State Bar of Michigan
BLS
Business Law Section

The Michigan Business Law JOURNAL

CONTENTS

Volume 46
Issue 2
Summer 2026

SBM
State Bar of Michigan

Published by THE BUSINESS LAW SECTION, State Bar of Michigan

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:

Issue	Article Deadline
Spring 2027	November 30, 2026
Summer 2027	March 31, 2027
Fall 2027	July 31, 2027
Spring 2028	November 30, 2027

ADVERTISING

All advertising is on a prepaid basis and is subject to editorial approval. The rates for camera-ready digital files are $400 for full page, $200 for half page, and $100 for quarter page. Requested positions are dependent upon space availability and cannot be guaranteed. All communications relating to advertising should be directed to Publications Director, Brendan J. Cahill, the *Michigan Business Law Journal*, 39577 Woodward Ave., Ste. 300, Bloomfield Hills, MI 48304, (248) 203-0721.

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.

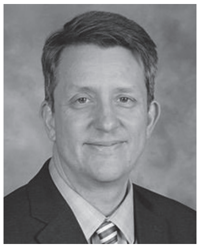
To fulfill this mission, the Section shall: (1) expand the resources of business lawyers by providing educational, networking, and mentoring opportunities; (2) review and promote improvements to Michigan's business legislation and regulations; and (3) provide a forum to facilitate service and commitment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

The *Michigan Business Law Journal* (ISSN 0899-9651) is published three times per year by the Business Law Section, State Bar of Michigan, 306 Townsend St., Lansing, Michigan.

Volume XXII, Issue 1, and subsequent issues of the *Journal* are also available online by accessing http://connect.michbar.org/businesslaw/newsletter

From the Desk of the Chairperson

By Michael K. Molitor



Here's another great edition of *The Michigan Business Law Journal*, the triannual publication of the Business Law Section. As usual, it has case digests and its regular columns: "Taking Care of Business" by Alexis Lupo of LARA, "Tax Matters" by Eric Nemeth of Varnum, LLP, "In-House Insights" by Gerard Mantese, and "Touring the Business Courts" by Douglas Toering of Mantese Honigman, P.C.

In this edition, we also have six timely and informative articles: "An Overview of Ethical Concerns for In-House Counsel" by Austin Blessing-Nelson; "Outside Litigation Counsel Best Practices, from an In-House Counsel Perspective" by Brendan Frey; "Intellectual Property Risk Mitigation in Michigan's Mobility and Aerospace and Defense Industries" by Linda Kennedy and Bill Panagos; "Marketing Across Borders—A Compliance Framework for In-house Counsel" by Pamela Mack; "Hold the Reins, Trust the Horse: The Evolving Balance Between In-House Counsel Control and Outside Counsel Independence" by Ryan Plecha, Kevin Lynch, and Blake Padget; and "Scaling Compliance Without Slowing Growth" by Erika Riggs. We hope you enjoy them. Thanks very much to the authors and thanks to the In-House Counsel Committee for coordinating this edition.

This is my final column as Chair of the Section, so I thought I would take a few minutes to reflect on the Section's work. In addition to this fine publication, the Section is known for its excellent programs. For example, on May 7, the Business Courts Committee, the LLC and Partnerships Committee, and the In-House Counsel Committee held a joint program entitled "Hot Topics in Business Law" that was attended by over 160 people. Speakers discussed many important topics, including drafting corporate governance documents, litigating in Michigan business courts, artificial intelligence and data security, and internal investigations. The event also featured panel discussions with nine Business Court Judges and several in-house counsel attorneys. Thanks to Gerard Mantese and Doug Toering and other members of these committees for their excellent work with this program.

Looking forward, the annual Business Law Institute is on Friday, October 9, at the JW Mariott in Grand Rapids. As usual, we will have a great lineup of speakers and topics. The Section's annual meeting will take place during lunch on October 9 but, in a change from prior years, the reception and dinner will be on the night before, Thursday, October 8. Plans are also underway for the Section's aptly named "Business Boot Camps," scheduled for November 12-13, 2026, in Grand Rapids, and March 9-10, 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. Send your young associates to them! Thanks to ICLE and the members of the Programs Directorship for their tireless work putting the Business Law Institute and the Boot Camps together.

A perhaps less well-known function of the Business Law Section is to produce *amicus* briefs when asked by the Michigan Supreme Court or the Court of Appeals. By my research, since 2001, the Section has filed at least ten *amicus* briefs with the Supreme Court or the Court of Appeals, in such well-known and important cases as *Estes v. Titus, Miller v. Allstate Insurance Co., Murphy v. Inman*, and *Kirchner v. Boyne*, among others. This work furthers the Section's purposes, which include, as stated in the Section's Bylaws, promoting "the fair and just administration of business law," promoting "the legal education of members of the Bar and the public on the issues of business law," and producing "legal writings in this field." The Section's most recent *amicus* brief was filed earlier this year in *FCA v. Kamax*, concerning issues under the statute of frauds in Article 2 of the Uniform Commercial Code. (After the brief was filed, the parties stipulated to dismiss the appeal.)

I am proud of the work that the Section does in producing *amicus* briefs and grateful for the dedication and efforts of those who have worked on *amicus* briefs in the past. I believe that *amicus* briefs are beneficial to the courts (which is probably why they invite the Section to file them from time to time!) and promote the development of business law in Michigan. Following our experience with the *FCA v. Kamax* brief, the Council of the Section approved a new *amicus* policy that includes formalized procedures for evaluating *amicus* brief requests, involving leading subject matter experts, directs any outside influence through the Section Chair, and ensuring that the Section's briefs continue to be of the highest quality. Other sections, of course, produce *amicus* briefs and it's my hope that the Section's policy will be useful to them in their own endeavors.

I am also pleased to announce that the Section awarded the annual Stephen H. Schulman Outstanding Business Lawyer Award to the Honorable Christopher P. Yates, currently of the Michigan Court of Appeals. Judge Yates is a tremendous figure in Michigan business (and other areas of) law, and I look forward to seeing him presented with the award at the Business Law Institute in October.

To repeat what I said in my last two columns: 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. To give just two examples, the Corporate Laws Committee is currently working on amendments to the Michigan Business Corporation Act and hopes to see them pass into law this year, and the LLC and Partnerships Committee has started work on a project to update the Michigan Limited Liability Company Act.

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.

2025–2026 Officers and Council Members
Business Law Section

Chairperson: Michael K. Molitor, Cooley Law School
300 S. Capitol Ave., Lansing, MI 48933 (molitorm@cooley.edu)
Vice-Chairperson: Carrie Leahy, Bodman PLC
201 S. Division St., Ste. 400, Ann Arbor, MI 48104 (cleahy@bodmanlaw.com)
Treasurer: Patrick J. Haddad, Kerr Russell & Weber, PLC
500 Woodward Ave., Ste. 2500, Detroit, MI 48226 (phaddad@kerr-russell.com)
Secretary: Laura E. Johnson, Butzel Long
201 W. Big Beaver Rd., Ste. 1200, Troy, MI 48084 (johnson@butzel.com)

TERM EXPIRES 2026:
Bruce Courtade—55 Campau Ave., NW, Ste. 300, Grand Rapids, 49503
Laura E. Johnson—201 W. Big Beaver Rd., Ste. 1200, Troy, 48304
Loukas P. Kalliantasis—220 Park St., Ste. 200, Birmingham, 48009
Shanna M. Kaminski—160 W. Fort St., 5th Fl., Detroit, 48226
Sharon Lee Levine—136 E. Michigan Ave., 14th Fl., Kalamazoo, 49007

TERM EXPIRES 2027:
Patrick M. Ellis—4033 Eastern Sky Dr., Traverse City, 49684
Carrie Leahy—201 S. Division St., Ste. 400, Ann Arbor, 48104
Michael K. Molitor—300 S. Capitol Ave., Lansing, 48933
Ryan B. Opel—222 N. Washington Sq., Ste. 400, Lansing, 48933
Hon. Victoria A. Valentine—1200 N. Telegraph Rd., Pontiac, 48341

TERM EXPIRES 2028:
Jovan Dragovic—39577 Woodward Ave., Ste. 300, Bloomfield Hills, 48304
Patrick J. Haddad—500 Woodward Ave., Ste. 2500, Detroit, 48226
Alexis Lupo—2407 N. Grand River Ave., Lansing, 48906
Rebecca Papi—500 Woodward Ave., Ste. 4000, Detroit, 48226
Hon. Lita M. Popke—2 Woodward Ave., Ste. 780 Detroit, 48226

EX-OFFICIO:
Diane L. Akers—1901 St. Antoine St., 6th Fl., Detroit, 48226
Jeffrey S. Ammon—45 Ottawa Ave. SW, Ste. 1100, Grand Rapids, 49501
G. Ann Baker—5740 N. Osborn Rd., Riverdale, MI 48877
Harvey W. Berman—201 S. Division St., Ann Arbor, 48104
Bruce D. Birgbauer—150 W. Jefferson, Ste. 2500, Detroit, 48226
Kevin T. Block—500 Woodward Ave., Ste. 2500, Detroit, 48226
James C. Bruno—150 W. Jefferson, Ste. 900, Detroit, 48226
Judy B. Calton—2321 Chestnut Dr., Bloomfield Hills, 48304
James R. Cambridge—500 Woodward Ave., Ste. 2500, Detroit, 48226
James L. Carey—23781 Point o' Woods Ct., South Lyon, 48178
Thomas D. Carney—820 Angelica Circle, Cary, NC, 27518
Jennifer E. Consiglio—201 W. Big Beaver Rd., Ste. 1200, Troy, 48084
Julia Ann Dale—440 Burroughs St., No. 200, Detroit, 48202
Timothy R. Damschroder—201 S. Division St., Ann Arbor, 48104
Alex J. DeYonker—150 Ottawa Ave. NW, Ste. 1500, Grand Rapids, 49503
Marguerite M. Donahue, 21640 Riverview Dr., Beverly Hills, 48025
Lee B. Durham, Jr.—4220 Lower Roswell Rd., Unit 6200, Marietta, GA 30068
David Foltyn—660 Woodward Ave, Ste. 2290, Detroit, 48226
Richard B. Foster, Jr.—11355 Trinkle Rd., Dexter, MI 48130
Dee Dee Fuller—885 Seaview Circle, P.O. Box 1156, Crystal Beach, FL 34681
Connie R. Gale—P.O. Box 327, Addison, 49220
Mark R. High—500 Woodward Ave., Ste. 4000, Detroit, 48226
Mark E. Kellogg—124 W. Allegan St, Ste. 1000, Lansing, 48933
Michael S. Khoury—31350 Telegraph Rd., Ste. 201, Bingham Farms, 48025
Justin G. Klimko—150 W. Jefferson, Ste. 900, Detroit, 48226
Eric I. Lark—500 Woodward Ave., Ste. 2500, Detroit, 48226
Tracy T. Larsen—300 Ottawa Ave. NW, Ste. 400, Grand Rapids, 49503
Edwin J. Lukas—100 Maple Park Blvd., Ste. 110, St. Clair Shores, 48081
Hugh H. Makens—7555 Aspenwood Dr. SE, Grand Rapids, 49546
Charles E. McCallum—150 Ottawa Ave. NW, Ste. 1500, Grand Rapids, 49503
Daniel H. Minkus—220 Park St., Ste. 200, Birmingham, 48009
Aleksandra A. Miziolek—311 Cloverly Rd., Grosse Pointe Farms, 48236
Mark W. Peters—201 W. Big Beaver, Ste. 500, Troy, 48084
Donald F. Ryman—313 W. Front St., Buchanan, 49107
Laurence S. Schultz—5805 Delano, Metamora, 48455
John T. Schuring— 200 Ottawa Ave. NW, Ste. 1000, Grand Rapids, 49503,
Lawrence K. Snider—410 S. Michigan Ave., Ste. 712, Chicago, IL 60605
Douglas L. Toering—1361 E. Big Beaver Rd., Troy, 48083
John R. Trentacosta—500 Woodward Ave., Ste. 2700, Detroit, 48226
Jeffrey J. Van Winkle—300 N. La Salle Dr., Ste. 1400, Chicago, IL 60654
Ian M. Williamson—1361 E. Big Beaver Rd., Troy, 48083
Robert T. Wilson—PO Box 998, Birmingham, 48012
Hon. Christopher P. Yates—350 Ottawa Ave. NW, Grand Rapids, 49503

COMMISSIONER LIAISON:
Aaron Vaughn Burrell—500 Woodward Ave., Ste. 4000, Detroit, 48226

2025–2026 Committees and Directorships
Business Law Section

Committees

Business Courts
Chairperson: Douglas L. Toering
Mantese Honigman, PC
1361 E. Big Beaver Rd.
Troy, MI 48083
Phone: (248) 457-9200
Email: dtoering@manteselaw.com

Commercial Litigation
Chairperson: Douglas L. Toering
Mantese Honigman, PC
1361 E. Big Beaver Rd.
Troy, MI 48083
Phone: (248) 457-9200
Email: dtoering@manteselaw.com

Corporate Laws
Co-Chair: Justin G. Klimko
Butzel Long
150 W. Jefferson, Ste. 900
Detroit, MI 48226-4430
Phone: (313) 225-7037
Email: klimkojg@butzel.com

Co-Chair: Michael K. Molitor
Cooley Law School
300 S. Capitol Ave.
Lansing, MI 48933
Email: molitorm@cooley.edu

Debtor/Creditor Rights
Co-Chair: Judith Greenstone Miller
Taft Law
27777 Franklin Rd., Ste. 2500
Southfield, MI 48034-8214
Phone (248) 727-1429
Email: jgmiller@taftlaw.com

Co-Chair: Marc N. Swanson
Miller Canfield Paddock and Stone
150 W. Jefferson Ave., Ste. 2500
Detroit, MI 48226
Phone (313) 496-7591
Email: swansonm@millercanfield.com

Co-Vice Chair: Jason W. Bank
Kerr, Russell & Weber, PLC
500 Woodward Ave., Ste. 2500
Detroit, MI 48226
Phone (313) 484-3853
Email: jbank@kerr-russell.com

Co-Vice Chair: Elliot Crowder
Stevenson & Bullock, PLC
26100 American Dr., Ste. 500
Southfield, MI 48034
Phone: (248) 354-7906
Email: ecrowder@sbplclaw.com

Financial Institutions
Co-Chair: Melissa Bridges
Bodman PLC
229 Court St.
Cheboygan, MI 49721
Phone: (231) 627-8001
Email: mbridges@bodmanlaw.com

Co-Chair: Thomas M. Schehr
Dykema
400 Renaissance Center
Detroit, MI 48243
Phone: (313) 568-6659
Email: tschehr@dykema.com

In-House Counsel
Chairperson: Gerard V. Mantese
Mantese Honigman, PC
1361 E. Big Beaver Rd.
Troy, MI 48083
Phone: (248) 457-9200
Email: gmantese@manteselaw.com

Law Schools
Chairperson: Mark E. Kellogg
Fraser Trebilcock Davis & Dunlap PC
124 W. Allegan St., Ste. 1000
Lansing, MI 48933
Phone: (517) 482-5800
Email: mkellogg@fraserlaw.com

LLC & Partnership
Co-Chair: Loukas P. Kalliantasis
Clark Hill PLC
220 Park St., Ste. 200
Birmingham, MI 48009
Phone: (248) 988-5859
Email: lkalliantasis@clarkhill.com

Co-Chair: Gerard V. Mantese
Mantese Honigman, PC
1361 E. Big Beaver Rd.
Troy, MI 48083
Phone: (248) 457-9200
Email: gmantese@manteselaw.com

Nonprofit Corporations
Co-Chair: Celeste E. Arduino
Bodman PLC
201 W. Big Beaver Rd., Ste. 500
Troy, MI 48084
Phone: (248) 743-6002
Email: carduino@bodmanlaw.com

Co-Chair: Jennifer M. Oertel
Bodman PLC
201 S. Division St., Ste. 400
Ann Arbor, MI 48104
Phone: (734) 930-6898
Email: joertel@bodmanlaw.com

Privately Held Business Forum
Co-Chair: E. Powell Miller
The Miller Law Firm PC
950 W. University Dr., Ste. 3000
Rochester, MI 48307
Phone: (248) 841-2200
Email: epm@millerlawpc.com

Co-Chair: Mark C. Rossman
Rossman PC
2145 Crooks Rd., Ste. 220
Troy, MI 48084
Phone: (248) 385-5481
Email: mark@rossmansaxe.com

Regulation of Securities
Chairperson: Patrick J. Haddad
Kerr, Russell and Weber, PLC
500 Woodward Ave., Ste. 2500
Detroit, MI 48226
Phone: (313) 961-0200
Email: phaddad@kerr-russell.com

Uniform Commercial Code
Co-Chair: Kimberly R. Clayson
Taft Law
27777 Franklin Rd., Ste. 2500
Southfield, MI 48034
Phone: (248) 727-1635
Email: kclayson@taftlaw.com

Co-Chair: T. L. Summerville
Brooks Wilkins Sharkey & Turco PLLC
401 S. Old Woodward Ave., Ste. 400
Birmingham, MI 48009
Phone: (248) 971-1719
Email: summerville@bwst-law.com

Directorships

Communication and Development
Kevin T. Block
Kerr, Russell and Weber, PLC
500 Woodward Ave., Ste. 2500
Detroit, MI 48226
(313) 961-0200
ktb@krwlaw.com

Jennifer E. Consiglio
Butzel Long PC
201 W. Big Beaver Rd., Ste. 1200
Troy, MI 48084
(248) 593-3023
consiglio@butzel.com

Julia Dale
civilla
440 Burroughs St., No. 200
Detroit, MI 48202
julia@civilla.org

Mark R. High
Dickinson Wright, PLLC
500 Woodward Ave., Ste. 4000
Detroit, MI 48226-5403
(313) 223-3500
mhigh@dickinsonwright.com

Michael S. Khoury
FisherBroyles LLP
31350 Telegraph Rd., Ste. 201
Bingham Farms, MI 48025
(248) 590-2910
michael.khoury@fisherbroyles.com

Stacey Lyn Knowles
Hilger Hammond
220 Lyon St., NW, Ste. 410
Grand Rapids, MI 49503
sknowles@hilgerhammond.com

Edward (EJ) Leuschner
Slot Law Group
977 Ada Place Dr., SE
Grand Rapids, MI 49546
eleuschner@slotlaw.com

John T. Schuring
Dickinson Wright, PLLC
200 Ottawa Ave. NW, Ste. 1000
Grand Rapids, MI 49503
(616) 336-1023
jschuring@dickinsonwright.com

Eric A. Zacks
Wayne State University Law School
471 W. Palmer St.
Detroit, MI 48226
ezacks@wayne.edu

Legislative Review
Eric I. Lark
Kerr, Russell and Weber, PLC
500 Woodward Ave., Ste. 2500
Detroit, MI 48226-5499
(313) 961-0200
elark@kerr-russell.com

Nominating
James L. Carey
23781 Point o' Woods Ct
South Lyon, MI 48178
(248) 605-1103
jcarey@careylaw.us

Programs
Laura E. Johnson
Butzel Long PC
201 W. Big Beaver Rd., Ste. 1200
Troy, MI 48084
(248) 258-1439
johnson@butzel.com

Eric I. Lark
Kerr, Russell and Weber, PLC
500 Woodward Ave., Ste. 2500
Detroit, MI 48226-5499
(313) 961-0200
elark@kerr-russell.com

John T. Schuring
Dickinson Wright, PLLC
200 Ottawa Ave. NW, Ste. 900
Grand Rapids, MI 49503
(616) 336-1023
jschuring@dickinsonwright.com

Sarah Williams
Bodman PLC
201 S Division St., Ste. 400
Ann Arbor, MI 48104
(734) 930-2485
swilliams@bodmanlaw.com

Publications
Brendan J. Cahill
Dykema
39577 Woodward Ave., Ste. 300
Bloomfield Hills, MI 48304
(248) 203-0721
bcahill@dykema.com

Liaisons

ICLE Liaison
Mark C. Rossman
Rossman PC
2415 Crooks Rd., Ste. 220
Troy, MI 48084
(248) 385-5481
mark@rossmanaxe.com

Young Lawyers Section Liaison
Isra Khuja
Rossman PC
2415 Crooks Rd., Ste. 220
Troy, MI 48084
(248) 385-5481
isra@rossmanpc.com

 By Alexis Lupo

Michigan's Merit Award Signals a Smarter Future for Business Filings

This spring, Michigan received well-deserved international recognition for a project that is already transforming how entrepreneurs and professionals interact with state government.

At the annual conference of the International Association of Commercial Administrators (IACA), the Corporations Division, which is part of the Michigan Department of Licensing and Regulatory Affairs (LARA), earned a Merit Award for the MiBusiness Registry Portal, Michigan's online business registry system. The award recognizes not only the technology itself, but also the thoughtful work that preceded it.

Success Started Before the Software

Too often, government technology projects begin with a procurement document and a list of technical requirements. The LARA Corporations Division took a different approach.

Before issuing a request for proposals, the Corporations Division engaged in extensive "lean process improvement" and took a human-centered design approach. Staff mapped existing workflows, identified inefficiencies, and, most importantly, studied how customers use the system.

This work asked practical questions:

- Where do filers get stuck?
- Which processes create unnecessary staff workload?
- What information do customers need to complete filings accurately?
- How can technology make the experience simpler for both businesses and state employees?

By reviewing processes before selecting a technical vendor, Michigan ensured that the resulting system would solve operational problems rather than simply digitize them.

That discipline paid off.

The MiBusiness Registry Portal has improved usability, allows all documents to be filed online, and positioned Michigan to adapt more quickly as business needs evolve.

Why IACA Recognition Matters

IACA is a professional association for government administrators responsible for business organization filings, secured transactions under the Uniform Commercial Code (UCC), and related public records.

Its Merit Awards honor innovation and excellence across jurisdictions in North America and beyond. Receiving this recognition places Michigan among the leading filing offices modernizing public service delivery.

The award also reflects the dedication of the Corporations Division's staff, whose expertise made the project successful.

A Model for Future Modernization

Michigan's Merit Award offers an important lesson for all organizations undertaking technology projects. The most successful implementations begin with a deep understanding of the underlying work. Lean process improvement and human-centered design create a foundation that allows technology to deliver meaningful and lasting improvements.

The MiBusiness Registry Portal is more than a new website. It is an example of how thoughtful planning, engaged staff, and a clear focus on customer needs can produce award-winning results.

Key Themes from the 2026 IACA Conference

The conference agenda made clear that the Michigan Corporations Division's work aligns closely with the issues shaping business registry offices.

Fraud Prevention and Identity Verification

Fraud was a central focus throughout the conference. Sessions explored how filing offices are responding to and working to combat false filings, identity theft, and other abuses. The challenge is balancing strong protections with accessible services for legitimate filers.

Data Access

Modern filing offices are expected to provide timely, secure, and scalable access to public records. Sessions examined how jurisdictions can support transparency while addressing privacy, cybersecurity, and operational costs.

Customer Experience and Outreach

Several sessions emphasized meeting customers where they are. Topics included effective outreach, interagency collaboration, and strategies to help businesses understand compliance requirements before problems arise. The Michigan Corporations Division's human-centered design approach reflects this same philosophy: the best systems are built around user needs.

Technology Rollouts

Software modernization remains a major challenge for filing offices. In the session "Share Your Software Rollout Story," jurisdictions discussed candid lessons from implementation projects involving business registries and UCC systems. Michigan was represented in this session, sharing insights from the MiBusiness Registry Portal project and highlighting the value of preparation, stakeholder engagement, and disciplined project management.

Legislative Developments

The session "State of the States: Legislative Trends Shaping Business and UCC Registries" reviewed evolving laws affecting beneficial ownership transparency, fraud prevention, filing procedures, and UCC administration. As state laws change, business registry and UCC filing offices must remain adaptable.

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.

 By Eric M. Nemeth and Mark J. Chasteen

AI/DOJ – Enforcement Partnership?

The U.S. Department of Justice ("DOJ") has recently created the National Fraud Enforcement Division and within it the National Fraud Detection Center. The center is "dedicated to identifying fraud across taxpayer-funded programs and generating leads for investigators and prosecutors." This is a major restructuring development with wide-ranging potential impact.

The Attorney General has stated that the fraud-enforcement effort will focus on healthcare, tax, and corporate fraud. The effort is to be assisted with support from all 93 U.S. Attorney's Offices and the DOJ. In other words, a national enforcement effort.

In the past, IRS-Criminal Investigation ("CI") conducted most of their tax-centric investigations as either administrative or grand jury investigations. These investigations were largely separate from other law enforcement agencies. This was because IRS agents have unique training and exclusive jurisdiction to investigate most Title 26 ("Tax") violations. Furthermore, disclosure laws made it more cumbersome to work with other law enforcement agencies. There are civil and criminal sanctions for violation of disclosure laws related to tax information. In addition, the much smaller CI division, with approximately 2200-2500 special agents, was better suited to its limited-scope mission than much larger law enforcement agencies such as the FBI and DEA.

Recent significant staffing reductions at the IRS at both the civil and criminal divisions, coupled with the closure of DOJ-Tax as a separate division within DOJ, debilitated tax enforcement. The establishment of the National Fraud Enforcement Division appears to address some aspects of those reductions and certainly has changed the investigative dynamic.

Parallel to those developments, the government (DOJ) announced a focus on the use of data analytics to conduct investigations. The IRS has said the same thing to Congress. Data analytics is essentially the use of AI to mine massive amounts of data to uncover anomalies or potential evidence of fraud. In society today, the ability to generate massive amounts of data and documents is unprecedented. In addition, the data is stored on servers or in a virtual setting. The data does not fade away like the boxes of paper records from what seems like a lifetime ago. Various comments from the Secretary of Treasury and others have stated that the IRS intends to address personnel cuts with AI investigations. Large amounts of data can be analyzed and organized at the speed of light. What used to take days, weeks, and months to review can be accomplished in minutes and hours. Leads can be highlighted.

Recently, DOJ's Civil Division announced an initiative to prioritize and expedite its review of whistleblower and qui tam actions brought by third-party data miners. The qui tam litigant files a lawsuit as a "relator" citing a civil war-era statute designed to ferret out fraud against the government. After the lawsuit is filed, the relator hopes to turn the matter over to DOJ for litigation and collect a percentage of the recovery and attorney fees in a settlement with the defendant. Traditionally, qui tam actions were initiated by "insiders" or whistleblowers with personal knowledge of alleged fraud.

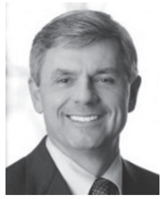
The rapid development and wide availability of AI tools has significantly lowered the barriers to bringing a qui tam action. We have witnessed this phenomenon firsthand. Qui tam actions were brought against clients based solely upon a third party scouring public data for technical violations, including eligibility issues for various programs. Inconsistencies in the spelling of names and addresses can be flagged. Transposition of a number is a red light. A further concern is that Fifth Amendment rights and evidence suppression that are available to a client in a criminal setting are not available as the third party is not the government. Essentially, everyone could monitor everyone for wrongdoing, and the government is now going to rely upon that fact as an enforcement tool. The government's encouragement of data miners means that investigative functions that used to be performed by public servants with considerations of justice, fairness, and stewardship of public resources in mind are increasingly being done, at least initially, by private parties motivated by profit. With little cost, and little of the considered judgment that government investigators and attorneys historically have been expected to bring to bear, relators are incentivized to seek out and file as many claims as possible in the hope a few will result in recovery. The DOJ has announced that data miners have filed more than 45 percent of qui tam complaints since 2024, and the DOJ is on pace to receive a record number of qui tam complaints in 2026. The DOJ acknowledges that its expedited review of qui tam actions will result in an increase in the number of actions litigated by relators rather than the government.

Attention to detail in government and financial filings, and thorough documentation and analysis, are critical to dissuade the government from pursuing unfounded investigations, lawsuits, and criminal prosecution. Even if the DOJ ultimately decides not to go forward with a lawsuit, targeted companies and individuals can incur substantial costs responding to government inquiries and subpoenas.

Clients, especially those in government contracts, government funds, or participating in government programs must adopt strict compliance policies, and if a potential issue arises, they should immediately contact counsel to consider "voluntary self-disclosure."

Eric has written about voluntary self-disclosure in previous columns. In March 2026, the DOJ unveiled a department-wide corporate enforcement policy for criminal matters. The policy has many nuances, but bottom-line: self-disclosed misconduct, cooperation, and remediation can lead to a declination of criminal prosecution.

The world of information is moving fast, and the rate of change even faster. Clients need to be proactive in monitoring their actions and being alert to potential problems. The data is likely to be monitored from the inside or outside. We have had many conversations with clients expressing regret about not being proactive in addressing problems early on. Not unlike medicine—early detection is critical. However, what they do next might make the difference between a minor slip and a career or company killing action.


Eric M. Nemeth of Varnum, LLP, in Novi, Michigan, practices in the areas of civil and criminal tax controversies, litigating matters in the various federal courts and administratively. Before joining Varnum, he served as a senior trial attorney for the Office of Chief Counsel of the Internal Revenue Service and as a special assistant U.S. attorney for the U.S. Department of Justice, as well as a judge advocate general for the U.S. Army Reserve.


Mark J. Chasteen, of Varnum, LLP, in Ann Arbor, Michigan practices in the areas white collar criminal defense, government investigations, and tax controversies. Before joining Varnum, he served for over 17 years as an Assistant United States Attorney in the Eastern District of Michigan, most recently as the Chief of the White Collar Crime Unit.

 By Douglas L. Toering

Takeaways from Business Court Judges and In-House Counsel Panel

Introduction

On May 7, 2026, the Business Law Section's Business Courts, Commercial Litigation, In-House Counsel, and LLCs & Partnerships Committees sponsored a seminar on hot topics in business law. The focus was on business court judges and in-house counsel, but the program also featured other issues of interest for transactional lawyers and business litigators. The program was well-attended and well-received. This article focuses on the panel discussion with the business court judges and in-house counsel; a report about the other portions of the seminar will be published elsewhere.

First, a couple of acknowledgments. Thank you to the following Business Court Judges: Judge David Allen, Judge Matthew Antkoviak, Judge Curt Benson, Judge Annette Berry (unable to attend but provided written comments), Judge Chris Christenson, Judge Victoria Valentine, Judge Jon Van Allsburg, Judge Kathyrn Viviano, Judge Michael Warren, and Court of Appeals Judge Chris Yates. The judges served on a panel with in-house counsel Jessica Fleetham, Brendan Frey, Brett Miller, and Victoria Policicchio. Thank you to all the judges and in-house counsel who generously gave their time. Thank you also to Gerard V. Mantese, Chair of the In-House Counsel Committee and Co-Chair of the LLCs & Partnerships Committee, who spearheaded the program and was a lead presenter; to former Business Law Section Chair Ian Williamson; and to all the other speakers and panelists.

The business court judges and in-house counsel dialogued on five main issues:

1. How can in-house counsel reduce the likelihood of litigation, and the delay, risk and exposure of litigation, if litigation does occur? This emphasized how lawyers can draft contracts to avoid litigation.
2. What common mistakes do companies make when litigating business cases, especially in the pleadings and in discovery?
3. How can business court judges help reduce the cost of discovery?
4. What is the value of having in-house counsel present for events like case management or status conferences? Should early mediation be the default?
5. What would business court judges like in-house counsel to know about their challenges as business court judges, and what would in-house counsel like business court judges to know about their challenges as in-house counsel?

Below are some of the insightful comments and wisdom shared by the panelists.

How can in-house counsel reduce the likelihood of litigation (and the delay, risk, and exposure of litigation, if litigation does occur), especially with reference to contract drafting?

One business court judge recommended: 1. "Be as precise as humanly possible." Ambiguity is "a litigator's dream." Why? It ensures that there will be a genuine issue of material fact; that, in turn, means that the case cannot be dismissed on summary disposition, which, in turn, means months or years of litigation. The more precise a contract is, the less likely litigation will occur. 2. Define terms, use appendixes, refer to manuals. 3. Consult caselaw. 4. Be specific about venue (arbitration, whether to waive a jury trial, etc.) 5. Make sure that the documents are internally consistent. 6. Make sure that the cross references actually exist. One judge anecdotally mentioned a case where the contract had a link to terms and conditions, but the link did not work so the terms and conditions were not part of the contract.

Given that one of the purposes of the business court is predictability,[1] one judge recommended reading the business court opinions on relevant issues. These will provide insight into how a particular business court judge may rule in a given set of facts. These publicly available opinions[2] can save the time and expense of litigation when the answer is likely ascertainable in advance. For example, a search of the business court opinions may reveal how a particular judge is likely to rule on enforcing certain types of restrictive covenants and may inform a litigator's recommendation to the client on whether to file such a motion.

Another judge suggested reviewing and updating existing contracts to ensure they remain applicable and relevant. The drafter can, for example, replace archaic legal language with plain language, update methods of giving notice (replace fax by email?), and address whether documents could be stored in the cloud rather than physically at a resident agent's office.

What common mistakes do companies make when litigating business cases, especially in complaints, counterclaims and discovery?

Complaints, counterclaims, and motions to dismiss. One judge observed that most business cases are basically breach of contract cases; accordingly, the complaint doesn't need 10, 15, or 28 counts. A 20-count complaint will not make for a cogent trial brief or make sense to the trier of fact. Instead, the counts should focus on the heart of the case. To that point, another business court judge observed that defendants in business cases often respond with motions to dismiss under MCR 2.116(C)(8). Even if a (C)(8) motion is granted, the judge will likely grant leave to amend. Thus, before filing a (C)(8) motion, the moving attorney should have a conversation with the client about what is actually going to survive, and meet with the opposing counsel about those concerns and determine what the complaint needs to include. Try to "work it out" before filing the (C)(8) motion.

Discovery. One business court judge pointed out a "rookie mistake:" Counsel do not discuss the discovery dispute before coming to court on a motion. In an example given, the parties filed numerous motions to compel or motions to quash, but counsel had not discussed whether a protective order would resolve the issues. That judge recommended against responding to every discovery request with boilerplate objections. (Boilerplate objections frequently draw criticism from judges.) Bottom line: Try to resolve discovery disputes before filing a motion. This echoes what many judges have mentioned in this column over the years.

To that point, one judge wants to know whether counsel have "actually talked" with each other about the discovery dispute. By the time of the hearing, the judge assumes that counsel have actually spoken to one another (not just exchanged emails). One judge suggested that "part of our profession is afraid to pick up the phone" and resolve a dispute before filing a motion. ("Pick up the phone" and call opposing counsel about the discovery dispute is advice that business court judges frequently give in this column.) In the motion and at the hearing, explain how the requested discovery is relevant—if it's not relevant, you will not get it. As one judge recommended, be prepared to explain: "How is the discovery connected to your case? What defense, what cause of action? Why is it relevant?" One judge commented about lack of precision in discovery requests: Even if you are entitled to the documents, you will not get them if your requests are not specific. Being precise in your discovery requests is important both in minimizing areas of disagreement for motion practice and for making your case on a motion to compel. That judge further remarked that discovery is a decision that lawyers and clients should discuss together.

Also, multiple judges mentioned organizing your document productions: Categorize your documents and identify by bates number which documents respond to which requests. ("Which one of the 6,000 [documents] is responsive" to which request?) Also, know how the documents should be produced (as a PDF, in native form, etc.), and if you don't have the technological sophistication, ask someone who does. Overall, as one business court judge observed, in the business courts, counsel should be able to "identify what's going on, identify the conflict, identify the pertinent issues, and address them in an efficient and quick way." This extends to electronically stored information and other technological issues.

How can business court judges help reduce the cost of discovery?

In-house counsel provided their thoughts on how business courts can reduce discovery costs. Specifically, multiple counsel reiterated the importance of talking with opposing counsel before filing motions. ("Get on the phone.") The proportionality standard under the Michigan Court Rules provides a mechanism to control the costs of discovery. The requested discovery should be proportional to the value of the case. As one in-house counsel said, discovery is a costly process. The client needs to understand how this will play out as the case proceeds.

For their part, judges can help to narrow the scope of discovery. One counsel recommended that judges require counsel to meet and resolve how electronic discovery will proceed, including deciding on key words for searches and custodians. As part of this process, outside counsel should help clients understand the cost to obtain the desired discovery. One of the in-house attorneys on the panel mentioned working very hard with opposing counsel to avoid having to go to court on discovery disputes. The way initial objections are structured can, in combination with conversations with opposing counsel, help to resolve discovery disputes.

One business court judge observed, "The most fundamental tool available to in-house counsel is the proportionality standard" under MCR 2.302(B)(1). Regarding privilege, that judge recommended that in-house counsel maintain "clear separation between privileged communications and ordinary business records" and promptly prepare privilege logs when required; that, in turn, helps to ensure that "costly privilege waiver disputes are avoided and that legally protected materials are shielded from production."

What is the value of having in-house counsel present for events like case management or status conferences? Should early mediation be the default?

Multiple judges endorse early mediation[3] and the presence of in-house counsel at court conferences. In the words of one judge, in-house counsel brings an "understanding of the business' legal needs and goals."

One judge cautioned, however, that early mediation is only as good as both sides' willingness to mediate; otherwise, it's an added expense. That being said, mediators want the parties to exchange critical documents before mediation. Thus, counsel should decide what information their client needs for effective mediation or settlement discussions. Another in-house counsel observed that early mediation does not work for that company. But having in-house counsel appear for a court conference is helpful; it helps personalize the company for the court.

If counsel believes that early mediation would be helpful, in-house counsel could include such a provision in the underlying contract between the parties. Litigation counsel can then work with the judge to resolve the issues (outstanding discovery, for example), so that the case will be ripe for a productive mediation.

Of course, counsel should be prepared to discuss early mediation and discovery at the initial case management or status conference. One business court judge commented that sometimes counsel will appear for a scheduling conference without having discussed scheduling. That won't do.

What would business court judges and in-house counsel like each other to know about the challenges that they face? What advice do they have?

One business court judge recommended that in-house counsel talk with the company's outside counsel and ask: Where do you want to go with the case? What do you want to resolve? How can you get there efficiently? (In other words, in-house counsel should be proactive.) That judge (like many business court judges) is always happy to have a status conference. "Just call my staff."

Echoing a concern that many business court judges are likely to have, one judge noted that the courts in that county are seriously understaffed. Another judge reported having 60 motions (mostly business court cases) on calendar for just that morning. One judge observed that he needs in-house counsel to make sure that outside counsel do their job. The judge's job is to make sure that justice is done, and counsel can help by making sure the client meets its burden of proof.

This leads us to trial briefs. In the trial brief, explain why the facts do or do not meet the elements, assume that the judge is a new juror and doesn't know anything about the case, and cite the relevant law. If you are seeking an injunction, be "very specific." If you are asking for a specific award of damages, give the judge "an actual number"—break it down. Judges don't have time to do the research and the work for you. No matter what you are seeking, be precise.

Another judge recommended "precision, patience, and spoon feeding." Get to the point on the first page and "give me a roadmap." Another judge observed that every lawsuit comes down to one question of fact or issue of law. The "trick is to get the attorneys to focus on that." Indeed, if "there's something that breaks the logjam, get it in front of us right away."

One in-house counsel wanted the judges to know that litigation is "not the only thing" that in-house counsel do. In-house counsel are often generalists "pulled in different directions." An in-house counsel is not just dealing with the lawsuit but is also thinking about its impact on the company. Sometimes decisions can't be made quickly because the in-house lawyer must defer to executives on the operational side of the business. Beyond that, in-house counsel may have strategic decisions with the media, licensing issues, and many other "balls in the air" that need to be addressed at any one time. Also, judges should be mindful that their rulings may affect the company everywhere, both domestically and internationally.

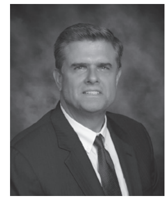
Conclusion

From the input of these ten judges and four in-house counsel, a common theme emerges: Business litigators (whether in-house counsel or outside counsel) should be prepared, precise in their discovery requests and briefs, patient (recognizing the judge likely has hundreds and hundreds of other cases), proactive, proportional in their discovery requests, phone-using, and professional. This, in turn, helps busy (and often understaffed) business court judges do justice and meet the business court's statutory objectives of efficiency, accuracy, consistency, and predictability of their decisions.[4]

This may be why one business court judge asked the lawyers at the seminar: How can we best serve you? Stay tuned. Another seminar may be on the way.

NOTES

1. MCL 600.8033(3).
2. https://www.courts.michigan.gov/business-court-search/
3. *See* AO 2013-6(4).
4. MCL 600.8033(3).



Douglas L. Toering of Mantese Honigman, PC, is a past chair of the SBM's Business Law Section, for which he chairs the Commercial Litigation Committee and Business Courts Committee. He is a 2021 recipient of the Stephen H. Schulman Outstanding Business Lawyer Award. His practice includes commercial litigation including shareholder litigation, business transactional matters, and ADR.

 By Gerard V. Mantese

Overview

In December 2025, the Business Law Section appointed me Chair of the In-House Counsel Committee, tasked with the goal of expanding the Committee so that it would be an excellent resource for in-house counsel and would strengthen the mission of the Business Law Section. That work took shape through three efforts over the last six months. We grew membership in the Committee from a handful of members to more than 60 attorneys. Additionally, several authors were recruited to write articles for the Summer issue of the *Michigan Business Law Journal*. Those articles are identified below. And on May 7, 2026, the In-House Counsel Committee hosted approximately 160 attorneys at the Troy Marriott for a seminar designed specifically for in-house counsel. Several committees co-sponsored this Seminar, including the Business Courts, Commercial Litigation, and the LLC and Partnerships Committees.

In this issue, the following excellent articles geared toward in-house counsel appear:

- An Overview of Ethical Concerns for In-House Counsel, by Austin Blessing-Nelson. This article provides an important discussion of who the client is when one is in-house counsel and also discusses technology and cybersecurity issues.
- Outside Litigation Counsel Best Practices, from an In-House Counsel Perspective, by Brendan Frey. This article gives excellent insights on how outside litigation counsel can use effective tools to assist in-house counsel.
- Intellectual Property Risk Mitigation in Michigan's Mobility and Aerospace and Defense Industries by Linda Kennedy and Bill Panagos. This article examines common intellectual property risk points faced by Michigan mobility and aerospace and defense companies.
- Marketing Across Borders: A Compliance Framework for In-House Counsel, by Pamela Mack. This article nicely summarizes the principal federal statutes governing marketing communications and examines several of the most aggressive state regulatory regimes and provides practical compliance considerations for in-house counsel.
- Hold the Reins, Trust the Horse: The Evolving Balance Between In-House Counsel Control and Outside Counsel Independence, by Ryan Plecha, Blake Padget and Kevin Lynch. This article provides an effective discussion of the ethical and structural framework within which the relationship between in-house counsel and outside counsel operates.
- Scaling Compliance Without Slowing Growth: The S.C.A.L.E. Model for In-House Counsel in Highly Regulated, Multi-Jurisdictional Businesses, by Erika Riggs. This article introduces the interesting S.C.A.L.E. Model, a practical framework designed to help organizations scale compliance alongside growth.

The Seminar on May 7

Perspectives from In-House Counsel

Overall Concerns and Advice

The first panel discussion of the Seminar featured seven in-house lawyers who shared observations about their work and current issues facing them, namely: Jason Brainer, Alisha Cieslak, Gloria Hage, David Jaffe, Jacquelynn Kittel, Deanna Kossaras, and Thomas Shaevsky. Ian Williamson of Mantese Honigman, PC, expertly moderated this panel, with great questions that drew in participation from all panel members. Budget discipline came up immediately. Several panelists described asking outside counsel to agree on a budget at the outset and to report back at the 50 percent and 75 percent marks. One panel member remarked that if outside counsel goes over budget without asking first, they may not get paid, because the authority to approve simply is not there. One panelist was plain about it: ask before, not after.

Panelists also pushed outside counsel to define the scope of the engagement at the start. What should outside counsel do? What should they not do? In-house lawyers want to know what the end product is: will this be a full memo or a phone call. Getting the scope of engagement correct at the front end avoids surprises in both the work product and the bill.

The idea of outside counsel taking the long view came up more than once. In-house counsel do not want outside counsel treating each matter as if it stands alone. Every case fits into a broader picture, and outside counsel who recognize that become useful partners. If an early settlement opportunity appears, look hard at it. Also, after a matter closes, as a courtesy tell the client what could be done differently next time, or which policies might benefit from a review.

Artificial Intelligence

The panel spent considerable time on artificial intelligence. In-house lawyers expect that if outside counsel uses AI tools to accelerate work, some of that efficiency will show up as reduced fees. But the more immediate concern for most panelists was confidentiality.

When outside counsel or internal teams feed client information into an AI tool, the question of where that data goes and who can access it rarely has a clean answer. Panelists urged outside counsel to use closed-system AI only and to be transparent with in-house counsel about which tools are being used and how they work.

The panel also discussed a situation where AI created work rather than reduced it. An employee with access to a company-sanctioned AI tool had a dispute with a supervisor, fed the situation into the tool, and received a response telling him he had a claim against his employer. The tool drafted an HR complaint without any understanding of the job, the applicable law, or the surrounding facts, and the employee became firmly convinced he had a viable case. The matter escalated, and in-house counsel had to work through questions about whether the company could access the AI logs and what to do with the output. The panel observed that in-house and outside counsel together need to find ways to educate business leaders about situations like this without coming across as obstructive.

Burnout and the Pressure on General Counsel

Several panelists discussed the internal pressures on in-house legal departments. General counsel today operate in a period of real uncertainty. One panelist noted that regulatory changes on DEI, gender-affirming care, tariffs, and other fronts arrive faster than in-house departments can absorb them. Those departments are typically resourced to handle the work that is intrinsic to the business—commercial contracts, employment matters, licensing, and the like. They are not resourced to handle several outside shocks at once. One panelist put it this way: the CEO is not staying up at night worrying about whether the lawyers are burning out. Someone has to care about that, and it falls to the general counsel.

The cost of burnout extends well beyond the person who leaves. When experienced in-house lawyers leave, they take institutional knowledge with them. That knowledge is difficult to replace. In-house teams also build relationships and trust over time with the people they serve, and those relationships have great value for managing risk. A colleague who trusts the legal team will address a problem early.

The panel offered other practical thoughts. General counsel need to be present enough to know how their people are doing and to understand where the pressure points are. Outside counsel can help by making sure junior in-house lawyers get some credit and recognition for the work that gets done. Small gestures matter more than people often expect.

There was a second panel discussion between eight Business Court Judges, one Court of Appeals judge, and four in-house counsel moderated by Doug Toering. That panel discussion is discussed at length by Mr. Toering in his column, Touring the Business Courts.

Specific Presentations on Other Hot Topics

The May 7 seminar also featured four presentations on hot-button issues for in-house counsel. James Sherer of the New York office of Baker Hostetler, whose practice focuses on data privacy and artificial intelligence, delivered a presentation on AI covering how legal teams are using AI today, state law on AI regulation, privilege and confidentiality risks, and the developing line of chatbot litigation. I presented on non-competes, succession planning, trade secrets, and data privacy, drawing on cases and practical examples to give in-house counsel guidance they can utilize in their organizations. Aaron Burrell addressed employment law developments including at-will employment, discrimination, and employment agreements, and brought the audience up to date on recent statutory changes. Thomas Cranmer and Andrew Goetz closed the program with a presentation on internal investigations, focusing on how to plan and conduct witness interviews, sequence witnesses properly, handle difficult interview dynamics, and document findings in a way that protects both the integrity of the investigation and the organization. These presentations provided practical, experience-based guidance that in-house counsel can deploy in their organizations.

Looking Ahead

The In-House Counsel Committee has grown quickly and intends to keep going. The May 7 Seminar drew a solid turnout and generated useful conversation between in-house lawyers, outside counsel, and the bench. The Committee welcomes Michigan in-house counsel who want to participate. The goal has not changed: build a Committee that is useful to the lawyers who do in-house counsel work every day and promote important exchanges of information among all business attorneys. Please contact me at gmantese@manteselaw.com if you have an interest in the In-House Counsel Committee.

Gerard V. Mantese has a national practice in shareholder, member, and partnership disputes, and other complex business litigation. He is the CEO at Mantese Honigman, P.C. He is chair of the State Bar of Michigan (SBM) Business Law Section's In-House Counsel Committee and co-chair of the LLC and Partnerships Committee, and he is on the Board of Commissioners of the SBM. Mr. Mantese is also chair of the New York County Lawyers Association (NYCLA) Committee on Corporations, LLCs, and Partnerships. The SBM has conferred both the Champion of Justice Award and the Roberts P. Hudson Award on Mr. Mantese for his advocacy for vulnerable citizens and for his service to the profession. He is routinely named one of the Top 100 Lawyers by Michigan Super Lawyers.

An Overview of Ethical Concerns for In-House Counsel

By Austin D. Blessing-Nelson

All attorneys are bound by the rules of ethics and must take care to know what is required of them and to ensure that they follow the rules. While certain ethical issues pertain to all lawyers, some practice areas face unique issues. One such practice area is in-house attorneys. As will be discussed herein, these somewhat unique issues include identifying your client and looking out for their interests, knowing when you can and cannot represent employees of your client (and making sure the employees know whether you represent them), supervising employees, and technology and cybersecurity issues. What follows is guidance that hopefully will allow you, as an in-house attorney, to fulfill your ethical obligations!

Duty to the Organization as Your Client

Perhaps the most unique, and potentially challenging, set of ethical issues faced by in-house attorneys is identifying who is (and isn't) your client and determining when you are required to go against the wishes of your superiors in order to protect the interests of the company (your client). These issues are largely addressed by MRPC 1.13.

MRPC 1.13(a) makes it clear that "A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders, or other constituents."[1] MRPC 1.13 stands for the proposition that usually the company, not your boss, is your client. That means that while you may owe your boss certain duties in your role as an employee, your duties as a professional are likely owed to the company as a whole. This is especially true when you are the top lawyer in a company and your bosses are not lawyers. However, it is also true when you are a subordinate lawyer.

As an example of when duties to your direct boss and to your client may be in conflict, SBM Informal Ethics Opinion RI-300 suggests that an in-house lawyer subordinate to the general counsel, whose advice regarding possible termination of the general counsel is sought by the corporation's chief executive officer, cannot discuss the CEO's conversation with the general counsel, can give legal advice to the CEO about the general counsel's employment, and has no duty to bring the matter to the attention of the corporate board.

It will normally be the case that the interests of your boss and the company align, but when they do not, it is important to remember that the company is your client. When the interests of your boss and the company do not align, you may have to go against the wishes of your boss to serve the interests of your client. These circumstances are addressed by MRPC 1.13(b) & (c) and the related Comment. MRPC 1.13(b) states in part that:

> If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization.

In determining how to proceed, you must consider "the seriousness of the violation and its consequences, the scope and nature of [your] representation, the responsibility in the organization, and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations."[2] Any measures taken should be designed to minimize 1) the disruption to the organization and 2) the risk of revealing confidential information to people outside the organization.[3] MRPC 1.13(b) lists some possible measures, including 1) asking the person to reconsider their decision, 2) advising that a separate legal opinion be sought and presented to the appropriate people in the organization, and

In-house counsel are required to take appropriate steps to ensure that the organization's directors, officers, employees, members, shareholders, or other constituents understand that the organization is the lawyer's client, not them.

3) referring the matter to a higher authority in the organization, including the highest possible authority if warranted.

Pursuant to MRPC 1.13(c), if your organization's highest authority insists upon taking or not taking an action that would violate a legal obligation of the organization, or result in a violation of the law that reasonably could be imputed to the organization, and it is likely to result in substantial injury to the organization, you can take remedial actions that you reasonably believe are in the best interest of the organization. Remedial actions could include revealing information that is otherwise confidential under MRPC 1.6, but only if you reasonably believe that "(1) the highest authority in the organization has acted to further the personal or financial interests of members of that authority which are in conflict with the interests of the organization; and (2) revealing the information is necessary in the best interest of the organization."[4] If the Sarbanes-Oxley Act applies to your company, it is important that you familiarize yourself with your obligations under the Act, including those contained in Section 307, which was codified as 15 U.S.C. §7245.[5]

An example of when your obligations under MRPC 1.13(b), and if necessary MRPC 1.13(c), would likely be triggered is when the CEO intends to withhold or destroy documents in violation of a court order.[6] It is important to remember that there is a difference between a decision you do not agree with, and a decision that triggers your obligations under MRPC 1.13(b) & (c). As the Comment to MRPC 1.13 states:

> When officers or employees of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer knows that the organization may be substantially injured by action of an officer or employee that is in violation of law.

Since organizations, unlike individuals, cannot directly communicate with you, and instead must communicate with their lawyers through intermediaries like officers and directors, it is important to identify who makes what decisions and to whom you should report.[7] This is important for fulfilling your various ethical duties, such as your duties of communication and confidentiality.[8] Answering this question requires consulting company policy, organizational documents, and any applicable laws.[9] Just remember that your client is the organization, not the intermediaries through whom the organization speaks.[10]

Everyone Must Understand Who Your Client Is

In-house counsel are required to take appropriate steps to ensure that the organization's directors, officers, employees, members, shareholders, or other constituents understand that the organization is the lawyer's client, not them.[11] This is very important because, as the Comment to MRPC 1.13 warns, when an employee frequently works with in-house counsel, it can become easy for the employee to forget that the lawyer represents the company, and not the employee. The Comment further warns that "[t]he result of such a misunderstanding can be embarrassing or prejudicial to the individual if, for example, the situation is such that the client-lawyer privilege will not protect the individual's communications to the lawyer."

What steps must be taken to avoid such a misunderstanding? That depends on the circumstances. It is likely the case that when handling routine legal matters, a lawyer—especially for a large corporation—does not have to explain that the corporation is the client.[12] Explicit warnings may also be unnecessary when it is apparent from the totality of the circumstances that the employee understands that the lawyer represents the company, not them.[13] However, if the lawyer is investigating potential wrongdoing or illegal activity, it is likely necessary to provide a warning to employees that you are interviewing.[14] When in doubt, it is best to remind the person you are speaking to that they are not your client!

Dual Representation and Conflicts of Interest

An in-house attorney's client is generally the organization as a whole.[15] However, pursuant to MRPC 1.13(e), and subject to the conflict of interest rules under MRPC 1.7, a lawyer who represents the organization can also represent "any of its directors, officers, employees, members, shareholders, or other constituents." Although the Comment to MRPC 1.13 does warn that even though dual representation is "often undertaken in practice, [it] can entail serious potential conflicts of interest." Dual representation can only occur if the interests of both clients are not in conflict, and if all the other conflict of interest rules are satisfied.[16] If consent for dual representation is required under MRPC 1.7, "the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders."[17] Whether or not there is a dual representation should be clearly established, preferably in writing, to avoid confusion about who the lawyer represents.[18]

An attorney cannot, at the request of a dissenting member of a city council/board, where that member is acting in a personal capacity, draft an opinion on the constitutionality of action taken by the city council/board, particularly when doing so would be counter to the interests of the city council/board.[19] An in-house attorney likely cannot represent an executive/employee in a criminal case when the board is exploring the possibility of terminating the employee based on the criminal case.[20] The Comment to MRPC 1.13 states that, depending on the circumstances and the nature of the action, it may or may not be permissible for the organization's lawyer to defend an organization's directors from a derivative action.[21]

Issues Related to Your Role as a Supervisor

While not technically an issue unique to in-house counsel, in-house counsel often supervise lawyer and non-lawyer employees and must be familiar with the applicable ethical obligations. Pursuant to MRPC 5.1 and MRPC 5.3, supervising lawyers must take reasonable steps to ensure that the lawyers and nonlawyers they supervise act in accordance with the applicable ethical rules. Under certain circumstances, a supervising lawyer can be held responsible for ethics violations committed by subordinates.[22] It is also important to familiarize yourself with your obligations under MRPC 8.3 pertaining to reporting potential professional misconduct by other lawyers, including those you supervise.[23]

Lawyers who are supervised by other lawyers must remember that they, like all lawyers, have an obligation to conform their conduct to the ethical rules. If they violate the rules, they are not automatically relieved of responsibility just because they were acting at the direction of a supervising lawyer.[24] An exception to this principle is found in MRPC 5.2(b), which states that "A subordinate lawyer does not violate the rules of professional conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty." However, MRPC 5.2(b) only applies if the answer to the ethical question is unclear and if it requires exercising professional judgment to decide the answer.[25] As the Comment to MRPC 5.2 states, "If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it."

Related to supervising employees is the topic of non-compete agreements, which many companies have employees sign. A discussion of the laws governing non-compete agreements in general is outside the scope of this article, but it is important to remember that MRPC 5.6 generally prohibits having a lawyer sign a non-compete agreement. If your client wants to have its employees sign noncompete agreements, you must advise them about this limitation.

Unauthorized Practice of Law and Professional Independence

It is important for in-house counsel to ensure that they and their employees do not engage in the unauthorized practice of law (UPL).[26] There are some specific rules and issues pertaining to in-house counsel that other practice areas are unlikely to encounter. Most notably, an in-house attorney from another state likely does not need to obtain a Michigan law license to serve as in-house counsel. This is because MRPC 5.5(d) states that:

> A lawyer admitted in another jurisdiction of the United States and not disbarred or suspended from practice in any jurisdiction may provide legal services in this jurisdiction that: (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or (2) are services that the lawyer is authorized by law to provide in this jurisdiction.

The Comment to MRPC 5.5 further defines what non-Michigan licensed in-house attorneys can, and cannot, do, and makes clear that MRPC 5.5(d) "does not authorize the provision of personal legal services to the employer's officers or employees." MRPC 5.5(d) also does not permit you to represent

There are some specific rules and issues pertaining to in-house counsel that other practice areas are unlikely to encounter.

your organization in court without first obtaining pro hac vice admission, nor does it permit you to sign pleadings or represent people at a deposition.[27] Even though MRPC 5.5(d) allows lawyers from other jurisdictions to serve as in-house counsel in Michigan, care should be taken to avoid crossing the line into UPL, and consideration should be given to seeking licensure in Michigan in order to be safe and to expand the services you can offer your client.[28]

Another somewhat unique issue faced by in-house attorneys, which is related to UPL, is the fact that they often have bosses (or directors or shareholders) that may not be lawyers. In these circumstances, it is important to recall that MRPC 5.4(c) states that "[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services." MRPC 5.4 does not automatically prohibit non-lawyers from supervising other aspects of a lawyer's job, including non-legal tasks or general personnel matters (an employee's attendance, compliance with generally applicable HR policies, etc.).[29]

Technology and Cybersecurity Issues

A full discussion of cybersecurity and related technology issues is outside the scope of this article, but since in-house counsel, especially those in large companies, are likely to be faced with, or even consulted about, these concerns, a brief discussion is warranted. Lawyers, and indeed companies as a whole, should familiarize themselves with technology and its safe and effective use. Indeed, lawyers have an ethical obligation to do this, both individually and as part of fulfilling their duties as supervising attorneys.[30] Fortunately, the State Bar of Michigan (SBM) has various resources to assist with cybersecurity and technology, including answers to frequently asked questions regarding cybersecurity.[31]

It is important to ensure that the way you communicate about work related matters, whether through email, text, or messaging apps, is safe and secure and that, when necessary, the messages are able to be easily preserved and maintained.[32] Lawyers, and companies in general, must also take care to avoid scams and should learn how to spot and avoid common scams.[33] In-house counsel, and the companies they represent, should also make sure that they have an appropriate disaster plan in place.[34] If the office is damaged or destroyed, this will ensure that access to, and the confidentiality of, important records and data are not lost. It will also ensure that, after everyone is safe, business operations can resume as quickly as possible.

A lot of companies, including law firms, are currently looking to implement AI.[35] If used correctly, AI can be beneficial to lawyers.[36] However, AI usage also comes with some ethical concerns that must be navigated, such as ensuring accuracy and protecting the confidentiality of information.[37] Unfortunately, these issues—specifically the risk of hallucinations—are not completely mitigated by using AI tools designed for lawyers, and therefore even AI tools designed for lawyers must be used with caution and the results of the AI tools checked for accuracy.[38] In addition to potential professional discipline, misuse of AI may result in a court imposing sanctions or taking other adverse action, which has already happened in many cases across the country.[39]

Miscellaneous Considerations

There are a few additional ethical issues that, while not necessarily unique to in-house counsel, are often faced by in-house counsel that bear briefly touching upon. If you are general counsel of a law firm and your job requires you to review retainer agreements, be sure to familiarize yourself with the various requirements and best practices regarding fee agreements.[40] If you are settling a case on behalf of your employer, in addition to making sure all other applicable rules and laws are complied with, it is important to ensure that the settlement agreement does not contain a clause that prohibits reporting attorney misconduct.[41]

Like all attorneys, if you receive a request for investigation (grievance), it is important to timely, completely, and accurately answer it and to cooperate with any investigation that may ensue.[42] Failure to do so may result in you being subjected to professional discipline, even if no action is taken regarding the allegations in the request for investigation.[43] If you are assisting a lawyer at your company or firm in responding to a grievance filed against them, it is important to ensure that the client is not billed for time spent responding to the grievance.[44] If your job requires you to assist lawyers with answering requests for investigation, even if only occasionally, it is best to avoid serving as an Attorney Discipline Board hearing panelist to avoid any potential issues under MCR 9.131(E).

Conclusion

In-house counsel, like all lawyers, must be familiar with their ethical obligations, including those that are unique to their practice area. Perhaps most importantly, in-house counsels must familiarize themselves with their obligations under MRPC 1.13. In-house counsels must also be familiar with their obligations regarding supervising employees, UPL and professional independence concerns, and technology and cybersecurity issues. The best way for lawyers to ensure they fulfil their ethical obligations is to review the MRPCs and take advantage of the various resources and ethics opinions that are available on SBM's website. Ensuring that you comply with all that is required of you will not only help you avoid professional discipline, but will also allow you to better serve your client!

NOTES

1. *See e.g., In re Iron Workers Local 25 Pension Fund*, No 04-CV-40243 (ED Mich Nov 4, 2009); *Lamont Cmty Church v Lamont Christian Reformed Church*, 285 Mich App 602, 777 NW2d 15 (2009). *But see City of Kalamazoo v Michigan Disposal Serv*, 151 F Supp 2d 913 (WD Mich 2001) (discusses how MRPC 1.13 applies in relation to unincorporated associations and joint defense groups).
2. MRPC 1.13(b).
3. MRPC 1.13(b).
4. MRPC 1.13(c).
5. *See also* 17 CFR 205 et seq.
6. SBM Informal Ethics Opinion RI-345.
7. Comment to MRPC 1.13; SBM Informal Ethics Opinion RI-300.
8. MRPC 1.13; Comment to MRPC 1.4; SBM Informal Ethics Opinion RI-300. *See also Grievance Administrator v Wilson A Copeland, II*, 09-48-GA (ADB 2011).
9. MRPC 1.13; Comment to MRPC 1.4. *See also Grievance Administrator v Wilson A Copeland, II*, 09-48-GA (ADB 2011).
10. *See Prentis Family Found v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 698 NW2d 900 (2005).
11. MRPC 1.13(d).
12. *See* Comment to MRPC 1.13.
13. *See McCool v Operative Plasterers' & Cement Masons' Int'l Ass'n of United States & Canada, AFL-CIO*, No 13-13614 (ED Mich Feb 18, 2014).
14. *See* Comment to MRPC 1.13.
15. *See e.g.*, SBM Informal Ethics Opinions RI-112 & RI-183.
16. *See e.g.*, SBM Informal Ethics Opinions RI-094 & RI-183.
17. MRPC 1.13(e).
18. *See MJK Family LLC v Corporate Eagle Mgmt Servs, Inc*, 676 F Supp 2d 584 (ED Mich 2009).
19. SBM Informal Ethics Opinion RI-254.
20. SBM Informal Ethics Opinion RI-259.
21. *See e.g., Goodson v Cairns*, No 346809 (Mich Ct App June 4, 2020) (unpublished).
22. MRPC 5.1(c); MRPC 5.3(c).
23. Austin D. Blessing-Nelson, *Reviewing the obligation to report potential misconduct*, Mich B J (July/Aug 2024); Alecia Chandler, *MRPC 8.3 – Navigating the duty to report*, Mich B J (Sept 2025).
24. MRPC 5.2(a).
25. Comment to MRPC 5.2.
26. SBM, *Unauthorized Practice of Law,* https://www.michbar.org/professional/upl; SBM, *General Attorney—Frequently Asked Questions*, https://www.michbar.org/opinions/ethics/generalattorneyFAQs.
27. SBM, *General Attorney—Frequently Asked Questions*, https://www.michbar.org/opinions/ethics/generalattorneyFAQs.
28. *See also* SBM, *Out-of-State or Foreign Lawyers*, https://www.michbar.org/professional/outofstate_foreign.
29. SBM Informal Ethics Opinion RI-210. *But see* SBM Informal Ethics Opinion RI-338.
30. SBM Informal Ethics Opinion RI-381.
31. SBM, *Cybersecurity—Frequently Asked Questions,* https://www.michbar.org/opinions/ethics/cybersecurityFAQs.
32. Alecia Chandler, *Texting clients: Is your signal in the dust?*, Mich B J (Apr 2025).
33. Robinjit K. Eagleson, *Scam alert: What to do*, Mich B J (Oct 2023); Joe Rivet and Alecia Chandler, *The reality of fraud*, Mich B J (Mar 2023).
34. Delaney Blakey, *Disaster preparedness*, Mich B J (Mar 2025).
35. SBM, *Report on Artificial Intelligence in the Legal Profession,* https://www.michbar.org/AI.
36. *Key Considerations for the Use of Generative AI Tools in Legal Practice and Courts: Guidelines for Safe and Effective Use of Legal AI*, AI Policy Consortium for Law & Courts (Aug 2025), available at https://www.ncsc.org/sites/default/files/media/document/KeyConsiderations.pdf.
37. SBM, *Artificial Intelligence for Attorneys—Frequently Asked Questions* https://www.michbar.org/opinions/ethics/AIFAQs.
38. Varun Magesh et al, *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, Journal of Empirical Legal Studies (Mar 14, 2025), available at https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf.
39. Damien Charlotin, *AI Hallucination Cases*, damiencharlotin.com, available at https://www.damiencharlotin.com/hallucinations/ (last accessed Feb 8, 2026).
40. Austin D. Blessing-Nelson, *Identifying and avoiding common ethical pitfalls when drafting retainer agreements*, Mich B J (Oct 2023); Delaney Blakey and Alecia Chandler, *Price to play: Ethics and attorneys' fees*, Mich B J (Nov 2024).
41. MCR 9.104(10). In addition to the MRPCs, MCR 9.100 et seq contains multiple, additional ethical obligations that attorneys must familiarize themselves with. *See e.g.*, MCR 9.103; MCR 9.104; MCR 9.120(A).
42. MCR 9.113; MRPC 8.1(a); Michael V. Goetz, *I've Received the Dreaded Letter from the Attorney Grievance Commission: Now What?*, Mich B J (June 2020).
43. *Grievance Administrator v Susan M. Eifler*, 14-54-GA (ADB 2015).
44. MCR 9.103(B).

Austin D. Blessing-Nelson is an associate counsel at the Michigan Attorney Grievance Commission, and he has authored multiple articles for the Michigan Bar Journal *covering various ethics topics.*

Outside Litigation Counsel Best Practices, from an In-House Counsel Perspective

By Brendan Frey

During most of my eleven years as in-house counsel at a publicly traded auto finance company, I led a team managing hundreds of litigation matters at a time, nationwide. During that time, I worked closely with several outside law firms and many talented and knowledgeable lawyers. Some firms became trusted, "go-to" counsel by consistently following a set of practical behaviors to provide valuable support, while other firms undermined otherwise strong relationships through avoidable missteps. In my experience, the difference between outside counsel who become trusted strategic partners and those who fall off of a client's roster often comes down to a handful of consistent practices such as understanding the client's business, communicating effectively, avoiding unnecessary work, and leveraging tools to be as efficient as possible. Many of these observations are straightforward. The biggest challenge is applying them consistently and with discipline.[1]

By consistently applying these principles, you can provide better support, create more value for your corporate clients, and strengthen your relationship with them. Over time, this can help you become a trusted advisor they turn to for guidance and advocacy. Of course, these are my own opinions. If your client has different preferences, listen to your client. This brings me to the first principle:

1. Know Your Client

Whether you are a solo practitioner or a national big law firm, you can become a consistently trusted resource by knowing your client's business inside and out. Institutional knowledge plays a critical role in putting in-house counsel at ease. Conversely, if an attorney has worked on several matters for a client and continues to describe the business inaccurately or awkwardly in pleadings and briefs or requires redirection on fundamental aspects of a client's business, it is going to be a burden for in-house counsel.

Consider this principle when staffing your cases and keep your staff as consistent as possible. If you have an associate who has worked well on other client matters, do not mess up a good thing by assigning a mix of attorneys across matters if it can be avoided.

2. Be Curious and Collaborative

Developing institutional knowledge takes time. Rely on in-house counsel colleagues, especially when you are new to a client. As Ted Lasso says, "Be curious ...."[2] Understand that your in-house counsel colleagues know more than you about the business and are there to help you succeed as much as you are there to help them. Ask them questions to help yourself understand as much of the business as time permits. Even if you have been working for a client for years, businesses change quickly. If you fail to stay curious and start to assume you know all there is to know about the business, you may eventually become out of touch and lose the advantage of the institutional knowledge you have built.

Do not act like in-house counsel is a second-class lawyer and you are there to save the day. It should go without saying that is not a good way to build a client relationship, but nonetheless some outside counsel appear to believe they are there to be "the expert" in all things. Ask questions, listen, learn, and be collaborative with your advice and strategy. Note that this means you need to get in-house counsel drafts of your work product with enough time for them to effectively provide input.

3. Be Proactive Within Your Practice Area

At the same time, you were hired because you are thought to have some experience, skills, and legal knowledge that adds value. Your in-house colleagues expect proactive guidance in areas where you are experienced. Do not wait for directions on every issue. If you understand the client's business, you can best assess where your knowledge is most needed and be proactive in a way that adds value.

4. Avoid Unnecessary Work[3]

Temper your enthusiasm with a measured approach to determine what is necessary. Engaging in excessive billable tasks is one of the most common ways to sour the client relationship. This most often arises in two scenarios:

a. ***Over-Lawyering Without Alignment***

The first is a well-intentioned lawyer who wants to make sure no stone goes unturned. The lawyer may be missing more efficient ways to resolve certain matters that still fully protect the client. Go back to principles 1 and 2: Know your client and work collaboratively with in-house counsel to align strategy before you get too far along in the case and start to bill for work that the client may not want or need. For instance, if you think legal research is required on a certain topic, make sure your client agrees before engaging in the research. In-house counsel may have already researched the issue, and better communication could save you from a task that the client does not want to pay for without advance clearance.

The most effective outside counsel think beyond individual assignments and consider how to deliver results efficiently, strategically, and in alignment with the client's business objectives.

b. Insufficient Supervision and Billing Discipline

The second scenario where unnecessary work commonly occurs is when the responsible partner fails to properly supervise associates or paralegals and fails to diligently review bills before sending an invoice to the client. Try your best to avoid this mistake, but if your client brings an issue to your attention, address it promptly and learn from the mistake, so it is not repeated. In-house counsel typically expect that the scope of services invoiced may occasionally require discussion with outside counsel to understand why a certain amount of time was put toward the task. While you cannot always avoid these situations, make sure you adjust your practices to avoid working in a way that causes repeated concern for in-house counsel. Recurring requests to reduce bills are a clear warning sign that the relationship is deteriorating.

5. Communicate Early and Often

This could easily be the first principle. Effective communication is critical. MRPC 1.4 is the *floor* ("A lawyer shall keep a client reasonably informed about the status of a matter …."). Assume your client wants visibility into all matter developments. Even if you do not think it is something that advances the case or changes strategy, let your in-house colleague know. If something is filed, no matter how clerical or administrative, send it to your client promptly. You want your in-house colleague to learn everything about the case from you. If they learn about developments in your case through some other channel, it may create the impression that the client's matter is not a priority for you.

Few things are more frustrating for in-house counsel than belatedly learning about case developments. Do everything you can to avoid surprising your in-house colleague. Even if you have a matter that has not progressed over the course of a month, provide that as an update. Some matters require daily updates, but you should never go more than a month without providing an update, even on slow moving cases.[4]

6. Use AI Responsibly[5]

Businesses of all kinds are intensely focused on using artificial intelligence (AI) tools to increase efficiency, and they expect the same from outside counsel. The highly publicized lawyer missteps with AI tools are ethical problems, not AI problems. For instance, a lawyer citing fictitious cases has, among other things, failed to meet the longstanding obligation to ensure the arguments they submit to the tribunal are grounded in reasonable inquiry and warranted by existing law (or, not applicable in this context, a good-faith argument for the extension, modification, or reversal of existing law).[6] These are the most egregious situations, but there are other missteps that lawyers can make when using AI. In addition to the ethical concerns, if lawyers are letting AI tools take them down rabbit holes and spending more time on tasks than they would be otherwise, they are failing to use the tool effectively. You need to stay in control of the tool, not the other way around.

Lawyers should not let the high-profile mistakes of some in the profession scare them from figuring out how to use AI to benefit clients. For instance, you can avoid a lot of problems by maintaining control over your work product, while still using AI to improve it. Start with your own draft and then ask AI for suggestions on how to improve it. Control the revisions so you can take the good suggestions and leave out the suggestions that fail to grasp legal nuances or fail to understand the strategic advantages of certain arguments. Overall, this may help you get to a final draft faster than through your own multiple drafts.[7] Of course, you need to have enterprise control of the tools you are using with client information and understand what information your client is comfortable with you sharing with your AI tools of choice.

There will be many different AI use cases depending on the types of matters you are handling. As a general rule, the lawyers who figure out the best ways to use AI to deliver results at a lower cost are going to get more of the client's work.[8]

Conclusion: Be Client-Obsessed and Think Like an Owner[9]

Develop a culture where the attorneys at your law firm are relentlessly focused on client outcomes. The outcomes are not just legal results, but the manner in which those results are delivered. Client results do not just mean: Did you win? Did you get the deal done? Obviously, those things matter a great deal. But do not stop there. Take the next step and be obsessed with delivering those results in a way that provides the most value for your client. That usually means in a cost-effective manner.

Certainly, law firms must remain profitable. This objective is not at odds with delivering client value. Sustainable client relationships depend on both. It will not do your client much good in the long term if you deliver services in an unsustainable manner.[10] The objective should be to align the interests of your clients and your law firm. If you have an associate who is laser focused on the number of hours she is billing and blind to the client impact, you are highly likely to violate principle 4 (avoid unnecessary work). The most effective outside counsel think beyond individual assignments and consider how to deliver results efficiently, strategically, and in alignment with the client's business objectives.

This also goes back to principles 1 and 3: Know Your Client and Be Proactive. How can you anticipate their needs? One way to anticipate client needs is to try to think about everything you do for the client through the lens of an owner of the business; that is, have an Owner's Mindset.

As described in *The Founder's Mentality*, having an Owner's Mindset involves:

- Treating costs like your own;
- Acting with urgency ("a bias to action");
- Avoiding unnecessary complexity ("aversion to bureaucracy").[11]

Ultimately, the outside counsel who earn repeat business are those who do more than just achieve positive legal outcomes. They are those who deliver those outcomes efficiently, communicate proactively, and consistently act as if they are part of the client's business. In other words, the best outside counsel do not just serve their clients—they think like them.

NOTES

1. As the recent co-founder of a law firm, I am writing this article in part as a reference I can return to should I ever feel like I'm losing the nimble and focused mentality that may come more naturally in the early days of founding any business.

2. *Ted Lasso*, season 1, episode 8 ("The Diamond Dogs"), Apple TV+ (Sept 18, 2020) ("Be curious, not judgmental."). In the episode, Ted attributes the quote to Walt Whitman. As far as this author knows, it is not a real Walt Whitman quote.

3. David Jaffe made this point succinctly—something to the effect of "It's not the rate that increases legal expenses, it's the tasks"—during the recent In-House Counsel Panel Discussion, Hot Topics Seminar (State Bar of Michigan Business Law Section Committees on Business Courts, In-House Counsel, and Litigation, May 7, 2026).

4. *See* Comment to MRPC 1.4: "… Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client …." At a minimum, provide monthly reports for all matters.

5. *See* State Bar of Michigan, *Artificial Intelligence for Attorneys-Frequently Asked Questions*, available at https://www.michbar.org/opinions/ethics/AIFAQs (accessed May 26, 2026) ("*AI FAQs*").

6. *Id.*, Duty of Diligence, citing MCR 1.109(E)(5); Fed. R. Civ. P. 11(b)(2).

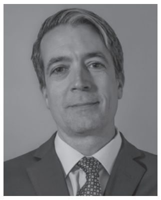
7. Copilot provided me with several helpful suggestions to make this article "feel crisp and publication-ready."

8. Understanding how AI can improve your legal services also touches on ethical obligations, *AI FAQs*, supra note 5, Duty of Competence, ("Lawyers have a duty to identify the technology that is needed to effectively represent the client, as well as determine if the use of such technology will improve service to the client.")

9. *See, e.g.*, Chris Zook & James Allen, *The Founder's Mentality: How to Overcome the Predictable Crises of Growth* (Harvard Business Review Press, 2016).

10. *See, e.g.*, Inside Amazon, *"Customer Obsession" Leadership Principle Explained by Amazon CEO Andy Jassy*, YouTube video, 4:44, posted May 21, 2024, available at https://www.youtube.com/watch?v=ADUfddD6Ivs (accessed May 26, 2026)

11. Zook & Allen, *The Founder's Mentality*, *supra* note 9, p 28.



Brendan Frey is a cofounder of Frey Law, PLLC. He has almost two decades of litigation experience, including eleven years as in-house counsel where he was most recently Senior Legal Counsel—Vice President of Corporate Litigation at Credit Acceptance Corporation. His practice at Frey Law focuses on Consumer Financial Services, Business Litigation, Commercial Transactions, and he offers General Counsel Services.

Intellectual Property Risk Mitigation in Michigan's Mobility and Aerospace and Defense Industries

By Linda Kennedy and Bill Panagos

In Michigan's mobility and aerospace and defense industries, innovation moves quickly, competition is intense, and intellectual property ("IP") often represents a company's most valuable assets. The State's concentration of Original Equipment Manufacturers (OEMs), Tier 1 and Tier 2 suppliers, advanced manufacturing firms, and defense contractors creates an environment in which technical collaboration and workforce mobility are routine features of doing business. At the same time, these industries are highly interconnected. Executives and engineers change employers, suppliers collaborate across tiers, and technical information flows through customers, regulators, and joint programs.

This combination creates a two-sided IP risk. Companies must avoid infringing the IP of competitors while also preventing their own proprietary information from leaking to others. Effective risk mitigation requires attention to both sides of that equation. These considerations have become increasingly significant as Michigan companies expand software-driven mobility platforms, autonomous technologies, and defense contracting activities.

This article examines common intellectual property risk points faced by Michigan mobility and aerospace and defense companies, particularly where product development, workforce mobility, and collaborative programs intersect.

I. Avoid Stepping into Third-Party Intellectual Property

A. Competitor Patents, Trademarks, and Copyrights

1. Identifying Risks

In the mobility and aerospace and defense sectors, patent risk often arises during product development rather than commercialization. Engineering teams may develop systems, components, or software architectures that independently overlap with existing patents held by competitors or suppliers. This is particularly common in areas such as propulsion systems, autonomous features, avionics software, battery technologies, and advanced materials.

Because these industries rely on incremental innovation, even small design choices can implicate broad patent claims. Risk increases when development timelines are compressed or when teams rely heavily on prior industry experience rather than structured IP review.

Trademark risk typically emerges later, when a product or platform is branded. A vehicle program name, subsystem designation, or software platform name may conflict with an existing mark, especially in global markets where multiple suppliers operate under similar naming conventions.

Copyright risk is often underestimated. Software code, technical documentation, training materials, and marketing content may incorporate third-party materials, open-source components, or Articificial Intelligence (AI)—assisted outputs without clear licensing or ownership analysis.

2. Developing Mitigation Plans

Mitigation begins with integrating IP review into development processes. For core technologies or mission-critical systems, freedom-to-operate ("FTO") analyses can help identify patent risk early enough to allow design alternatives. FTO reviews are often conducted when a company is developing a new product, implementing a design change, or introducing a new technical feature, where the risk of inadvertently reading on third-party patent claims is highest.

Companies must avoid infringing the IP of competitors while also preventing their own proprietary information from leaking to others.

In competitive or globally active markets, the analysis often extends beyond U.S. patents to include relevant international filings, particularly those owned by key competitors in jurisdictions where the product will be made, used, or sold. Conducting the analysis early in the design cycle is also economically significant: the cost of pivoting, redesigning, or selecting alternative components is typically far lower at the concept or prototype stage than after tooling, regulatory filings, or market launch. Framed this way, an FTO is a forward-looking clearance assessment that helps business and engineering teams make informed design, licensing, and launch decisions. These analyses should be treated as risk-management tools rather than guarantees, because they meaningfully reduce uncertainty but cannot eliminate all potential patent exposure.

Trademark clearance should occur before public naming decisions are finalized, particularly for platforms intended for long production cycles or global deployment. In automotive, aerospace and other globally deployed systems, early trademark review functions as a similar risk-screening step. It allows companies to avoid costly rebranding, relabeling, or certification complications once a name is embedded in documentation, supply chains, and customer-facing materials.

For copyright issues, companies benefit from clear internal rules governing third-party content and open-source software, coupled with verification of ownership and usage rights for software, technical documentation, and other copyrighted materials incorporated through the supply chain. This includes understanding open-source and third-party license obligations and reviewing contractor and vendor agreements for work-for-hire language, assignment provisions, and license scope to confirm that the company has the rights necessary for integration, modification, maintenance, and global deployment. In software-heavy aerospace and mobility programs, treating copyright clearance as part of both license compliance and contract/supply chain review helps prevent later disputes over code ownership, reuse, distribution, and downstream operational restrictions.

B. Competitor Trade Secrets and Confidential Information

1. Identifying Risks

Trade secret risk frequently arises through workforce mobility. Engineers, program managers, and executives often move between competitors within the same industry. In mobility and aerospace and defense, this movement is common across OEMs, Tier 1 suppliers, and specialized technology companies.

Risk arises when a competitor perceives that new hires were brought on board to accelerate development by drawing on prior work, or when they possess detailed knowledge of the competitor's confidential designs, pricing strategies, or customer requirements. Even well-intentioned employees may struggle to separate general skills from protected information. For example, an engineer with years of experience designing turbine blades may find it difficult to distinguish between knowledge derived from general aerospace engineering principles and insights gained through exposure to a prior employer's confidential design geometries and performance specifications. While such engineers will understand foundational aerodynamics, materials constraints, and cooling requirements for turbine engines, determining whether a particular blade geometry or performance optimization reflects general industry knowledge or a former employer's proprietary design can be more difficult to discern. Risk is heightened where incoming personnel are bound by non-compete or non-disclosure obligations, underscoring the need for pre-hire diligence and clear onboarding boundaries regarding prior employer confidential information.

These HR risks are particularly significant under the Michigan Uniform Trade Secrets Act ("MUTSA").[1]

In 2024, CPM Acquisition Corp. sued two former Michigan-based employees and their new employer C.A. Picard under a number of legal theories, including breach of noncompete agreements and violation of MUTSA.[2] One former employee was an Aftermarket Outside Sales Manager who hired the other at CPM as a machinist. Both former employees signed noncompete agreements, for which CPM established a likelihood of success on the merits during preliminary injunction proceedings.[3] They were also accused of misappropriating customer leads, pricing schedules, sales strategies, and contractual details. On their last day of employment, the former employees accessed a file labeled MasterListLeads. That tipped the scales on the likelihood of success on the merits on the MUTSA count to Plaintiff.[4]

Competitive intelligence and competitor benchmarking are generally permissible, but trade secret and related concerns may arise where large-scale scraping or systematic extraction targets proprietary databases or non-public compilations disclosed under circumstances implying confidentiality. Courts have treated such cases as fact-specific, focusing on the nature of the compilation, secrecy measures, and context of acquisition rather than the mere fact of competitor data gathering.[5]

2. Developing Mitigation Plans

Effective mitigation starts with onboarding practices that clearly instruct new hires not to use or disclose prior employers' confidential information, as should be reflected in company policy handbooks. Written acknowledgments and targeted training are particularly important for employees joining from direct competitors. Reviewing any existing noncompete agreements and nonsolicitation agreements is also wise.

Companies can further reduce risk by structuring projects to rely on documented, independent development. Clean-room approaches, design documentation, and internal review processes help demonstrate that innovations were developed without misuse of third-party trade secrets.

Sales and business development teams should also be trained to recognize when information crosses the line from general industry knowledge into protected confidential information.

II. Avoid Leaking Your Intellectual Property to Competitors

A. Risks and Mitigation Plans Concerning Human Resources

1. When Executives and High-Access Personnel Depart

Departures of executives and senior technical personnel present heightened IP risk. In mobility and aerospace and defense companies, these individuals often have access to system architectures, long-term product roadmaps, supplier strategies, and government or OEM program data.

Risk exists both during the transition period and after departure. Mitigation requires prompt adjustment of system access, careful exit interviews, and reinforcement of ongoing confidentiality obligations. Companies should ensure that confidentiality and, where appropriate, non-solicitation or non-competition provisions are enforceable and aligned with business realities. In practice, disputes in this area more often arise from inadequate onboarding, unclear project boundaries, or delayed access controls than from intentional misconduct.

The goal is not to restrict lawful employee mobility, but to protect proprietary information that gives the company its competitive position.

2. When Employees Travel, Work Remotely, or Use AI Without Caution

Remote work, international travel, and the use of personal devices increase the risk of inadvertent disclosure. Engineers may access sensitive files on unsecured networks or discuss proprietary details in public settings.

The growing use of generative AI tools introduces additional IP and confidentiality risks in engineering, software, and program management environments. Employees may input technical data, source code, customer specifications, or program details into AI systems without fully understanding how that information may be stored, processed, or incorporated into future outputs. In regulated and supply chain–driven industries, such inputs may include non-public technical documentation, contractor-developed materials, or data subject to contractual confidentiality or export control restrictions, creating potential exposure beyond traditional document-handling risks. Even where the underlying information is not intentionally disclosed, the aggregation of sensitive technical or commercial inputs into AI workflows can blur the line between independently developed analysis and the inadvertent reuse of protected information.

Mitigation requires clear policies, regular training, and integration of AI use into existing IP governance practices. Companies should define acceptable uses of AI tools, restrict the input of non-public technical and customer data into public or unvetted platforms, and align AI policies with existing confidentiality, data security, and

Companies that manage risk effectively focus on both sides of the equation.

open-source compliance protocols. Training should emphasize practical, field-facing scenarios such as proposal drafting, technical troubleshooting, software debugging, and competitive analysis. This is where employees are most likely to rely on AI tools, and should reinforce that convenience does not override contractual, trade secret, or license obligations associated with third-party data and proprietary program information. Companies should define acceptable use of AI tools and establish secure methods for remote access. Enforcement of policies is essential, but as a practical matter it cannot be effective where a substantial portion of the workforce operates outside established guidelines. This emerging issue therefore calls for workable policies and implementation strategies that meet employees where they are and reflect real-world workflows.

B. Risks and Mitigation Plans for Sharing Technical Information

1. Presentations, Publications, and Trade Shows

Public presentations are common in the mobility and aerospace and defense sectors, whether at trade shows, technical conferences, or customer demonstrations. These events create opportunities to showcase innovation, but they also pose IP risks.

Premature disclosure can compromise patent rights in certain jurisdictions and can destroy trade secret protection. Engineers and marketing teams may unintentionally reveal design details that competitors can exploit.

Mitigation requires coordination among legal, technical, and marketing teams. Presentation materials should be reviewed in advance, and patent filings should be considered before public disclosure. Where possible, information should be presented at a high level without revealing enabling details.

2. Participation in Consortia and Joint Development Projects

Collaborative programs are common in these industries, particularly in advanced mobility, defense systems, and dual-use technologies. While collaboration can accelerate innovation, it also creates complexity around IP ownership, licensing, and confidentiality.

Risks arise when agreements fail to clearly define rights in background technology, jointly developed IP, or post-project use. Disputes often emerge after a program ends or when one participant commercializes the technology.

Mitigation starts with well-drafted agreements that address ownership, licensing, disclosure limits, and exit rights. Just as important is internal discipline. Teams must understand and follow the agreed boundaries when sharing technical information. These arrangements are typically governed by contract terms and federal procurement frameworks such as the Federal Acquisition Regulation and its Defense supplement.

3. Authorization, Consent, and the Limits of Patent Exclusivity

Another factor that shapes IP risk in aerospace and defense, particularly for Michigan-based defense contractors and suppliers participating in federal procurement programs, is the Government's authorization and consent framework. Under this doctrine, contractors may be authorized to use patented technology in performing a government contract even where that use would otherwise constitute infringement. In such cases, the patent owner's remedy is typically against the United States and is often limited to reasonable compensation rather than injunctive relief.[6]

For companies accustomed to relying on patents as exclusionary tools, this framework underscores a broader reality. In defense programs, patents may secure compensation, but they do not always secure control. Contractual rights in technical data and software frequently play a more decisive role in determining long-term leverage.

Conclusion

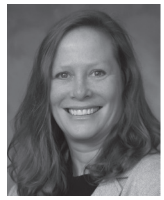
For Michigan mobility and aerospace and defense companies, IP risk mitigation is not a one-time legal exercise but an operational discipline that must evolve alongside product development, hiring practices, and collaborative programs.

Companies that manage risk effectively focus on both sides of the equation. They take deliberate steps to avoid infringing competitors' IP while also protecting their own proprietary assets from unintended disclosure.

By embedding IP awareness into everyday decision-making, businesses can reduce legal exposure, preserve strategic flexibility, and support long-term innovation in some of the most competitive industries in the world.

NOTES

1. MCL 445.1901 et seq.
2. *CPM Acquisition Corp v Easterday*, No 1:24-cv-605 (WD Mich Aug 5, 2024).
3. *Id.* at *17-18.
4. *Id.* at *20-23.
5. *See EF Cultural Travel BV v Explorica, Inc*, 274 F3d 577, 582–84, 587–88 (1st Cir 2001) (scraping competitor pricing data using insider structural knowledge and confidential information supported injunctive relief); *cf. Compulife Software Inc v Newman*, 959 F3d 1288, 1295–98, 1304–06 (11th Cir 2020) (recognizing trade secret protection for compilations and declining to dismiss scraping-based misappropriation allegations at the pleading stage).
6. *See* 28 USC 1498.



Linda Kennedy is a partner at Panagos Kennedy PLLC in Troy, Michigan, where she focuses on intellectual property counseling, litigation, and risk mitigation for technology, manufacturing, and defense-sector clients. Ms. Kennedy previously served in-house with a defense contractor.

Bill Panagos is a partner at Panagos Kennedy PLLC in Troy, Michigan, where he focuses on intellectual property counseling, litigation, and risk mitigation for technology, manufacturing, and defense-sector clients. Mr. Panagos has in-house leadership experience with a Tier 1 automotive supplier.

Marketing Across Borders – A Compliance Framework for In-House Counsel

By Pamela Denise Mack

Introduction

The legal landscape governing interstate marketing communications has become increasingly difficult for businesses to navigate. Companies that market through telephone calls, text messages, email campaigns, social media, and digital advertising now operate in an environment shaped by overlapping federal statutes, aggressive state legislation, evolving FCC and FTC rulemaking, and expanding privacy obligations. In recent years, compliance risk has increased substantially because multiple states have enacted laws that diverge from the federal framework and impose broader restrictions on marketing conduct.

For in-house counsel, the challenge is both legal and operational. Marketing departments often move quickly, vendors are frequently retained without extensive legal review, and business teams may assume that compliance with federal law alone is sufficient. In reality, a marketing campaign that appears compliant under the Telephone Consumer Protection Act (TCPA) may still violate state-specific telemarketing statutes, privacy laws, or consumer protection frameworks.

The financial exposure associated with noncompliant campaigns can be severe. Many telemarketing statutes provide for statutory damages on a per-call or per-message basis, meaning that even technical violations may create enormous aggregate liability when thousands of calls or text messages are involved. Because most of these statutes also authorize class action litigation, businesses increasingly face litigation risk arising from routine marketing activity rather than intentional misconduct.

The issue became even more complicated after the United States Supreme Court narrowed the federal definition of an automatic telephone dialing system (ATDS) in *Facebook, Inc v Duguid*.[1] Following *Duguid*, several states adopted broader definitions of autodialing technology that effectively restored the broader pre-*Duguid* framework at the state level.

This article summarizes the principal federal statutes governing marketing communications, reviews important Michigan requirements, examines several of the most aggressive state regulatory regimes, and provides practical compliance considerations for in-house counsel advising business and marketing teams.

The Federal Framework

The Telephone Consumer Protection Act

The Telephone Consumer Protection Act of 1991, 47 USC 227,[2] remains the cornerstone federal statute governing telemarketing calls, prerecorded voice messages, and text message marketing. Congress enacted the TCPA in 1991 in response to consumer complaints regarding intrusive robocalls and automated marketing campaigns. Since that time, FCC rulemaking and judicial interpretation have expanded the TCPA's practical application to include text messaging and a broad range of telecommunications technologies.

The TCPA generally prohibits, absent an applicable exception or valid consent, placing calls or sending text messages to cellular telephones using an automatic telephone dialing system, delivering prerecorded or artificial voice messages to residential or cellular lines, and sending unsolicited facsimile advertisements. The statute is enforced by the FCC, state attorneys general, and private litigants through an express private right of action.

The Impact of **Facebook, Inc v Duguid**

One of the most significant developments in telemarketing law occurred in 2021, when the United States Supreme Court decided *Facebook, Inc v Duguid*.[3] Prior to that decision, plaintiffs frequently argued that virtually any dialing system capable of automatically dialing stored numbers qualified as an ATDS.

The Supreme Court rejected that interpretation. The Court held that a device constitutes an ATDS only if it uses a random or sequential number generator to either store or produce numbers to be called. As a practical matter, most modern dialing platforms dial from stored customer lists rather than randomly generated numbers.

The decision substantially narrowed federal TCPA exposure for many businesses. However, the practical relief created by *Duguid* was short-lived because several states responded by enacting broader state-law definitions of autodialing technology. Consequently, businesses that avoided federal TCPA liability may still face substantial exposure under state law.

Consent Standards

The TCPA imposes different consent standards depending on the nature of the communication. Prior express written consent is generally required for autodialed or prerecorded telemarketing calls and text messages directed to cellular telephones. Consent must be clear, conspicuous, and signed, including through electronic signatures consistent with the E-SIGN Act.

The FCC has repeatedly emphasized that consent cannot be obtained through misleading disclosures or prechecked boxes. Businesses should also avoid bundling consent into unrelated terms and conditions. For nonmarketing informational communications, prior express consent may suffice without a separate written agreement.

Revocation of Consent

2024 FCC guidance significantly expanded consumer revocation rights by confirming that consumers may revoke consent through any reasonable means and are not required to follow a company's preferred opt-out method. As a result, consumers who reply "STOP" to a text message, verbally request not to receive further calls, or submit a request through a website form have likely effectively revoked consent, making it critical for businesses to maintain centralized suppression procedures capable of immediately processing opt-out requests across all marketing systems and communication channels.

Calling Hours and Penalties

Federal law generally permits telemarketing communications only between 8:00 a.m. and 9:00 p.m. local time at the called party's location. The TCPA provides statutory damages of $500 per violation and up to $1500 per willful or knowing violation. Because damages are assessed on a per-call or per-message basis, class action exposure can escalate rapidly.

The Telemarketing Sales Rule

The FTC's Telemarketing Sales Rule (TSR), 16 CFR Part 310,[4] supplements the TCPA by regulating the substance of telemarketing conduct. The TSR establishes the National Do Not Call Registry and prohibits deceptive or abusive telemarketing practices. Among other things, the TSR requires telemarketers to disclose the identity of the seller, accurately describe the goods or services offered, and avoid deceptive or misleading representations.

The FTC possesses substantial enforcement authority under the TSR and may seek significant civil penalties for violations.

The CAN-SPAM Act

The CAN-SPAM Act, 15 USC 7701 et seq.,[5] governs commercial email communications.

Commercial email messages must include accurate header and routing information, avoid deceptive subject lines, identify the message as an advertisement, contain a valid physical mailing address, include a functional opt-out mechanism, and honor opt-out requests within 10 business days, while businesses remain responsible for email campaigns conducted by third-party vendors acting on their behalf.

Direct Mail and FTC Oversight

Direct mail marketing is generally subject to fewer restrictions than telemarketing or SMS marketing; however, Section 5 of the FTC Act still prohibits unfair or deceptive acts and practices in direct mail solicitations. In addition, industry-specific rules may apply, particularly in financial services marketing, healthcare marketing, and sweepstakes promotions, which frequently implicate additional federal and state requirements.

High-Risk State Regimes

Florida

Florida's Telephone Solicitation Act (FTSA), Fla Stat 501.059,[6] is among the most aggressive state telemarketing statutes currently in effect. The FTSA defines autodialing technology more broadly than federal law and there-

Marketing departments often move quickly, vendors are frequently retained without extensive legal review, and business teams may assume that compliance with federal law alone is sufficient.

fore captures many dialing systems excluded from the TCPA after *Duguid*.

Florida also requires prior express written consent before using covered technology to place marketing calls or send text messages.

The statute restricts telemarketing activity to between 8:00 a.m. and 8:00 p.m. local time and authorizes statutory damages of $500 per violation and up to $1,500 for willful violations.

Since its expansion in 2021, the FTSA has generated substantial class action litigation against legitimate businesses engaged in ordinary marketing campaigns.

California

One of the most significant compliance challenges in multistate marketing is the inconsistent definition of regulated dialing technology.

California's Consumer Privacy Act (CCPA), as amended by the California Privacy Rights Act (CPRA), does not function as a traditional telemarketing statute. Instead, it regulates the collection, retention, sharing, and use of personal information.

California consumers possess broad privacy rights, including the right to know what personal information businesses collect, request deletion of personal information, opt out of the sale or sharing of personal information, and limit certain uses of sensitive personal information.

These rights significantly affect digital marketing operations, targeted advertising practices, customer databases, analytics systems, and vendor relationships. Businesses conducting email marketing or digital advertising campaigns involving California residents must ensure that privacy notices accurately disclose how consumer information is used and shared.

Texas

Texas expanded its telemarketing framework through Senate Bill 140, effective in 2025. The legislation applies to certain SMS marketing activity and imposes registration and bonding requirements on businesses conducting qualifying campaigns directed at Texas consumers. The statute also authorizes private lawsuits and enhanced damages for knowing violations.

Maryland

Maryland's "Stop the Spam Calls Act" similarly adopted expansive autodialer standards applicable to marketing calls and text messaging campaigns. Like Florida, Maryland's statute reflects a legislative response to the narrowing of the federal ATDS definition after *Duguid*.

Michigan Law

Michigan Home Solicitation Sales Act

Michigan's Home Solicitation Sales Act (MHSSA), MCL 445.111 through 445.126,[7] regulates telemarketing conduct within the state. The MHSSA prohibits several practices commonly associated with abusive telemarketing activity, including calling consumers who request not to receive additional solicitations, blocking or interfering with caller identification information, using recorded messages in prohibited circumstances, and contacting consumers listed on the National Do Not Call Registry.

The statute authorizes private lawsuits and provides for statutory damages and attorney fee recovery.

Michigan Penal Code Restrictions

Michigan imposes additional restrictions through MCL 750.540e(f),[8] which prohibits unsolicited commercial telephone calls between 9:00 p.m. and 9:00 a.m. Unlike federal law, which generally permits calls until 9:00 p.m., Michigan's statute effectively prohibits calls during the 9:00 p.m. hour itself.

Pending Michigan Legislation

Senate Bill 351, introduced in Michigan's 2025–2026 legislative session, would significantly expand telemarketing regulation by adopting a broader autodialer definition similar to Florida's and requiring express, verifiable authorization for certain automated calls and text messages. As a result, companies marketing into Michigan could face substantially greater litigation risk.

Cross-Cutting Compliance Issues

Autodialer Definitions

One of the most significant compliance challenges in multistate marketing is the inconsistent definition of regulated dialing technology. A platform excluded from the federal ATDS definition may still qualify as an autodialer under Florida, Maryland, or proposed Michigan law. As a practical matter, many national businesses now operate under the assumption that any automated or list-based dialing or texting technology requires prior express written consent.

Calling Hours and Time Zones

Telemarketing laws regulate communications based on the recipient's local time rather than the sender's location. Because different states impose different permissible calling windows, businesses conducting nationwide campaigns frequently apply the most restrictive applicable standard. Businesses should also ensure that dialing and messaging systems properly account for time zones and applicable state-specific holidays.

Do Not Call Compliance

The National Do Not Call Registry remains central to telemarketing compliance. Telemarketers must regularly scrub call lists against both federal and applicable state registries. Businesses should maintain clear suppression procedures capable of quickly processing Do Not Call requests.

Consent Documentation

Consent documentation is often the decisive issue in telemarketing litigation. Businesses should maintain records establishing the exact consent language presented to consumers, the date and time consent was obtained, the source of the lead, any electronic signatures or authentication information, and screenshots or archived copies of the applicable web forms. Incomplete or poorly maintained records frequently undermine otherwise defensible cases.

Opt-Out Procedures

Consumers must be able to revoke consent easily. Organizations should ensure that opt-out requests submitted through telephone calls, text messages, websites, emails, or customer service channels are promptly honored across all marketing systems.

Caller Identification and Spoofing

Federal and state laws prohibit caller ID spoofing and misleading identification practices. Companies using third-party vendors should confirm that outbound systems transmit accurate caller identification information and comply with FCC requirements.

Vendor and Lead Generator Risk

Third-party vendors create substantial compliance risk. Courts frequently hold businesses liable for unlawful conduct committed by lead generators, SMS vendors, outbound call centers, and marketing agencies acting on the company's behalf. Vendor agreements should include compliance representations and warranties, audit rights, indemnification provisions, obligations to maintain consent documentation, and requirements to honor suppression requests.

Channel-Specific Considerations

Telephone Calls

For outbound voice campaigns, in-house counsel should evaluate whether the dialing technology may qualify as an autodialer under applicable federal or state law, whether valid prior express written consent exists, whether Do Not Call procedures are current, and whether calling-hour restrictions are properly configured.

Text Messaging

SMS marketing has become one of the highest-risk marketing channels because of aggressive class action litigation and per-message statutory damages. Even where federal TCPA exposure may be limited post-*Duguid*, state statutes such as the FTSA may still create substantial liability.

Businesses should also ensure compliance with wireless carrier registration obligations associated with 10DLC messaging campaigns. 10DLC campaigns are registered business text messaging campaigns that permit companies to send A2P SMS or MMS messages over standard 10-digit phone numbers. Under the 10DLC framework, businesses must register both their brand and specific messaging campaigns through The Campaign Registry (TCR), including campaigns involving marketing promotions, appointment reminders, customer service updates, verification codes, and transactional alerts.

Email Marketing

Email campaigns remain subject to CAN-SPAM requirements and increasingly intersect with state privacy laws. Businesses collecting consumer email addresses should ensure that privacy notices accurately disclose how personal information is used and shared. California and other state privacy laws may also require businesses to honor deletion requests and opt-outs relating to targeted advertising and data sharing.

Direct Mail

Although direct mail is comparatively less regulated, deceptive advertising principles and industry-specific regulations still apply. Businesses involved in financial services marketing, healthcare marketing, or sweepstakes promotions should carefully review applicable disclosure requirements.

For Michigan businesses in particular, the potential enactment of Senate Bill 351 underscores the importance of preparing now rather than reacting after litigation or regulatory scrutiny occurs.

Enforcement and Litigation Risk

Telemarketing enforcement now arises primarily from federal regulatory enforcement, state attorney general actions, and private litigation, including class actions. Although federal regulators frequently target fraudulent robocall operations, private class action litigation often focuses on technical compliance violations committed by legitimate businesses.

A single campaign involving thousands of calls or text messages may generate theoretical exposure in the millions of dollars because statutory damages are calculated on a per-message basis. For this reason, proactive compliance efforts are significantly less expensive than defending litigation after a campaign launches.

A Practical Compliance Framework for In-House Counsel

Pre-Campaign Review

Before launching any marketing campaign, legal departments should evaluate the communication channels involved, the states in which recipients are located, the technology used for dialing or messaging, the adequacy of consent documentation, applicable calling-hour restrictions, and any relevant vendor relationships.

Consent Architecture

Businesses should develop consent systems designed to satisfy the strictest applicable standards, with consent forms that clearly identify the sender, specify the communication channel, and avoid misleading or bundled disclosures, while also maintaining centralized suppression systems capable of honoring opt-out requests across all marketing platforms.

Vendor Oversight

Companies should conduct due diligence before engaging vendors involved in outbound marketing activity by reviewing vendor consent practices, compliance procedures, and contractual safeguards, while also conducting periodic audits, as many lawsuits arise from purchased leads or third-party marketing campaigns.

Ongoing Monitoring

Telemarketing and privacy laws continue to evolve rapidly, requiring legal departments to monitor FCC rulemaking activity, state legislative developments, significant TCPA and privacy decisions, and FTC enforcement trends.

Periodic compliance reviews help ensure that existing procedures remain current.

Incident Response

When potential violations arise, companies should preserve all relevant records, assess the number of recipients and jurisdictions involved, suspend problematic campaigns, evaluate available defenses, and document remediation efforts, as rapid response and strong recordkeeping are critical to mitigating potential liability. Frequently determine whether a compliance issue escalates into major litigation.

Conclusion

The legal framework governing interstate marketing communications continues to expand in complexity, with federal statutes now operating alongside increasingly aggressive state telemarketing laws, privacy regulations, and active class action litigation. For in-house counsel, the central challenge is translating this fragmented regulatory environment into practical operational guidance for business teams. Organizations that invest in strong consent architecture, vendor oversight, centralized suppression systems, and proactive legal review are significantly better positioned to manage risk.

For Michigan businesses in particular, the potential enactment of Senate Bill 351 underscores the importance of preparing now rather than reacting after litigation or regulatory scrutiny occurs. A carefully structured compliance program is no longer optional but instead has become an essential component of modern marketing operations.

NOTES

1. *Facebook, Inc v Duguid*, 592 US 396 (2021).
2. Telephone Consumer Protection Act, 47 USC 227.
3. 592 US 396 (2021).
4. Telemarketing Sales Rule, 16 CFR Part 310.
5. CAN-SPAM Act, 15 USC 7701 et seq.
6. Florida Telephone Solicitation Act, Fla Stat 501.059.
7. Michigan Home Solicitation Sales Act, MCL 445.111 through 445.126.
8. Michigan Penal Code, MCL 750.540e(f).

Pamela Denise Mack is the founding and managing member of The Mack Law Group, PLC a boutique law firm based in Bloomfield Hills, Michigan. She is recognized as a Top 100 National Black Lawyer and concentrates her practice in corporate and commercial transactions and legacy planning, advising businesses, business owners, and their families. She is also the creator and founding editor of The Nosy Lawyer™ and the author of the children's book, My Name Is Judah.

Hold the Reins, Trust the Horse: The Evolving Balance Between In-House Counsel Control and Outside Counsel Independence

By Ryan C. Plecha, Blake Padget, and Kevin Lynch

Introduction

For much of the twentieth century, the relationship between a corporation and its outside law firm followed a familiar pattern. The general counsel, often a single attorney with a modest staff, served primarily as a liaison who routed significant legal matters to trusted outside firms. Those firms exercised broad professional judgment, billed by the hour, and largely set the terms of engagement. The client deferred; the firm decided.

That arrangement has all but disappeared. The modern legal department is a sophisticated operation, frequently staffed by a full team of attorneys, equipped with matter-management software, governed by detailed outside counsel guidelines, and increasingly evaluated on its ability to control costs and outcomes.[1] General counsel today often function as enterprise executives first and lawyers second, with seats on management committees and reporting lines that run directly to the chief executive or the board. Outside counsel, in turn, compete for work in a buyer's market shaped by procurement professionals, alternative fee arrangements, and reverse auctions.

The tension this produces is real and consequential. The more aggressively in-house counsel manage their outside firms, such as dictating staffing or requiring approval for routine decisions, the more they risk eroding the very independence that makes outside counsel valuable in the first place. Conversely, outside counsel who insist on autonomy untethered from client direction may find themselves out of step with both contemporary practice and the duties they owe to the corporate client. The question is no longer whether in-house counsel should manage the relationship, but how to do so in a way that preserves the professional judgment outside counsel are retained to provide.

This article examines the contours of that balance. It considers the ethical and structural framework within which the relationship operates, identifies the friction points that arise in practice, and offers a set of principles for calibrating control and independence in a way that serves the client's interests without compromising professional integrity.

I. The Shifting Center of Gravity

The transformation of the in-house bar over the years has been one of the most significant developments in the legal profession. Whereas corporate legal departments once handled routine compliance and contract work while sending anything complex to outside firms, today's departments increasingly retain sophisticated matters in-house, develop deep substantive expertise, and treat outside counsel as a specialized resource rather than a default destination.[2]

Several forces have driven this shift. Cost pressure is the most obvious. Outside counsel rates have risen faster than inflation, and the marginal cost of an additional in-house attorney is typically a fraction of what the same work would cost at a major firm. Beyond economics, in-house counsel offer immersion in the business that outside lawyers cannot easily replicate. They understand the company's commercial strategy, its risk appetite, its culture, its key personnel, and its regulatory environment in ways that no external advisor can match without significant onboarding. The Supreme Court's recognition in *Upjohn Co. v. United States* that the attorney-client privilege extends beyond a corporation's "control group" to encompass communications with employees throughout the organization further entrenched the central role of corporate legal departments in gathering and managing privileged information.[3]

The result is that general counsel today exercise meaningful control over how legal work is performed, by whom, at what cost, and to what end. Outside counsel guidelines ("OCGs") now routinely dictate matters that would once have been left to firm discretion: which timekeepers may staff a matter, which tasks may not be billed, which travel arrangements are permissible, what notice must be given before a deposition is taken, and how settlement authority must be sought.[4] E-billing systems flag deviations automatically. Periodic business reviews measure firm performance against quantitative benchmarks.

This is not, on balance, a regrettable development. Many of these practices have improved the quality and efficiency of legal services. The reflexive deference of an earlier era often produced overstaffed matters, underexamined strategies, and bills that bore little relation to the value delivered. A more engaged client is a better client.

But the same practices, taken to an extreme, can compromise the conditions under which good legal judgment is exercised. An attorney who fears that any deviation from a budget will be treated as a failure may avoid the additional research that would have revealed a stronger argument. A firm whose engagement can be terminated at the first sign of bad news may shade its assessments toward optimism. A partner required to seek permission before every strategic choice may stop offering the unsolicited counsel that has historically distinguished excellent representation from merely passable service.

II. The Ethical Framework

The professional conduct rules that govern the lawyer-client relationship were drafted with the individual client in mind. Their application to the corporate context has required ongoing interpretation, but the core principles remain instructive.

Under Michigan Rule of Professional Conduct ("MRPC") 1.2, a lawyer must follow the client's prerogative concerning the lawful objectives of the representation through reasonably available means permitted by the law and the rules of professional conduct.[5] The rule contemplates a division of labor: the client sets the goals; the lawyer, with the client's input, decides the strategy for accomplishing them in a manner that is consistent with the rules. In the corporate context, the in-house attorney is typically the client's authorized representative for purposes of giving direction, and outside counsel may properly take instruction from that representative on the full range of matters within the engagement.

MRPC 5.4(c), however, provides a counterweight. It prohibits a lawyer from allowing a person who recommends, employs, or pays the lawyer to obstruct the lawyer's independent professional judgment when rendering legal services.[6] The rule was originally aimed at lay ownership of law firms and similar arrangements, but its principle has been interpreted to extend to any context in which a third party seeks to dictate the substance of legal services. The point is reinforced by MRPC 2.1, which directs that "[i]n representing a client, a lawyer shall exercise independent professional judgment and shall render candid advice."[7]

The principle has been most fully developed in the analogous context of insurance defense, where state bar opinions have held that billing and litigation guidelines imposed by an insurer cannot override defense counsel's independent professional judgment in representing the insured.[8] Although the in-house counsel relationship differs in important respects, the underlying principle translates to relationships with in-house counsel. The fact that the in-house attorney controls the engagement and holds the purse strings does not entitle that attorney to require outside counsel to subordinate professional judgment to administrative directives.

MRPC 1.13 adds a further dimension by clarifying that the client is the organization itself, not any particular constituent.[9] This means that outside counsel's loyalty runs to the corporation, not to the general counsel personally, and certainly not to the business executives who may be the day-to-day points of contact. When the interests of the organization diverge from the preferences of its representatives outside counsel may be required to act in ways that the in-house team would prefer they did not. The ABA reinforced this principle most recently in Formal Opinion 514 (2025), which reminded both in-house and outside counsel of their obligations under Rules 1.1, 1.4, and 2.1 when advising organizational clients about future conduct that may pose legal risk to the organization's constituents.[10] Although the ABA opinion references the ABA model rules, model rules 1.1, 1.4, and 2.1 are substantially similar to their Michigan equivalent as it relates to this issue.

The transformation of the in-house bar over the years has been one of the most significant developments in the legal profession.

The result is a framework in which the in-house attorney has substantial authority to direct the representation but cannot lawfully require outside counsel to subordinate professional judgment, ethical obligations, or duties to the organizational client. Notably, the in-house attorney who insists on such subordination may themself face discipline if an OCG is so onerous that it effectively vitiates outside counsel's independent professional judgment because Rule 8.4(a) prohibits knowingly assisting or inducing another lawyer to violate the Rules.[11] The framework is clear in principle but contested in application, and most of the difficulties that arise in practice fall in the space where the competing principles meet.

Major law firms represent many clients, and conflicts inevitably arise.

III. Friction Points in Practice

Several recurring scenarios illustrate where the balance between in-house control and outside independence is most often tested.

A. Staffing and Resource Allocation

Outside counsel guidelines frequently restrict the use of associates below a certain class year, prohibit the staffing of more than a specified number of attorneys on a call or deposition, and require approval before any new timekeeper is added to a matter. These rules are often sensible cost-control measures. But they can also prevent outside counsel from deploying the team that the matter requires. A junior associate may be the right person to handle a discrete research task at a reasonable rate, even if the guidelines disfavor first-years. A particular issue may genuinely demand the attention of three partners with different areas of expertise, even if the standard rule contemplates only one.

In other contexts, the Michigan Professional Ethics Committee has cautioned that a lawyer may accept client-imposed limitations only if the lawyer can still "provide competent representation with the limitations in place."[12] Similarly, unique payment arrangements with a third party on behalf of the client are permitted as long as they do not interfere with a "lawyer's independent professional judgment and the lawyer represents the insured with competence and diligence."[13] Staffing and resource allocation restrictions in OCGs must therefore not impinge on a lawyer's duty to provide competent representation, although there is sure to be disagreement on where the competency threshold lies.

B. The Framing and Delivery of Advice

In-house counsel sometimes signal, explicitly or implicitly, that certain conclusions are preferred. The signal may be benign: a desire to avoid alarming the business, a wish to maintain a particular litigation posture, a strategic preference for a particular outcome. But the signal can subtly distort the advice that follows. Outside counsel who sense that a hedged conclusion will be unwelcome may sharpen it; those who sense that a candid risk assessment will provoke pushback may soften it. MRPC 2.1's directive that a lawyer "shall exercise independent professional judgment and shall render candid advice" is not satisfied by advice that reflects the dynamics of the engagement rather than the underlying legal analysis.[14]

C. Settlement and Strategic Decisions in Litigation

Decisions about whether to settle, whether to pursue a particular motion, whether to take an appeal, and how to respond to settlement overtures are ultimately the client's to make.[15] But the recommendations that inform those decisions are properly the province of outside counsel, who have the closest view of the case and the most direct experience with the relevant courts, opposing counsel, and factual record. When in-house counsel substitute their own strategic judgment for that of trial counsel without engaging with the underlying analysis, the recommendations become advisory in name only, and the client may be deprived of the very expertise it retained outside counsel to provide.

D. The Management of Bad News

Outside counsel are sometimes the first to recognize that a matter is going badly, that a regulatory inquiry is more serious than initially understood, or that a key witness' testimony will not hold up. MRPC 1.4 imposes an affirmative obligation to keep the client reasonably informed about the status of a matter and to explain matters to the extent reasonably necessary to permit informed decisions.[16] The temptation to defer delivery of bad news, or to qualify it in ways that obscure its significance, is real. This temptation is particularly strong when the bearer of bad news is also the party whose engagement may be reviewed in light of it. A relationship that does not protect the candor of outside counsel in difficult moments protects very little of value.

E. Conflicts and the Management of Multiple Engagements

Major law firms represent many clients, and conflicts inevitably arise. In-house counsel have a legitimate interest in understanding how their firms manage these conflicts and in receiving prompt notice when issues develop. But aggressive demands for advance waivers, broad restrictions on the firm's ability to represent other clients in unrelated matters, and "client-expansion" clauses that purport to treat every corporate affiliate as a current client raise concerns under MRPC 5.6, which prohibits restrictions on a lawyer's right to practice.[17] As one commentator has observed, "OCGs that prevent a lawyer from representing any client competitor—whether true adversity exists or not—and that define the 'client' expansively, do the very thing Rule 5.6 prohibits."[18] The ABA addressed the closely related question of when representation of a corporate affiliate becomes representation of the affiliate in Formal Opinion 95-390, concluding that the answer depends on the particular circumstances and the reasonable understanding of the parties.[19]

IV. Principles for Calibrating the Relationship

No single formula can resolve the tensions described above. The right balance depends on the nature of the matter, the sophistication of the in-house team, the firm's role in the client's broader legal ecosystem, and the personalities involved. But several principles can guide the calibration.

First and foremost, the best method of preventing these issues is communication. That communication must take place early and often. Candid conversations between in-house and outside counsel are a critical part of the representation. These conversations ensure all parties are on the same page regarding communicating expectations, preferences, and other non-negotiables. Reaching agreements on potential friction points before the engagement begins creates the best environment for successful and ethical representation. It may be appropriate to discuss these initial issues after comparing outside counsel's proposed engagement letter with the company's OCG to work through any points of concern.

Second, control over the engagement is different from control over legal judgment. In-house counsel are entitled to manage the business of the relationship but they would do well not to impose harsh OCG mandates without careful consideration. They are not entitled to dictate the substantive content of the advice.[20] The distinction is sometimes subtle in practice, but maintaining it conceptually is essential to keeping the relationship within ethical bounds.

Third, outside counsel should be selected for their judgment and then permitted to exercise it. A great deal of value in the relationship comes from the outside firm's perspective, experience, and willingness to offer views that the in-house team has not considered. A management regime that treats outside counsel as fungible executors of predetermined strategies discards much of what the firm was retained to provide.

Fourth, candor should be structurally protected. The most important conversations in any engagement are often those in which outside counsel deliver assessments that the in-house team does not want to hear. Building explicit space for those conversations including but not limited to, periodic candid reviews, direct lines of communication that bypass the day-to-day intermediaries, and a stated expectation that bad news should travel fast, makes it easier for everyone to do their jobs, and reinforces the candor that MRPC 2.1 requires.[21]

Fifth, disagreements should be highlighted and resolved rather than suppressed. When in-house and outside counsel reach different conclusions on a substantive question, the answer is not for outside counsel simply to defer. The answer is to articulate the disagreement, examine the reasoning on both sides, and arrive at a considered resolution. If the in-house team's view ultimately prevails, the decision should be made with a full understanding of the contrary analysis, not in spite of an unspoken one. Where the disagreement implicates the obligations imposed by MRPC 1.13 the Rule's reporting-up obligations may be triggered, and outside counsel must be prepared to escalate beyond the general counsel to higher authority within the organization.[22] This same issue could arise where in-house counsel seeks to raise a frivolous argument in violation MRPC 3.1.

Sixth, the relationship should be evaluated on outcomes rather than on compliance. Outside counsel who consistently deliver excellent results while occasionally exceeding a guideline are more valuable than those who scrupulously observe every guideline while delivering mediocre work. Management sys-

The challenge for the profession is to develop and reinforce norms that honor both the legitimate authority of the in-house attorney and the irreducible independence of the outside lawyer.

tems that lose sight of this hierarchy invert the priorities of the engagement.

Conclusion

The transformation of the in-house bar has been positive in many respects. Clients are better served when they are engaged, informed, and demanding. Outside counsel are sharper when they must justify their work and compete for the privilege of doing it. The era of unquestioning deference to outside firms was not a golden age.

But the pendulum can swing too far. The conditions under which good legal judgment is exercised include intellectual freedom, candid dialogue, and a willingness to deliver unwelcome conclusions. Management practices that erode those conditions, even if well-intentioned, diminish the value of the very relationships they are designed to optimize.

The best in-house counsel understand this instinctively. They manage their outside firms firmly but with respect for the firms' professional autonomy. They demand accountability without demanding agreement. They reward candor even when it complicates the day's agenda. They recognize that the goal of the engagement is not compliance with a set of guidelines but the delivery of excellent legal services to the organizational client. And they understand that holding the reins is not the same as riding the horse: the value of outside counsel is realized only when they are permitted to practice their craft. The law, like equitation, is an art.

The challenge for the profession is to develop and reinforce norms that honor both the legitimate authority of the in-house attorney and the irreducible independence of the outside lawyer. The relationship is at its best when each side understands the other's role, respects its limits, and acts in service of the client that both ultimately serve.

NOTES

1. For a recent practitioner overview of outside counsel guidelines, *see* Helen W. Gunnarsson, *Law Firm General Counsel Tell How They Handle Outside Counsel Guidelines, Mistakes, and COIs*, 26 The Prof Lawyer 2 (ABA 2020).

2. *See generally* Deborah A. DeMott & David F. Cavers, Colloquium, *Ethics in Corporate Representation: The Discrete Roles of General Counsel*, 74 Fordham L Rev 955 (2005) (tracing the evolution of the general counsel role and the corresponding shift in responsibilities between in-house and outside counsel); Sarah Helene Duggin, *The Pivotal Role of the General Counsel in Promoting Corporate Integrity and Professional Responsibility*, 51 St. Louis L J 989 (2007).

3. *Upjohn Co v United States*, 449 US 383, 392–97 (1981) (rejecting the "control group" test and holding that the corporate attorney-client privilege protects communications between counsel and employees throughout the organization when made for the purpose of obtaining legal advice).

4. For an examination of contemporary OCG practices and their implications, *see* Bruce A. Green & Eli Wald, *Outside Counsel Guidelines: Power, Ideology, and the Evolution of the Corporate Bar*, 68 Ariz L Rev 427, 433-34 (2026); Amy E. Richardson, Hilary P. Gerzhoy & Lauren E. Snyder, *Ethical Implications of Outside Counsel Guidelines*, Bloomberg Law Professional Perspective (2019) (discussing the trend of OCGs expanding the definition of "client" to include affiliates of the corporation as well as unduly broad non-competition provisions).

5. MRPC 1.2(a) (2026) ("A lawyer shall seek the lawful objectives of a client through reasonably available means permitted by law and these rules.").

6. MRPC 5.4(c) (2026) ("A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.").

7. MRPC 2.1 (2026).

8. *See e.g.*, Mich Prof'l Ethics Comm, Op CI-973 (1983) ("It is not unethical for a lawyer to accept compensation for legal services from one other than the client provided . . . the third party does not attempt to direct, regulate or otherwise interfere with the professional judgment of the lawyer in rendering legal services to the client"); *see also* Mich Prof'l Ethics Comm, Op RI-89 (1991)(providing that a lawyer retained to defend an insured, "must advocate the insured's position even if it is adverse to the insurer.").

9. MRPC 1.13(a) (2026) ("A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders, or other constituents.")

10. ABA Comm on Ethics & Pro Resp, Formal Op 514 (2025) ("Where a lawyer—in-house or outside counsel—is giving advice to an organization client about future action the organization may choose to take, the Rules [Rules 1.1, 1.4, and 2.1] may require the lawyer to advise the organization about constituents' potential legal risk.").

11. MRPC 8.4(a) (2026) ("It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.").

12. Mich Prof'l Ethics Comm, Op RI-358 (2013) (limitations on the scope of representation due to conflict waiver agreements).

13. Mich Prof'l Ethics Comm, Op RI-343 (2008) (fixed fee arrangement with insurance company to represent insured permissible).

14. MRPC 2.1 (2026); *see also id.* at cmt. 1 ("A client is entitled to straightforward advice expressing the lawyer's honest assessment.").

15. MRPC R 1.2(a) (2026) ("A lawyer shall abide by a client's decision whether to accept an offer of settlement or mediation evaluation of a matter.").

16. MRPC 1.4(a)–(b) (2026); *see also* Restatement (Third) of the Law Governing Lawyers 20 (Am Law Inst 2000) (lawyer's duty to inform and consult with client).

17. MRPC 5.6 (2026) ("A lawyer shall not participate in offering or making: (a) a partnership or employment agreement that restricts the right of a lawyer to practice

after termination of the relationship . . . ."); *see generally* Mich Prof'l Ethics Comm, Op RI-86(1991) (analyzing Rule 5.6's policy of preserving client choice of counsel).

18. Richardson, Gerzhoy & Snyder, *supra* note 4.

19. Michael Sacksteder, *Formal Opinion 95-390 of the ABA's Ethics Committee: Corporate Clients, Conflicts of Interest, and Keeping the Lid on Pandora's Box*, 91 NW U L Rev 741, 753 (1997).

20. This distinction tracks the structure of Rules 1.2 and 5.4(c). *See* Mich Rules of Prof'l Conduct R 1.2 and 5.4(c) (2026).

21. MRPC 2.1 (2026).

22. MRPC 1.13(b) (2026) ("If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action . . . that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization."); *see also* Sarbanes-Oxley Act of 2002, 307, 15 USC 7245 (directing the SEC to issue rules requiring attorneys appearing and practicing before the Commission to report evidence of material violations "up the ladder" within the organization); 17 CFR 205.3 (2024) (SEC rules implementing section 307).

Ryan C. Plecha is a Shareholder in Butzel's Troy office whose practice focuses on civil and commercial litigation. He represents clients in complex, high-stakes disputes, including shareholder and member conflicts, construction matters, real estate litigation, and contract disputes. Frequently sought for commentary on newsworthy legal issues, Ryan is recognized by respected legal publications for his work in business and civil litigation.

Blake Padget is a Shareholder in Butzel's Troy office whose practice focuses on labor and employment law. He represents employers in litigation involving discrimination, harassment, retaliation, and wrongful termination claims, and advises clients on workplace matters including ADA and FMLA compliance, employee complaints, and discipline. He also has experience responding to charges before the EEOC, MDCR, and NLRB and managing key aspects of employment litigation.

Kevin Lynch is an Associate in Butzel's Troy office, where he focuses his practice on labor and employment law and the education industry. Prior to joining the firm, he worked in human resources roles in the public and private sectors, conducting employee investigations, advising on compliance with employment laws, and handling labor relations matters, including contract negotiations, arbitrations, and grievances.

Scaling Compliance Without Slowing Growth – The S.C.A.L.E. Model for In-House Counsel in Highly Regulated, Multi-Jurisdictional Businesses

By Erika A. Riggs

When Growth Outpaces Governance

In many organizations, compliance doesn't break all at once—it erodes quietly. Small inconsistencies compound across teams, jurisdictions, and systems until they surface as regulatory exposure, reputational damage, or operational inefficiency. When a regulated business expands into new jurisdictions, it quickly reveals whether compliance is truly built into the organization or simply treated as a checkbox. To address these challenges, this article introduces the S.C.A.L.E. Model, a practical framework designed to help organizations scale compliance alongside growth.

As a founding partner of Law Offices of Kelly, Riggs & Mansour, PLC, and later Disability Law Group and Michigan Accident Attorneys, I have experienced rapid growth while operating in federally driven practice areas that allow us to serve clients nationwide. On paper, a federal practice model can reduce jurisdictional complexity. In reality, expansion across state lines, and increasingly across borders, creates far more compliance touchpoints than most organizations expect.

As organizations grow, they face new layers of employment law, advertising and ethics rules, confidentiality and data handling requirements, cybersecurity and insurance expectations, vendor contract complexity, and rising expectations to govern artificial intelligence (AI) responsibly. This pattern is consistent with enforcement trends. Regulators increasingly evaluate not just whether policies exist, but whether they are operationalized, monitored, and consistently applied across the organization.

The key insight is simple: growth multiplies compliance risk. The instinctive response to growth risk is to add approvals and route more decisions through legal. That approach can feel protective, but it often creates bottlenecks, encourages workarounds, and leads to shadow systems—all conditions that tend to generate more risk. A better approach is to treat compliance like infrastructure: built into systems, roles, and workflows from the start.

To address this growing "Regulatory Compression Effect," the S.C.A.L.E. Model provides a structured framework for embedding compliance into day-to-day operations. This model is a practical governance framework developed through real-world experience scaling in a highly regulated, multi-jurisdictional environment. S.C.A.L.E. stands for **S**tandardize Governance, **C**ontrol Access, **A**lign AI and Technology with the Rule of Law, **L**everage Specialists Strategically, and **E**scalate Early and Transparently. While grounded in the legal services context, the Model is designed to translate across industries and can be applied by any regulated organization navigating rapid growth, technology adoption, and generative AI integration.

The Regulatory Compression Effect

Even when the underlying law is federal, compliance exposure remains local, layered, and highly practical. Employment rules vary by state, privacy and breach notification laws differ across jurisdictions, advertising and ethics rules are not uniform, and data protection obligations change depending on where data is collected, stored, and shared.

The addition of advanced analytics and generative AI introduces further complexity. W. Nicholson Price II argues that artificial intelligence can weaken traditional privacy protections by undermining deidentification and enabling sensitive inferences, including health-related inferences from non-health data.[1] More recently, Price and Freilich describe "data as policy," emphasizing how choices about data collection, quality, and structure shape downstream governance outcomes, especially as inference capabilities expand.[2]

Scholars are increasingly describing AI risk in terms of real-world harm, not just technical flaws. Sylvia Lu explains that AI can harm people by weakening privacy, limiting personal choice, reinforcing unfair outcomes, and creating safety risks, especially when the technology is hard to understand and no one is clearly accountable for its decisions.[3] These concerns are showing up in practice. The Stanford AI Index Report found that reported AI-related incidents reached 233 in 2024, a 56.4 percent increase from 2023.[4]

International attention is also accelerating. The International AI Safety Report 2026 synthesizes research on general-purpose AI capabilities and risks, including systemic and malicious misuse scenarios that can scale rapidly through widely deployed tools.[5]

For example, a single marketing campaign using AI-generated content may simultaneously implicate state advertising rules, data privacy laws governing input data, vendor contractual obligations, and professional responsibility standards. What appears operationally simple quickly becomes legally multi-dimensional.

For regulated businesses, these dynamics affect everyday decisions: which vendors to use, how employees can use AI, how cybersecurity is managed, and how liability is assessed. Rapid growth intensifies what I call the Regulatory Compression Effect: more people, more systems, more jurisdictions, and more data flows, without necessarily more clarity.

To manage this pressure without slowing growth, compliance has to scale intentionally, not reactively.

The S.C.A.L.E. Model

The question is not whether these risks exist, but whether the organization is structured to manage them consistently at scale. The S.C.A.L.E. Model translates legal risk into practical operating decisions and repeatable systems:

S – Standardize Governance
C – Control Access
A – Align AI and Technology with the Rule of Law
L – Leverage Specialists Strategically
E – Escalate Early and Transparently

Each component reinforces the other. Together, they move compliance from reactive review to day-to-day governance built into the organization.

S – Standardize Governance

Compliance cannot depend on people remembering what to do. As teams grow, unwritten rules and assumptions become gaps.

One of the earliest lessons in scaling is simple: when expectations are unclear, mistakes become inevitable.

Policies should be written in plain language, address real operational decisions, be role-specific where necessary, and be updated as systems evolve. This approach aligns with the U.S. Department of Justice's Evaluation of Corporate Compliance Programs (ECCP), which emphasizes risk-based resourcing, operational integration, continuous improvement, and data-driven effectiveness.[6] The 2024 update also underscores that prosecutors may ask whether compliance teams have access to the same data and tools used elsewhere in the business, a point that becomes especially relevant when AI is deployed for productivity or revenue functions.

Documentation is not a static exercise. Policies must be version-controlled, periodically reviewed, and updated as systems, laws, and technologies evolve as they inevitably do. Equally important, they must be communicated clearly during employee onboarding and reinforced through ongoing training and practical application with some degree of regularity and intention. Regulators consistently evaluate whether policies are "living" documents. The DOJ's ECCP specifically asks whether policies are updated based on lessons learned and whether employees are trained in ways that ensure understanding, not just distribution. A policy that sits in a shared drive but is not understood in practice is not governance—it is exposure.

Standardized governance is not bureaucracy. It is clarity that helps people act consistently and confidently. Most employees do not want to guess what is permitted. Structured guidance reduces anxiety, increases consistency, and lowers the probability of inadvertent violations.

> When a regulated business expands into new jurisdictions, it quickly reveals whether compliance is truly built into the organization or simply treated as a checkbox.

In scaling environments, governance must be standardized before problems emerge, not retrofitted afterward.

C – Control Access

As systems multiply, from case management to CRM platforms, marketing tools, cloud storage, and AI assistants, the temptation is to grant broad access to avoid friction.

That approach creates organization-wide exposure.

Granting overly broad permissions—or applying uniform access across roles—is one of the most common and preventable sources of internal risk. Industry analyses of data breaches consistently show that excessive or poorly managed access significantly increases both the likelihood and impact of incidents. Access control should be embedded into onboarding workflows, ensuring that new employees receive only role-appropriate permissions from day one, rather than relying on later correction.

The S.C.A.L.E. Model translates legal risk into practical operating decisions and repeatable systems[.]

Role-based access control (RBAC), grounded in the principle of least privilege, is foundational. It ensures individuals access only the information necessary for their role. This is especially important in environments handling medical records, sensitive personal data, financial information, litigation strategy, or AI-integrated systems.

The National Institute of Standards and Technology (NIST)'s Cybersecurity Framework 2.0 elevates governance as a core function and reinforces access control as a foundational risk management practice.[7] NIST also has released quick-start guidance that connects cybersecurity controls to enterprise risk management and workforce planning, a useful bridge for organizations scaling quickly.[8]

In practice, scaling organizations should define access tiers aligned to job functions, conduct periodic access reviews, document approval authority, and log and audit changes.

When implemented well, access control makes onboarding smoother and reduces the need for later cleanup.

A – Align AI and Technology with the Rule of Law

AI adoption introduces governance implications that are often underestimated. The rule of law depends on fairness, transparency, accountability, and predictability. When AI systems are opaque, it becomes harder to ensure fairness, accountability, and consistent outcomes.

In a regulated business, alignment means putting practical controls in place: clarifying what can be entered into generative AI tools, requiring human review of AI-assisted work, assessing AI risks and potential harms, ensuring transparency when AI affects rights or outcomes, and vetting vendors for strong compliance practices.

Professional responsibility standards increasingly reinforce these obligations. ABA Model Rule 1.1, Comment [8] requires lawyers to maintain competence in relevant technology. ABA Formal Opinion 512 (July 2024) applies that duty to generative AI, emphasizing that lawyers must understand relevant limitations, guard against errors such as hallucinations, protect client confidentiality, and supervise the use of these tools.[9]

On the governance side, NIST's AI Risk Management Framework offers a structured approach to identify, measure, and mitigate AI risks.[10] NIST's Generative AI Profile provides additional guidance tailored to generative systems, including risks related to memorization, data leakage, and downstream misuse, all of which are directly relevant to vendor diligence and internal usage policies.[11]

AI cannot be treated as a productivity tool alone. It must be governed as a real risk area, like cybersecurity or privacy.

Alignment means technology enhances service without eroding privacy, without undermining fairness, and without compromising accountability. Organizations should also document acceptable use policies for AI, maintain audit trails of AI-assisted outputs where appropriate, and periodically review how these tools are being used in practice. Without documentation and monitoring, even well-designed policies can fail in execution. The increasing frequency of AI-related incidents reflects not only technical risk, but governance gaps in how these systems are deployed and supervised.

L – Leverage Specialists Strategically

As organizations grow, specialized risks become harder to manage without expert help. No in-house leader can fully internalize (or capably and independently oversee) cybersecurity architecture, privacy engineering, complex vendor contracting, insurance coverage nuances, or fast-moving AI governance frameworks. In many cases, the cost of proactive specialist engagement is significantly lower than the cost of remediating a compliance failure, regulatory inquiry, or security incident.

Strategic use of specialists is not a weakness, it is governance maturity. A company expanding into a new jurisdiction may engage local counsel early to identify regulatory risks before launch, while implementation of AI tools may warrant consultation with cybersecurity or AI governance specialists.

This layered approach reflects enterprise risk management principles found in COSO and ISO 31000, which emphasize integrating specialized expertise into governance processes.[12] COSO has also issued more recent guidance on alternative or nontraditional data sources, highlighting both opportunities and the privacy, integrity, and compliance blind spots that can arise when organizations rely on new data streams.[13]

Specialists reduce blind spots and strengthen organizational resilience.

E – Escalate Early and Transparently

One of the most overlooked governance tools is a clear, documented escalation path, especially one that is communicated early, consistently, and often throughout the organization. Equally important is ensuring employees understand when and how to escalate. This requires more than a written policy—it requires training, reinforcement, and a culture where raising concerns is expected and supported.

Research in organizational behavior consistently shows that employees are more likely to report concerns when expectations are clear and psychological safety is present, reducing the likelihood that small issues develop into systemic failures.[14]

In high-growth environments, risk events often worsen not because of malice, but because of delay. An organization may define specific escalation triggers, designate reporting channels (e.g., compliance hotlines), and assign ownership to ensure timely review and response.

Without a clear escalation structure, issues often go unreported until they become crises. A clear escalation path reinforces accountability and predictability, especially when organizations adopt AI tools, which more often than not introduce uncertainty where early risk signals are easy to miss.

In AI contexts, escalation ensures that uncertainty is surfaced rather than buried.

Sustainable Growth Requires Governance Infrastructure

Risk is not always a sign of failure. Often, it is evidence that an organization is growing.

The objective is not to eliminate all risk. The objective is sustainable, prioritized, well-documented risk management.

The S.C.A.L.E. Model does not slow growth. It enables it by reducing ambiguity, accelerating decision-making, clarifying authority, embedding oversight into systems, and preserving trust with clients and regulators.

As AI evolves rapidly, privacy protections are tested, and regulatory expectations rise, compliance cannot remain reactive; it must be built into the organization's design. This design must be one that everyone within the organization knows well; one that is revisited often by leadership to ensure compliance and requires updates as needed which are clearly documented and communicated throughout the organization.

For in-house counsel and organizational leaders, the responsibility is not simply to manage risk, but to design systems where compliance is understood, practiced, and continuously improved. That requires clear documentation, regular revisiting of policies, and deliberate communication across all levels of the organization—from onboarding through ongoing operations. Growth without governance creates risk. Growth with embedded, understood, and continuously reinforced governance creates durability.

NOTES

1. W. Nicholson Price II, Problematic Interactions Between AI and Health Privacy, 2021 Utah L. Rev. 925 (2021).
2. Janet Freilich & W. Nicholson Price II, Data as Policy, 66 B.C. L. Rev. 2475 (Nov. 25, 2025).
3. Sylvia Lu, Regulating AI Harms, Fla. L. Rev. (forthcoming 2026).
4. Stanford Institute for Human-Centered AI, 2025 AI Index Report, Responsible AI (AI Incidents Database: 233 incidents in 2024, +56.4% YoY).
5. International AI Safety Report 2026 (Feb. 2026).
6. U.S. Dep't of Justice, Evaluation of Corporate Compliance Programs (Sept. 23, 2024 update).
7. NIST, Cybersecurity Framework (CSF) 2.0 (Feb. 2024).
8. NIST CSF 2.0 Quick-Start Guide resources (including March 2025 and November 2025 updates).
9. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 512 (July 29, 2024); ABA Model Rule 1.1 cmt. [8].

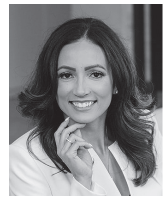
10. NIST, AI Risk Management Framework (AI RMF 1.0) (Jan. 2023).

11. NIST, AI RMF: Generative Artificial Intelligence Profile (NIST AI 600-1) (July 26, 2024).

12. COSO, Enterprise Risk Management—Integrating with Strategy and Performance (2017); ISO 31000:2018 Risk Management Guidelines.

13. COSO, Alternative Data: The COSO Perspective (2024).

14. Ethics & Compliance Initiative, *Global Business Ethics Survey: The State of Ethics & Compliance in the Workplace* (2023).



Erika A. Riggs is an attorney and founding partner of Disability Law Group in Troy, Michigan, where her practice focuses on social security disability and veterans disability law. She serves as Chair of the State Bar of Michigan Public Outreach and Education Committee and has been recognized numerous times for her advocacy and community engagement, including the State Bar of Michigan Champion of Justice Award.

Case Digests

*Prepared by Tala Dahbour**

Vox Funding, LLC v Grow Green, LLC, No 375050, ___ Mich App ___, ___ NW3d ___ (Apr 13, 2026)

Plaintiff company and defendant companies were engaged in a series of agreements which provided an exchange for plaintiff's money for defendants' receivables. Defendants defaulted on the agreements. Plaintiff sued in New York state court to recover amounts due under the agreements. Defendants argued the agreements were unenforceable as a violation of New York's civil and criminal usury laws. The court disagreed and granted plaintiff's motion for summary disposition, ordering defendants to pay plaintiff what is owed under the agreements.

Plaintiff then sought to enforce the judgment in Michigan by filing a notice of entry of foreign judgment subject to MCL 691.1173. Defendants moved to strike, arguing that the interest rates imposed under the agreements were unlawful and contrary to Michigan law and public policy. Defendants argued the court had the authority to refuse enforcement under MCR 2.612(C)(1)(f) subject to the Uniform Enforcement of Foreign Judgments Act, MCL 691.1171 et seq.

The trial court denied defendants' motion, holding that there is no public policy exception to the Full Faith and Credit Clause, US Const, art IV, § 1, and that Michigan courts must give effect to sister state judgments even when Michigan courts "would not be required to entertain the suit on which the judgment was founded."(Citing *Baker v GMC*, 522 US 222, 232-233 (1998)).

Despite the seemingly broad language of MCL 691.1173, it does not permit a collateral attack on a foreign judgment based merely on disagreement with its merits or conflict with Michigan public policy; holding otherwise would create a back-door public policy exception to the Full Faith and Credit Clause, contrary to the U. S. Supreme Court's instruction that no such exception exists. *See Baker*, 522 US 222, at 233. The decision of the trial court is affirmed.

Turner v J&J Slavik, Inc, No 370564, ___ Mich App ___, ___ NW3d ___ (June 12, 2026)

Plaintiff, the former president and chief executive officer of defendant company (J&J), entered into a redemption agreement requiring him to sell his stock to defendant at its fair market value as of the last day of the year preceding his 1992 termination. That redemption, however, never occurred.

Around 2012, plaintiff brought an action against J&J under the Business Corporation Act (BCA), MCL 450.1101 et seq., and asserted his status as a shareholder. Defendants argued that plaintiff's shares had no value at the time of his termination and that plaintiff was therefore no longer a shareholder. The trial court held that the plaintiff's claims were barred by the six-year statute of limitations under MCL 600.5813. The court of appeals reversed, holding that although plaintiff is barred from substantive relief for past violations, he may seek injunctive relief to prevent future violations if the trial court determines he remains a shareholder. *Turner v J & J Slavik, Inc*, No 303243 (Mich Ct App May 10, 2012) (unpublished).

This issue made its way back to the court of appeals on the issue of plaintiff's status as a shareholder. The court ultimately held that plaintiff's shares were never redeemed and that he therefore remained a shareholder. Defendants did not follow the agreement's redemption procedures: they did not conduct a valuation, produce documentation of the shares' value, or otherwise show that the shares were worthless. And nothing in the agreement excused compliance with the valuation and closing requirements because the shares allegedly had negative or no value. *Turner v J & J Slavik, Inc*, No 313936 (Mich Ct App Apr 15, 2014) (unpublished).

This brings us to the present case. Plaintiff filed this action, alleging violations of the BCA, including breach of fiduciary duty and minority shareholder oppression, among other claims. The trial court entered a directed verdict, dismissing plaintiff's breach of fiduciary duty claim but found that defendants had engaged in minority shareholder oppression by intentionally refusing to determine and pay plaintiff the fair market value of his shares as required under the redemption agreement. The court further found that defendants violated MCL 450.1487(1), as well as MCL 450.1487(2) and (6), by refusing to provide plaintiff with requested financial statements and corporate records. In addition, the court determined that defendants had engaged in spoliation of evidence concerning those documents.

The trial court entered judgment against defendants, ordering them to purchase plaintiff's shares for $25,000—the amount plaintiff originally paid—plus 7 percent interest on that principal amount starting from May 1992. The court also awarded plaintiff attorney fees. However, defendants subsequently moved for relief from the attorney fee portion of the judgment, arguing that MCL 450.1487(5) did not apply to plaintiff's remaining BCA claims and that, under the American Rule, attorney fees were therefore not recoverable. The trial court granted defendants' motion. Both parties appealed.

Defendants appealed the trial court's denial of summary disposition under MCR 2.116(C)(10) on the issue of minority shareholder oppression, arguing plaintiff's claims were barred by res judicata. The court of appeals held that because the claims arose only after prior litigation established plaintiff's continued status as a shareholder, that no prior court had adjudicated the merits of plaintiff's BCA claims, and that the earlier dismissal was without prejudice. The appellate court further concluded that the record supported the conclusion that defendants engaged in a continuing course of willfully unfair and oppressive conduct, relevant evidence included the redemption agreement itself and that plaintiff solicited financial documents

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

to no avail. Therefore, summary disposition was properly denied.

Defendants also argued that the trial court applied the wrong statute of limitations to plaintiff's shareholder oppression claim—six years under MCL 600.5813, rather than the three years pursuant MCL 450.1489(1)(f). The court of appeals disagreed and held that the shorter limitations period in MCL 450.1489(1)(f) applies only to claims seeking damages, not to claims seeking the equitable remedies listed in MCL 450.1489(1)(a)–(e), which includes a forced buyout of shares at fair value under MCL 450.1489(1)(e).

Plaintiff appealed the trial court's directed verdict on his breach of fiduciary duty claim against J&J director Ronald Slavik. The court of appeals affirmed, holding that a directed verdict was proper because no financial records existed from which the jury could assess damages. Although the court found the defendants' spoliation caused the absence of those records, the jury still lacked an evidentiary basis to reasonably determine the value of the company or plaintiff's shares.

Both parties also appealed the order awarding plaintiff $25,000 plus interest. The court of appeals affirmed, holding that the trial court did not abuse its discretion, because defendants destroyed or withheld the financial records needed to value the shares, the trial court reasonably relied on the only undisputed evidence of value: the amount plaintiff originally paid. The remedy was within the trial court's broad equitable authority under MCL 450.1489.

Plaintiff further argued that he was entitled to attorney fees and costs. The court of appeals disagreed, holding that under the American Rule, each party generally bears its own attorney fees unless otherwise authorized by statute, court rule, or a narrow common-law exception. Plaintiff identified no statute or court rule authorizing fees, arguing instead that defendants' misconduct triggered the limited exception for fees caused by fraudulent or unlawful conduct. See *Int'l Outdoor, Inc v SS Mitx, LLC*, 349 Mich App 212, 242; 27 NW3d 365 (2023). The court recognized the exception but found that defendants' conduct, while improper, did not warrant a fee award. The decision of the trial court is affirmed.

HPIL Holding, Inc v Zhang, 168 F4th 944 (6th Cir 2026)

In a Michigan receivership proceeding involving HPIL, a Wyoming corporation, minority shareholder Haining Zhang alleged corporate mismanagement and sought appointment of Angela Collette as receiver. Zhang served the complaint at an outdated company address, and HPIL failed to respond. The state court entered a default judgment and appointed Collette. During the receivership, Zhang and Collette transferred 92 percent of HPIL's stock to Stephen Brown.

In 2021, three other minority shareholders moved to intervene, arguing they had not been served. The state court set aside the default judgment and dismissed the receivership complaint for lack of proper service but declined to unwind actions taken during the receivership. Those shareholders later filed derivative counterclaims against Zhang, Collette, and Brown, but the state court dismissed them because the plaintiffs had not continuously held shares throughout the receivership proceedings and had not made a written demand with a company director.

In 2023, HPIL sued Zhang, Collette, and Brown, among other parties. HPIL alleged breach of fiduciary duty, tort claims, RICO violations, and civil conspiracy. The complaint claimed that Zhang and Collette intentionally served the receivership petition at the wrong address to seize control of HPIL, loot the company, and carry out a "pump-and-dump" scheme.

The district court dismissed for lack of subject-matter jurisdiction under 28 USC 1257(a), relying on the *Rooker-Feldman* doctrine, which bars lower federal courts from reviewing state court judgments. *See Rooker v Fidelity Tr Co*, 263 US 413, 416 (1923); *District of Columbia Court of Appeals v Feldman*, 460 US 462, 463 (1983)

The Sixth Circuit reversed. Citing *Exxon Mobil Corp v Saudi Basic Indus Corp*, 544 US 280, 283 (2005), the court emphasized that *Rooker-Feldman* is narrow and applies only to cases brought by state court parties complaining of injuries caused by state court judgments and seeking federal review or rejection of those judgments. HPIL's claims did not fit that category. The alleged injuries arose from defendants' conduct—improper service, misuse of the receivership, corporate looting, and alleged fraud—not from the state court's receivership order itself. Because HPIL challenged independent misconduct rather than the state court judgment itself, § 1257(a) and *Rooker-Feldman* did not deprive the federal court of jurisdiction. The Sixth Circuit reversed the dismissal and remanded for further proceedings.

Hai v CIG Capital Advisors, Inc, No 370517, ___ Mich App ___, ___ NW3d ___ (June 18, 2026)

Plaintiff provided consulting services to defendant (CIS), a wealth management company. The parties entered into a compensation agreement granting plaintiff equity-earning rights: (1) a 5–10 percent equity interest in new transactions for which plaintiff was the "procuring cause"; and (2) a 10% equity interest in the Business Advisory Services (BAS) department, vesting in 3.33 percent annual increments and fully vested on plaintiff's third anniversary, subject to meeting an annually determined revenue hurdle rate.

The agreement provides that the "hurdle rate" would be "defined by plaintiff's direct report," but the parties dispute how the annual rates were determined. Plaintiff asserts the hurdle rate reflected the revenue needed for the department to remain viable; defendant contends it was to be agreed upon by department heads and management. The company founder, Osman Minkara, testified that he repeatedly told plaintiff he failed to meet his hurdle rates, while plaintiff maintains the rates were never raised during performance reviews. The parties also dispute whether, after plaintiff's third anniversary, they entered into an oral agreement allowing plaintiff to continue accruing BAS equity at 3.33 percent per year for 15 years, totaling up to 49.95 percent.

The company founder created a subsidiary, EAS, to support another project and entered into a consulting agreement under which EAS was billed $26 million. Plaintiff later learned that profitable revenue—including monthly $160,000 invoices for company services—was allocated entirely to EAS rather than BAS, despite BAS's alleged contributions to the project. Because plaintiff's compensation depended on BAS profits, he believed the allocation deprived him of profit sharing and began questioning EAS's and BAS's finances, leading to disputes with Minkara. After an outburst at a meeting, plaintiff was suspended and later terminated.

Plaintiff then filed suit asserting multiple claims, but the trial proceeded only on his breach of contract claim based on defendant's alleged failure to provide the promised 49.95% equity stake in BAS. The jury found for plaintiff and awarded $3 million in damages.

On appeal, defendant argues that the trial court erred in granted monetary damages rather than ordering specific performance. Defendant reasoned that the award of monetary damages puts plaintiff in a better position than if the contract were performed. However, the court of appeals held that the monetary damages are equal to the value of equity plaintiff would have had had the contract been performed, so he is not in a better position. Therefore, the trial court did not err in declining to award specific performance.

Defendants also argued they were entitled to a new trial because the jury's findings on breach of contract, fraudulent concealment, and damages were against the great weight of the evidence. *See Guerrero v Smith*, 280 Mich App 647, 666, 761 NW2d 723 (2008). They claimed there was no evidence that plaintiff met the revenue targets required to earn BAS equity. But the record supported the jury's finding: plaintiff testified that Minkara told him during annual reviews that he had earned equity, the reviews never stated that plaintiff failed to meet any hurdle or accrue equity, the reviews repeatedly referenced revenue targets being met, and CIG prepared a spreadsheet showing plaintiff earning 3.33% equity annually. Although defendants presented contrary evidence—including Minkara's denial, his claim that the spreadsheet was hypothetical, and the absence of K-1 forms—those conflicts raised factual and credibility issues for the jury to resolve.

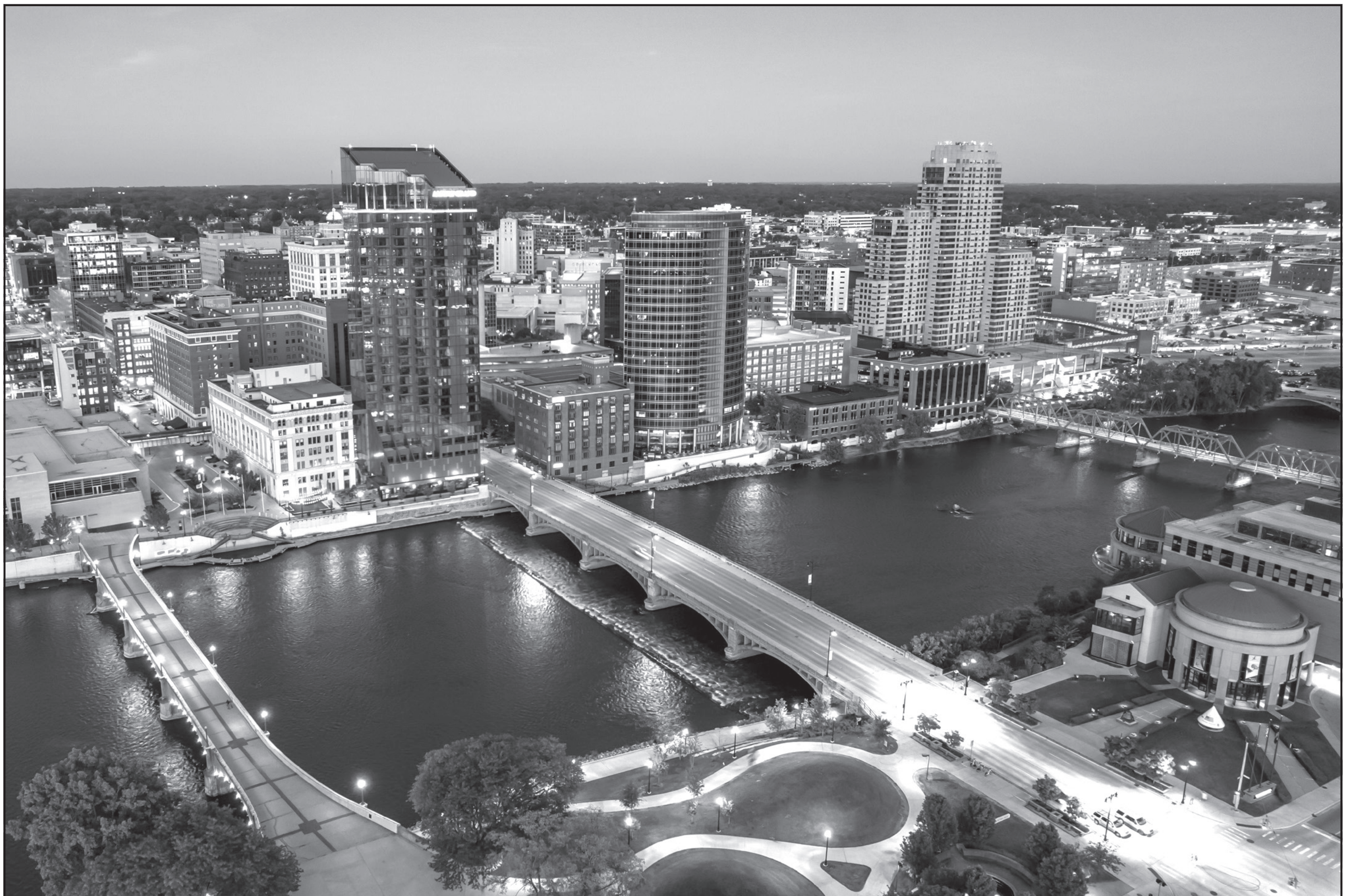
On fraudulent concealment, defendant argued plaintiff's claims were time-barred under MCL 600.5807(9) because plaintiff knew in 2011 that he held no BAS equity and did not sue until 2022. Defendant therefore asserted that fraudulent concealment could not toll the limitations period. But the evidence was disputed: plaintiff testified he was told he had earned equity, his reviews showed strong revenue performance without noting failed hurdles, and evidence suggested Minkara concealed EAS financials. Accordingly, the jury could reasonably find fraudulent concealment and reject defendant's statute-of-limitations defense.

Defendant also challenged the evidentiary support for the jury's $3 million damages award, arguing that plaintiff improperly relied on unsupported CIG gross and net revenue figures and attributed EAS revenues to BAS without a factual basis. The court of appeals rejected those arguments, noting that defendants failed to produce the third-party valuation documents needed to undermine plaintiff's valuation, despite Minkara's testimony that it was hypothetical. The court also held that EAS's provision of "consulting services" supported plaintiff's theory that its revenues were attributable to BAS, where plaintiff worked as a consultant. Accordingly, the verdict was not against the great weight of the evidence, and the trial court properly denied a new trial. Defendants brought other issues on appeal, which the court of appeals declined to address for lack of preservation. The decision of the trial court is affirmed.

Index of Articles

(vol 30 and succeeding issues)*

For cumulative index from volume 16, go to http://connect.michbar.org/businesslaw/newsletter.



Notes

SUBSCRIPTION INFORMATION

Any member of the State Bar of Michigan may become a member of the Section and receive the *Michigan Business Law Journal* by sending a membership request and annual dues of $30 to the Business Law Section, State Bar of Michigan, 306 Townsend Street, Lansing, Michigan 48933-2012.

Any person who is not eligible to become a member of the State Bar of Michigan, and any institution, may obtain an annual subscription to the *Michigan Business Law Journal* by sending a request and a $30 annual fee to the Business Law Section, State Bar of Michigan, 306 Townsend Street, Lansing, Michigan 48933-2012.

CHANGING YOUR ADDRESS?

Changes in address may be sent to:

Membership Services Department
State Bar of Michigan
306 Townsend Street
Lansing, Michigan 48933-2012

The State Bar maintains the mailing list for the *Michigan Business Law Journal*, all Section newsletters, as well as the *Michigan Bar Journal*. As soon as you inform the State Bar of your new address, Bar personnel will amend the mailing list, and you will continue to receive your copies of the *Michigan Business Law Journal* and all other State Bar publications and announcements without interruption.

CITATION FORM

The *Michigan Business Law Journal* should be cited as MI Bus LJ.

DISCLAIMER

The opinions expressed herein are those of the authors and do not necessarily reflect those of the Business Law Section.

CUMULATIVE INDEX

The cumulative index for volumes 16 to volume 36 No 1 may be found online at the Business Law Section's website (http://connect.michbar.org/businesslaw/newsletter). The index in this issue is cumulative from volume 30 No 1 (Spring 2010).

SBM
STATE BAR OF MICHIGAN

PRSRT STD
U.S. POSTAGE
PAID
SAGINAW, MI
PERMIT NO. 269

BUSINESS LAW SECTION
State Bar of Michigan
306 Townsend Street
Lansing, Michigan 48933-2012

BRENDAN J. CAHILL
Publications Director

Published in cooperation with
INSTITUTE OF CONTINUING
LEGAL EDUCATION
TALA DAHBOUR
Staff Attorney
CHRISTINE MATHEWS
Copy and Production Editor

SECTION CALENDAR

Business Law Institute

DATE	TIME	LOCATION
October 9, 2026	8:00 a.m.	Grand Rapids, MI