As both courts have noted, a developer's proposed retail store might "increase traffic congestion in the area," burdening nearby roads in ways that those roads weren't equipped to handle.[23] To address that "negative externalit[y]," the government could reasonably "require the owner to give it the strip of land required to widen a public road"—expanding the road along the store frontage to address the increased traffic.[24]

That condition would satisfy the Takings Clause, because it would offset the store's added burden on the abutting road. First, there would be a "nexus," because the government would be widening the road "because of" the increased traffic from the store and "not for other reasons."[25] Second, there would be "rough proportionality," because the permit condition—widening the abutting road—would "match[] the increased congestion that [the] store would cause" and "approximate the project's burdens on society."[26] By contrast, if the proposed store did not generate enough additional traffic to require a wider road, if the government demanded and used the developer's money to improve a road elsewhere, or if the government treated the assessment as a tax to fund other infrastructure projects generally, the permit condition would flunk the "nexus" and "rough proportionality" tests.[27] So as that example shows, a permit condition must offset—and be tailored to—the specific "negative externalit[y]" that the municipality otherwise wouldn't have faced.[28]

Many local governments thus have a strong incentive to extract additional payments from property developers or other businesses as a condition of granting land-use permits.

The *Jamestown Shores* Example: Bankrolling Bike Paths

Last year's decision in *Jamestown Shores, LLC v Jamestown Charter Township*, a case in the Western District of Michigan, provides additional guidance on when property developers and other businesses should draw a line in the sand on permitting conditions.[29] The defendant there, Jamestown Charter Township, wanted to expand its bike-path network and sought new funding sources to do so. For one of those funding sources, the township amended its zoning ordinance to require property owners seeking site-plan approval or certain development authorizations to either build and dedicate easements for public bike paths on their land or pay a fee-in-lieu.[30]

In the land-use context, the U.S. Supreme Court has enforced a "special application" of that doctrine under the Fifth Amendment's Takings Clause, incorporated against the states by the Fourteenth Amendment.

Two affiliated development companies, Quincy Street Ventures and Jamestown Shores, encountered these requirements when they sought approval for projects on their respective parcels. Quincy Street Ventures wanted to build a private road on its property; Jamestown Shores sought to build a small condominium development. In the township's view, both projects required site-plan approval, triggering the bike-path regulation.[31]

It made little sense to build a bike path on Quincy Street Ventures' property, though, because there was already a bike path on the other side of the street, running along the entire length of that same stretch of road. And there was no evidence that the project would create or increase congestion on that existing bike path, much less so drastically as to require expanding it. But instead of waiving the bike-path requirement, the township demanded that Quincy Street Ventures pay the township a $19,913 fee-in-lieu. The township did not connect the imposition or amount of that fee-in-lieu to any impact from the proposed development, and it planned to spend the money on bike paths that it was building elsewhere.

Jamestown Shores faced a similar situation. There were no connecting bike paths anywhere near its proposed development, so any bike paths on Jamestown Shores' property would connect to nothing. But as with Quincy Street Ventures, the township required Jamestown Shores to pay a $94,078.50 fee-in-lieu. And as with Quincy Street Ventures, that fee-in-lieu had no connection to any impact from the proposed development. The township simply calculated the amount like a tax, based on the development's property dimensions, and did not connect it to any traffic, safety, or other development-specific metrics. The township then spent the resulting payment on an already-planned bike path many miles away from Jamestown Shores' development.[32]

When both Quincy Street Ventures and Jamestown Shores sued the township, alleging an unconstitutional taking, the district court held that the township failed to establish a "nexus" between its required fees-in-lieu and any negative externalities generated by the companies' developments.[33] Although the township argued that its bike-path requirements were designed to promote safety, reduce congestion, and create a contiguous bike-path network, those general purposes were insufficient to force these particular developers to pay fees used to build bike paths elsewhere in the township.[34] The court emphasized that the nexus inquiry requires a connection to the development project's specific impacts, not merely to the township's broader goals benefitting the public at large.[35]

As to Quincy Street Ventures, the district court emphasized that the fee-in-lieu would support the construction of bike paths in other areas, to address other developments' impacts, not those of Quincy Street Ventures.[36] The district court held that a hypothetical, generalized increase in bicycle usage did not justify forcing this developer to fund unrelated bike-path segments elsewhere.[37] Because the development did not create a gap in the bike-path network or otherwise necessitate construction in a different part of town, the permitting condition lacked the constitutionally required nexus.[38]

The same was true for Jamestown Shores. The township used Jamestown Shores' fee-in-lieu to build a bike path more than two miles away—construction the township had planned before Jamestown Shores' development project was even proposed.[39] Because there was no connection between the development project's traffic or transportation impacts and that preexisting bike-path plan, the fee funded a general public improvement rather than addressing any harms caused by the development.[40] It therefore failed the nexus requirement and constituted an unconstitutional taking.[41] And the court rejected the township's "pay-it-forward" theory, which posited that each development should contribute to a general network that future developments might connect to.[42] That logic,

the court explained, would allow governments to use the permitting process to finance broad public-works programs on the backs of a few property developers—precisely what the Supreme Court's cases forbid.[43]

Lessons for Property Developers and Other Businesses

As *Jamestown Shores* demonstrates, permit conditions can quickly become constitutionally suspect when they drift from targeted mitigation into general revenue-raising. Thus, when confronted with permitting conditions, property developers and other businesses should think carefully about whether and how to push back—and when to litigate in response to conditions that transgress constitutional boundaries. A few key lessons stand out.

First, any exaction—whether a property concession or a fee-in-lieu—must be tethered to the specific development project, not to a municipality's broader wish list. Whenever a local government requires a developer to fund improvements that may be far from the project site—or improvements that would have been built anyway—it signals that the condition may be functioning as a public-finance mechanism rather than a mitigation measure to address the development project's negative externalities.

A second lesson concerns fees-in-lieu, which are particularly prone to abuse given the temptation for the government to view that money as general revenue. Fees-in-lieu are not inherently unlawful, and in some instances, they fall within the Takings Clause's boundaries. But they still require a tight factual connection to the development project before they can satisfy the "nexus" and "rough proportionality" requirements. When a municipality uses fees-in-lieu to complete long-planned infrastructure or fund general operations, or cannot specifically articulate how the money remediates any negative externalities from the proposed development, the exaction begins to resemble the unconstitutional conditions that the Supreme Court warned against. Developers should ask pointedly: What specific burden created by this project necessitates this payment? If the government cannot answer, or if the answer resembles a description of general taxation, that should be a red flag.

Third, and relatedly, developers should watch out for "pay-it-forward" rationales—funding structures in which each new project is required to contribute to a systemwide network under the theory that some later project will build the link that benefits the first. As the *Jamestown Shores* decision shows, courts treat these chain-reaction theories with skepticism because they shift the general cost of public infrastructure from the tax base to the few permit applicants who happen to be in the pipeline.

Fourth, the use of one-size-fits-all formulas—particularly formulas based on acreage, frontage, or unit counts—can signal that an exaction is operating more like a tax than a mitigation tool. Formulas are not per se improper, but they cannot replace the individualized determination required by the Supreme Court's caselaw. When a municipality plugs a project's size into a table to generate a payment obligation, without any showing that the amount reflects the project's actual externalities, the condition may not satisfy the Takings Clause. Developers encountering formula-based fees should request the underlying studies or calculations. If none exist, or if they address general community needs rather than project-specific impacts, the fee may be vulnerable to challenge.

Finally, perhaps the clearest indicator that a local government has gone too far is when an especially onerous burden falls disproportionately on only a handful of property owners. It might be politically popular to force a few property developers to bankroll general infrastructure, but the Takings Clause is rooted in the principle that public burdens should be borne by the public as a whole. When municipalities use the permitting process as a revenue-raising device—financing public improvements through ad hoc exactions imposed only on those seeking discretionary approvals—they bypass democratic accountability and violate the Takings Clause. For developers, recognizing this pattern early can provide powerful negotiating leverage and a strong basis for legal challenges.

Conclusion

Local governments may pursue ambitious infrastructure goals, but they cannot finance them by shifting public burdens onto the few developers who need permits. For property developers and other businesses, recognizing when an exaction functions as a selective tax—disguised as an off-site fee or dressed up as a pay-it-forward scheme—is essential to protecting both economic viability and

Local governments may pursue ambitious infrastructure goals, but they cannot finance them by shifting public burdens onto the few developers who need permits.

constitutional rights. When municipalities stretch their authority beyond project-specific mitigation, the law provides a powerful backstop, and courts have shown they are willing to enforce it.

NOTES

1. *Nollan v California Coastal Comm'n*, 483 US 825 (1987); *Dolan v City of Tigard*, 512 US 374 (1994); *Koontz v St Johns River Water Mgmt Dist*, 570 US 595 (2013).
2. *Jamestown Shores, LLC v Jamestown Charter Twp*, No. 1:23-CV-849, 2025 WL 79768 (WD Mich, Jan 13, 2025).
3. *Knight v Metropolitan Gov't of Nashville & Davidson Cty, Tennessee*, 67 F4th 816, 823–824 (6th Cir 2023).
4. *Id.*
5. *Id.*
6. *Koontz*, 570 US at 604.
7. *Id.*
8. *Id.*
9. *Id.* at 605.
10. *Id.* at 604–05.
11. *Id.*
12. *Id.* at 605; *accord Sheetz v County of El Dorado, California*, 601 US 267, 275 (2024).
13. *Knight*, 67 F4th at 825.
14. *Koontz*, 570 US at 605–606 (citing *Dolan*, 512 US at 387).
15. *Knight*, 67 F4th at 825 (citing *Nollan*, 483 US at 837).
16. *Knight*, 67 F4th at 825 (citing *Dolan*, 512 US at 391).
17. *Sheetz*, 601 US at 276.
18. *Dolan*, 512 US at 391.
19. *Koontz*, 570 US at 606.
20. *Sheetz*, 601 US at 276 (quoting *Koontz*, 570 US at 612–615).
21. *Koontz*, 570 US at 612.
22. *Sheetz*, 601 US at 267, 274–75 (2024) (citing *Koontz*, 570 US at 605); *Knight*, 67 F4th at 824 (same).
23. *Knight*, 67 F4th at 824 (citing *Koontz*, 570 US at 605).
24. *Id.* (citing *Koontz*, 570 US at 605).
25. *Id.* at 825 (citing *Nollan*, 483 US at 837).
26. *Id.* at 825–26 (citing *Dolan*, 512 US at 391, 395–96).
27. *See id.* at 820–21, 836 (citing *Knight v Metropolitan Gov't of Nashville & Davidson Cty*, 572 F Supp 3d 428, 443–444 (MD Tenn 2021)).
28. *Id.* at 824–25.
29. *Jamestown Shores, LLC v Jamestown Charter Twp*, No. 1:23-CV-849, 2025 WL 79768 (WD Mich, Jan 13, 2025).
30. *Id.* at *1.
31. *Id.*
32. *Id.* at *2.
33. *Id.* at *3–*7.
34. *Id.*
35. *Id.* at *3–*4.
36. *Id.* at *4.
37. *Id.*
38. *Id.*
39. *Id.* at *5.
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*

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The Human-Centric Practice of Law

By Victoria Policicchio

Transferable skills are a very real thing. Spending nearly 20 years analyzing people's motives to understand human behavior has taught me lessons that can't be found within the four corners of a law book. Although I now serve as in-house counsel—a litigation manager within a large corporation—the foundation of my prior career still shapes the core of who I am as an advocate. As a prosecutor, I was a champion for justice, which wasn't simply about winning a case, it was about connecting with people, *really* understanding their motives, and empowering them by imparting knowledge during moments when their world felt uncertain. I helped them gain a semblance of control. I always kept one thought in the back of my mind—the case before me was one amongst thousands, but for the people before me, this was the most important event they were experiencing. Viewing my job as such instilled within me a deep respect for the human experience and it transcended the legal issues I battled.

Practicing law is fundamentally the practice of understanding people. "Seek first to understand, then to be understood," is a Stephen Covey quote I found when I figuratively went down a rabbit hole to find an anchor for this article, and Covey's quote was illustrative of the very thing I have always practiced: that in the human-centric practice of law, to be effective, I needed to understand the audience, the witness, the expert, opposing counsel, the judge, the politics and the list goes on. Navigating egos, differences of opinions, fears, unique experiences, and let's not forget the actual rules of evidence and statutes, meant that if I failed to understand any of the preceding, I could not lead a case to "winning."

In-House and Its Audience

As I said—transferable skills are a very real thing. Transitioning from public service to corporate America can be daunting for some, but the underlying skillset of learning and understanding personalities translates seamlessly. As in-house counsel, you have a different dynamic and a different group of people to counsel than a litigator in a courtroom. The in-house counsel must advise decision-makers who often have little experience with litigation or government processes. Where prosecutors hold power, in-house attorneys counsel those who have power—and they must communicate in ways that educate executives. Certainly, a high-level executive has experience navigating politics, but in a courtroom, in a judge's chambers, and in a conference room with other lawyers, politics are a minefield to navigate in real time and executives without courtroom experience cannot possibly be expected to comprehend them clearly. However, that executive, as the listener, must be open to hearing and digesting that advice, which can only occur when there is a foundation of trust with their counsel, aka the speaker. That means adjusting language when communicating. You must gauge the personality before you. Some people are naturally defensive and others more open, more trusting. At the heart of the matter, you must determine their motives for the interaction to be effective. Is this the section of the business most interested in optics or cashflow? Are you interacting with C-Suite or the employees who grew up in the business and know how to build your product or offer your service? Language and psychology change with every conversation. My advice is to always be straightforward, honest, and earnest. I change my language depending on whom I am speaking with, and I don't ever act like I'm the smartest person in the room. The intelligence of your audience can't be measured with schooling, degrees, or paychecks—intelligence in one's field is from experience first and foremost. When I speak with someone who is not from a legal or business perspective, I try not to inundate them with legalese. And when I interact with someone who is full of hands-on experience in a technical field, I make a point to ask questions about their expertise. I want to understand their perspective and learn their technical language so I can speak in their terms. This connection through common language and a common motivation builds trust and leads to more effective communication.

Litigation Management

In litigation management, outcomes rely not on rules alone, but on relationships—

on understanding before advising, listening before leading, and recognizing that the law is practiced not in books, but with people. One must navigate expectations, understand a level of psychology, and adapt their communication style to suit the recipient's motives and background. Inside a corporation, litigation management is not the doctrinal, policy-heavy version people write about. It's about the human, psychological, and cultural realities that shape outcomes long before anything reaches the courtroom, all while also keeping stakeholders and executives informed in a way that not only make them feel knowledgeable, but comfortable with an experience they likely have never had—presenting their case before a judge or a jury. In addition to a litigation manager balancing executives' expectations at a national level corporation, one is tasked with the nuance of dealing with outside attorneys that come from different traditions and mentalities. Our republic is one quite divided in its beliefs, and a litigation manager must take into consideration the various mentalities and cultural differences throughout the country as well.

Practicing law is fundamentally the practice of understanding people.

A litigation manager is essentially a liaison between the executives, the local attorneys, and the people on the ground making sure the business is executing properly. The scope of personality is potentially enormous, and the range of motives may be even broader. But in their differences, you must find the common denominator to effectively communicate between all of them—and that is usually the success of the company you represent. It's simple in theory, yet difficult to execute without risking misconception. The attorney is not always a friend, but the one making sure the best interests of their client are safeguarded.

Communication

Some people feel intimidated when speaking to an attorney. When you're trying to fact-find from someone with any level of trepidation, you are unlikely to get straightforward answers—and that, in turn, creates risk for your client. To make your listeners feel comfortable, ask questions about their experience or opinion on the matter, make a self-deprecating joke, and always use your audience's preferred form of communication. I avoid legal jargon when it isn't necessary because I don't want to make anyone feel that we can't understand each other. Overloading them with legalese and not taking their communication style into account makes them less likely to be open with me because it creates a disconnect. By doing this, I learn communication skills from every person I speak to, and it arms me for the next conversation in the future. At the end of the day, people just want to be understood, even if they don't know it consciously. Sometimes they just want to be heard. You must navigate the difference and shift your strategy accordingly because the human element of practicing law has nothing to do with law and everything to do with connection.

As an advocate, you are there to help navigate people through choices, and when you connect with them, you give them the tools and information to make the right decisions. Ultimately, you must understand someone before you advise them, listen before leading them, and navigate expectations across diverse personalities and cultural backgrounds. For a national corporation, it is especially important to be sensitive to regional attitudes, communication styles, and psychological dynamics that influence how executives perceive risk. For an international corporation, the complexity deepens because you must navigate cross-cultural norms, traditions, and communication styles of which you are often not familiar. You must educate yourself of a global partner's cultural mindset in order to effectively communicate risk and aid in decision-making. Out of respect, you should research the relevant international communication styles and business traditions so as to avoid alienating and insulting anyone. Business practices around the world are very different than our own, and what makes sense to you could likely lead to a very awkward interaction. Once you set an uncomfortable tone, your attempts at connection turn into potentially counterproductive interactions.

The Practice of People

Understanding the human element of practicing law comes with experience. My approach to communicating with people has changed completely over the past 20+ years. I am more empathetic because I know that life has a way of teaching you lessons with indifference. I respect and understand various traditions because I have travelled extensively. And I can build trust with my listeners because I always strive to be passionate and honest about who I am. But that's all about

me. The same lessons, inversed, are that your listener may be going through something difficult, so it's important to notice changes or inconsistencies in their demeanor and adjust your approach accordingly, treading lightly with them in a time of uncertainty. Some people haven't travelled or been out of their comfort zone, so you need to make sure you approach unknown situations with grace and patience. And most people are not naturally trusting, often because they struggle to face their own reality or because they may have a hidden agenda—even if that agenda takes the form of withholding information in an attempt to "help." Your job is to keep asking questions when you sense something is missing because protecting your client is of the utmost importance.

Law Meets Humanity

Persistence in navigating the complexities of human psychology is key because our legal system is ultimately a human system. We all carry various ways to perceive and emote. And we all carry defense mechanisms and biases. As a good advocate and communicator, you must be able to present information and risk clearly—and you absolutely must anticipate human reactions. Law school, with its fancy degree and ridiculously expensive textbooks, does not prepare you for this. Law is learned first and then practiced with people second.

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As an advocate, you are there to help navigate people through choices, and when you connect with them, you give them the tools and information to make the right decisions.

Designing AI Governance for In-House Legal: From Default Use to Deliberate Design

By Jordan B. Segal

Artificial intelligence is already inside most companies, whether legal likes it or not. Employees test AI tools without guidance or oversight; vendors turn on AI features by default without any notice; and business units use AI with no record of AI inputs or outputs.[1] The headline risks—the too-frequent and often cringe-worthy instances of attorneys and others getting caught irresponsibly using AI—get the attention, but the day-to-day legal exposure is often much more quiet gaps—exposures which go unnoticed until a disaster strikes. However, AI tools and product features have become ubiquitous for a simple reason—they are impressively useful. The task, then, for in-house counsel, is not to stop AI, but to make its use visible, governed, and defensible—in other words, in-house counsel must mitigate the risk without eliminating the tool. This requires that in-house offices, first, understand the scope of AI risks, and then, second, adopt policies to mitigate those risks.

The Big Legal Risk Areas—What AI Can Break (and How)

Debating whether to "allow" AI misses the point. AI is already embedded in SaaS products, piloted by teams, and explored by employees—classic "adoption by default." The alternative is "adoption by design"—planned, documented, risk-tiered use with clear owners and evidence to back decisions. When that happens without standards or documentation, risk accumulates in untracked prompts, unvetted outputs, and decisions no one can later reconstruct. The fix is adoption by design, which can be implemented as a simple program that sets boundaries for use, documents decisions, allocates risk in contracts, and preserves enough context to explain choices to regulators and courts. NIST's AI Framework organizes this work into four plain-English functions—govern, map, measure, and manage—while ISO/IEC 42001 describes the policies, roles, controls, and monitoring an organization should have in place.[2]

Privilege and Work Product Risk

AI tools can quietly erode privilege and work-product protection if they funnel client confidences through third-party systems, retain prompts by default, or commingle attorney analysis with general business records. Consumer-grade chatbots may reuse or review prompts; collaboration copilots may log attorney edits alongside nonlegal content. Courts have already sanctioned misuse of generative tools in litigation—for example, when counsel relied on AI-fabricated citations, resulting in sanctions and reputational harm.[3] Even without bad faith, leaking privileged content into external models or producing AI-assisted drafts without preserving prompt context can fuel waiver arguments and spoliation disputes. Practical risk controls include enterprise deployments with contractual "no-training" terms, access controls and logging; segregated legal environments; and preserving governing prompts and iterations in the legal file where material to the advice.[4]

Trade Secret and Confidential Information Risk

Generative systems amplify both theft and accidental leakage of crown-jewel know-how. Employees can paste source code, pricing logic, deal terms, or product roadmaps into public models that store or learn from those inputs; vendors may enable AI features that create shadow datasets. On the offensive side, scraping and mass text-and-data mining to train or prompt models has triggered IP and unfair-competition suits,[5] while automated harvesting of public-facing data has drawn CFAA and tort claims.[6] Trade-secret plaintiffs need to be able to reconstruct what data left the enterprise, through which tools, and when.[7] For in-house counsel, the risk is two-sided: uncontrolled prompting can waive secrecy; uncontrolled vendor inges-

tion can taint models and your outputs. Controls include bright-line bans on prompting crown-jewel content into public tools; restricted, logged enterprise instances; DLP on prompt/output channels; and contract terms that preserve input/output ownership and prohibit training on your data.

Records, Retention, and E-Discovery Risk

AI generates ephemeral artifacts—such as system instructions, prompts, weights, selected parameters, and iterative outputs—that can be material to claims or defenses but disappear under default settings. If your retention schedule and legal holds do not name AI systems and vendor logs, you may face completeness challenges or sanctions. Courts and commentaries increasingly expect contextual production from collaboration platforms and dynamic data, emphasizing reproducibility and proportionality.[8] The inability to show who approved an AI-assisted statement, the failure to preserve the prompt that shaped a customer communication, and disputes over whether an AI output is a "record" can all be critical failures in a dispute or regulatory action.

Employment and Workplace Risk

Algorithmic tools used for recruiting, screening, performance management, or discipline can create disparate-impact or ADA "screen-out" exposure if unvalidated, opaque, or poorly supervised. The EEOC has warned that employers remain responsible for vendor tools and must monitor for adverse impact under the Uniform Guidelines.[9] Private litigation is emerging as well, alleging algorithmic bias, accessibility barriers, and age discrimination.[10] For example, in *Mobley v Workday*, the plaintiff contends Workday's automated AI-powered resume screening tools proportionately excluded older applicants and people with disabilities.

Regulatory Compliance and Marketing/ Claims Risk

"AI-powered" claims frequently attract regulatory scrutiny. The FTC has warned against "AI-washing," brought actions targeting unsubstantiated efficacy or detectability promises, and challenged "robot lawyer" and earnings claims—and this is so common that the FTC has labeled this program, "Operation AI Comply."[11]

A Practical Blueprint For In-House Lawyers

The good news is that there are clear, non-technical playbooks to protect against these kinds of unknown risks, grounded in widely used standards and recent enforcement trends. For example, NIST's AI Risk Management Framework provides a practical structure,[12] the FTC has issued concrete guidance about "AI-washing" in marketing,[13] and the ABA has issued ethics guidance for lawyers' use of generative AI[14] (and the Michigan Bar is following suit, with its own guidance).[15] Together, these tools point to an approach corporate legal teams can implement quickly and explain easily to business partners.

NIST's AI Risk Management Framework (RMF) organizes this work into four steps—map, measure, manage and govern—which can then facilitate the policies, roles, controls, and monitoring an organization should have in place. *Govern* means set policy, assign roles and accountability, ensure competence and oversight, and drive continual improvement across the organization.[16] *Map* means identify and understand AI uses, data, stakeholders, and risks so decisions are based on facts rather than assumptions.[17] *Measure* means test and monitor systems and uses to generate evidence about performance, bias, privacy, security, and compliance.[18] *Manage* means apply controls, approvals, change-management, and incident response to keep risks within acceptable bounds during day-to-day operations.[19] NIST further explains: "Functions organize AI risk management activities at their highest level to govern, map, measure, and manage AI risks. Governance is designed to be a cross-cutting function to inform and be infused throughout the other three functions."[20]

Below are specific, non-technical processes in-house counsel can lead for each function, aligned to NIST's RMF and informed by its Playbook of suggested actions.

Map: Build a Reliable Picture of AI Across the Enterprise

"*Aspects related to context are critical; the MAP function is intended to enhance an organization's ability to identify risks and broader contributing factors.*"[21]

Start by creating a centralized AI use register that lists every internal tool, embedded vendor feature, and employee trial; capture business purpose, data categories (including personal, privileged, or trade-secret content),

Artificial intelligence is already inside most companies, whether legal likes it or not.

model/provider, external exposures, and a simple risk tier. Stand up a lightweight intake form in the procurement or legal portal so new uses and vendor features are registered before they launch. Work with privacy and security to classify data and define prohibited prompts; with IT, link the register to a system-of-record (e.g., GRC or contract-lifecycle platforms) so it stays current as vendors add AI. Map critical dependencies (interfaces, subprocessors, data locations) and identify high-impact use cases that trigger enhanced review.

Measure: Generate Evidence That the Uses Are Safe and Effective

"*The MEASURE function employs quantitative, qualitative, or mixed-method tools, techniques, and methodologies to analyze, assess, benchmark, and monitor AI risk and related impacts*."[22]

Generative systems amplify both theft and accidental leakage of crown-jewel know-how.

Adopt right-sized testing protocols before launch and periodically thereafter: spot-check accuracy and stability on representative tasks; perform adverse-impact screening where HR or customer outcomes are involved; review privacy/security controls (e.g., no-training commitments, access logging, data retention); and document failure modes and limits for user guidance. Establish simple acceptance criteria tied to risk tier (for example, higher accuracy, documentation, and human review for customer-facing uses). Preserve testing workpapers including inputs, outputs, material parameters, and edits, so results are reproducible in audits or litigation. Where feasible, pilot on internal or synthetic data first, and set up lightweight monitoring (sampling or QA checklists) for production uses that affect customers, employees, or regulators.

Manage: Control Day-to-Day Operations and Changes

"*The MANAGE function entails allocating risk resources to mapped and measured risks on a regular basis and as defined by the GOVERN function, including incident response and continual improvement*."[23]

Implement a use-case review path that fast-tracks low-risk activities and routes high-risk ones (customer communications, HR analytics, pricing/marketing claims, legal work) for quick legal/compliance sign-off with documented conditions. Require enterprise accounts for external models, with access controls, logging, retention settings, and "no-training" terms; prohibit crown-jewel prompts in public tools and confine privileged work to segregated environments. Establish change-management so substantive model or feature updates (vendor or internal) trigger a short re-test and, if needed, refreshed approvals and disclosures. Require vendor "model update" notices; silent updates can invalidate prior approvals and disclosures. Define AI-specific incident response (what counts as an AI incident, who investigates, notification/escalation, corrective action), and add AI artifacts (prompts, outputs, logs) to legal-hold and collection playbooks.

Govern: Set Policy, Accountability, and Assurance

"*The GOVERN function cultivates and implements a culture of risk management…[and] connects technical aspects of AI system design and development to organizational values and principles*."[24]

Publish a concise acceptable-use standard and role-based playbooks that translate do's and don'ts into everyday tasks (permitted prompts, prohibited inputs, escalation paths, approved claims/disclosures). Create a cross-functional steering group (legal, privacy, security, compliance, procurement, and business) with a clearly defined RACI matrix; designate legal as convener and policy owner. Deliver short, role-tailored trainings; require attestations for higher-risk roles. Build assurance into routine operations: periodic prompt/output reviews, bias/accuracy spot-checks in sensitive workflows, and post-incident lessons learned with documented remediation. Report program status and key metrics (inventory coverage, reviews completed, incidents, corrective actions) to senior leadership, and refresh policies and templates at least annually to reflect evolving standards and enforcement.

Implementing NIST's Four Functions: A 90-Day End-to-End Plan

This 90-day plan is about moving from adoption by default to adoption by design. Think of it in four plain questions you already ask in other risk programs: who decides and is accountable (govern), where is the tool used (map), what checks happen before and after use (measure), and how do we control daily use and changes (manage). The steps below are written for legal teams and use ordinary business processes—policies, intake forms, contract terms, training, and simple reviews.

Days 1–30: Set the foundation

Publish an interim acceptable-use standard with permitted uses, "do-not-enter" prompts, and clear escalation paths; convene a small cross-functional steering group. Require approved enterprise/vendor accounts with logging and retention. Launch a one-page intake form and central register embedded in procurement/product portals. Run first pre-launch reviews using short checklists, save workpapers, and define AI-incident triggers and contacts.

Days 31–60: Operationalize and contract

Convert guidance into role-based playbooks and embed the review path in procurement/product workflows. Update standard contracts with AI clauses (input/output ownership, "no training on our data," model-change notice, evaluation/attestation rights, subprocessor transparency, tailored indemnities). Complete the first-pass register with risk tiers and data classifications, flag high-impact uses, and start light production monitoring on a set cadence with a remediation tracker. Run a short tabletop of the AI-incident process.

Days 61–90: Formalize and assure

Publish the formal AI governance policy; set two or three key performance indicators and a reporting cadence; align legal holds and preservation procedures to named AI systems and vendor logs. Run the first assurance cycle sampling high-impact outputs (accuracy, bias, policy/contract compliance), assign owners/dates, and finalize the AI-incident runbook. Close register gaps, add system/subprocessor locations, and establish a standing monitoring plan for high-impact uses. Require and act on vendor model-update notices—pause affected workflows, re-test samples, and refresh approvals/disclosures—and prepare a brief leadership update alongside an AI clause library.

Finally, ensure your processes and safeguards are consistent with expectations already established. For discovery, name AI systems in legal holds and work with IT to preserve prompts, outputs, and logs so you can explain important decisions later. For marketing and consumer claims, pre-clear AI-related statements and keep simple substantiation files tied to the tests you ran. By Day 90, you should have four concrete artifacts in place: a formal AI policy, a living AI use register, a standard AI clause library, and a standing monitoring plan for high-impact uses; in other words: you should have a robust adoption by design AI program.

Conclusion

As stated above, a NIST-anchored program delivers tangible business value by making AI use predictable and defensible: fewer contract cycles through standard AI clauses, faster vendor onboarding with clear diligence expectations, less rework from low-quality outputs, and stronger positions in audits, investigations, and litigation. Grounding policies and controls in NIST's functions and aligning contracts signals to counterparts and regulators that the organization meets recognized expectations. At the same time, keep focus on the core risk: not model "hallucinations," but unmanaged use—no standards, no documentation, and no clear owners. A concise inventory, a risk-tiered approval path, targeted data and privilege safeguards, vendor controls, and periodic assurance—mapped to NIST and informed by the American Bar Association, Equal Employment Opportunity Commission, Federal Trade Commission, and the Sedona Conference AI guidance—turns AI into a managed capability that withstands discovery and regulatory scrutiny. By framing the work in business terms—speed, predictability, and defensibility—you keep adoption moving while reducing surprise. Start small, iterate, and build the record as you go.

A NIST-anchored program delivers tangible business value by making AI use predictable and defensible[.]

NOTES

1. Often resulting in the computing problem originally described by IBM Programmer and Instructor, George Fuechsel as "GIGO", or "Garbage In, Garbage Out."

2. Nat'l Inst. of Standards & Tech., Artificial Intelligence Risk Management Framework (AI RMF 1.0) (Jan. 26, 2023), https://doi.org/10.6028/NIST.AI.100-1 ; see also NIST, AI Risk Management Framework | Overview, https://www.nist.gov/itl/ai-risk-management-framework.

3. *E.g., Mata v Avianca, Inc*, 678 F Supp 3d 443 (SDNY 2023).

4. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 512, Generative Artificial Intelligence Tools (July 29, 2024),

5. *Thomson Reuters Enter Ctr GmbH v Ross Intelligence Inc*, 765 F Supp 3d 382 (D Del 2025).

6. *hiQ Labs, Inc v LinkedIn Corp*, 31 F4th 1180 (9th Cir 2022).

7. *WeRide Corp v Huang*, 379 F Supp 3d 834 (ND Cal 2019); *Red Wolf Energy Trading, LLC v BIA Capital Mgmt., LLC*, 626 F Supp 3d 478 (D Mass 2022).

8. *In re Google Play Store Antitrust Litig*, 664 F Supp 3d 981 (ND Cal 2023); The Sedona Conf., Commentary on Ephemeral Messaging, 22 Sedona Conf. J. 435 (2021), https://thesedonaconference.org/publication/Commentary_on_Ephemeral_Messaging.

9. U.S. Equal Emp. Opportunity Comm'n, Select Issues: Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964 (May 18, 2023), https://www.eeoc.gov/laws/guidance/select-issues-assessing-adverse-impact-software-algorithms-and-artificial.

10. *Mobley v Workday, Inc*, 740 F Supp 3d 796 (ND Cal 2024).

11. Benesch, One Year In, FTC's "Operation AI Comply" Continues (Oct. 21, 2025), https://www.beneschlaw.com/resources/one-year-in-ftcs-operation-ai-comply-continues-under-new-administration-signaling-enduring-enforcement-focus.html.

12. Nat'l Inst. of Standards & Tech., Artificial Intelligence Risk Management Framework (AI RMF 1.0) (Jan. 26, 2023), https://doi.org/10.6028/NIST.AI.100-1; see also NIST, AI Risk Management Framework, https://www.nist.gov/itl/ai-risk-management-framework.

13. Fed. Trade Comm'n, Keep your AI claims in check (Feb. 27, 2023), https://www.ftc.gov/business-guidance/blog/2023/02/keep-your-ai-claims-check.

14. ABA Standing Comm. on Ethics & Prof'l 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.

15. https://www.michbar.org/AI.

16. Nat'l Inst. of Standards & Tech., Artificial Intelligence Risk Management Framework (AI RMF 1.0) (Jan. 26, 2023).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

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Case Digests

*Prepared by Tala Dahbour**

Auburn Area Chamber of Commerce, Inc v Arthur, No 372134, ___ Mich App ___, ___ NW3d ___ (Dec 10, 2025)

During an Auburn Area Chamber of Commerce (COC) meeting, tensions flared between the general membership and the members of the governing board, resulting in a proverbial tug-of-war for control. After the contentious session, dissenting members asserted that they had lawfully ousted the board, assumed its authority, and began operating as such. To assert their claim, they filed suit against the board, asserting claims of fraudulent misrepresentation, civil conspiracy, violation of common law trademark, and breach of fiduciary duties, and requested declaratory judgment, injunctive relief, and monetary damages. The defendants argued that the events of that meeting did not create a transfer of authority and moved for summary disposition on the basis that plaintiffs did not adhere to the organization's official rules and procedures, namely the COC's constitution and bylaws, as well as the Nonprofit Corporation Act, MCL 450.2101 et seq, making plaintiffs' actions null and void. The trial court agreed, granting summary disposition in favor of defendants.

At the start of the meeting, plaintiff Harrison Gunden asked to be recognized and was refused by both the COC President and Vice President. Nonetheless, Gunden proceeded to make a motion and hold a popular vote to remove the president and appoint a new president pro tem. The president contends that the meeting was then adjourned, which plaintiffs dispute. At that point, the building owner asked everyone to vacate the building. Gunden and others purportedly continued the meeting, and subsequent meetings, voting to remove and replace the entire board. Operating as the new board, plaintiffs undertook actions to remove the old boards's access to the COC's bank account, prompting the bank to freeze the account until the rightful board was identified.

The Michigan Court of Appeals held that the trial court properly granted defendants summary disposition under MCR 2.116(C)(8). Nothing in the COC's bylaws or *Robert's Rules of Order* required the sitting president to recognize the attempted motions that the would-be overthrowing members made, nor does any governing authority give plaintiffs the right to continue the meeting, regardless of whether it was officially adjourned. The vague phrase "subject to the will of the membership," in the Bylaws does not broadly authorize any action a member decides to take. Further, COC Bylaws Art III, § 2., explicitly grants the board authority to fill vacancies. Therefore, because none of plaintiffs' actions carried the weight of law, the attempted takeover was null and void, and the decision of the trial court is affirmed.

**Tala Dahbour is a staff attorney at the Institute of Continuing Legal Education.*

Boyd v Northern Biomedical Research, Inc, 165 F4th 424 (6th Cir 2026)

Plaintiff, founder of Northern Biomedical Research, Inc. ("NBR"), sold his majority stake in the company, and merged with defendants. Plaintiff retained 16 percent of the shares and briefly served as chairman of the board before resigning and assuming a reduced role in the company's management. Meanwhile, defendants sought to expand the company and began to look at financing options, including a bank loan and private equity. Defendants made their plans to expand known to plaintiff, and proposed plaintiff sell them his shares to help with financing. The parties dispute as to whether defendants explicitly told plaintiff that they were considering private equity; plaintiff contends this was not mentioned to him. The record shows evidence plaintiff notified defendants that he was against private equity because it creates control issues.

Defendants were then approached by and engaged in talks with a venture capital firm over the course of a few months, however, nothing concrete had come of the discussion. This was not disclosed to plaintiff, who, at the same time, was negotiating the sale of his shares with defendants, which was eventually finalized. Over two months after the sale of plaintiff's shares to defendants, defendants secured a $40 million investment from venture capital. Plaintiff brought suit under Section 10(b) of the Exchange Act and Securities and Exchange Commission Rule 10b-5, Violation of the Michigan Uniform Securities Act, and breach of fiduciary duty under Michigan common law, among other related claims.

The district court granted summary judgment for defendants on all counts, finding the alleged omissions were not material under precedent interpreting Section 10(b) and Rule 10b-5. As to the common-law fiduciary duty claim, the court held Michigan law applied but relied on Delaware precedent and the federal materiality standard, likewise finding no material omission.

On appeal, the Sixth Circuit addressed all claims. First, addressing the question of whether the Delaware materiality standard applied in the Michigan common law claim of breach of fiduciary duty. Plaintiff argues that Michigan common law imposes a stricter fiduciary obligation upon directors of a closely held corporation.

In *Murphy v Inman*, 509 Mich 132, 148 983 NW2d 354, 362 (2022), the Michigan Supreme Court held that directors must disclose all material facts that may influence shareholder action. In *Estes v Idea Eng'g & Fabrications, Inc,* 250 Mich App 270, 281 649 NW2d 84, 91 (2002), the Michigan Court of Appeals found that directors of closely held corporations owe a heightened fiduciary duty, requiring full and frank disclosure akin to partnership law. Under Michigan partnership law, partners must provide "full and frank disclosure of all relevant information," including all material facts relating to partnership affairs. *Band v Livonia Assocs*, 176 Mich App 95, 113 439 NW2d 285, 294 (1989). Therefore, the Sixth Circuit declined to apply Delaware's narrow materiality standard, finding that Michigan

precedent requires broader disclosure: any information that may influence shareholders, with heightened duties for closely held corporations. The court concluded a reasonable jury could find the defendant wrongfully omitted mention of venture capitalist interest, as it might have affected the minority shareholder's decision to sell his shares—even though formal negotiations had not begun.

The federal securities law claim fails under *Basic Inc v Levinson*, 485 US 224 (1988), since investment negotiations were only preliminary and defendants were pursuing alternative financing. The decisions of the district court is affirmed as to the securities-related claims, reversed on Michigan common law fiduciary duty and fraudulent inducement claims, and remanded for further proceedings.

Sav-Time, Inc v Department of Treasury, No 370459, ___ Mich App ___, ___ NW3d ___ (Mar 10, 2026

Plaintiff Sav-Time challenged the Department of Treasury's ("The Department") audit and subsequent upward adjustment of its sales, use, and withholding (SUW) tax returns for the years 2015 through 2018. The trial court granted summary disposition in favor of the Department under MCR 2.116(C)(10), finding no genuine issue of material fact. Sav-Time asserted that it was entitled to exemptions from sales tax on labor charges, but the Department contended that Sav-Time had failed to separately itemize labor and tangible personal property charges as required by law. Under MCL 205.68(4), when a taxpayer's records are incomplete, inaccurate, or insufficient—as alleged with Sav-Time—the Department may utilize indirect audit procedures and other available information to assess taxes, and such assessments are presumed correct, placing the burden of rebuttal on the taxpayer.

On appeal, Sav-Time argued the audit report was inadmissible hearsay under MRE 801 and 802 because it was introduced via affidavit from the auditor's supervisor, not the original auditor who since left his position. The court rejected this argument, clarifying that the report was offered to demonstrate the auditor's identification of inconsistencies in Sav-Time's financial records, not for the truth of its contents, and was therefore not hearsay and properly admitted. Sav-Time also claimed compliance with AC, R 205.117, alleging the Department improperly applied the stricter requirements of the General Sales Tax Act (GSTA) while ignoring its own rule. However, the court explained that the statutory requirements of the GSTA override conflicting administrative rules. *See Brightmoore Gardens, LLC v Marijuana Regulatory Agency*, 337 Mich App 149, 160-161, 975 NW2d 52 (2021). Under MCL 205.51(1)(d)(iii)(B) and MCL 205.52(3), businesses must separately itemize labor charges to avoid sales tax liability.

Given Sav-Time's insufficient and unreliable documentation, the Department's tax assessment, supported by the audit report, was justified and stood as prima facie valid under MCL 205.68(4). Sav-Time failed to provide evidence sufficient to rebut this assessment, and the trial court properly ruled in favor of the Department. Finally, Sav-Time's procedural due process claim—based on the case being resolved by summary disposition instead of proceeding to trial—was rejected, as the court found Sav-Time was provided notice and an opportunity to be heard, fulfilling the constitutional requirements of due process. *See Al-Maliki v LaGrant*, 286 Mich App 483, 485, 781 NW2d 853 (2009). The judgment of the trial court is affirmed.

Eaton Corp v Angstrom Auto Grp, LLC, No 24-3604, ___ F4th ___ (6th Cir Feb. 13, 2026)

Defendant Angstrom manufactured levers for use in plaintiff Eaton's automotive clutches. When the levers began allegedly causing clutch failures, Eaton filed suit against Angstrom, alleging breach of contract and breach of both express and implied warranties. After receiving complaints about clutch failures, Eaton notified Angstrom and conducted laboratory tests, which revealed that Angstrom's levers were defective and did not comply with the parties' supplier contract. Angstrom contended that although they engaged in a meeting with Eaton on this topic, Eaton did not mention Angstrom's potential liability for the defect.

About nine months later, Eaton brought suit in district court for breach of contract and breach of express and implied warranties. Angstrom moved for summary judgment, arguing the suit was barred under Ohio Rev. Code 1302.65(C)(1), which required pre-suit notice of breach. The motion was denied. After the case went to trial, the jury awarded Eaton $30 million in damages.

On appeal to the Sixth Circuit, Angstrom argues the case was barred without pre-suit notice, and that two of Eaton's witnesses offered improper testimony, affecting the jury's ability to deliver a fair verdict. In interpreting 1302.65(C)(1), the Sixth Circuit held that *Chemtrol Adhesives, Inc v American Mfrs Mut Ins Co*, 42 Ohio St3d 40, 537 NE2d 624 (1989) controls. While Angstrom argues, notice of breach must be explicit under the statute, the Ohio Supreme Court in *Chemtrol*, provided a more lenient interpretation, based on the legislative commentary. Under *Chemtrol*, Eaton merely needed to inform Angstrom in a timely manner that the transaction warranted concern. The record shows that Eaton provided Angstrom sufficient notice while it was investigating the levers so as to satisfy the pre-suit notice requirement, although it never explicitly termed it a breach. Further, Angstrom argued that improper testimony from Eaton's expert witnesses warranted reversal and a new trial, but the court found that the opinions were properly admitted within the scope of their respective expertise and reports, and did not materially mislead the jury, especially since Angstrom had the opportunity to cross-examine. As a result, the district court did not abuse its discretion, and Angstrom's objections did not justify a new trial. The judgement of the district court is affirmed.

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